

# SUPERANNUATION AND THE BREAKDOWN OF RELATIONSHIPS



**SUPER SA**  
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## IN THIS FACT SHEET

- > What is the effect of Part VIII B of the Family Law Act?
- > The splitting of a member spouse's super interest
- > Does a super entitlement have to be split just because the parties are permanently separating or divorcing?
- > The value of an accrued super entitlement
- > Family Law legislation
- > What will happen to existing property settlements?
- > Supporting documentation
- > Super entitlements that cannot be split
- > How do I ensure my former spouse does not take their super entitlement before our splitting agreement or Family Court Order is finalised?
- > Fees payable
- > Where to obtain copies of the Commonwealth legislation
- > Taxation implications of splitting a super interest
- > Glossary of terms

<sup>1</sup> See Glossary on page 4

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 superannuation interests.

### What is the effect of Part VIII B of the Family Law Act?

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 superannuation interests in the same way as other property in a relationship. 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 application (on the relevant form) for access to information about the member spouse's<sup>1</sup> superannuation interest. The parties themselves decide whether there will be a sharing of an accrued superannuation interest and how the superannuation entitlement will be split and shared. If the parties cannot come to an agreement, the Family Court can make an order to split superannuation entitlements.

### 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 costly and lengthy 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 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.



To obtain a *Request for Superannuation Interest Information (Family Law Act 1975) form*:

Visit the Super SA website [www.supersa.sa.gov.au](http://www.supersa.sa.gov.au) and go to Knowledge Centre > Forms And Publications

Drop in to the Super SA Member Centre at 151 Pirie Street, Ground Floor (enter from Pulteney Street) Adelaide

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



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### Example

Peter and Mary separated on 31 December 2016. Mary (the non-member spouse) has lodged a request for information with Super SA on Peter's superannuation interest in Triple S 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 superannuation account balances at the Annual Statement dated 30 June 2016 when the balance was \$40,000, and 31 December 2016 when the balance was \$46,000.

It is then up to Peter (the member spouse) and Mary to determine if they will split Peter'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, Peter and Mary may agree on a 50/50 split or alternatively they may agree that Mary will receive \$20,000.

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.

### Family Law legislation

State legislation complements 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 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.

### 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.

### 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



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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 agreement' 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.



**Superannuation entitlements that cannot be split**

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

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

**How do I ensure 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.

**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:

|  |
|--|
| <b>Lodgement of Request for Information form</b> |
| \$70 each request                                |
| <b>Splitting of superannuation entitlement</b>   |
| \$100 each party                                 |

Fees are payable at the time of the request.

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.

**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 on the internet by going to **www.comlaw.gov.au** and following the relevant links.

**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.



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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.

### Contact us

#### Address

Ground floor,  
151 Pirie Street  
Adelaide SA 5000  
(Enter from Pulteney Street)

#### Postal

GPO Box 48, Adelaide, SA 5001

#### Call

(08) 8207 2094  
1300 369 315 (for regional callers)

#### Email

supersa@sa.gov.au

#### Website

www.supersa.sa.gov.au

## GLOSSARY OF TERMS

**Interest:** the value of an accrued benefit in the superannuation scheme.

**Member spouse:** the partner 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 of a de facto or same sex relationship.

### 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.

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