

The treatment of your RBF superannuation

for Family Law purposes

*This brochure covers the treatment of your **RBF** superannuation for **Family Law** purposes*

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Introduction

On 28 December 2002 there was a change in the law about how superannuation is treated when married couples separate or divorce. Under the Commonwealth *Family Law Act 1975* superannuation is now treated as 'property' and not just as a 'financial resource'. This means that superannuation can be considered in all property settlements when married couples divorce or separate. All or part of a person's superannuation is potentially payable to his or her spouse. This is known as 'superannuation splitting'.

If a couple separate or divorce must superannuation be split?

The changes do not mean that superannuation must be split. The value of superannuation can be offset against other property.

Who is affected by superannuation splitting?

The legislation relating to superannuation splitting applies to legally married couples, with a binding superannuation agreement or a court order made in accordance with the provisions of the *Family Law Act*.

Who is not covered by the legislation?

De facto and same sex couples are not covered by the legislation.

Property settlements that were finalised before 28 December 2002 are not covered by the new legislation.

Who can request information about a superannuation interest?

Only an 'eligible person' can request information about a superannuation interest.

An eligible person includes:

- a fund member;
- the spouse of the member (non-member spouse); and
- a person who intends to enter into a superannuation agreement (pre-nuptial type agreement) with a member.

The Retirement Benefits Fund (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 superannuation interest, such as salary and employment history.

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 the court to value a member's superannuation interest.

RBF does not:

- provide information unless the request is made in accordance with the requirements of the *Family Law Act*; or
- calculate the value of a member's superannuation interest, for Family Law purposes.

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

Privacy issues

Under the *Family Law Act* strict privacy conditions apply to the provision of information. RBF also has its own privacy policy. 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 superannuation;
- provide the non-member spouse with details about the member's superannuation interest where that interest is 'flagged', without first obtaining the member's written consent; or
- provide any additional information about the member's superannuation other than that which is required to be provided under the *Family Law Act*.

Can all superannuation interests be split?

Generally, any superannuation interest can be split. It does not matter whether the superannuation is in the 'growth' or 'payment' phase. Please see details below of whether the superannuation interest is in the growth or payment phase.

The Commonwealth legislation provides that the following superannuation benefits cannot be split:

- payments made on the grounds of financial hardship;
- payments made on specified compassionate grounds;
- an Interim Invalidity Pension/Temporary Incapacity Pension; or
- payments made to children.

In addition, a superannuation interest which has a withdrawal value of less than \$5,000 is not able to be split.

What influences how a superannuation interest is treated under the Family Law Act?

Under the *Family Law Act* the following factors determine how a superannuation interest is treated:

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

Is the superannuation interest an accumulation or a defined benefit interest?

The effect of the *Family Law Act* on a member's superannuation and the options that the non-member spouse has will depend on whether the member has an accumulation interest or a defined benefit interest.

An accumulation interest is one which results from a build-up over time of employer contributions - such as employer superannuation guarantee support, voluntary personal contributions, salary sacrifice and rollovers, plus interest on those contributions.

A defined benefit interest is one in which the formula for calculating the member's benefit is specified in terms of service and salary.

Many RBF members will have both an accumulation interest and a defined benefit interest. For RBF purposes an accumulation interest includes the following:

- TAS-SG Account;
- RBF-TAS Investment Account; and
- TAS Allocated Pension Account.

For RBF purposes a defined benefit interest includes the following:

- RBF Contributory Scheme; and
- Life Pensions including Total and Permanent Incapacity Pensions and Partial and Permanent Incapacity Pensions.

Is the superannuation interest in the growth or payment phase?

Under the *Family Law Act* a member's superannuation 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 his or her share of the superannuation.

Superannuation is in the growth phase if the member:

- has not satisfied a condition of release; or
- has satisfied a condition of release, but has not requested payment of a superannuation benefit he or she may be entitled to receive.

Superannuation is in the payment phase when the member:

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

A condition of release includes retirement, death, permanent incapacity or reaching age 65.

How are superannuation interests valued?

How RBF superannuation interests are valued depends on whether the superannuation is an accumulation interest or a defined benefit interest. RBF does not value superannuation interests for Family Law purposes. The separating couple or the court undertakes this valuation.

With an accumulation interest the value of the superannuation is the account balance at the relevant date.

With a defined benefit interest the value of the superannuation is determined on the basis of a method prescribed in the *Family Law Act*.

Splitting superannuation in the growth phase

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

The options available to a non-member spouse when a superannuation interest in the growth phase is split depend on whether the interest is:

- an accumulation interest; or
- a defined benefit interest.

Accumulation interest (in the growth phase)

Where a base amount or a specified percentage has been allocated against an accumulation interest in the growth phase (eg the TAS-SG Account or RBF-TAS Investment Account) the non-member spouse can request that:

- a new interest be created within RBF to the value of the base amount or the percentage. An RBF-TAS Investment Account will then be opened for the non-member spouse;

- the base amount or percentage be rolled over or transferred to another fund
- a lump sum payment be made to the value of the base amount or the percentage. This can generally only occur if a condition of release has been satisfied by the non-member spouse.

A condition of release includes retirement, death, permanent incapacity or reaching age 65.

Defined benefit interest (in the growth phase)

With a defined benefit interest in the growth phase, the following procedure applies:

- the base amount specified in the court order or the superannuation agreement is allocated to the non-member spouse;
- RBF adjusts the base amount over time, in accordance with the method prescribed in the *Family Law Act*; and
- the adjusted base amount is payable to the non-member spouse when the member satisfies a condition of release and receives payment of his or her superannuation benefit from RBF.

A condition of release includes retirement, death, permanent incapacity or reaching age 65.

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

What is a 'flagged' superannuation interest?

A 'flagged' superannuation interest arises when an agreement or order places a 'flag' on the member's superannuation interest while the interest is in the growth phase. A flagged superannuation interest cannot be paid until both parties make a flag lifting agreement or the court authorises the lifting of the flag.

When would it be likely for a superannuation interest to be flagged?

If the superannuation interest will become payable to the member spouse in the near future, it may be appropriate to defer a final decision on the division of that interest until the payment has occurred. In the interim period, a flag may be placed on that interest to prevent the trustee from making any payment to the member spouse.

Splitting superannuation in the payment phase

An agreement or order can be made to split superannuation during the payment phase.

The options available to a non-member spouse when splitting a superannuation interest in the payment phase depend on whether the interest is:

- an RBF Life Pension; or
- an RBF Allocated Pension.

RBF Life Pensions

A Life Pension can be split by either the base amount method or by the specified percentage method.

If the base amount method is used, the non-member spouse's entitlement is calculated as a lump sum. It should be noted however 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 spouse will be required to receive his or her base amount entitlement in the form of Life Pension payments.

If the specified percentage method is used, the non-member spouse will be paid a specified percentage of the pension.

What happens to the pension paid to the non-member spouse if the member dies?

The reversionary pension is only payable if the member spouse has a surviving partner at the time of death. If the member spouse has a partner at the time of death any split pension payment will cease on the member spouse's death.

RBF Allocated Pensions

The following applies to Allocated Pensions that are split:

- Allocated Pensions are treated as accumulation interests which can be assigned a capital value (account balance);
- Allocated Pensions can be split by an agreement or court order; and
- the non-member spouse can:
 - take his or her portion of the benefit as a lump sum*; or
 - rollover his or her portion of the benefit into another superannuation fund; or
 - transfer his or her portion of the benefit into the RBF-TAS Investment Account*.

*Conditions apply, please contact RBF for further details.

Tax implications

There are tax implications when separating couples split superannuation.

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

What fees are payable?

The trustee of an eligible superannuation plan 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 the RBF Board is that fees be imposed for the provision of information about a superannuation interest. Those fees apply to each completed information form the Board is required to provide in relation to a superannuation interest.

The fees, inclusive of GST, are as follows:

	Fee Units
Provision of information in relation to an interest in the RBF Contributory Scheme	300
Provision of information in relation to a Compulsory Preservation Account or an accumulation interest in the RBF-TAS Investment Account or the Tasmanian Accumulation Scheme Superannuation Guarantee Account	150

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

For the 2004-2005 financial year a fee unit is \$1.14

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, the Board will advise that applicant or their nominated representative of the fees that are payable in relation to the request. The information will then be provided once the Board has received payment of the fee. It should be noted that on receipt of an application for information the Board will provide information in relation to all of the superannuation interests that the relevant RBF member has with RBF.

The Board is able to provide information about the value of the withdrawal benefit in relation to the member; if the application for information specifically makes such a request. The Board will not charge the above fees in situations where the application for information specifically requests that the only information required is the withdrawal benefit in relation to the member.

The Board's current policy is not to charge fees for other activities performed by the Board in compliance with the *Family Law Act 1975* and the *Family Law (Superannuation) Regulations 2001*. The Board reserves the right to review and vary this policy at its discretion and without prior notice.

How does the process work?

Step 1

- The member, the non-member spouse or a person who intends to enter into a superannuation arrangement with the member should make a request for information about the member's superannuation interest.
- The request must be made on a Form 6 Declaration, which is available from RBF, 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 superannuation interest the member has (with RBF) and provide separate details about each interest. This will enable the member's superannuation interest(s) to be valued.
- Under the *Family Law Act*, RBF is not permitted to advise the member if the non-member spouse has requested information.

Step 3

- The member's superannuation interest(s) are valued using the methods detailed in the *Family Law Regulations*.
- The parties (the separating couple) or the court undertake the valuation.

Step 4

- The parties make a binding agreement or the court makes an order.
- The superannuation interest can be split on a percentage basis or by a dollar amount.

- The superannuation interest may be flagged for splitting at a later date.

Step 5

- RBF receives the agreement or order from the parties or the court.
- RBF must provide a Payment Split Notice to both the member and non-member spouse within 28 days of receiving the agreement or order.
- RBF must provide the non-member spouse with his or her options about the superannuation entitlement.

Step 6

- The non-member spouse must advise RBF within 28 days of receiving the Payment Split Notice what he or she wants to do with the superannuation entitlement.
- If the non-member spouse fails to advise RBF within 28 days of receiving the Payment Split Notice, his or her entitlement will be placed in the RBF-TAS Investment Account where it will remain until otherwise advised.

Step 7

- Where the superannuation interest is subject to a payment flag, RBF must provide written notice to both parties when the member satisfies a condition for release of his or her superannuation.
- RBF must advise the parties that a flag is operating on the superannuation interest and that a 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 superannuation interest can be split.

USE THE WEBSITE AT:

www.rbf.com.au

PHONE US ON:

03 6233 3672 or 1800 622 631

FAX US ON:

03 6233 3357

E-MAIL US AT:

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WRITE TO:

The Chief Executive Officer
Retirement Benefits Fund Board
GPO Box 446 HOBART TAS 7001

VISIT US AT:

Retirement Benefits Fund Board
39 Sandy Bay Road Hobart

PERSONAL INTERVIEWS

Personal interviews available in Hobart, Launceston, Burnie and Devonport, by appointment only. To arrange an interview, telephone 1800 622 631.

The privacy of your personal information is important to RBF. We understand the need for confidentiality. RBF will hold your personal information securely and use it only for the purposes described in the RBF Privacy Statement. Certain personal information you provide to RBF may be provided to your employing agency. RBF will not, however, provide your employer with details of the benefit that you will receive. Service providers to the Board may also have access to confidential information held by the Board. The privacy of members is protected by confidentiality clauses contained in the agreements with such service providers. If you would like to be provided with a copy of the RBF Privacy Statement please contact RBF. The Privacy Statement is also available on the RBF website.

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