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

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

Part VIIIIB of the *Family Law Act* enables divorced or permanently separated married or de facto couples to split and share their accrued superannuation interest 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 Spouse¹ may make an application (on the relevant form) for access to information about the member spouse's¹ superannuation interest. The parties themselves decide whether the superannuation entitlement will be split. 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, or
- by Court Order.

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

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 splitting agreement, they will need to know the value of the accrued superannuation interest held by each party. The member or their spouse can make an application to obtain a valuation and we will calculate the value of the accrued interest for family law purposes.

The method and factors used for the valuation are those defined under the *Family Law (Superannuation) Regulations 2001 (Cth)*. The *Family Law (Superannuation) (Methods and Factors for Valuating Particular Superannuation Interests) Approval 2003* sets out the method and factors used for PSS 1 and PSS 2 members in the growth phase and can be viewed by visiting www.comlaw.gov.au.

Example:

Chris and Mary separated on 15 July 2017. Mary (the non-member spouse) has lodged a request for information with Super SA on Chris's superannuation interest in the Parliamentary Superannuation Scheme 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 Information Kit*, Super SA will provide Mary with a valuation of Chris's accrued superannuation interest for family law purposes. An example of the information that will be provided is shown over the page.

It is then up to Chris (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) or a percentage. For example Chris and Mary may agree on a 50/50 split

¹ See Glossary on page 4.



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or alternatively they may agree that Mary will receive \$500,000.

Information that will be provided includes the following:

	1 July 2017
Accrued Benefit Multiple (as a percentage of annual salary)	52.75
Annual Salary, at valuation date	\$153,1130
Family Law Value of the Superannuation Interest	\$844,844

PSS 3 members

Members of PSS 3 should refer to the *Superannuation and the Breakdown of Relationships* Fact Sheet for PSS 3. This is available from Super SA.

Family law legislation

State legislation recognises the Commonwealth Family Law provisions.

In the event that a member spouse's benefit is split while he/she is still serving in the Parliament, the legislation stipulates that the non-member spouse will receive a lump sum. On receipt of the splitting instrument, Super SA will create a separate interest for the non-member spouse immediately, which can be cashed (if the non-member spouse has met a Condition of Release), rolled out of the Scheme to a nominated complying fund, or rolled over to Triple S.

The non-member spouse interest initially created within the Parliamentary Superannuation Scheme will be invested in the same investment option as the member spouse's account. If the non-member spouse does not advise Super SA within 28 days of their preferred option, the interest will be rolled over to Triple S. The Triple S account will be established in the default Balanced investment option until an investment choice is made. The lump sum is subject to Commonwealth preservation rules, which generally means the lump sum will not be available to be paid out until the non-member spouse permanently retires.

Pension entitlements

If the member spouse is receiving a pension from PSS 1 or PSS 2, the non-member spouse may receive a portion of this entitlement. The non-member spouse may elect to continue their portion of the pension, convert their share to a separate pension (associate pension) or commute this to a lump sum.

What will happen to existing property settlements?

The Family Law property settlement 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 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.



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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.

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 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 for PSS1 or PSS2 will be charged for the following services:

- Lodgement of Request for Information form \$176 each request
- Splitting of superannuation entitlement \$176 each party.

Fees are payable at the time of request. 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 accessed at www.comlaw.gov.au.

Where to obtain a Request for Superannuation Interest Information (Family Law Act 1975) form

The form is available on the Parliamentary Superannuation Scheme section of the Super SA website, from Super SA at 151 Pirie Street, Ground Floor (enter from Pulteney Street), Adelaide, or by calling (08) 8226 9839.

Taxation implications of splitting a superannuation interest

Information about the taxation implications should be referred to your financial adviser.

You 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 lump sum amounts payable from the Parliamentary Superannuation Scheme will be taxed in accordance with the Australian Taxation Office rules applicable to untaxed funds.

Further questions

If you have any questions, please do not hesitate to contact us. If you have general questions about the Family Law Act and the legal ramifications of its provisions, you should consult a lawyer practicing in Family Law matters.



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Glossary of terms

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

Member spouse: the spouse 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*).

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.

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 fact sheet.

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