



# Family Law and Super

## Understanding family law and super

If you're going through a relationship break up, it's important to understand how your super is handled when it comes to a financial settlement. We've designed this fact sheet as a general overview, not as legal advice. With that in mind, it's best to first seek independent legal advice before making any decision on the splitting or flagging of superannuation benefits.

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### Overview

Since 2002 superannuation benefits have been treated as matrimonial property. This means they can be split or flagged by a superannuation trustee as part of a family law property settlement. Also, since 1 March 2009, in most states, the superannuation benefits of certain de facto couples (including same gender couples) may also be split or flagged on the breakdown of the relationship.

Accounts can only be split if the balance is over \$5,000.

### What is splitting and flagging?

'Splitting' means that a decision has been made to split a member's superannuation benefit and allocate some of it to the member's spouse/ de facto partner.

It's important to note that splitting a superannuation entitlement won't convert it into a cash asset, and it remains subject to superannuation law.

'Flagging' means that a decision on how to split a member's superannuation benefit has been deferred until a later date. If the

benefit becomes payable to the member while a flag is in place, the benefit cannot be paid and we must notify the parties or the Court. We will then wait for further instructions from the parties or the Court before paying the benefit.

### **You can split or flag superannuation under:**

- a formal written superannuation agreement made under the *Family Law Act*
- a court order made by the Family Court.

### Requesting information about a super account

To negotiate a superannuation agreement or to assist in applying the splitting laws, an 'eligible person' may apply for information from the Trustee about a member's superannuation account.

An 'eligible person' is the member, a spouse or de facto partner of the member, or a person who intends to enter into a superannuation agreement with the member (like a pre-nuptial agreement).

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The Trustee is not permitted to inform the member that an application for information has been received and cannot provide the non-member spouse/de facto with the member's address.

## What you need to give the Trustee

Before you can receive information about a member's superannuation, you'll first need to provide the Trustee with the following:

- *Form 6 Declaration*
- *Superannuation Information Request Form* (along with the appropriate *Superannuation Information Form*)
- The fee charged by the Trustee.

You'll find more information, as well as copies of the above documents, in the *Superannuation Information Kit* issued by the Family Court of Australia at [familylawcourts.gov.au](http://familylawcourts.gov.au).

## What happens when a superannuation split occurs?

The formal splitting agreement or court order (which must be served on the Trustee) gives instructions to the Trustee on how the superannuation interest will be split.

Unrestricted non-preserved, restricted non-preserved and preserved benefits will be split between the member and the spouse in proportion to their share of the overall benefits.

The Trustee may split the member's superannuation entitlements by creating a new account in the name of the non-member spouse/de facto partner, and allocating the amount to that account. Alternatively, the non-member spouse or de facto partner may request that the superannuation interest be rolled over to another complying super fund. If they meet a condition of release, they may request payment of the benefit.

## What are the fees and charges?<sup>1</sup>

If you're the person making the request for information, you'll have to pay a fee of \$80 at the time the request is made.

If the Trustee is required to process a superannuation split, a fee of \$80 is payable to the Trustee, which is usually split equally between both parties. So \$40 will be taken from the member's account and \$40 will be taken from the amount allocated to the spouse. If 100% of the member's account balance is to be split to the spouse, the entire fee will be taken from the amount to be transferred.

<sup>1</sup> Fees and charges are subject to change.

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For more information, please visit our website at [mtaasuper.com.au](http://mtaasuper.com.au). You can also call us on **1300 362 415**. We're here to help.