

## **FAMILY LAW IN THE DEFINED BENEFIT SCHEME**

The Family Law Act provides a mechanism for taking account of superannuation entitlements when negotiating property settlements, resulting from marriage breakdowns and for the 'splitting' of those entitlements between the two parties involved.

### **The first step**

The member, the member's spouse (including de facto spouses and same sex partners) and a representative of the Court 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 telling a member that an application for details has been made by their spouse or prospective spouse.

The Family Law Act requires that an application for these details (Valuation Request) include 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 on our website. Alternatively, a *Form 6 Declaration* and a *Superannuation information request* form are available directly from the Family Court of Australia and an application for a Valuation Request can be made by letter.

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

### **What happens next?**

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

We will not, however, 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 else have the Family Court do so. It must be kept in mind, though, that all or part of a superannuation entitlement might be subject to compulsory

preservation and that there might also be taxation issues to consider. The information we provide will enable these issues to be taken into account.

Superannuation can be divided either by agreement of the parties or by a court order. For the Trustee to action any agreement, it 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, which include a direction from the court as to splitting, and these would be served on the Trustee.

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

It is to be noted that if the member's benefit is less than \$5000, it cannot be 'split'.

When a court order or agreement is made under Family Law Legislation, the defined benefit superannuation benefit is split into two components:

1. The non-member spouse entitlement, which is immediately rolled out to a complying institution at the direction of the non-member spouse
2. The member's reduced benefit entitlement.

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

The non-member spouse entitlement is specified by the court order or agreement as a dollar amount or as a percentage of the value of the accrued benefit.

The value of the accrued benefit is calculated at the operative time, using assumptions and methods specified or approved by the Australian Government Actuary. This involves calculation of the discounted present value of the member's likely superannuation benefits in respect of service and contributions to date:

- Taking into account the specified probabilities of leaving service due to retirement, resignation, invalidity or death; and
- Using specified factors to value pension benefits where applicable; and
- Using approved methods of apportioning the total expected benefit between accrued service and future service.

We are required to rollover 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.

Where the member is in the Defined Benefit Scheme, separate spouse accounts cannot be maintained within that Scheme. The spouse can direct us to rollover 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 will include the same proportions of the various preservation and taxation components as in the member's own account.

### **Member's reduced benefits entitlement**

The member's reduced benefit entitlement on eventual exit or payment of benefit is equal to the benefit had there been no payment to the non-member spouse, less a benefit reduction calculated in respect of service prior to the operative time using the non-member spouse percentage.

Firstly, the amount of each pension or lump sum component of the benefit payment, (had there been no payment to the non-member spouse) is apportioned between service prior to the operative time and service since that date. This is done using assumptions and methods approved by the Australian Government Actuary. Secondly, the proportion of the benefit accrued before the operative time is then multiplied by the non-member spouse percentage to obtain the reduction. No reduction is made to the proportion of benefit accrued after the operative time.

### **NEED FURTHER INFORMATION?**

If you would like further information, please visit our website at [activesuper.com.au](https://activesuper.com.au) or contact Member Services on 1300 547 873 between 8.30am and 5.00pm, Monday to Friday.