



RBF Family Law

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

Introduction

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

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

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.

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.

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 spouse');
- ▶ the spouse or de facto of the member (known as the 'non-member spouse');
- ▶ if the member spouse or non-member spouse 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 a 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.

Can all super be split?

Contributory Scheme defined benefits cannot be split until the first splittable payment is payable to the member, this is normally when the member retires or they meet another condition of release.

The family law interest of the non-member spouse will be adjusted each year on the basis of Average Weekly Ordinary Time Earnings (AWOTE) plus 2.5%. The adjusted base amount or specified percentage is then deducted when the first splittable payment is paid to the member. Dependent on the member's payment instruction, the first splittable payment to the non-member spouse may be sufficient to cover the full adjusted base amount.

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.

The below payment types are **not** splittable payments and a member can receive payments for the below from RBF without the non-member spouse being made aware of or receiving any of these payments.

These circumstances can be:

- ▶ on the grounds of financial hardship;
- ▶ on specified compassionate grounds;
- ▶ on the grounds of partial and permanent incapacity or interim invalidity;
- ▶ after the death of a member, to a reversionary beneficiary who is a child of the member.

Any other type of benefit payment is eligible to be split.

The splitting process

Step 1 - Request for information

- ▶ The member, the non-member spouse or a person who intends to enter into a Superannuation Agreement with the member or their legal personal representative, should make a request for information about the member's super interest (see 'Who can request information about super?').
- ▶ 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 for the third party to act on their behalf.
- ▶ Under the *Family Law Act 1975*, RBF is not permitted to advise the member if the non-member spouse has requested information.

Step 2 - Valuation of interest/s

- ▶ The member's super interest/s with RBF is/are valued using the methods detailed in the Family Law (Superannuation) Regulations 2001.
- ▶ The parties (the separating couple) or the court undertake the valuations.

Step 3 - Splitting super

- ▶ The parties make a binding agreement or the court makes an order and RBF receives the agreement or order from the parties or the court.
- ▶ The super interest may be flagged for splitting at a later date.
- ▶ The non-member spouse needs to provide RBF with a completed 'Regulation 72 Notice'.
- ▶ RBF will then provide a 'Payment Split Notice' to both the member and non-member spouse 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.
- ▶ The non-member spouse must respond to RBF within 28 days of receiving the 'Payment Split Notice'.
- ▶ If a clean break split is to be applied (in the case of SFCSS and TASSS accounts) and the non-member spouse fails to advise RBF within 28 days of receiving their 'Payment Instruction Form', their entitlement will be transferred to the Tasmanian Department of Treasury and Finance.

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 that RBF is required to provide information for 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. The current value of a fee unit can be found on the Tasmanian Department of Treasury and Finance website at www.treasury.tas.gov.au/economy/economic-policy-and-reform/fee-units. Otherwise, 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 spouse in which case the non-member spouse 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

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 spouse 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. The separating couple or the Family Court undertakes this valuation. RBF will provide information for the purposes of a valuation to an eligible person upon submission of relevant forms.

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.

Defined benefit (sources)	Nature of interest	Method of treatment
Contributory Scheme Contributory Scheme CPA Contributory Scheme CPA12 Investment 12 Account	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 spouse. ▶ 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 spouse'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 a lump sum 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. ▶ If the splittable payment is not sufficient to satisfy the base amount in full, the remaining amount is converted to a % split. The non-member spouse will then receive a % of each pension payment. A fortnightly pension payment is classed as a splittable payment. <p>Note: Some RBF benefits can only be taken as a pension, such as total and permanent incapacity benefits, although there is the possibility of a member who retires on the grounds of total and permanent incapacity applying for and being granted a lump sum up to \$80,000 (classed as a splittable payment) prior to the benefit becoming a pension.</p>

Continued over

Defined benefit (sources)	Nature of interest	Method of treatment
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 spouses 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 spouse is paid 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
Contributory Scheme Life Pension Parliamentary Superannuation Fund Life Pension RBF Life Pension	A defined benefit interest in an exempt public sector super scheme	<p>Pension payments are to be split in accordance with the Family Law (Superannuation) Regulations 2001.</p> <p>RBF will administer these interests as follows:</p> <ul style="list-style-type: none"> ▶ If the specified percentage method is used, the non-member spouse will be paid a specified percentage of each pension payment made to the pensioner. ▶ If the base amount method is to be used please note that most 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 spouse will be required to receive the base amount entitlement in the form of a % split of fortnightly pension payments. ▶ The share of the pension payable to the non-member spouse will stop upon the death of the member if the deceased member does not have a surviving partner or the pension is non-reversionary. ▶ Where a member does have a reversionary RBF Life Pension and 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 and the non-member spouse will be entitled to the same % but of the 2/3 pension until the surviving partner's death. ▶ Where a non-member spouse predeceases the RBF member, RBF will commute the non-member spouse's share to a lump sum to be paid to the deceased non-member spouse's estate.

What is 'flagged' super?

'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.

Where the super interest is subject to a payment flag and the member satisfies a condition of release for their 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.

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.

You should speak to your lawyer about whether a flag is appropriate in your circumstances.

Tax implications

There are tax implications when separating couples split super.

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

Privacy

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

RBF will not:

- ▶ provide the member or the non-member spouse with each other's contact details;
- ▶ inform the member, even on direct inquiry, if the non-member spouse has requested information about the member's super;
- ▶ provide the non-member spouse 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 and the Privacy Policy of our administrator Australian Administration Services Pty Ltd (ABN 62 003 429 114) (Link Group), which are both available by contacting the RBF Enquiry Line on **1800 622 631** or by visiting our website at **www.rbf.com.au**

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The information in this fact sheet is of a general nature only. It does not take into account your personal objectives, financial situation or needs. Accordingly, before acting on the contents of this fact sheet, you should consider whether it is appropriate to you, having regard to your objectives, financial situation and needs. You should read any relevant RBF documentation available at **www.rbf.com.au** before making a decision. We also recommend that you consider talking to a financial adviser. The Superannuation Commission is not licensed to provide financial advice to RBF members.

If you would like information about your super you can make an appointment with one of RBF's Superannuation Consultants; simply contact the RBF Enquiry Line on **1800 622 631**.

At RBF, we strive to provide accurate and up-to-date information to our members. However, things may have changed since this fact sheet was published and some of the information may no longer be correct. If there are mistakes or omissions in the information, we reserve the right to correct those errors or omissions. The governing rules of RBF or any other law will prevail over any misstatement in this fact sheet.

Information contained in this fact sheet may be updated at any time without prior notification to you. Updated information can be downloaded from our website at **www.rbf.com.au**. A hard copy can also be posted free of charge by calling the RBF Enquiry Line on **1800 622 631**.

The privacy and confidentiality of your personal information is important to RBF. We hold your personal information securely and use it only for the purposes described in the RBF 'Privacy Policy', available on the RBF website at **www.rbf.com.au**.

Your personal information, including sensitive information, may be transferred between RBF and RBF's administrator Australian Administrative Services Pty Ltd (ABN 62 003 429 114). AASs Privacy Policy is also available on the RBF 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)

Visit: www.rbf.com.au

Write: RBF, Reply Paid 89418,
PARRAMATTA NSW 2124

Email: RBF.enquiries@treasury.tas.gov.au

Office: Ground Floor,
21 Kirksway Place,
Hobart

Level 3, Henty House,
1 Civic Square,
Launceston