



wa super
Trust the locals

FAMILY LAW & SUPERANNUATION Member factsheet

When a relationship breaks down, superannuation splitting laws allow superannuation to be divided, either by a superannuation agreement or by applying for a Court Order.

ASSESS YOUR FINANCIAL SITUATION

Before you begin the process of splitting super, it's a good idea to assess your financial situation.

Get your current super balance

If you're a WA Super member, log into Member Online for your current super balance and statements.

Get financial advice

The process of splitting super can exacerbate an already stressful situation, so both parties may benefit from receiving some financial advice to make the future a little clearer. As a member, you can access personal financial advice on a fee for service basis*. Our qualified financial planners will be able to analyse your specific situation, there is no charge for the initial consultation, and you'll be provided with a quote before any work is done. Call 08 9480 3500 to find out more about these services.

Get legal support

Seek advice from a lawyer regarding your rights and entitlements in relation to superannuation and the breakdown of a marriage or de facto relationship. We cannot provide you with legal assistance.

SPLITTING SUPERANNUATION UNDER THE FAMILY LAW ACT

This legislation applies to married couples where the couple is currently married, or the couple divorced on or after 28 December 2002. Splitting laws may also apply to couples in de facto relationships if they have a connection to a state or territory other than Western Australia. In most states and territories, the legislation applies to de facto couples whose relationship broke down on or after 1 March 2009 (and in South Australia on or after 1 July 2010).

Currently, in Western Australia, superannuation is not considered an asset for the purpose of property division between separating de facto couples. However, the *Family Law Amendment (WA De Facto Superannuation Splitting and Bankruptcy) Bill 2019* was introduced in November 2019, which - if passed into law by Parliament - will allow de facto couples separating in WA to achieve a fairer split of their superannuation assets.

If a superannuation interest is split between parties, it will be subject to the superannuation preservation requirements.

It is not mandatory for parties to split their superannuation interests. The superannuation interests of the parties may be used to offset the division of other property of the marriage or de facto relationship.

WHICH SUPERANNUATION INTERESTS CAN/CANNOT BE SPLIT?

An interest in either WA Super's *Super Solutions* or *Retirement Solutions* **can** be split. However, the following superannuation interests **cannot** be split if they apply to a WA Super account:

- A member's accrued superannuation with a withdrawal value of less than \$5,000;
- Any benefit payment that has been made to the member on financial hardship or compassionate grounds;
- If the member has died, their legal personal representative;
- Any income protection benefit payments received by the member;
- Temporary incapacity benefit payments received by the member;
- Death benefits to or for a child under age 18 that was paid following the death of the member.

*Personal financial advice is provided by financial planners employed by WA Local Financial Services Pty Ltd (Western Financial), a wholly owned subsidiary of WA Super, as authorised representatives of Quadrant First Pty Ltd AFSL 284443.

HOW TO SPLIT SUPERANNUATION

STEP 1 - APPLY FOR INFORMATION ABOUT THE SUPERANNUATION INTEREST AND PAY THE FEE

An eligible person can apply to WA Super for information. An eligible person includes:

- The member of WA Super; or
- The member's legal spouse (referred to in this fact sheet as the "non-member spouse"). This could include couples in de facto relationships if one of the parties has a connection to a state or territory other than Western Australia;
- If the member has died, their legal personal representative;
- If the non-member spouse has died, the non-member's spouse's legal personal representative; and
- Any other person who intends to enter into a superannuation agreement with the WA Super member (e.g. a prenuptial agreement).

An eligible person should complete and send us a Superannuation Information request form, along with a Form 6 Declaration. The form is available by contacting us or a legal representative, or a Superannuation Information Kit can be obtained from the Family Court of Australia at www.familycourt.gov.au.

Applications for information must be sent to:

WA Super
PO Box Z5493
St Georges TCE, PERTH WA 6831

For enquiries and the supply of information, there is a fee of \$480. This will be paid by the enquirer at the time of the enquiry.

If you're a member of WA Super, the fee will be debited from your account.

If you're not a member of WA Super, then payment will be required before you can receive any information.

The Trustee will provide details about the superannuation interest which will include a valuation. Owing to legislation, the Trustee of WA Super is not permitted to:

- Inform the member that an application for information has been received;
- Provide the non-member spouse with the address of the member;
- Provide the member with the address of the non-member spouse.

STEP 2 - DECIDE HOW SUPERANNUATION INTERESTS WILL BE SPLIT

To split a superannuation interest, the parties must either make a superannuation agreement or obtain a court order.

COURT ORDER

The Family Court of Australia or the Federal Circuit Court of Australia can make a court order, splitting the superannuation interests of the parties.

A court order can be:

- A **consent order** – where parties agree on the terms of the court order and it is registered by the court; or
- A **contested order** – where terms of the court order are determined by the court.

Court orders are binding on the Trustee, provided that 'procedural fairness' is applied in relation to the making of the order. This means that the parties have a period of at least 28 days before seeking a court order to provide the Trustee with the draft court order. The Trustee will respond, confirming if the terms are acceptable.

All final court orders served on the Trustee must be certified copies.

SUPERANNUATION AGREEMENT

A superannuation agreement is a formal written agreement between two parties and requires that both parties obtain independent legal advice.

A superannuation agreement can be made before, during or after a marriage or de facto (opposite sex or same-sex) relationship.

A superannuation agreement is binding on the Trustee if the agreement complies with the legislative requirements and is served on the Trustee together with a certified copy of the Certificate of Divorce or a separation declaration, and certificates of independent legal advice for each party.

Unlike a Court Order, there is no legal obligation for the parties to provide the Trustee with a draft before executing a superannuation agreement. Once the agreement is made, the parties do not need to go to court. The agreement is not registered in court and both parties must be careful to retain a copy.

STEP 3 - THE SUPERANNUATION INTEREST IS SPLIT BY WA SUPER

If the Trustee accepts draft court orders, as part of Step 2 above, then a request is sent to the non-member spouse for a Regulation 72 Notice at that time. Therefore, generally, by the time the Trustee receives the final court orders, the required details from the non-member spouse would have already been provided.

If the Trustee receives final orders (without first being sent the draft orders), then it's likely that the Regulation 72 Notice would not have been provided by the non-member spouse. So the Trustee will make the request for the Regulation 72 Notice and needs to receive it back from the non-member spouse for the payment split to be made.

The payment split must be done at the 'operative time': the date that the Trustee is required to recognise the split of the superannuation interest which is usually dictated by either the superannuation agreement or the court orders. The payment split must be made within 28 days of the Trustee receiving the final consent orders and will be processed effective as of the operative time.

At the time of the payment split, a fee of \$160 must be paid in equal parts by both parties (i.e. \$80 each).

WA Super will send a letter to both parties notifying them of the payment split.

What is a Regulation 72 Notice?

It's a document that the non-member spouse is obliged to use to give the Trustee personal contact information, and to tell the Trustee whether they are a member of WA Super.

WHAT HAPPENS ONCE THE SUPERANNUATION BENEFIT HAS BEEN SPLIT?

The non-member spouse has three options once the superannuation benefit has been split:

1. Join WA Super

The non-member spouse can elect to open a WA Super account and have the proceeds paid into this new account. This provides the choice of various investment options, potential insurance cover, and the ability to nominate beneficiaries.

If this option is selected, then a *Super Solutions: Application for Membership Form* must be completed and sent to us¹.

2. Transfer money

The non-member spouse can elect to transfer their money to an existing superannuation account. There is no fee to transfer the proceeds to another super provider.

If this option is selected, then a *Rollover Initiation Request Form* must be completed and sent to us.

3. Claim their money as a cash benefit

The non-member spouse may be eligible to claim their money as a cash benefit. This is dependent on age and circumstances and so it's best to call us on 08 9480 3500 to discuss the details.

We're only permitted by law to act on a request if the relevant documents are received within the legally prescribed timeframe.

If the non-member spouse does not tell us how they wish to proceed within the prescribed timeframe, then we'll create a WA Super account and deposit the non-member spouse's money there. As a result, an investment profile will be set up in accordance with the default options prescribed in the Product Disclosure Statement (PDS). The non-member spouse's money will be held in this account until we receive instructions of how to proceed.

DIY CONSENT ORDERS

If both parties have reached an agreement between themselves and are attempting to navigate this process without legal representation or legal assistance, then the Family Court of Australia website has an Application for Consent Orders (also referred to as a 'do it yourself kit'). This application is made directly to the Family Court. WA super is unable to provide legal advice.

Before a court order can be finalised, WA Super must be sent a draft of the orders to ensure the correct wording for a superannuation split has been used.

¹Prior to joining WA Super, you should read and understand our Product Disclosure Statement, available at www.wasuper.com.au or by contacting us, to ensure the product is right for you.

ACCEPTABLE WORDING FOR A SUPERANNUATION SPLIT

Below is wording which is acceptable to WA Super and is provided here as a guide only. This does not replace any legal advice that you may independently seek.

Court Order

Where a base amount is specified, the following wording is acceptable:

"Pursuant to section 90XT(1)(a) of the Family Law Act 1975 (Cth), whenever a splittable payment becomes payable in respect of [member spouse]'s interest in WA Super:

- [non member spouse] is entitled to be paid an amount calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001 (Cth) using the base amount of \$[insert amount]; and
- there will be a corresponding reduction in the superannuation interest of [member] to whom the payment would have been made but for the order."

Where a percentage split is specified, the following wording is acceptable:

"Pursuant to section 90XT(1)(b) of the Family Law Act 1975 (Cth), whenever a splittable payment becomes payable in respect of [member spouse]'s interest in WA Super:

- [non member spouse] is entitled to be paid the amount calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001 (Cth) which is [insert percentage required]% of each splittable payment; and
- there will be a corresponding reduction in the superannuation interest of [member] to whom the payment would have been made but for the order."

Superannuation Agreement

Where a base amount is specified, the following wording is acceptable:

"Pursuant to section 90XJ(1)(c)(i) of the Family Law Act 1975 (Cth), whenever a splittable payment becomes payable in respect of [member spouse]'s interest in WA Super:

- [non member spouse] is entitled to be paid the amount calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001 (Cth) using the base amount of \$[insert amount]; and
- there will be a corresponding reduction in the superannuation interest of [member] to whom the payment would have been made but for the order."

Where a percentage split is specified, the following wording is acceptable:

"Pursuant to section 90XJ(1)(b)(i) of the Family Law Act 1975 (Cth), whenever a splittable payment becomes payable in respect of [member spouse]'s interest in WA Super:

- [non member spouse] is entitled to be paid the amount calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001 (Cth) which is [insert percentage required]% of each splittable payment; and
- there will be a corresponding reduction in the superannuation interest of [member] to whom the payment would have been made but for the order."

COMMON PROBLEMS WITH DIY CONSENT ORDERS

When parties manage the super splitting process without legal representation or legal assistance, we often experience the following issues when handling superannuation agreements and court orders.

Confusion over the 'operative time'

The operative time determines when a Trustee must recognise the non-member spouse's interest. It is defined in sections 90XI and 90XK of the Family Law Act 1975 (Cth), or is the time specified in a court order in relation to a payment split.

The Trustee will object to any superannuation agreement or court order which specifies an operative time or date that is not pursuant with the above sections of the Family Law Act, or is not effective for implementation of a superannuation split.

The Trustee or the fund is not correctly named/identified

The correct way to refer to the fund is 'WA Super'.

The correct way to refer to the Trustee is 'WA Local Government Superannuation Plan Pty Ltd'.

A superannuation agreement or a draft court order that incorrectly identifies the fund or the Trustee will be referred to the parties with a request for the details to be corrected and resubmitted.

Impractical to implement

If WA Super or the Trustee are unable to act on a superannuation agreement or a draft court order, then the document will be referred to the parties with a request for the details to be amended and resubmitted.

We're here to help!

If you have any questions about the process, call us on 08 9480 3500. Please note that we cannot provide you with legal advice.

IMPORTANT NOTE

This factsheet provides general information only and we recommend that you seek expert advice prior to taking any action in relation to family law matters.

The information contained in this factsheet was current as at 11 December 2019; there may be changes to legislation after this date that will impact how the legislation will operate. Care has been taken to ensure the content of this factsheet is accurate, but no representation or undertaking is made in relation to its accuracy or currency of the information. In addition, no liability, whether in negligence or otherwise, will be accepted for any error or inaccuracy.

Information in this factsheet doesn't take into account your personal objectives, situation or needs. Before acting on the information, consider the appropriateness of the information, having regard to your objectives, financial situation and needs. Before making a decision about WA Super, you should read our product disclosure statement at wasuper.com.au.