

To request this document in an alternative format such as Braille, call us on 13 43 72 or use our Live Chat service at [gesb.wa.gov.au](https://gesb.wa.gov.au).

### 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 married or de facto couples to value their super and 'split' it according to:

- A formal agreement called a Superannuation Agreement (agreement), which may be part of a financial agreement
- A court order that is issued by the Family Court directing how the super should be split

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

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 ex-partner is governed by a number of laws, including the Family Law Act, *State Superannuation Regulations 2001 (WA)*, and *Family Law (Superannuation) Regulations 2025 (Cth)* (FLS Regulations).

If you receive legal advice, it's important that you ensure your lawyer is aware of how these laws apply to your situation.

### What super interests can't be split?

Super interests and benefits that cannot be split include:

- Benefits of less than \$10,000
- 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 any of the following points apply:
  - The child has not yet turned 18
  - 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
  - The child has 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.

### The process of splitting super

Here are the steps you will need to follow to split super with GESB.

#### 1. Find out how much super you and your ex-partner have

It's useful to get a valuation of each other's super, as it can help determine how your assets should be divided up.

If your ex-partner is a member of GESB, you can request this information free of charge by completing a *Form 6* and a *Superannuation Information Request form*. These forms are available at [familycourt.wa.gov.au](https://familycourt.wa.gov.au).

You can also apply to the relevant court for your ex-partner's super information. If eligible, the court will request the Australian Taxation Office (ATO) to disclose this information.

#### Will my ex-partner know if I request information about their super?

No. We cannot, under the legislation, inform a member of a request for information made by someone other than themselves.

However, only information specified in the Family Law legislation can be provided to a person other than the member without the member's consent. We do not provide the member's address.

## 2. Draft an agreement or court order

Once you've discussed with your ex-partner how the super should be split, you can formalise your agreement through a Superannuation Agreement or court order.

The Family Court can also make orders if you can't agree.

You should seek legal advice to understand these options, and what your rights and responsibilities are.

To ensure your order meets our requirements, you can find sample wording on page 4.

Before an order is finalised, you'll need to send us a copy for our review. Family law legislation requires that we are afforded 'procedural fairness' before a court order or consent orders are finalised.

We have 28 days to review the draft order and comment on any required changes and confirm we can action the order.

While not legally required, we recommend that you provide us with a copy of any proposed Superannuation Agreement. This can help avoid any issues with implementing it. We'll need 28 days to complete our review.

Please submit your draft order or agreement to [family.law@gesb.com.au](mailto:family.law@gesb.com.au) or post it to:

GESB  
PO Box J 755  
Perth WA 6842

**Please note:** draft orders or draft 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 order, the benefit will be paid to the member in accordance with the benefit payment instructions.

## 3. Submit your finalised agreement or court order

When submitting your finalised agreement or sealed court order to us, please ensure the whole of the order or agreement is provided and not just an extract.

If using an agreement, you and your ex-partner must also supply the following:

- Certificates from your respective legal advisers confirming that you have been provided with independent legal advice
- A copy of the divorce order or a valid separation declaration

To prevent delays in processing the split, we'll also need the following information about your ex-partner:

- Full name and postal or email address (or that of their legal personal representative)
- Date of birth
- If they are an existing GESB member, their membership number
- If they are a pension account holder and not an existing GESB member, proof of identity and a tax file number declaration

You can submit these to [family.law@gesb.com.au](mailto:family.law@gesb.com.au) or post it to:

GESB  
PO Box J 755  
Perth WA 6842

**Please note:** if your court order states that the trustee must be served with a certified copy of the order, you'll need to post us a copy that has been certified as a true copy by an authorised witness. Emailed copies won't be accepted.

Once we receive everything, we calculate the split to be paid.

The method used to calculate the split will depend on whether your court order was dated before or after 28 December 2002. Please refer to page 3 for more information.

### Super can be flagged

While waiting for the split and property settlement to be finalised, a flagging order can be put on your ex-partner's super.

It prevents them from withdrawing or doing anything with their super, until the flag is lifted by a court order or flag-lifting agreement.

A flagging order is typically used when:

- One person is close to retirement and may try to access their super before a property settlement agreement is reached
- The value of the super is uncertain at the date of the court hearing, but will be able to be calculated in a short period of time

## 4. The super is split and transferred to your ex-partner

When the split has been calculated, you and your ex-partner will be notified of the value of the split.

We'll contact your ex-partner and ask where they would like their portion transferred.

We will implement the agreement or court order within 10 working days of receiving the payment form (and proof of identity if required).<sup>1</sup>

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.

We do not charge a fee to complete the split.

<sup>1</sup> Implementation of the agreement or order does not mean that the money is paid at this time. Timing of payments will depend on various issues.

## How we implement your super split

	Family Court order dated BEFORE 28 December 2002	Family Court order or Superannuation Agreement dated FROM 28 December 2002
<b>How is the family law split calculated?</b>	The split is based on the amount or formula stated in the court order.	<p>The base amount to be paid from a member's West State Super account will be adjusted to reflect the investment performance (i.e. the change in unit prices) of the account between the operative date<sup>1</sup> and payment date. This means that the amount may go up and down in reaction to market movements.</p> <p>We use the following formula:</p> $\begin{array}{rcccl} \text{Member's} & & \text{Unit price} & & \text{West State} \\ \text{units at} & & \text{at payment} & = & \text{Super} \\ \text{operative date} & \times & \text{date} & & \text{entitlement} \end{array}$ <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>
<b>How is interest on payments or other adjustments calculated?</b>	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.
<b>Who is liable for the tax after super is split?</b>	<p>Tax law treats the family law split as a re-direction of a member's super benefit. 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.</p> <p>This is because West State Super is an untaxed scheme and untaxed schemes are generally taxed when the benefit is paid or rolled over to a taxed fund, not while the money is accumulating.</p> <p>We do not accept references to "net amounts". You must provide for any tax in your base amount or percentage split.</p>

## 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.

If you have any questions, please call your Member Services Centre on 13 43 72.

<sup>1</sup> For a court order, the operative date is usually the date specified within the court order. For a Superannuation 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 divorce order or separation declaration.

## Sample wording for court orders

We provide here a sample of orders that satisfy GESB's requirements. Please note that this template may not be appropriate for you. We recommend you seek legal advice for your own personal circumstances.

As GESB is not governed by the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*, no reference to those should be made.

### Sample 1: notations

NOTING THAT

A The interest of <member name> (include member's date of birth XXX and/or member number XXX) in the West State Super Scheme as at XXX was \$XXX.

(The correct way to refer to the member's interest is the West State Super Scheme. We will accept references to "the fund" if this is defined after reference to the scheme.)

B GESB is the administrator of the West State Super Scheme and for the purpose of this document is referred to as the trustee.

(Please note that GESB does not have a trustee; however, we will accept references to the trustee as long as it is defined here.)

### Sample 2: base amount split

That a base amount of \$XX is allocated, as required by section 90XT(4) of the Family Law Act 1975, to <> out of <>'s interest in the West State Super Scheme.

In accordance with section 90XT(1)(a) (for parties who are/were married)/section 90YY(1)(a) (for parties who were in a de facto relationship) of the *Family Law Act 1975*, whenever a splittable payment within the meaning of section 90XE of the Act (for parties who were married)/section 90YG (for parties who were in a de facto relationship) becomes payable in respect of the interest of <member name> in the West State Super Scheme:

<non-member partner name> is entitled to be paid the base amount calculated in accordance with Part 7 of the *Family Law (Superannuation) Regulations 2025*, and

There is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order.

### Sample 3: percentage split

In accordance with section 90XT(1)(b) (for parties who are/were married)/90YY(1)(b) (for parties who were in a de facto relationship) of the *Family Law Act 1975*, whenever a splittable payment within the meaning of section 90XE of the Act (for parties who were married)/section 90YG (for parties who were in a de facto relationship) becomes payable in respect of the interest of [name of member] in the West State Super Scheme

<non-member partner name> is entitled to be paid a specified percentage of the splittable payment and the specified percentage for the purposes of this order is XXX%;

There is a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for the order.

### Sample 4: operative time

That these orders have effect from the operative time and the operative time for these orders is [XXX] after service of the orders on GESB.

It is up to you and your legal advisers to agree on the exact wording of the orders and GESB cannot provide you with legal advice on these.

Disclaimer: the information contained in this document is of a general nature, and does not constitute legal, taxation or personal financial advice. In providing this information, we have not considered your personal circumstances including your investment objectives, financial situation or needs. We are not licensed to provide financial product advice. Before acting or relying on any of the information in this document you should review your personal circumstances, and assess whether the information is appropriate for you. You should read this document in conjunction with the relevant product information booklet and disclosure documents at [gesb.wa.gov.au/brochures](http://gesb.wa.gov.au/brochures). You should seek advice specific to your personal circumstances from a suitably qualified adviser.

 **How to contact us**

**T** Member Services Centre 13 43 72

**F** 1800 300 067

**W** [gesb.wa.gov.au](http://gesb.wa.gov.au)

PO Box J 755, Perth WA 6842