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It is up to the parties who are permanently separating to agree how they will share the property in the marriage or relationship, including their superannuation assets.

**What is the effect of Part VIIIIB of the Family Law Act 1975?**

Part VIIIIB of the *Family Law Act* enables divorced or permanently separated married or de facto<sup>1</sup> couples to split and share their accrued superannuation interests in the same way as other property in a relationship breakdown.

As part of the process of enabling the parties to determine how their property will be shared between them, a Non Member Spouse<sup>1</sup> may make an application (on the relevant form) for access to information about the Member Spouse's<sup>1</sup> superannuation interest. The parties themselves decide whether the superannuation entitlement will be split.

**The splitting of a Member Spouse's superannuation interest can be made in one of two ways:**

- By agreement between the parties – giving the parties the flexibility to settle their own financial affairs, rather than engaging in court procedures.
- By Court Order.

The above are referred to as "splitting instruments" and must be served on the relevant superannuation 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.

**Does a superannuation entitlement have to be split just because the parties are permanently separating or divorcing?**

No. 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.

**The value of an accrued superannuation entitlement**

To enable the parties to a relationship which has broken down to negotiate a property settlement, they will need to know the value of the accrued superannuation interest held by each spouse. In PSS 3 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.

**Example**

Chris and Mary separate on 30 November 2016. Mary (the Non Member Spouse) lodges a request for information with the State Superannuation Office on Chris's superannuation interest in PSS 3 as at the date of separation. On receipt of a valid *Request for Information* form, Super SA will provide Mary with Chris's accrued superannuation account balances at the Annual Statement dated 30 June 2016 when the balance is \$40,000, and 30 November 2016 when the balance is \$46,000.

It is then up to Chris (the Member Spouse) and Mary to determine if they will split Chris's superannuation 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, Chris and Mary may agree on a 50/50 split of the superannuation entitlement or alternatively they may agree that Mary will receive \$20,000 in cash or other assets.

<sup>1</sup> See Glossary on page 3



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As an alternative to lodging a *Request for Information* form, the Member and Non Member Spouse may opt to use the last Annual Statement provided to the member to provide information to enable the parties to determine an appropriate split of the Member Spouse's accrued superannuation interest.

**Amendments to Scheme legislation**

State legislation, complementing Commonwealth Legislation, allows a separate interest to be created immediately for the Non Member Spouse, rolled out of the Scheme to a nominated complying fund or taken in cash, if the Non Member Spouse meets the Commonwealth Government's preservation age.

**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.

**Property settlements which include sharing of superannuation assets without a legal dissolving of a marriage**

Splitting of superannuation benefits can be made in accordance with a splitting instrument once a "splitting declaration" is 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 have separated and thereafter have lived separately and apart for a continuous period of at least 12 months, and there is "no reasonable likelihood of cohabitation being resumed".

In general, any superannuation entitlement can be split except for Superannuation entitlements less than \$5,000.

**Ensuring a former spouse does not take their superannuation entitlement before a 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 issuing a flagging order is considered necessary and your options in this regard.

**Fees payable for Super SA's services in relation to superannuation and relationship breakdowns**

Fees are permitted to be charged in terms of Part VIII B of the *Family Law Act*. Fees will be charged for the following services:

- Lodgement of *Request for Information* form \$60 each request
- Splitting of superannuation entitlement \$89 each party

Fees are payable at the time of request. In the interests of the security of our members and staff, Super SA does not accept cash payment of fees. Payments can be made by cheque or money order. Contact Super SA for more details.

**Where to obtain copies of the Commonwealth legislation**

A copy of the *Family Law Act 1975*, and the *Family Law (Superannuation) Regulations 2001* can be viewed by going to [www.comlaw.gov.au](http://www.comlaw.gov.au) and following the relevant links.

**Where to obtain a Request for information on a superannuation interest under the Family Law Act 1975 form**

The form is available from Super SA: Ground Floor, 151 Pirie Street (enter from Pulteney Street), Adelaide, or by ringing (08) 8226 9839.

**Taxation implications of splitting a superannuation interest**

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



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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 PSS 3 will be taxed in accordance with the ATO rules applicable to untaxed funds.

**Glossary of terms**

- Interest:** the value of an accrued benefit in the superannuation scheme.
- Member Spouse:** the partner to a legal marriage who is a member of the relevant superannuation scheme.
- Non Member Spouse:** the superannuation scheme member's spouse who is not a member of the relevant superannuation scheme.

Member spouse and non-member spouse may include partners who are married or de facto (as per the *Family Law Act 1975*).

**Contact us**

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**Disclaimer**

This fact sheet provides a general summary to help you understand your entitlements in the Parliamentary Superannuation Scheme. 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. The precise details under which the Scheme is administered and entitlements are paid are set out in the *Parliamentary Superannuation Act 1974* and accompanying regulations. You can access copies of these documents by contacting (08) 8226 9839.

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