

## Family law and superannuation

Australian Government family law and superannuation legislation allows superannuation entitlements to be treated as property for the purpose of a property settlement on the breakdown of a marriage or, since 1 March 2009, a de facto relationship (including same sex partners, but excluding all de facto relationships in Western Australia and South Australia).

Family law allows the splitting of superannuation on separation or divorce. It does not require that superannuation must be split, nor does it prescribe the proportions of a split. This is something that is decided between the parties concerned, or the Family Court.

Because the superannuation family law provisions are complex, it is strongly recommended that individuals seek their own legal advice if they are contemplating a property settlement that includes superannuation.

### Obtaining information?

Before a decision can be made on how to treat a superannuation entitlement in a property settlement, it will be necessary to obtain information on the value of the entitlement. The family law legislation sets out a form of declaration that must accompany any request for information. This is known as FL Form 6. LGsuper has a version of this form designed for members (and non-members) to complete.

Superannuation information may be requested by either the member or the member's current, prospective or former spouse (also called non-member spouse). If the non-member spouse requests information about the member's superannuation, LGsuper must provide the information set down in the legislation, and is not permitted to advise the member that such a request has been made.

The legislation spells out what information must be provided. Therefore, LGsuper will provide a standard document setting out all the necessary information for family law purposes. It is not necessary to forward the Superannuation Kit which may be downloaded from the Family Court website.

If requested to do so, LGsuper will provide the family law valuation amount for a Defined Benefits Fund member. This is the withdrawal benefit on resignation. For other members, the relevant superannuation value will be the account balance.

Information may be requested for the current date, or an earlier date. If no date is specified, the information will be provided as at the date LGsuper receives the application. The information provided will include the value of the taxation components of the current withdrawal benefit.

### Splitting a benefit

A superannuation entitlement (whether defined benefit or accumulation) can be split before a benefit is payable to the member. This may be done by a Superannuation Agreement or by a Family Court Order.

A Superannuation Agreement is a legal document and must be accompanied by a statement signed by two independent legal advisors certifying that certain information and advice has been provided to each party.

Either a copy of the decree absolute dissolving the marriage, or a Separation Declaration must also be included.

The nominated split-off amount is transferred from the member's entitlement to an entitlement for the non-member spouse. This may be to a new membership created in LGsuper for the non-member spouse, or to another complying superannuation fund.

In order for the non-member spouse to actually access the split-off superannuation benefit, they must have satisfied a relevant condition of release:

- > permanent incapacity (as defined in the Superannuation Industry (Supervision) Regulations)
- > death
- > age 65 or over
- > age 60 or over and ceased work with an employer
- > terminal illness
- > reached preservation age (see below) and permanently retired

### Preservation age

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 to 30 June 1961	56
1 July 1961 to 30 June 1962	57
1 July 1962 to 30 June 1963	58
1 July 1963 to 30 June 1964	59
1 July 1964 or later	60

### Summary

This information sheet is intended to provide a brief overview of the family law arrangements as they apply to superannuation. Legal advice should be obtained if you are considering splitting a superannuation entitlement.

### Any questions?

LGsuper is here to help. Contact us on 1800 444 396 to talk through your options and have your questions answered.

This info sheet has been prepared by the Queensland Local Government Superannuation Board (AFSL 230511 RSE Licence No. L0000178) on behalf of the Local Government Superannuation Scheme (ABN 23 053 121 564 RSE Registration No. R1000160). Information on products offered by the Board can be found in our product disclosure statements.

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Jul 10

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