

INFORMATION SHEET

Superannuation and the breakdown of relationships Pension and Lump Sum Schemes

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

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 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 spouse¹ may make application (on the relevant form) for access to information about the member spouse's¹ 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 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 South Australian Superannuation Board (the 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.

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 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. The member or their spouse can make an application to obtain a valuation and we will calculate a value of the accrued interest for family law purposes.

The method and factors used for the valuation are as approved by the Commonwealth Attorney-General in terms of Regulation 62 of the *Family Law (Superannuation) Regulations 2025 (Cth)*. The *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2025* setting out the method and factors can be viewed online at www.legislation.gov.au.

Quick Glossary

Family Courts: 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 superannuation scheme.

Member spouse: the partner or spouse who is a member of the relevant superannuation scheme.

Non-member spouse: the superannuation 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*).

¹ Refer to the Glossary on page 3

Example for splitting an entitlement in the Lump Sum Scheme

Peter and Mary separated on 31 December 2024. Mary (the non-member spouse) has lodged a request for information with Super SA on Peter's superannuation interest in the Lump Sum Scheme at the date of separation. The Lump Sum Scheme retirement entitlement consists of an accumulation member contribution account including interest, plus an accumulation PSESS account (if any), plus a defined multiple of final annual salary (employer component). On receipt of a Family Law request for superannuation information form or the Superannuation Information Kit, Super SA will provide Mary with a valuation of Peter's accrued employer component for family law purposes as well the value of the accumulation balances which make up the total superannuation interest.

Information that will be provided may include the following:

31 December 2024	
Accrued Benefit Multiple (as a multiple of annual salary)	5.1074
Annual Salary, at valuation date	\$83,600
Family Law Value of the Employer Component	\$471,000
Value of the Member Contribution Account	\$385,000
Value of the PSESS Account	\$0
Total Family Law Value of the Superannuation Interest	\$856,000

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 a base amount, e.g. \$300,000.

Example for splitting an entitlement in the Pension Scheme

Donald and Sally separated on 31 December 2024. Sally (the non-member spouse) has lodged a request for information with Super SA on Donald's superannuation interest in the Pension Scheme at the date of separation. On receipt of a Family Law request for superannuation information form or the forms contained in the Superannuation Information Kit, Super SA will provide Sally with a valuation of Donald's accrued superannuation interest for family law purposes.

Information that will be provided includes the following:

31 December 2024	
Accrued Benefit Multiple (as a percentage of annual salary)	68.17
Annual Salary, at valuation date	\$72,500
Family Law Value of the Superannuation Interest	\$650,000

It is then up to Donald (the member spouse) and Sally to determine if they will split Donald'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, Donald and Sally agree on a 50/50 split or alternatively they may agree that Sally will receive a base amount, e.g. \$300,000.

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.

The benefit amount shown on your annual member statement or benefit quote should not be used for family law purposes. The value will not necessarily reflect the value of your benefit at a particular time for family law purposes.

Flagging super

A payment flag (flagging order or agreement) may be put in place if there is a concern that a member’s super interest may be paid out or rolled over before a property settlement has been finalised. 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 issuing a flagging order or flagging agreement is considered necessary and your options in this regard.

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.

Procedural fairness

Family Law legislation requires that the Board 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.

We 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 Board 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 14.4 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.

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’, and certificates of independent legal advice for each party. The declaration must be signed and dated no more than 28 days before the service of the agreement on Super SA.

Super options for the non-member spouse

State legislation complements the Commonwealth Family Law provisions.

In the event that a member spouse’s benefit is split while he or she is in the growth phase, the legislation stipulates that the non-member spouse will receive a lump sum. This allows Super SA to create a separate interest for the non-member spouse immediately, which can be cashed (if the non-member spouse has met a cashing condition) or rolled out of the Scheme to a nominated complying fund, or rolled over to Triple S.

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 Balanced investment option 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.

For Pension members in the payment phase, please refer to the Superannuation and the breakdown of relationships information sheet for superannuants, available on the Super SA website.

Historic arrangements prior to 28 December 2002

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 1975*) 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 applies to de facto relationships that break down only on or after 1 July 2010 or 1 March 2009 outside of SA.

Superannuation entitlements that cannot be split

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

- superannuation 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.

Fees

Fees are permitted to be charged in terms of *Part VIII B and VIII C of the Family Law Act*. Fees 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 the request. Payments can be made by BPAY. Contact Super SA to obtain payment details for Family Law fees.

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.

All amounts payable from the Lump Sum Scheme will be taxed in accordance with the Australian Taxation Office 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.

Where an order or agreement is dated on or after 28 December 2002, the Non-Member Spouse will pay tax on any benefit withdrawn or when a super benefit is rolled over to a taxed fund. Tax will be payable on the taxable untaxed component because the Lump Sum Scheme and Pension Scheme are untaxed funds and tax is deferred until a benefit is paid instead of whilst it is accumulating.

Further questions

If you have any questions in relation to superannuation in the breakdown of relationships, please contact Super SA. 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.

We're here to help



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Disclaimer

The information in this document is intended to help you understand your entitlements in the Pension Scheme or the Lump Sum 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. For the complete rules of the Pension Scheme and the Lump Sum Scheme, please refer to the Superannuation Act 1988. The Act and accompanying Regulations set out the rules under which the Pension Scheme and the Lump Sum Scheme are administered and entitlements are paid. You can access a copy from the Super SA website.

The Pension Scheme and the Lump Sum Scheme are exempt public sector superannuation schemes and 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 the Pension Scheme and/or the Lump Sum Scheme.

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 the Pension Scheme or Lump Sum Scheme you consider the appropriateness of this information in the context of your own objectives, financial situation and needs and seek financial advice from a licensed financial adviser in relation to your financial position and requirements.

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