

## Defined Benefit Scheme

# Superannuation and Family Law

Family law treats superannuation as property, which can be divided in the event of a marriage or a de-facto relationship breakdown.

### What do the super splitting laws say?

Under the Family Law Act 1975 (Cth), super can be divided in the event of a relationship breakdown.

Couples who have separated and are going through a property settlement are able to make a superannuation agreement (a financial agreement that deals with a super interest) about how their super is to be split.

Super can be split either by:

- an order of the Federal Circuit and Family Court of Australia (Court Order); or
- a superannuation agreement (Agreement).

As trustee we are required by law to implement the Court Order or the Agreement (provided it is legally compliant and is binding), as follows:

- provide information to an eligible person (for example, the other party to the split or legal representative) who inquires about the value of a super interest;
- flag a super interest (on the request of the parties or by Court Order) so that no payment can be made until the flag is lifted; and
- split a super interest either by agreement or by Court Order.

Please note, a super benefit of less than \$5,000 cannot be split.

### Requesting information

The member, the member's spouse (including de facto spouses, same sex partners as well as a prospective spouse), and a representative of the Court or a person who intends to enter into a superannuation agreement with a member (collectively, 'eligible persons') have the right to obtain details of a member's super entitlements.

The Family Law Act requires that an eligible person seeking information about the super interest of a member must provide a declaration in a form prescribed under the Family Law Regulations. We can only act on a request for information where a declaration is provided in the prescribed form.

This declaration is included in the Application for Information under the Family Law Act form. This form and other relevant forms are available at [eissuper.com.au/forms](https://eissuper.com.au/forms). The Trustee does not charge a fee for applying for Family Law information or for the actual splitting of super.

### Providing information

Once the required forms have been received, we will provide the eligible person with the information required by the Family Law Super Regulations which may include the value of the member's super entitlements together with other relevant information that may be needed in determining a super split.

Information is provided as at the date specified in the application, or if no date is specified, the date we receive the application.

The Family Law Act prohibits us from giving a member's address details to an applicant and from telling a member that a request for information has been made by an eligible person.

Information will only be provided where the Family Law Super Regulations require us to provide it.

We are not able to provide any advice as to what might be an equitable basis for apportioning those entitlements as it is a matter for the respective parties to reach agreement on or else have the Federal Circuit and Family Court of Australia do so. It must be kept in mind, that all or part of a super entitlement might be subject to compulsory preservation and that there might also be taxation issues to consider.

### What happens next?

#### Splitting super

The non-member spouse entitlement is specified by the Court Order or Agreement as a dollar amount or as a percentage of the value (base amount) of the accrued benefit. We are required to roll over the amount involved into a separate super account in the name of the spouse. The only exception to this is where the total amount is not subject to compulsory preservation. In this case, the spouse can request direct payment of the total amount.

The spouse can direct us to open an EISS Super account in their name or roll over the entitlement to another complying super fund. The default arrangement in the absence of any direction is that a separate EISS Super account will be established in the spouse's name. The amounts paid into a spouse's account will include the same proportions of the various preservation and taxation components as in the member's own account.

### Payment of a super split

At the effective date of the split, the member's benefit is reduced by the dollar or percentage amount allocated to the non-member spouse. We will notify the member of the payment and of their reduced entitlement.

### Fees

The Trustee does not charge a fee for the provision of Family Law information or for the actual 'splitting of the benefit'.

For further information on super splitting, please refer to the Federal Circuit and Family Court of Australia [fcfcoa.gov.au](http://fcfcoa.gov.au) and the Attorney-General's Department [ag.gov.au](http://ag.gov.au).

### Seek professional advice

Our financial planners provide advice over the phone, at our offices or at a location near you.



To book an appointment, please call **1300 369 901** or visit [eisuper.com.au/appointment](http://eisuper.com.au/appointment).

## We're here to help

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