

## **FAMILY LAW IN THE RETIREMENT SCHEME**

The Family Law Act provides a mechanism for taking into account superannuation entitlements when negotiating property settlements that have resulted from marriage or de facto relationship breakdowns and for splitting those entitlements between the two parties involved.

### **The first step**

An Active Super member, their spouse (including de facto spouse) and a representative of the Family Court of Australia have the right to obtain details of the member's superannuation entitlements. A member's prospective spouse also has the right to obtain those details.

The Family Law Act prohibits us from giving a member's address details to an applicant or from notifying a member that an application for details (valuation request) has been made by their spouse or prospective spouse.

The Family Law Act requires that a valuation request includes a declaration in a form prescribed under the Regulations. This declaration is included in the Active Super Application for Information under the Family Law Act form, which is available at [activesuper.com.au](http://activesuper.com.au). Alternatively, a *Form 6 Declaration and superannuation information request* form is available directly from the Family Court of Australia. A valuation request can also be made by letter.

Information is provided as at the date specified in the valuation request. If the Active Super application form is not used, the applicant must specify the date at which the information requested is to apply. This could, for example, be the date of separation. If no date is specified, the relevant date is the date we receive the request.

### **What happens next?**

Upon receipt of a valuation request, we provide the applicant with the value of the member's superannuation entitlements at the relevant date, together with other information that may be needed to establish a basis for apportioning those superannuation entitlements between the respective parties.

We don't provide any advice as to what might be an equitable basis for apportioning those entitlements. That is a matter for the respective parties to reach agreement on or have the Family Court make a direction. All or part of a superannuation entitlement may be subject to compulsory preservation. There may also be taxation issues to consider. The information we provide enables these issues to be taken into account.

Superannuation can be divided either by a formal written agreement of the parties or by court order.

For the Active Super Trustee to action a formal written agreement, the agreement needs to comply with Family Law requirements and be served on the Trustee. Alternatively, if the parties cannot agree on the way in which to split their assets, the Family Court can make orders. These orders can include a direction as to how the benefit should be split, which would be served on the Trustee.

In accordance with the Family Law Act, the Trustee must be provided with a copy of the agreement or court orders for review and approval.

The Trustee then updates the member's records and complies with the procedures for splitting set out in the Family Law Act. The base amount adjusted for interest is transferred to the rollover institution of the non-member spouse's choice in accordance with the terms of the agreement or order.

Please note that if the member's benefit is less than \$5,000, it cannot be split.

When a court order or agreement is made under Family Law legislation, the Retirement Scheme benefit is split into two components:

1. Non-member spouse entitlement. Where possible, this is immediately rolled out to a complying institution at the direction of the non-member spouse; and
2. Member's reduced benefit entitlement.

#### **Non-member spouse entitlement**

The formal written agreement or court order defines the non-member spouse's share of the member's superannuation entitlements. This base amount is provided as either a set amount or a percentage of those entitlements. In either case, we are required to roll over the amount involved into a separate superannuation account in the name of the spouse. The only exception to this is when the total amount is not subject to compulsory preservation. In this case, the spouse can request direct payment of the total amount.

Separate spouse accounts cannot be maintained within the Retirement Scheme. The spouse can direct us to roll over the entitlement to another complying superannuation scheme. In the absence of any direction, an Active Super Accumulation Scheme account will be established for the spouse and the entitlement transferred to that account.

The amounts paid to the non-member spouse include preservation and taxation components in the same proportions as in the member's own account.

#### **Member's reduced benefit entitlement**

The member's reduced benefit entitlement is calculated at the operative time using the non-member spouse percentage. At the operative time, the non-member spouse percentage is calculated as the base amount divided by the actuarially determined family law value of the member's benefit entitlement. This non-member spouse

percentage is then applied to all components of the benefit entitlement including the Contributor Financed Benefit, the Employer Financed Benefit and the Basic Benefit.

### **Current members of the Retirement Scheme**

The Employer Financed Benefit is based on the number of Benefit Points accrued. Actuarial formulae are then applied to calculate the benefit entitlement at exit. To reflect the family law reduction, there is a permanent reduction to the maximum number of Benefit Points that can be accrued.

The reduction of Benefit Points reflects the prepayment of the Employer Financed Benefit portion of the benefit entitlement to the non-member spouse carried out in accordance with Superannuation Law.

Following the reduction of the member's account for the family law payment split at the operative time, the member's benefit entitlement accrues normally, subject to the permanent reduction of the maximum Benefit Point entitlement.

### **Deferred members of the Retirement Scheme**

In a case where the Trustee receives a duly executed written agreement or binding court orders, the Deferred benefit is reduced by the non-member spouse percentage at the operative time. Following the reduction, both entitlements continue to be adjusted with investment earnings until the member's exit from the Scheme. If the base amount is required to be paid at the operative time, it cannot exceed the Deferred Withdrawal Lump Sum benefit.

The member is notified of the effect of the family law payment split in their next periodic statement.

## **NEED FURTHER INFORMATION?**

If you would like further information please call Member Care on 1300 547 873 between 8.30am and 6.00pm, Monday to Friday.

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