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In the event of separation or divorce, the *Family Law Act 1975 (Cth)* (Family Law Act) affects the way in which super entitlements are treated.

According to the Family Law Act, your super is treated as property that can be divided between parties in the event of a relationship breakdown. The law allows separating couples to value their super and 'split' or 'flag' the super according to a court order or an agreement.

Flagging orders are useful when the value of the super is uncertain at the date of the court hearing, but will be determinable in a short period of time. A flagging order prevents a super fund (like GESB) from dealing with the account until a flag-lifting agreement is issued by the Family Court. Once the flagging order is lifted, the super can be split.

Super that has been split is still subject to Commonwealth preservation laws and is generally only accessible when you meet a condition of release, such as reaching retirement age.

As a GESB member, your super entitlement and the way it can be split with your spouse or de facto partner is governed by a number of laws including the Family Law Act, *State Superannuation Regulations 2001 (WA)*, and *Family Law (Superannuation) Regulations 2001 (Cth)*. If you receive legal advice, it's important that you ensure your lawyer is aware how the laws apply to your situation.

Clean Break

The 'Clean Break' principle requires the court to (as far as practicable) make orders that will finally determine the financial relationships between partners. This can give partners the ability to split a member's super before the member is able to access their super. The Clean Break principle applies to all court orders and splitting agreements made since 28 December 2002.

The super split can be made relatively quickly, as opposed to a pre-28 December 2002 court order or splitting agreement where the split can only be made at the time the member accesses their benefit (i.e. when the member retires).

The process of splitting your super

Our role in Family Law matters is to administer the scheme and act upon the agreement or court orders between the two parties.

The splitting of super can be authorised by:

- A formal agreement between separating couples called a Superannuation Agreement (also known as a Splitting Agreement) or a Binding Financial Agreement (if it deals with super), or
- A court order that is issued by the Family Court directing how the super should be split

Super interests and benefits that cannot be split include:

- Benefits of less than \$5,000
- Payments made to the member on financial hardship or compassionate grounds
- Pension payments (by way of salary continuance benefits) that are made as a result of the member's temporary ill health
- Payments to, or for the benefit of, a child reversionary beneficiary after the death of a member if:
 - The child has not yet turned 18, or
 - The child is over 18, the child was dependent on the member at the date of death and the payment is made to enable the child to complete their education, or
 - The child has special needs of a physical or mental disability and the payment is made to another person for the benefit of that child

Please note: if you have a binding death nomination in place, you should review it upon separating from your partner.

Family Law legislation requires that we are afforded 'procedural fairness' before a court order or consent orders are finalised. We will review the draft order and make comment on any amendments that might be required before stating that we have no objections to them. We have 28 days to review draft court orders and raise any objections to them.

Although procedural fairness rights do not exist at law in relation to Superannuation Agreements, we suggest you provide us with a copy of any proposed Superannuation Agreement. It may help to avoid any problems in the future.

Draft orders or draft Splitting Agreements are not legally binding on the super fund. If:

- the benefit becomes payable
- the member requests payment, and
- the payment is processed prior to us receiving final court orders or the Splitting Agreement

then, in the absence of any flagging agreement, the benefit will be paid to the member in accordance with the benefit payment instructions.

Following receipt of the court order or agreement, we are able to implement the split within 28 days of receipt of the payment form (and ID if required).

Once a split has occurred, we will attempt to pay the splittable amount to the ex-partner by following the steps below:

1. Transfer to a super fund nominated by the ex-partner
2. If step 1 is not possible and the ex-partner is a current West State Super member, transfer to that fund
3. If steps 1 and 2 are not possible and the ex-partner is a current GESB Super, Pension Scheme or Gold State Super member, transfer to GESB Super, or
4. If none of the above are possible, transfer to the Australian Taxation Office (ATO) as a voluntary fund transfer

There are three main phases in the super-splitting process:

1. Requesting information	2. Providing information	3. Super valuation and decision
<p>An eligible person can request information about a member's super.</p> <p>An eligible person is:</p> <ul style="list-style-type: none">• A member of GESB• A member's married spouse or de facto partner• A member's former spouse or de facto partner• A person who is intending to enter into a super agreement with a GESB member (including a Pre-nuptial Agreement)• If the member has died, their legal personal representative• If the partner has died, their legal personal representative <p>The eligible person requesting information must complete a 'Form 6' and a 'Superannuation Information Request' form (available at familycourt.gov.au).</p> <p>See the 'More information' section below for details on accessing these forms. We do not charge a fee for providing information in response to a 'Form 6'.</p>	<p>Once we have received the required forms, we will provide information to the eligible person. This can be used in a number of ways, for example:</p> <ul style="list-style-type: none">• To inform the details of a Pre-nuptial Agreement on how to split super in case of a future breakdown• To make an agreement on how to split super after a marriage breakdown• To take to the Family Court to obtain a court order• To assist in the splitting of assets other than super	<p>We receive a Splitting Agreement or court order authorising a payment split.</p> <p>The member and the partner are notified that the member's interest is subject to a split and the value of the split.</p> <p>The partner is contacted and asked where he or she would like their portion transferred.</p> <p>We will implement the Splitting Agreement or court order within 28 days of receiving the payment form (and proof of identity if required)¹.</p> <p>If we do not receive payment instructions within 28 days of issuing a Payment Split Notice, the benefit may be transferred to an existing West State Super or GESB Super account or, alternatively, to the ATO as a voluntary fund transfer.</p>

Family Court orders made before 28 December 2002

Before 28 December 2002, the Family Court could order a member to split his or her super and pay their partner a defined amount once the member reached retirement age and met a condition of release (except for transition to retirement).

We are only able to make payment to the partner on behalf of the member from the member's benefit on receipt of a signed Irrevocable Authority from the member, which aligns with the court order.

Since 28 December 2002, the law has allowed splits to be made earlier than members' retirement dates.

Terminology used in court orders can be very complex and the wording is not always clear:

- Many orders and agreements dated pre-28 December 2002 are not specific when describing the GESB member's scheme. Ambiguity here could mean that the split will be calculated using the values in *all* your GESB accounts and not just the account you held at the date the court order or agreement was issued
- West State Super is a complex scheme and this complexity was often not taken into account when court orders and agreements were written. See the scheme details below for information on how your super is likely to be split
- Some court orders and agreements include specific variables for splitting super. Frequently, we find that we are unable to determine the required values to meet the variables, which makes calculating the super split a very complex and lengthy process

¹ Implementation of the Splitting Agreement or order does not mean that the money is paid at this time. Timing of payments will depend on various issues. See scheme detail overleaf for more information.

Transition to retirement

If you have a court order dated pre-28 December 2002, you are unlikely to be able to access your super early through a transition to retirement arrangement. Transition to retirement is not a condition of release under the State Superannuation legislation with respect to Family Court orders.

It's important that you ensure your advisers are aware as to which regulations apply to your situation. Call your Member Services Centre on 13 43 72 to discuss.

Contact us

Although we are unable to provide legal advice in these matters, we may be able to clarify some of the details in your court order and ensure you have the correct scheme information before you seek advice from a lawyer.

We recommend you contact us if you have a Family Court order or agreement and:

- You have not already sent it to us, and/or
- You plan to access your super early through a transition to retirement arrangement

More information

Go to familycourt.gov.au and type the words 'Superannuation Information Kit' into the search engine. This will provide you with additional information and a copy of the 'Form 6' (information request).

West State Super	Family Law Court order dated BEFORE 28 December 2002	Family Law Court order dated from 28 December 2002
How is the Family Law split calculated?	The split is based on the amount or formula stated in the court order.	<p>The base amount to be paid from your West State Super account will be adjusted to reflect the investment performance (i.e. change in unit prices) of your account between the operative date² and the payment date.</p> <p>This means that the amount may go up and down in reaction to market movements. We use the following formula:</p> <p>Member's units at operative date × unit price at payment date = West State Super entitlement.</p> <p>If a percentage is used, the calculation is based on applying the percentage to the account balance on the date of processing or a date instructed on the court order.</p>
Interest on payments/other adjustments	Interest and adjustments depend on the instructions of the court order. If there is no mention of interest in the court order, then no interest is calculated or paid.	Since West State Super is a unitised fund, the base amount is adjusted for investment performance, which is reflected in the unit price rather than in the form of interest.
Who is liable for the tax?	<p>Tax law treats the Family Law split as a re-direction of a member's super benefit.</p> <p>This means the super lump-sum payment is treated as if being made to the member and not the partner. The tax withheld is based on the member's age because the member is liable for the tax. The Payment Summary is issued to the member. The partner receives the net amount with no further tax to pay.</p> <p>Unless the court order addresses this issue, the member pays all the tax.</p>	<p>Tax law treats the Family Law split as if the payment is a super benefit of the partner.</p> <p>When the super benefit is rolled over to a taxed fund, the receiving fund will pay 15% tax on the taxable component – untaxed element. This is because West State Super is an untaxed fund, and untaxed funds are generally taxed when the benefit is paid or rolled over to a taxed fund, not while the money is accumulating.</p>

² This is the commencement of recognition of the partner's entitlement. For a court order, the operative date is usually the date specified within the court order. For a Splitting Agreement, the operative date is the beginning of the fourth day of business after the day in which a copy of the agreement, together with other prescribed documents, is served on the trustee, together with a copy of the Decree Nisi or Separation Declaration.

West State Super	Family Law Court order dated BEFORE 28 December 2002	Family Law Court order dated from 28 December 2002
When is the split implemented?	<p>We can only make the split once the member claims his or her super benefit (i.e. generally at retirement).</p> <p>We must receive the Irrevocable Authority from the member before we can release funds to the partner.</p>	<p>We can split the benefit once the original or certified copy of the sealed court order, the payment instructions and certified ID have been received.</p> <p>If using an agreement, the member and partner must also supply certificates from their respective legal advisers confirming that they have been provided with independent legal advice.</p>
How is the amount paid to a partner?	<p>Once we have all documents and the member accesses his or her benefit (i.e. at retirement), the partner is paid their portion of the split amount by cheque or electronic funds transfer (EFT)</p> <p>The amount is paid to the partner regardless of their age.</p>	<p>A letter is sent to the partner asking for payment details.</p> <p>We will wait 28 days to hear from the partner as to their requirements. The partner has a choice of:</p> <ul style="list-style-type: none"> Rolling in the amount to a <i>current</i> GESB Super or West State Super account, or Rolling the amount over to another complying super fund (nominated by the partner) <p>If we do not receive payment instructions within 28 days of issuing a Payment Split Notice, the benefit may be transferred to the ATO as a voluntary fund transfer.</p>
When is the amount paid to a partner?	<p>Payment is made to the partner once the member accesses his or her super benefit (i.e. generally at retirement) and once we have received the sealed court orders and the member's Irrevocable Authority.</p>	<p>The partner can apply to have the amount paid to them once they meet a condition of release of their chosen super fund, usually once they reach retirement age.</p> <p>If using an agreement, the member and partner must also supply certificates from their respective legal advisers confirming that they have been provided with independent legal advice.</p>

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How to contact us

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