

# FAMILY LAW and SUPERANNUATION

**Under family law and superannuation legislation, superannuation can be divided by agreement or court order following the breakdown of certain relationships.**

## About the legislation

Australian Government family law and superannuation legislation allows superannuation to be treated as property for the purpose of property settlement by couples who have separated or divorced, including de facto and same sex couples.

Although family law and superannuation legislation allows couples to split their superannuation in the circumstances mentioned above, it does not require it. Nor does it prescribe the proportions of a split. This is something that is decided between the parties concerned or the Family Court.

## It's very complex, seek legal advice

Because the superannuation family law provisions are complex, it is strongly recommended you seek legal advice if you are contemplating a property settlement that includes your super.

You should also consider seeking financial planning advice to find out about any tax, social security (Centrelink), or other implications.

## Splitting a benefit

A member's superannuation entitlement (whether defined benefit or accumulation) can be split before it is paid to the member. This may be done by a Superannuation Agreement or by a Family Court Order.

## What is a Superannuation Agreement?

This is a legal document and must be accompanied by a statement signed by two independent legal advisors certifying that certain information and advice has been provided to each party.

Either a copy of the decree absolute dissolving the marriage, or a Separation Declaration must also be included.

## What happens when the benefit is split?

The nominated split-off amount is transferred from the member's entitlement to an entitlement for the member's spouse. This may be to a new or existing LGIAsuper account, or to another complying superannuation fund.

In order for the member's spouse to actually access the split-off superannuation benefit, they must satisfy one of the following conditions of release:

- permanently incapacitated (as defined in the Superannuation Industry (Supervision) regulations)
- aged 65 or older
- suffer from a terminal illness
- permanently retired after reaching preservation age (see the table over page)
- severe financial hardship or release on compassionate grounds
- death

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## What is my preservation age?

Generally you can access your super when you reach your preservation age and permanently retire from the workforce. Your preservation age is set by the Australian Government and is based on your date of birth.

### What is my preservation age?

If you were born...	Your preservation age is...
Before July 1960	55
1 July 1960 - 30 June 1961	56
1 July 1961 - 30 June 1962	57
1 July 1962 - 30 June 1963	58
1 July 1963 - 30 June 1964	59
On or after 1 July 1964	60

## How is super taxed?

Super is taxed at various stages of its life cycle. The type and amount of tax that applies will vary depending on where you are in life, the contributions you make, your benefit amount and whether you take your super as a lump sum or pension payment.

Any money you take from your super account has a taxable component and possibly a tax-free component. The taxable component generally grows with:

- employer and salary sacrifice contributions
- voluntary contributions for which a tax deduction has been claimed
- investment earnings

### What will my taxable component be?

If you...	Your taxable component will be...
are under preservation age	taxed at 22% including the Medicare levy.
are between preservation age and 60	tax-free for the first \$200,000. The remainder will be taxed at 17% including the Medicare levy.
are 60 or over	tax free.

## Obtaining information

Before any decision can be made on how to treat a superannuation entitlement in a property settlement, it is necessary to obtain information on the value of the entitlement.

Under family law legislation anyone requesting information about a member's superannuation entitlement must complete a form of declaration to certify they are eligible to make the request.

The family law declaration form is known as FL Form 6. LGIASuper has a version of this form designed for members (and non-members) to complete. Call us for a copy.

### Who can request information?

A member or the member's current, prospective or former spouse can request information about a member's superannuation entitlement. If a request for information about a member's superannuation is made, LGIASuper must provide the information in line with legislation and is not permitted to advise the member about the request.

### What information will LGIASuper give?

The legislation tells us what information we must provide. As such, we will produce a standard document that sets out all the necessary details for family law purposes in line with the legislation.

If requested to do so, LGIASuper will provide the family law valuation amount for a member of the Defined Benefits Fund or Defined Benefit account. This is the withdrawal benefit on resignation. For other members, the relevant superannuation value will be the account balance.

Information can be requested as at a specific date. If no date is specified, we will provide information as at the date we receive the application. The information provided will include the value of the taxation and preservation components of the current withdrawal benefit.

## Any questions?

We're here to help you better understand and grow your super. Contact our trusted and reliable team to find out more. Call us on **1800 444 396** or visit our website at **lgiasuper.com.au**.

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