

INFORMATION SHEET

Superannuation and the breakdown of relationships

Triple S

When a relationship has ended, Family Law legislation enables divorced or married couples, and de facto couples to divide (split) their superannuation interests.

The *Family Law Act* and super

Part VIIIB and VIIIC of the *Family Law Act 1975* enables divorced or separated married couples and separated de facto couples to split their accrued superannuation interests in the same way as other property in a relationship.

The splitting of a member spouse's superannuation interest can be made by:

- a superannuation agreement which is a formal written agreement entered into between the parties who both must obtain independent legal advice about the agreement. The agreement may be part of a financial agreement with specific clauses related to superannuation or a stand alone agreement.
- a consent order where the parties agree on the terms of the court order and it's registered by the court, or
- a contested order where the terms are determined by the court

The above are referred to as 'splitting instruments' and must be served on the South Australian Superannuation Board (the Board).

The splitting instrument must specify either a dollar amount (referred to as the 'base amount') which represents a share of the total value of the interest, or a specific percentage of the interest to be shared with the non-member spouse.

The option not to split

It is up to the parties who are permanently separating to agree how they will share the property in the relationship, including their superannuation assets. They do not have to split a superannuation entitlement. By sharing other assets the parties may avoid splitting a superannuation interest.

Superannuation entitlements that cannot be split

Generally most super entitlements can be split however there are some exceptions:

- superannuation entitlements less than \$10,000
- pension payments to dependent children
- temporary disablement pension entitlements which have been paid for less than two years.
- a payment made to the member spouse due to severe financial hardship or on compassionate grounds.

Quick Glossary

Family Court: means the Federal Circuit and Family Court of Australia and the Family Court of Western Australia.

Interest: the value of an accrued benefit in the super scheme.

Member spouse: the partner who is a member of the relevant super scheme.

Non-member spouse: the super scheme member's spouse who is not a member of the relevant super scheme. Member spouse and non-member spouse may include partners of a de facto or same sex relationship.

The value of an accrued superannuation entitlement

To enable the parties to a relationship to negotiate a property settlement, they will need to know the value of the accrued superannuation interest held by each spouse. In Triple S the value at any particular date is simply the accumulated balance at that date. After an application is made in relation to a member, we will calculate the value of the accrued interest at the requested date or provide annual balance information to enable the parties to determine an appropriate value.

Requesting information – the process

A member spouse or non member spouse can request information by completing the:

- ‘Family Law request for superannuation information’ form (available in the Forms and Publications section of the Super SA website) or
- the **Superannuation Information Kit** available on the Family Law Court website or if you are in Western Australia, the kit can be obtained from the Family Court of Western Australia website.

Flagging super

A payment flag (flagging order or flagging agreement) may be put in place to prevent a member’s super interest being paid. A payment flag will remain in place until it is lifted, by a flag lifting agreement or by a court order. You should contact your legal representative to ascertain whether the issuing of a flagging order is considered necessary and your options in this regard.

Splitting super - the process

Procedural fairness

Family Law legislation requires that the Board must be given a copy of the draft orders before they are filed with the Court. The order will be reviewed to ensure the clauses about the payment split of super are clear and in accordance with the scheme’s legislation.

Super SA have 28 days to respond and will let you know if we require changes to the orders before they are submitted to the Court.

Whilst it is not a legal requirement for superannuation agreements to be provided to the Board before they are finalised, it is recommended that this occurs in order to reduce the risk of the Agreement being unable to be processed.

Documentation Super SA require for the split

Once a splitting order or superannuation agreement has been finalised, the individual who is receiving a super benefit from their former spouse can complete a notification to split a superannuation interest (Regulation 144 Notice) available in the Forms and Publications section of the Super SA website. The form should be returned to Super SA with a certified copy of the sealed court order or financial agreement to split a member’s superannuation interest.

Additional requirements for agreements

Where parties enter into a splitting agreement which includes sharing of superannuation assets, supporting documentation must be provided to Super SA with the agreement.

If the parties were married and the marriage has been dissolved, the splitting agreement must be accompanied by a certified copy of the divorce papers.

Where the parties are married and there is no divorce or where a de facto relationship has ceased, the splitting agreement must be accompanied by a ‘separation declaration’, and certificates of independent legal advice for each party. The declaration must be signed and dated no more than 28 days before the service of the agreement on Super SA.

Super options for the non-member spouse

State legislation complements the Commonwealth Family Law provisions. This allows Super SA to create a separate interest for the non-member spouse upon receipt by Super SA of the necessary documents. The interest can be preserved in Triple S, rolled out to a nominated complying fund, or cashed (if the non-member spouse has met a cashing condition).

If the non-member spouse does not advise Super SA within 28 days of their preferred option, their interest will be preserved in Triple S. The Triple S account will be established in the same investment option as the member spouse’s Triple S account until an investment choice is made. The non-member spouse’s interest is subject to Commonwealth preservation laws, which generally means the lump sum will not be available to be paid out until the non-member spouse retires.

The amount you receive may differ from the amount in the order or agreement because investment earnings (positive or negative) will be applied to the split amount from the operative date.

Historic arrangements prior to 28 December 2002

The Family Law legislation applies to all relationship breakdowns, irrespective of whether a divorce takes effect. However, where a property order (Section 79 of the Family Law Act) or maintenance agreement (Section 87) was in place prior to 28 December 2002, the Family Law superannuation splitting provisions will not apply unless those property settlement orders or agreements are revoked.

Family Law property settlement legislation generally only applies to de facto relationships that break down on or after 1 July 2010 in South Australia or 1 March 2009 outside of SA.

Fees

Fees are permitted to be charged in terms of Part VIIIB and VIIIC of the Family Law Act. Fees will be charged for the following services:

Lodgement of Request for Information form	Splitting of superannuation entitlement
\$70 each request	\$100 each party

Fees are payable at the time of the request. Payments can be made by BPAY. Contact Super SA to obtain payment details for Family Law fees.

Taxation implications of splitting a superannuation interest

Information about the taxation implications should be referred to the Australian Taxation Office (ATO) at www.ato.gov.au or to your financial adviser.

Members should also note that superannuation balances are always quoted as gross (before tax) amounts. Relevant taxation information will be provided with the superannuation interest information and in accordance with the *Family Law Act* so that the parties can work out the net after-tax balance if necessary.

All amounts payable from Triple S will be taxed in accordance with the ATO rules applicable to untaxed funds.


If you believe you have a surcharge debt account with the ATO, you should contact them to find out the balance (if any), and take the surcharge debt into account in any family law split. The surcharge debt itself cannot be split and will remain the liability of the member spouse.

Where an order or agreement is dated on or after 28 December 2002, the Non-Member Spouse will pay tax on any benefit withdrawn or when a super benefit is transferred to a taxed fund. In the case of a transfer, the receiving fund will generally deduct 15% tax from the taxable untaxed portion of the benefit. This is because Triple S is a untaxed fund and generally tax is deferred until a benefit is paid instead of whilst it is accumulating.


Legal questions and advice

Family law is complex and getting legal advice will help you better understand your rights and responsibilities. Super SA can't provide you legal advice and we strongly recommend you seek advice from a lawyer practicing in Family Law matters.


Contact us

 **Email** supersa@sa.gov.au

 **Post** GPO Box 48, Adelaide SA 5001

 **Website** supersa.sa.gov.au

 **Phone** 1300 369 315

 **Member Centre, Karna Country**
Ground floor, 151 Pirie St Adelaide SA 5000
(Enter from Pulteney Street).

Disclaimer

The information in this document is intended to help you understand your entitlements in Triple S. Super SA does its best to make sure the information is accurate and up to date. However, you need to be aware that it may not include all the technical details relevant to the topic. For the complete rules of Triple S, please refer to the Southern State Superannuation Act 2009 and Southern State Superannuation Regulations 2009. The Act and accompanying Regulations set out the rules under which Triple S is administered and entitlements are paid. You can access a copy from the Super SA website.

Triple S is an exempt public sector superannuation scheme and is not regulated by the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA). Super SA is not required to hold an Australian Financial Services Licence to provide general advice about Triple S.

The information in this document is of a general nature only and has been prepared without taking into account your objectives, financial situation or needs. Super SA recommends that before making any decisions about Triple S you consider the appropriateness of this information in the context of your own objectives, financial situation and needs, read the Product Disclosure Statement (PDS) and seek financial advice from a licensed financial adviser in relation to your financial position and requirements.

Super SA and the State Government disclaim all liability for all claims, losses, damages, costs or expenses whatsoever (including consequential or incidental loss or damage), which arise as a result of or in connection with any use of, or reliance upon, any information in this document.