# Family Law Legislation

If you're going through a relationship breakup, it's important to understand how super is treated in a financial settlement.

Super is treated as a type of property and not as a financial asset for the purposes of Australian court orders and settlement agreements. This means separated couples need to value and split their super interests and come to their own agreement. The courts will then only become involved if an agreement can't be reached.

We recommend getting legal advice before making these decisions, because a lawyer can advise you about your rights, the advantages and disadvantages, and how the law applies to your situation. You may wish to check the list of free legal services available at **MoneySmart.gov.au**

The law has allowed super to be split since 28 December 2002 for married couples who are separating, and since 1 March 2009 for de facto couples who are separating (including same sex).[1]

For property settlements or agreements finalised on or made before these dates, the above super splitting laws don't apply, and you should seek legal advice.

Agreements made before, during, and after marriage are recognised by the *Family Law Act 1975* (the Act).

## Do you have to split your super in a divorce?

You don't always have to split your super in a divorce or separation, unless the court orders it – but if one of you has more super than the other, it's something to consider and this will depend on your personal circumstances.

### How to split super

Your or your former partner's super can be split by entering into a superannuation agreement with them or by obtaining a court order.

If you agree with your partner on how your super will be divided, you can either:

- Apply for a court order formalising your agreement, or
- Instruct a lawyer to prepare a binding financial agreement.

If you choose to make a superannuation agreement together, both of you have to get independent legal advice before signing.

If you can't agree on how your super will be divided, you can ask the courts to decide ('a contested order').

Court orders and super agreements may specify a dollar amount (typically for Accumulation accounts, Income accounts, or Defined Benefit accounts) or a percentage (typically for defined pensions). See the final page of this factsheet for sample wording you can use in the order or agreement.

The order/agreement is effective from what's called the **operative time**, which depends on the type of court order/agreement you're sending us. For a court order, the operative time must be specified in the order. For a super agreement, the operative time is defined by law as the fourth business day after we receive a copy of the binding agreement and other required documents.

### When can super not be split?

There are a few cases when super can't be split, including:

- Small balances (if the withdrawal value is less than $5,000)
- Payments for compassionate grounds, severe financial hardship, temporary incapacity benefit
- Income protection benefit payments
- Pension that would have been paid to the former partner if the member had died while they were still married
- A pension that is payable for life and can't be made into a lump sum, with an annual benefit payable less than $2,000
- Payments to a child reversionary beneficiary after the member's death, if:
  - They're under 18 years old, or
  - They're over 18 but were dependent on the member when the member died, and the payment is to complete their education, or
  - They're over 18 but have a physical or intellectual disability, and the benefit is paid to another person for the child's benefit.

### What do I need from QSuper?

The process for splitting your or your former partner's super with us usually involves three steps.

**1. Get a valuation**

Find out how much you and your former partner have in super, using either our form (see below) or the Family Court of Australia's form for other super funds.

**1** At the time of writing, de facto couples in Western Australia may be subject to different arrangements. We recommend you ask your legal adviser for more information.

**2. Prepare your property settlement and declaration**

Consider getting legal advice when preparing a property settlement (your agreement about dividing up your assets and debts) or requesting a court order to split super. Your **superannuation agreement** (a property agreement about super) must be a formal written agreement between you and your former partner, and you must both obtain independent legal advice before signing.

You also need to provide a **separation declaration** (or a copy of the divorce order if you have one) to prove you have separated (in addition to your super agreement). We can't process your super agreement until we receive your separation declaration. This must be in writing, signed by at least one of the partners, and current (sent to us within 28 days of signing).

If the member has less than or equal to $230,000 (for 2022-23) in super (low rate threshold), your separation declaration just needs to state that you are married or in a de facto relationship and are separated at the time of the declaration. If they have more in super than this threshold, it must state you are married or in a de facto relationship, you're separated, you've been living apart for at least 12 months in a row immediately before the declaration, and it's not likely you'll live together again.

**3. Send the settlement and declaration**

Send a certified copy of your financial agreement or a copy of your court order to the super fund/s, together with a *Non-Member Spouse Information Collection* form (available from **qsuper.qld.gov.au/forms**) if it's a QSuper account, and a copy of your separation declaration.

## Requesting information about a super account

We can give you information on your account, and we can also give you information if you're the partner of a member, or a person entering into a superannuation agreement with a member under the Act.

You'll need to fill out a *Family Law Declaration and Request for Information* form, available on our website at **qsuper.qld.gov.au/forms** or give us a call to request a copy, free of charge.

### Protection of information

Please remember it's an offence to make a false or misleading statement in a declaration you give to us or any other trustee of a super fund. If you make a false or misleading statement in a declaration, you may face up to 12 months' imprisonment.

## Calculating the value of a superannuation benefit

### Accumulation account and Income account

As Accumulation and Income accounts are unit-based, we multiply the number of units in the account by the unit price applicable on the valuation date you nominate. If you don't tell us a date, we'll use the unit price applicable on the date we receive your request for information.

Money in Self Invest is not unit-based. In this case, we take the opening Self Invest balance on the valuation date and add this to the unit-based value to get a total amount.

### Defined Benefit account

Valuing an interest in a Defined Benefit account is more complex. We look at salary and contribution rate and length of service. To calculate a member's benefit upon resigning, we add their contributions to the present-day value of their employer's contributions.

The present-day value of employer contributions is calculated based on how long it is until the member with the account turns 55 years old. So the closer to 55, the greater the present-day value is.

You can find more information about the present-day value of Defined Benefit accounts in the *Defined Benefit Account Guide*. You can download it from **qsuper.qld.gov.au/guides** or call us to request a copy, free of charge.

## What happens to an Accumulation account, Income account, or Defined Benefit account after it is split?

We'll split a member's account once we receive a court order or superannuation agreement.

After the split, we'll move the specified amount from the account. If the split happens after the date specified by the court order or agreement, we'll calculate an interest adjustment to be applied to the amount the former partner is entitled to.

We will never take more out of a member's account or superannuation interest than they have available.

We then add the split amount and any interest to a QSuper Accumulation account in the name of the person receiving it (you or your former partner). If they do not have a QSuper Accumulation account, we'll open one for them and automatically invest it in the default investment option, Lifetime. We then write to you to let you know your options.

In some cases, you may need to request a **payment flag** in your super agreement or court order. This means your former partner can't withdraw their super, receive payments, or roll over their super to another fund until the flag is removed.

## What happens after a Lifetime Pension is split?

The product cannot be exited upon divorce or separation outside of the cooling-off period. When we receive a family law court order or super agreement that requires your super to be split, we may transfer an amount from your Lifetime Pension to your former partner, subject to the capital access schedule.

If your former partner (whom you nominated when you selected the partner protection option) passes away, your payments won't change. Any arrangements determined through the family law separation will continue until you pass away.

If you have chosen the partner protection option and your nominated partner is not valid when you die, the Lifetime Pension payment will stop and a death benefit (if applicable) is payable to your beneficiaries.

## Other changes to make to your account after separating

### Changing your name

You don't have to change your surname after divorce or separation, but if you do want to, here's how to let us know your new name.

If you currently work for the Queensland Government, please change your name by letting your payroll office know about your change of details, and they will let us know.

Otherwise, if you want to change your name after divorce or separation, please send us:

- Your request in writing, listing your name, date of birth, and address, and
- A certified copy of your marriage certificate or change of name certificate from the Registry of Births, Deaths, and Marriages.

If you're having difficulty getting your official change of name certificate, please contact us to discuss your options.

### New contact details

To change your address and password (if your former partner had access to your account), log in to Member Online at **memberonline.qsuper.qld.gov.au** or contact us.

### Your beneficiaries

You can update who will receive your super when you die (your beneficiaries) in Member Online.

### Insurance cover

Your insurance needs may change after you separate, so you can try our Insurance Needs Calculator or seek financial advice.

### Authorities and power of attorney

You can withdraw your former partner's authority to access information about your super accounts by writing to us, and consider changing your enduring power of attorney (EPOA) if you have one.

## Checklist

Follow this checklist to make sure you provide all the information so that we can process your super split efficiently.

- [ ] List our super fund as Australian Retirement Trust, and the trustee as Australian Retirement Trust Pty Ltd (QSuper is the Government division of Australian Retirement Trust).
- [ ] Include the QSuper member's client number if you're asking us to split super from their membership.
- [ ] List each person by their full name (including middle names), rather than saying "Husband" or "Wife".
- [ ] Check that it's clear when the split needs to take effect (the operative time), e.g. we can't process a split if it is based on a future event, such as one person paying money to another person.
- [ ] For a superannuation agreement, check that your superannuation agreement reflects the legal definition of the operative time from the *Family Law Act 1975* (Cth): the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee of the fund, accompanied by a copy of the divorce order or separation declaration.
- [ ] If the QSuper member has more than one account with us, and they want the split to come out of a particular account, please let us know. You can either list the account number in the order/agreement, or the member can send us an email or letter when you give us the final order/agreement.
- [ ] Check that your order/agreement is not trying to split more than the balance of the member's account or value of the member's interest.

### Advice for the future

Deciding what is best for you will depend on your personal circumstances and you may want to seek personal financial advice to get the most from your superannuation. You can find out more about financial advice options at **qsuper.qld.gov.au/advice**

You may also want to use our calculators to see how you could grow your super balance, or check out our seminars about saving tax with super, preparing for retirement, and more. Visit **qsuper.qld.gov.au** to try our calculators or register for a seminar.

## Sample preferred wording for court orders and super agreements

Your agreement or court order will be easiest for us to process if it uses the following wording.

### For court orders that specify a base amount (typically used for Accumulation accounts, Income accounts, and Defined Benefit accounts)

Pursuant to section 90XT(1)(a) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of (member's full name)'s interest in the Government Division (known as "QSuper") of Australian Retirement Trust (client number ########), (non-member partner's full name) is entitled to be paid an amount calculated in accordance with the *Family Law (Superannuation) Regulations 2001*, using a base amount of $# (provided that such base amount shall not exceed the value of the member's superannuation interest) and there is a corresponding reduction in the entitlement of (member's full name).

This order has effect from the operative time, and the operative time is the beginning of the fourth business day after the day on which a sealed copy of these orders is served on the trustee of the fund.

### For court orders that specify a percentage (typically used for defined pensions)

Pursuant to section 90XT(1)(b) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of (member's full name)'s interest in the Government Division (known as "QSuper") of Australian Retirement Trust (client number ########), (non-member partner's full name) (or their legal personal representative) is entitled to be paid #% of the splittable payment and there is a corresponding reduction in the entitlement of (member's full name).

This order has effect from the operative time, and the operative time is the beginning of the fourth business day after the day on which a sealed copy of this order is served on the trustee of the fund.

### Super agreements that specify a base amount (typically used for Accumulation accounts and Defined Benefit accounts)

Pursuant to section 90XJ(1) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of (member's full name)'s interest in the Government Division (known as "QSuper") of Australian Retirement Trust (client number ########), (non-member partner's full name) is entitled to be paid an amount calculated in accordance with the Family Law *(Superannuation) Regulations 2001*, using a base amount of $# (provided that such base amount shall not exceed the value of the member's superannuation interest) and there is a corresponding reduction in the entitlement of (member's full name).

The operative time for this agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee of the fund, accompanied by a copy of the divorce order or separation declaration.

### Super agreements that specify a percentage (typically used for defined pensions)

Pursuant to section 90XJ(1) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of (member's full name)'s interest in the Government Division (known as "QSuper") of Australian Retirement Trust (client number ########), (non-member partner's full name) (or their legal personal representative) is entitled to be paid #% of the splittable payment and there is a corresponding reduction in the entitlement of (member's full name).

The operative time for this agreement is the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee of the fund, accompanied by a copy of the divorce order or separation declaration.


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