

INFORMATION SHEET

Superannuation and the breakdown of relationships Super SA Select

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 VIIC of the *Family Law Act 1975* enables divorced or permanently separated married couples and permanently separated de facto couples to split and share their accrued super 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 Southern Select Super Corporation (as Trustee of Super SA Select).

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 super assets. They do not have to split a super entitlement. By sharing other assets the parties may avoid splitting a super interest.

Super entitlements that cannot be split

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

- super 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.

Splitting instruments: a super agreement or court order that provides for a payment split.

The value of an accrued super 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 Super SA Select the value at any particular date is simply the accumulated balance at that date.

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 Trustee 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 Trustee 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 supporting documents for splitting agreements

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’. The declaration must be signed and dated no more than 28 days before the service of the agreement on Super SA.

Certificates of independent legal advice are required for both parties.

Super options for non-member spouse

The Trust Deed and Rules complement 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, which can be retained in Super SA Select. This account can be rolled out to a nominated complying fund, or cashed (if the non-member spouse has met a cashing condition).

The non-member spouse’s interest is subject to Commonwealth preservation laws, which generally means the account will not be available to be paid out until the non-member spouse retires.

Fees

Fees are permitted to be charged in terms of Part VIIIB and VIIC of the *Family Law Act*. Super SA charges fees for the following services:

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

Fees are payable at the time of the request. Super SA does not accept cash payment of fees. Payments can be made via BPAY. Contact Super SA to obtain payment details for Family Law fees.

Taxation implications of splitting a super interest

Any amounts taken in cash may be subject to benefits tax. The amount of tax will be based on the taxation components of the payment and the age of the receiving spouse.

Super balances are always quoted as before-tax amounts. Relevant taxation information will be provided with the super interest information and in accordance with the *Family Law Act* so that the parties can work out the net after-tax balance if necessary.

! 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



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Website supersa.sa.gov.au



Phone 1300 369 315



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(Enter from Pulteney Street).

Disclaimer

The information in this document is intended to help you understand your entitlements in Super SA Select. The Southern Select Super Corporation, as Trustee, 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 Super SA Select, please refer to the Trust Deed and Rules. You may obtain a copy by requesting it in writing from Super SA.

Super SA Select 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). Southern Select Super Corporation is not required to hold an Australian Financial Services Licence to provide general advice about Super SA Select.

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 Super SA Select, 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. Please refer to the PDS for information on the cooling off rights associated with this product.

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