

SUPERANNUATION AND THE BREAKDOWN OF RELATIONSHIPS

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Legal questions

If you have questions about the Family Law Act and the legal ramifications of its provisions, you should consult a lawyer practising in Family Law matters.

Divorced or permanently separated married couples and permanently separated de facto couples can split their super in the same way as other property.

The Family Law Act and super

Part VIII B of the Family Law Act 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's super interest can be made in one of two ways:

1. By agreement between the parties – giving the parties the flexibility to settle their own financial affairs, rather than engaging in costly and lengthy court procedures;
2. By Court Order – if the parties cannot come to an agreement, the Family Court can make an order to split superannuation entitlements.

The above are referred to as 'splitting instruments' and must be served on the relevant super Trustee.

Super entitlements that cannot be split

In general, any superannuation entitlement can be split except for the following:

- super entitlements less than \$5,000
- pension payments to dependent children
- temporary disablement pension entitlements which have been paid for less than two years.

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.

Key terms

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

Under the Family Law Act a non-member spouse¹ may make application (on the relevant form) for access to information about the member spouse's super interest.

The form required is the *Request for Superannuation Interest Information (Family Law Act 1975)* form.

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.

Taxation implications of splitting a super interest

Enquiries about the taxation implications should be referred to the Australian Taxation Office, www.ato.gov.au, or to your financial adviser.

All amounts payable from Super SA Select will be taxed in accordance with the Australian Taxation Office (ATO) rules applicable to taxed super funds.



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Example

Peter and Mary separated on 30 April 2017. Mary (the non-member spouse) has lodged a request for information with Super SA on Peter's super interest in Super SA Select as at the date of separation.

On receipt of a *Request for Superannuation Interest Information (Family Law Act 1975)* form or the forms contained in the *Family Court of Australia Superannuation Kit*, Super SA will provide Mary with Peter's accrued super account balances from the Annual Statement, and at 30 April 2017.

It is then up to Peter (the member spouse) and Mary to determine if they will split Peter's super or leave it untouched and simply take account of its value when sharing other assets. The split may be expressed as a dollar amount (known as the base amount), a percentage, or a method or formula to calculate a dollar amount. For example, Peter and Mary may agree on a 50/50 split or alternatively they may agree that Mary will receive a set amount.

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A copy of the *Family Law Act 1975*, and the *Family Law (Superannuation) Regulations 2001* can be viewed at www.comlaw.gov.au and then following the relevant links.

Members should also note that 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.

All amounts payable from Super SA Select will be taxed in accordance with the Australian Taxation Office rules applicable to taxed super funds.

Fees

Fees are permitted to be charged in terms of Part VIII B 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 by electronic fund transfer. Bank payment details are on the *Request for Superannuation Information (Family Law Act 1975)* and *Notification to Split a Superannuation Interest (Family Law Act 1975)* forms.

The fee can also be paid by cheque or money order made payable to "SuperSA".

Requesting information - the process

On receipt of a *Request for Superannuation Interest Information (Family Law Act 1975)* form or the forms contained in the *Family Court of Australia Superannuation Kit*, Super SA will provide the non-member spouse with the member spouse's accrued super account balances as at the most recent Annual Statement, and the date of the request.

NOTE: As an alternative to lodging a *Request for Superannuation Interest Information (Family Law Act 1975)* form, the last Benefit Statement provided to the member may provide sufficient information to enable the parties to determine an appropriate split of the member spouse's accrued superannuation interest.



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Splitting super - the process

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.

Supporting documentation

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' made by at least one of the spouses in terms of Section 90MP of the Family Law Act.

The declaration must state that the spouses separated and thereafter lived separately and apart for a period of at least 12 months and there is 'no reasonable likelihood of cohabitation being resumed'. The declaration must be signed and dated no more than 28 days before the service of the agreement on Super SA.

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 immediately 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.

Frequently asked questions

Ensuring my former spouse does not take their superannuation entitlement before our splitting agreement or Family Court Order is finalised

A flagging order can be served on Super SA which effectively stops payment of any superannuation entitlement. You should contact your legal representative to ascertain whether the issuing of a flagging order is considered necessary and your options in this regard.

What will happen to existing property settlements?

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 only applies to de facto relationships that break down on or after 1 July 2010.

Financial information and advice

Getting accurate information and good financial planning advice is essential to making sound decisions about your super.

As a Super SA Select member, you have the option of calling Super SA's Member Solutions team or for personal financial planning advice, speaking with a professional financial planner. You can choose your own financial planner, or you can take advantage of the commission free service available through Industry Fund Services (IFS).

Super SA's Member Services

Member Services is a good place to start when you're looking for information about your super. And it's free!

Member Services can't give you personal financial advice but can provide information to help you make informed decisions about your super, including:

- showing you how other Super SA products can work for you
- telling you about tax payable on super.

To speak to Member Services, call (08) 8207 2049 or 1300 369 315 (for regional callers).



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Personal financial planning advice

You are encouraged to seek professional advice in relation to your financial planning needs.

Please note: Super SA does not charge commissions or receive commissions from financial advisers, sales agents or any other person or entity.

Contact us

In person:

Ground floor, 151 Pirie Street
Adelaide SA 5000

Postal: GPO Box 48, Adelaide, SA 5001

Call: (08) 8207 2094 or 1300 369 315 (for regional callers)

Email: supersa@sa.gov.au

Website: www.supersa.sa.gov.au

Disclaimer

The information in this document is intended to help you understand your entitlements in SuperSA 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 SuperSA 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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