

RBF family law

This brochure covers the treatment of your RBF super for family law purposes



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Introduction

Under the *Family Law Act 1975* married and de facto¹ couples have the option of splitting their super entitlements if and when the marriage or relationship breaks down.

Super splitting is the name given to the process of dividing up an individual's super entitlements for the purpose of dividing assets when a relationship breaks down.

This document contains important information and some answers to frequently asked questions about how family law is applied at RBF.

Please note this is a guide only. We recommend that you seek legal advice in relation to your rights where a marriage or relationship breaks down.

¹ Includes opposite and same sex couples. We recommend that you seek legal advice on the requirements that apply to the splitting of super for de facto couples and married couples where the relationship breaks down.

If a couple separates or divorces must super be split?

No. Couples that are separating have a number of options:

- ▶ to enter into a formal written agreement to split super;
- ▶ to seek consent orders from the family law Court to split super; or
- ▶ if an agreement cannot be reached, to seek a court order to split super.

In reaching an agreement or obtaining consent orders, it is not mandatory that super be split.

For more information we suggest you seek legal advice.

Can all super be split?

Generally, any super can be split by agreement or court order. It does not matter whether the super is in the 'growth' or 'payment' phase (please see page 3 for more information).

However, we cannot accept orders or an agreement that requests a split of:

- ▶ a super interest with a withdrawal benefit of less than \$5,000; or
- ▶ a non-commutable pension with an annual value of less than \$2,000 per annum.

Additionally once an order or agreement has been received in the following circumstances RBF can make a payment to a member without notice to the non-member partner:

- ▶ on the grounds of financial hardship;
- ▶ on specified compassionate grounds;
- ▶ on the grounds of partial and permanent incapacity or temporary incapacity, unless it has been made continuously for two years;
- ▶ after the death of a member, to a reversionary beneficiary who is a child of the member.

Who can request information about super?

For family law purposes, only an 'eligible person' can request information about super.

An eligible person includes:

- ▶ a fund member (known as the 'member partner');
- ▶ the partner or de facto of the member (known as the 'non-member partner');
- ▶ if the member or partner/de facto of the member has died, the deceased person's legal personal representative; or
- ▶ a person who intends to enter into a Superannuation Agreement (for example under a pre-nuptial agreement) with a member.

RBF can only supply information to a third party (including your solicitor) if the eligible person provides written authority.

When information is requested, RBF may not be able to respond immediately. RBF may need to verify the relevant details about the member's super, such as salary and employment history.

What influences how super is treated under the *Family Law Act 1975*?

The following factors determine how a super interest is treated under the *Family Law Act 1975*:

- ▶ whether it is an accumulation interest;
- ▶ whether it is a defined benefit interest;
- ▶ whether it is in the growth phase; and
- ▶ whether it is in the payment phase.

Is the super in the growth or payment phase?

Under the *Family Law Act 1975* a member's super is treated differently depending on whether it is in the growth or payment phase. This will determine how RBF responds to a request for information and will also influence what options the non-member partner has in relation to their share of the super.

Super is in the growth phase if the member:

- ▶ has not satisfied a condition of release²; or
- ▶ has satisfied a condition of release, but has not requested payment of a super benefit they may be entitled to receive.

Super is in the payment phase when the member:

- ▶ has satisfied a condition of release and has requested payment of a super benefit; or
- ▶ is receiving a pension.

² Acceptable conditions of release include retiring after reaching preservation age, ceasing an employment arrangement after reaching age 60, death, terminal illness, permanent incapacity or reaching age 65.

How is super valued?

RBF does not value super for family law purposes. However RBF will provide information for the purposes of a valuation to an eligible person upon submission of relevant forms (see page 6 for more information). The separating couple or the Family Court undertakes this valuation.

With a defined benefit interest the value of the super is determined on the basis of a method prescribed in the Family Law (Superannuation) Regulations 2001.

Splitting super in the growth phase

The agreement or court order to split a member's super interest may specify a dollar amount or a percentage of the member's benefit. If a dollar amount is allocated to the non-member partner, that amount is known as the 'base amount'.

| Defined benefit (sources) | Nature of interest | Method of treatment |
|--|---|--|
| Contributory Scheme Contributory Scheme CPA | A defined benefit interest in an exempt public sector super scheme | <p>The base amount method is to be applied and adjusted in accordance with the Family Law (Superannuation) Regulations 2001:</p> <ul style="list-style-type: none"> ▶ The base amount in the court order or the Superannuation Agreement will be allocated to the non-member partner. ▶ RBF will adjust the base amount annually by AWOTE (Average Weekly Ordinary Time Earnings) plus 2.5% as required under the <i>Family Law Act 1975</i>. ▶ Funds will not be split to the non-member partner's super account until the member triggers a splittable payment. This may be once the member terminates employment and either requests an RBF Life Pension or is able to satisfy a condition of release under Commonwealth legislation and RBF receives a request for payment from the member and/or a request to rollover to an external super fund. |
| State Fire Commission Superannuation Scheme Tasmanian Ambulance Service Superannuation Scheme | A fully funded defined benefit interest in an exempt public sector super scheme | <p>The member's super will be split so that all claims between partners are settled prior to the member accessing their super (known as a 'clean break' split). The super interest will be treated in accordance with Part 7A of the Superannuation Industry (Supervision) Regulations 1994.</p> <p>RBF will administer the interest as follows:</p> <ul style="list-style-type: none"> ▶ when a payment split is implemented and the non-member partner is allocated the family law split amount, RBF will adjust the member's benefit by creating a Debt Account; ▶ the Debt Account will accrue interest at the Scheme earning rate until the member becomes entitled to the super benefit; ▶ at that time the member's benefit will be calculated in accordance with Scheme rules; and ▶ the member's benefit will then be reduced by the value of the Debt Account. |

Continued over

| Defined benefit (sources) | Nature of interest | Method of treatment |
|---|--|---|
| Contributory Scheme Life Pension Parliamentary Superannuation Fund Life Pension RBF Life Pension | A defined benefit interest in an exempt public sector super scheme | Pension payments are to be split in accordance with the Family Law (Superannuation) Regulations 2001. RBF will administer these interests as follows: <ul style="list-style-type: none"> ▶ If the specified percentage method is used, the non-member partner will be paid a specified percentage of the pension. ▶ If the base amount method is to be used it should be noted that most RBF Life Pensions do not provide for a lump sum to be paid once the pension has commenced. This means that in most cases the non-member partner will be required to receive the base amount entitlement in the form of pension payments. ▶ The share of the pension payable to the non-member partner will cease on the death of the member where the deceased member does not have a surviving partner or the pension is non-reversionary. ▶ Where a member in receipt of a reversionary RBF Life Pension is survived by a surviving partner, the surviving partner is eligible to continue to be paid a pension at the rate of two thirds of the deceased's pension; ▶ If a reversionary RBF Life Pension is subject to a payment split at the date of the member's death, then the non-member partner is entitled to continue receiving the same percentage split as provided by the court order or Superannuation Agreement from the pension paid to the surviving partner. ▶ Where a reversionary pension is payable to the surviving partner of a deceased member and payment of that pension ceases upon the death of the surviving partner, payment of the pension to the non-member partner will also cease. ▶ Where a non-member partner predeceases the RBF member RBF will commute the non-member partner's share to a lump sum to be paid to the deceased's estate. |
| Parliamentary Retiring Benefits Fund | A defined benefit interest in an exempt public sector super scheme | The Parliamentary Retiring Benefits Fund is a percentage only interest as defined by Regulation 9A of the Family Law (Superannuation) Regulations 2001. RBF will administer these interests as follows: <ul style="list-style-type: none"> ▶ The accrued benefit multiple (as defined in the Family Law (Superannuation) Regulations 2001) at the date of separation will be recorded on the member partner's file. ▶ The percentage split amount in the court order or the Superannuation Agreement will be recorded against the member partner's file. ▶ Once the member satisfies a condition of release and a splittable payment becomes payable, the benefit for the non-member partner will be calculated in accordance with the formula provided by Regulation 26 of the Family Law (Superannuation) Regulations 2001. ▶ Funds will not be payable to the non-member partner until the non-member partner is able to satisfy a condition of release under Commonwealth legislation and RBF receives a request for payment. |

What is 'flagged' super?

An alternative to splitting the interest immediately is to 'flag' the interest, so it may be split at a later date.

'Flagged' super arises when an agreement or order places a 'flag' on the member's super. Flagging agreements can only be made while the interest is in the growth phase. Flagged super cannot be paid by the Trustee until both parties make a flag lifting agreement or the court authorises the lifting of the flag.

When would it be likely for super to be flagged?

If the super will become payable to the member partner in the near future, it may be appropriate to defer a final decision on the division of that interest until the actual value of the super benefit becomes known. In the interim period, a flag may be placed on that interest to prevent the Trustee from making any payments to the member partner.

What fees are payable?

The Trustee of an eligible super fund may charge reasonable fees in respect of certain activities they perform in compliance with the requirements of the *Family Law Act 1975*.

The current policy of RBF is that fees be imposed for:

- ▶ requests for family law information; and
- ▶ family law account splitting.

Request for family law information fee

A fee is charged when a request is made to obtain information for the purposes of separation or divorce. Fees apply to each completed information form for which RBF is required to provide in relation to a super interest and will be invoiced to the person making the request.

Where a member holds more than one account or a completed information form requests detail for more than one date, RBF will only charge a single fee.

The request for family law information fees, inclusive of GST (if applicable), is as follows:

| | Fee units |
|------------------------------------|-----------|
| Request for family law information | 318 |

The value of a fee unit is determined in accordance with the *Fee Units Act 1997*.

The value of a fee unit changes on 1 July each year. Please contact the RBF Enquiry Line on **1800 622 631** for the current fee unit rate.

The fees will apply to all requests for information irrespective of the value of the interest.

On receipt of a completed declaration in accordance with 'Form 6' of the Family Law (Superannuation) Regulations 2001 and an accompanying application for information, RBF will advise that applicant or their nominated representative of the fees that are payable in relation to the request. The information requested will be provided once RBF has received payment of the fee. It should be noted that on receipt of an application for information RBF will provide information in relation to all of the super interests that the relevant RBF member has with RBF.

Family law account splitting fee

A fee is charged to perform a payment split in accordance with a court order or Superannuation Agreement. A fee will apply for each account to be split. The fee will be charged equally to both parties and will be deducted from each party's benefit at the time the benefit is split unless all of the benefit is payable to the non-member partner in which case that party will be charged the whole fee.

The family law account splitting fee, inclusive of GST (if applicable), is as follows:

| | Fee units |
|----------------------------------|-----------|
| Family law account splitting fee | 396 |

Tax implications

There are tax implications when separating couples split super.

RBF strongly suggests that separating couples seek appropriate legal, financial and taxation advice.

How does the process work?

Step 1

- ▶ The member, the non-member partner or a person who intends to enter into a Superannuation Agreement with the member should make a request for information about the member's super interest.
- ▶ The request must be made on a 'Form 6 Declaration', which is available from family law practitioners and the Family Court.
- ▶ After RBF receives payment of the appropriate fee, information will be forwarded to the applicant, or to a third party on receipt of a written authority from the applicant.

Step 2

- ▶ RBF will identify each super interest the member has (with RBF) and provide separate details about each interest. This will enable the member's super interest(s) to be valued.
- ▶ Under the *Family Law Act 1975*, RBF is not permitted to advise the member if the non-member partner has requested information.

Step 3

- ▶ The member's super interest(s) are valued using the methods detailed in the Family Law (Superannuation) Regulations 2001.
- ▶ The parties (the separating couple) or the court undertake the valuation (refer to page 3 for information on the valuation of super interests).

Step 4

- ▶ The parties make a binding agreement or the court makes an order.
- ▶ How the super interest is split will depend on whether it is in the growth phase or the payment phase.
- ▶ The super interest may be flagged for splitting at a later date.

Step 5

- ▶ RBF receives the agreement or order from the parties or the court.
- ▶ The non-member partner needs to provide RBF with a 'Regulation 72 Notice' which can be sent to you by RBF or obtained from your legal practitioner. Both the member and non-member partner need to complete a 'Certificate of identity' form which can be sent to you by RBF or obtained from the RBF website at **www.rbf.com.au**.
- ▶ RBF must provide a 'Payment Split Notice' to both the member and non-member partner within 28 days of either receiving an original certified copy of the agreement or order or the operative date of the agreement or order, whichever is the later.

- ▶ RBF must provide the non-member partner with their options about the super entitlement.

Step 6

- ▶ The non-member partner must advise RBF within 28 days of receiving the 'Payment Split Notice' what they want to do with the super entitlement.
- ▶ If a clean break split is to be applied and the non-member partner fails to advise RBF within 28 days of receiving the 'Payment Split Notice', their entitlement will be placed in the default Eligible Rollover Fund.

Step 7

- ▶ Where the super interest is subject to a payment flag and the member satisfies a condition of release for his or her super, RBF must provide written notice to both parties within 14 days of the payment becoming payable, advising that a flag is operating on that super interest and that payment cannot be made whilst the flag is in place.

Step 8

- ▶ Where a benefit is flagged, a flag lifting agreement is required from the parties or an appropriate order of the court before the super interest can be split.

What role does RBF play in the process?

RBF is required to provide certain prescribed information which will allow the separating couple to reach an agreement, or allow the court to value a member's super interest. RBF does not:

- ▶ provide information unless the request is made in accordance with the requirements of the *Family Law Act 1975*; or
- ▶ calculate the value of a member's super interest, for family law purposes; or
- ▶ provide advice on what the parties should do.

RBF strongly suggests that separating couples seek appropriate legal, financial and taxation advice.

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This fact sheet contains information of a general nature and does not take into account your personal objectives, financial situation or needs. It is not intended to be, and should not be relied upon as legal, financial or other advice. You should consider obtaining legal, financial and taxation advice. If there is a discrepancy between the information in this document and RBF's governing legislation or other legislation, that legislation will be the final authority. The information in this brochure is subject to change without notice. If you wish to confirm whether any of the information in this brochure has changed since the date of publication, please contact RBF.

Privacy issues

Under the *Family Law Act 1975* strict privacy conditions apply to the provision of information.

RBF also has its own Privacy Policy which can be obtained by calling the RBF Enquiry Line on **1800 622 631** or from our website at **www.rbf.com.au**

RBF will not:

- ▶ provide the member or the non-member partner with each other's contact details;
- ▶ inform the member, even on direct inquiry, if the non-member partner has requested information about the member's super;
- ▶ provide the non-member partner with details about the member's super interest where that interest is 'flagged', without first obtaining the member's written consent; or
- ▶ provide any additional information about the member's super other than that which is required to be provided under the *Family Law Act 1975*.

The privacy of your personal information is important to RBF. We will use your personal information for the purposes set out in our Privacy Policy which can be obtained by contacting the RBF Enquiry Line on **1800 622 631** or by visiting our website at **www.rbf.com.au**

Contacting RBF

Contact RBF if you would like additional information or assistance.

RBF Enquiry Line: 1800 622 631 or
+61 2 8571 6868
(international)

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