

Section 1

Introduction

The purpose of this Information Sheet is to provide you with basic information about making an Application to ESSSuper for information (in accordance with the Commonwealth Family Law Provisions) relating to a superannuation interest in a fund administered by ESSSuper. The information contained in this Information Sheet is intended to be of general nature and should not be taken as financial advice, as your personal situation has not been taken into account in the preparation of this document.

The Commonwealth Family Law provisions are complex and detailed; this Information Sheet is intended to be a broad introduction to those provisions and their application to the funds administered by ESSSuper.

ESSSuper strongly recommends that you seek legal and/or other professional advice in order to understand the Commonwealth's Family Law provisions and their effect on you and the superannuation interest with which you may be concerned.

Section 2

Superannuation splitting laws (summary)

Effective from 28 December 2002, the Commonwealth *Family Law Act 1975* enables the parties to a marriage and (from 1 March 2009) de facto couples, including those that are in same sex relationships, to split their superannuation interests the same way as other property of the relationship is divided upon a relationship breakdown.

The rules also apply to marriages dissolved, but not having finally settled their property arrangements, prior to 28 December 2002, and de facto couples who separated on or after 1 March 2009, however they do not apply if a previous property settlement or maintenance Agreement under the Commonwealth *Family Law Act 1975* is in force. In these cases we recommend you contact your legal advisor or the Family Law Consultants at ESSSuper for further information.

The superannuation splitting laws allow:

- either party to a marriage, de facto relationship or a person who is intending to enter into a Superannuation Agreement, to obtain information about the superannuation interest of a party to that relationship;
- by agreement of the parties to the relationship or by Order of the Family Court, to flag a superannuation interest to prevent the benefit being paid until a decision is made as to the property settlement; or
- by agreement of the parties to the relationship or by Order of the Family Court, to split a superannuation interest between the parties.

Parties to a de facto relationship (including same sex couples) who separated prior to 1 March 2009 must opt into the legislation before they are able to split or flag a benefit entitlement.

It is important to note that it is not mandatory to split superannuation in the event of a relationship breakdown. You should seek further information from a legal professional regarding broader property settlement issues.

Section 3

Applying for information about a Superannuation interest

For the purposes of a Family Law property settlement or if you are entering into a Superannuation Agreement with the Member Spouse, you may require information about a superannuation interest.

To request the information from ESSSuper you must complete a *Form 6 (Declaration to accompany application to trustee for information about a superannuation interest)* and *Application for Information* where you can request the information to be provided at up to three different dates. If you do not specify particular date(s), the information will be provided based on the date ESSSuper receives your application.

These forms are available from our website at esssuper.com.au/familylaw

What happens after ESSSuper receives a form 6 (declaration) and application for information?

Please note:

Section 90XZB(5) of the Family Law Act 1975 prohibits the Trustee from communicating to the eligible person the address of the member (including the postal address).

Section 90XZB(6) of the Family Law Act 1975 prohibits the Trustee from informing the member that an application for information has been made.

Section 90XZG of the Family Law Act 1975 provides that false declarations served on the Trustee may subject the person to a penalty of 12 months imprisonment. ESSSuper must receive the original Form 6 (Declaration) and Application for Information.

All information provided to ESSSuper in relation to a *Form 6 (Declaration) and Application for Information* is confidential between the applicant and ESSSuper and will not be disclosed to any other party except as required or authorised by law.

In order for a *Form 6 (Declaration) and Application for Information* to be considered valid:

- It must be completed by an “eligible person”,
- All sections of the *Form 6 (Declaration) and Application for Information* must be completed (with the exception of any sections noted as optional),
- All documentary evidence must be enclosed as listed below:
 - a certified copy* of your driver’s licence, passport or other photo ID which contains your signature (if ESSSuper does not already hold a copy of your signature on file),
 - if you are married, a certified copy* of your marriage certificate,
 - If you are not married, you will need to provide:
 - a certified copy of Certification of Registration on the Relationships Register (pursuant to the *Relationships Act 2008*), or
 - a Declaration by the Family Court pursuant to Section 90RD (1) of the *Family Law Act 1975* as to the existence of your de facto relationship, or
 - a Statutory Declaration as to the existence of your de facto relationship (including information regarding the geographical location and length of the relationship).
- The fee for providing information must be enclosed (please refer to Section 4, “Fee Schedule”).

* Information on how to certify documents and who can certify documents can be found in Section 11 “How to certify documents”.

Provided your request is valid, upon receiving your *Form 6 (Declaration) and Application for Information* ESSSuper will process your application and provide the required information as specified in the Commonwealth Family Law provisions (within 28 days as required by the legislation). This information will be sent to you at the address you have advised on your application.

Section 4 Fees schedule

	Initial Form 6 (Declaration) and Application for Information*	Additional Form 6 (Declaration) and Application for Information*	Split or flag a benefit**
Member Spouse	\$0.00	\$100.00 (incl. GST)	\$0.00
Non-Member Spouse	\$250.00 (incl. GST)	\$100.00 (incl. GST)	\$0.00

* Each application fee paid allows for information to be provided at up to three separate dates. These three dates can be requested in one or more applications but must be requested within 12 months of the date the fee was paid. If they are requested separately, a new Form 6 (Declaration) and Application for Information must be completed for each request.

** There are no fees to Split or Flag a Superannuation Benefit with ESSSuper.

The appropriate fee should be paid by EFT to BSB: 033-001 Account: 151047 Ref: FL Fee – *name*”.

Note: It is important to ensure that the person about whom you are requesting information is a member of one of the funds administered by ESSSuper as fees will not be refunded.

Section 5

How is a Superannuation interest split?

Superannuation entitlements in ESSSuper can be split by way of Court Order or by Superannuation Agreement.

Benefits can be split using a specified portion of the benefit (split by percentage) or by a specified dollar amount. This amount is referred to as the "base amount".

Superannuation agreement

In consultation with legal representatives, the Member Spouse and the Non-Member Spouse (the parties) can agree to split a superannuation interest. The parties can make a Superannuation Agreement specifying how their superannuation interests are to be split.

A Superannuation Agreement will be enforced by ESSSuper if it complies with the legislative requirements as specified in Part VIII B of the Commonwealth *Family Law Act 1975*, and is served on the Trustee together with a copy of the decree absolute or separation declaration. Certificates of independent legal advice must also be provided for each party.

Court order

Alternatively, in consultation with legal representatives the parties can agree to split their superannuation interests by way of Consent Order. However if agreement can not be reached, the Family Court can order the split of a superannuation interest.

On receipt of the relevant final Agreement or Order, ESSSuper will provide a payment split notice to both the Member Spouse and the Non-Member Spouse to confirm the Superannuation Agreement or Court Order details.

Section 6

How is a Superannuation interest flagged?

In some circumstances, parties may wish to wait to seek a Court Order or Superannuation Agreement to split a superannuation benefit. If this is the case, a Flagging Order or a Flagging Agreement may be made in consultation with legal representatives, in order to prevent ESSSuper from paying out a superannuation interest.

Flagging a Superannuation interest

A Flagging Order or Agreement, when applied, will prevent a superannuation interest being paid until such time as a property settlement has been finalised.

For superannuation interests administered by ESSSuper, the flag is applied by serving ESSSuper with a valid Flagging Agreement or Order imposing a payment flag. This flag will prevent any benefit being paid to the Member Spouse until a Flag Lifting Order or Agreement is served on ESSSuper.

If the payment flag still applies at the time the Member Spouse becomes entitled to a superannuation benefit, ESSSuper will write to both the Member Spouse and Non-Member Spouse in the case of an Agreement, and to the court in the case of a Court Order, to notify them of the situation.

Note: A Flagging Order or Agreement cannot be applied if the Member Spouse has commenced receiving a pension before ESSSuper was served with the Flagging Agreement or Order.

Section 7

Additional information about orders and agreements

Procedural fairness

ESSSuper must be accorded procedural fairness for any Orders or Agreements made under Part VIII B of the *Family Law Act 1975* to be binding (Section 90XZD). Rules 10.16 and 14.06 of the Family Law Rules 2004 require that a Trustee be given at least 28 days notice of any Orders proposed to be sought.

Scheme terminology

Please note that when drafting Orders or Agreements, the correct reference to a superannuation interest is "the Emergency Services Superannuation Scheme (The Scheme)". The Emergency Services Superannuation Board (ESSB) is the Trustee and Administrator of The Scheme. ESSSuper (Emergency Services & State Super) is a trading name only and should **not** be used in Orders or Agreements.

Section 8

How does ESSSuper administer a payment split?

After being served with a final Agreement or Court Order to split a superannuation interest, in most cases, ESSSuper is required to pay out the entitlement of the Non-Member Spouse as a lump sum, which will be subject to Commonwealth preservation rules.

This applies to splittable interests in both the growth and payment phases and is referred to as a “clean break”. Prior to the payment, the Member Spouse and Non-Member Spouse will be advised of the details of the benefit split. The Non-Member Spouse will be required to complete any necessary paperwork before any benefit is paid.

The clean break provisions may not apply to some types of disability pensions. If the clean break provisions are not applicable, the Non-Member Spouse may be entitled to receive a portion of ongoing payments from each pension payment. You should be aware that ongoing payment splitting to a Non-Member Spouse will cease if the Member Spouse dies and there is no reversionary pension payable. If the Non-Member Spouse dies first, the payment splitting will continue to be paid to the Non-Member Spouse’s estate.

When a payment is made to the Non-Member Spouse under a Family Law splitting Order or Agreement, a corresponding reduction will be made to the Member Spouse’s entitlement in accordance with the *Family Law Act 1975* and governing rules of the relevant scheme.

Additional details - Non-Member Spouse

The Non-Member Spouse is required to provide ESSSuper with the information set out under Regulation 72 of the Family Law (Superannuation) Regulations 2001, as soon as practicable after the relevant Agreement or Order has been served on ESSSuper. If the benefit is not required to be preserved under Commonwealth preservation requirements, it may be paid directly to the Non-Member Spouse, however if the benefits are considered to be preserved, the benefit will need to be rolled over to a *complying superannuation plan* of the Non-Member Spouse’s choice, until a condition of release is satisfied.

ESSSuper will request the Non-Member Spouse provide details of where the benefit is to be paid. Where the Non-Member Spouse has not provided payment instructions within 28 days, or if the nominated eligible Fund is unable to accept the rollover, the benefit will be rolled over to the Australian Taxation Office (ATO). The ATO can be contacted on 13 28 65.

Until the payment split occurs, any base amount will be adjusted in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001.

Additional details - Member Spouse

The methodology used to reduce the Member Spouse’s benefit will depend on the status of the membership and the reduction may occur only when the Member Spouse has become entitled to claim a benefit. This methodology has been approved by the Minister for Finance, as required by Victorian legislation. It requires that after a superannuation split, members’ benefits are to be reduced on a proportionate basis.

For defined benefit members

(ESSS Defined Benefit Fund, New Scheme, Revised Scheme, SERB Scheme, Melbourne Water Corporation Employees’ Superannuation Scheme, Port of Melbourne Authority Superannuation Scheme, Melbourne Transit Authority Superannuation Scheme and Transport Scheme).

The amount paid to the Non-Member Spouse at the time of the superannuation split will sit in a notional debt account and the debt will be increased by Average Weekly Ordinary Times Earnings (AWOTE) + 2.5% per annum.

After a superannuation split, an active defined benefit members’ benefits will continue to accrue as per the rules of the applicable scheme.

Upon the Member Spouse meeting a condition of release (e.g. Resignation, Retrenchment, Retirement, Death or Disability) the Member Spouse’s final benefit will be valued (using the most recent actuarial assumptions as applicable to the Scheme) and the benefit will be proportionately reduced by the value accrued in the Member Spouse’s notional debt account.

Family Law Reforms – legislative amendments:

- For members who have attained their maximum accrued benefit, the indexation (AWOTE + 2.5%) no longer applies.
- A provision which allows a member to repay any or all of their outstanding Family Law Deduction amount, now exists.

For more information on the above reforms, please contact a Family Law Administrator.

For accumulation members

(Beneficiary Account, Retirement Income Stream, Working Income Stream and Accumulation Plan - including defined benefit members with an accumulation account).

For any value that is required to be transferred from the Member Spouse’s accumulation entitlement, the split amount will be deducted from the Member Spouse’s benefit effective from the operative date (resulting in a reduction of the balance).

Section 9

Need more information?

Our Member Service Centre Consultants can help with any general enquiries you have about your superannuation, but if you have a specific query relating to Family Law we also have dedicated Family Law Administrators who will be able to assist you. You can contact them by phoning the Member Service Centre and asking to be transferred to the Family Law Department.

Alternatively, if you wish to meet with or speak with a Member Education Consultant please contact us on the phone numbers shown below.

ESSSuper also has an arrangement with a licensed financial planning organisation to provide you with fee-for-service financial advice (commission free). The financial advisers are able to provide you with a range of services which takes into account your specific financial needs and objectives. Please contact us for further information.

ESSSuper Financial Advisers are authorised representatives of Link Advice Pty Ltd (Link Advice). Link Advice holds a current Australian Financial Services Licence No. 258145 and is responsible for the financial services provided to you. ESSSuper has an arrangement with Link Advice Pty Ltd to provide financial advice to ESSSuper members. ESSSuper pays Link Advice a fee for this service. Neither the Board, nor the Victorian Government, guarantee or endorse any recommendations made by Link Advice, or are responsible for the advice and actions of Link Advice.

ESSSuper contact details

- **Open:** 8.30am - 5.00pm
- **Telephone:** 1300 650 161 (emergency services members)
1300 655 476 (state super members)
- **Forms, Information Sheets and publications are available from our website at esssuper.com.au/familylaw**
- **Write to (and return all forms to):** ESSSuper - GPO Box 1974, Melbourne VIC 3001

Section 10

Definitions (Glossary)

Commonwealth Family Law Provisions	means Part VIII B of the <i>Family Law Act 1975</i> , the Family Law (Superannuation) Regulations 2001 and all related regulations and legislation.
Eligible person	means the Member Spouse, the Non-Member Spouse or a person who intends to enter into a Superannuation Agreement with the Member Spouse.
Eligible Rollover Fund	means a fund within the meaning of section 242 of the Commonwealth <i>Superannuation Industry (Supervision) Act 1993</i> .
Eligible superannuation plan	means a regulated superannuation fund, an approved deposit fund, an exempt public sector superannuation scheme, or a Retirement Savings Account.
ESSSuper	is the trading name of the Emergency Services Superannuation Board, Administrator of the Emergency Services Superannuation Scheme.
Growth phase	means a superannuation interest where the Member Spouse is an active member of the Scheme, that is the employer of the Member Spouse is required to make contributions for and on behalf of the Member Spouse; or the Member Spouse is a deferred beneficiary and entitled to a deferred benefit on or after the minimum age of retirement from the Scheme; or the Member Spouse, in limited cases, has a preserved lump sum held within the Scheme.
Member Spouse	refers to a member or a pensioner of one of the funds administered by ESSSuper.
Non-Member Spouse	means the legally married spouse or the de facto partner (including same-sex) of the Member Spouse.
Payment phase	means a superannuation interest where the Member Spouse has commenced receiving a pension payment.
Superannuation interest	means the Member Spouse's benefit entitlement in the relevant superannuation fund.

Please forward this completed form to

ESSSuper GPO Box 1974, Melbourne Vic 3001
T 1300 650 161 | W esssuper.com.au

At ESSSuper, we treat the privacy and confidentiality of our members' personal information seriously. We are committed to complying with the guidelines of the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001 (Vic)*. To obtain copies of ESSSuper's Privacy Policy and Privacy Collection Statement, please visit our website at esssuper.com.au

How to certify documents

You do not need to seek an authorised witness to certify a photocopy of your identification if you bring your original identification for an ESSSuper staff member to sight, and a copy is made for our use only. However copies of any other documents, any photocopies sent in to us, or any copies that will be used to transfer funds from another superannuation scheme to ESSSuper, must be certified as set out below:

Step 1	Step 2	Step 3
Take the original and a copy of your selected documents to an approved certifier (see list below) who will verify that the original documents have been sighted.	Ensure that the certifier sights the original and then signs the copy confirming it is a true copy of the original. The certifier must also provide their name, the date of certification and the category/occupation that allows them to certify documents.	Post your completed application form and the certified copy of your documents to ESSSuper. NOTE: We can not accept a photocopy, scanned copy via email or a fax of the certification. Please ensure the original certification is sent.

Who can certify documents?

Conditions and definitions

Accountant

- A member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the Institute of Public Accountants, Accountants; Member of the Association of Taxation and Management Accountants; or a Fellow of the National Tax Accountants' Association.

Banking or Financial Institutions

- A bank or building society or Credit Union officer with 2 or more continuous years of service; or a finance company officer with 2 or more continuous years of service; or a Financial Adviser or Financial Planner. An officer with, or a credit representative of, a holder of an Australian credit licence, having 2 or more years of continuous service with one or more licensees.

Consular or Diplomatic Officer

- An Australian Consular Officer or an Australian Diplomatic Officer (within the meaning of *Consular Fees Act 1955*).

Justice of the Peace or Notary Public

- A Justice of the Peace or Notary Public.

Law Enforcement

- A Police officer; A Sheriff or Sheriff's officer; a member of the Australian Defence Force who is an officer; or a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 2 or more years of continuous service or a warrant officer within the meaning of that Act.

Legal Professional

- Legal practitioner; a judge of a court; a magistrate; a chief executive officer of a Commonwealth court; a registrar or a deputy registrar of a court; a master of the court; a Bailiff; a Clerk of the court; a Trades marks attorney; a Patent attorney; a Commissioner for Affidavits; or a Commissioner of Declarations. A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described).

Medical and Pharmacy

- Medical Practitioner; Dentist; Pharmacist; Chiropractor; Nurse; Optometrist; Physiotherapist; Psychologist; Midwife or Occupational Therapist.

Outside of Australia, Employee of the Australian Trade Commission or of the Commonwealth

- An employee of the Australian Trade Commission or of the Commonwealth who is in a country or place outside Australia and is authorised under paragraph 3 (c) or 3 (d) of the *Consular Fees Act 1955* and exercising his or her function in that place.

Politician or Government Employee

- A permanent employee of the Commonwealth or a Commonwealth authority; or a State or Territory or a State or Territory authority or a local government authority with 2 or more years of continuous service. A member of the Parliament of the Commonwealth; or the Parliament of a State; or a Territory legislature; or a local government authority of a State or Territory. A Senior Executive Service employee of the Commonwealth or a Commonwealth authority; or a State or Territory or a State or Territory authority.
- Migration Agent registered under Division 3 of Part 3 of the Migration Act 1958.
- State Emergency Service employee of the Commonwealth.
- Australian Public Sector employee engaged on an ongoing basis with 2 or more years of continuous service who is not specified in another item of this part.

Teacher

- A Teacher Employed on a full time basis at a school or tertiary education institution.

Other

- A Veterinary Surgeon; Marriage celebrant or Minister of religion registered under Subdivision A or C of Division 1 of Part IV of the *Marriage Act 1961*;
- A member of Engineers Australia, other than at the grade of student, or a registered Professional Engineer of Professionals Australia or registered as an engineer under a law of the Commonwealth, a State or Territory or registered on the National Engineering Register by Engineers Australia; a person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made; a member of the Australasian Institute of Mining and Metallurgy.
- An agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public.
- A permanent employee of the Australian Postal Corporation with 2 or more years of continuous service who is employed in an office supplying postal services to the public.
- Architect.
- A member of the Governance Institute of Australia Ltd.
- A person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents.