

# Family Law and Superannuation

## ! Important information

### Please note:

- This document outlines the process of splitting superannuation interests under Family Law, and also includes a form for requesting account information.
- Legislation on this topic is very complex. The information provided here is only general, and is not a substitute for legal or financial advice. If you are either contemplating or involved in Family Law proceedings, we recommend that you seek specialist legal and financial advice.

## General property settlement information

When a domestic relationship breaks down, couples may choose to separate their assets, including superannuation, through a formal property settlement. This has both legal and financial implications.

The *Family Law Act 1975* (Act) enables all or part of a super benefit to be split between the parties. Benefits that have a preserved status in accordance with superannuation law in the original account maintain the preserved status after the split. Such preserved benefits can be transferred only to a complying superannuation account in the receiving spouse's name where they will remain preserved until the receiving spouse meets a condition of release specified in superannuation law. However, if the receiving spouse has already satisfied a condition of release, the receiving spouse can be paid the benefit in cash.

Superannuation splitting under the Act applies to:

- married couples who separated or divorced after 28 December 2002
- married couples who separated or divorced before 28 December 2002 but did not finalise their property settlement prior to that date and
- de-facto couples who separated on or after 01 March 2009.

Superannuation can be split either by a court order or by a Superannuation Agreement within a Binding Financial Agreement. As court proceedings are complex, it is advisable for each party to consult a suitably qualified legal practitioner.

If the split is by Superannuation Agreement, the law requires each party to obtain separate certificates from a qualified legal practitioner, stating that they have been provided with independent legal advice.

If settlement is determined by the Court, all financial assets and liabilities of each party are formally identified, valued and assessed.

## What super payments can be split?

Under the Act, the following can be split:

- accumulation super benefits
- defined benefit super
- account-based pensions, including transition to retirement pensions
- lifetime pensions
- other complying pensions and annuities.

## What cannot be split

- Any superannuation interest valued at less than \$5,000
- A fixed term annuity or an allocated pension that pays an annual pension of less than \$2,000
- Payments to a member on compassionate grounds or on grounds of severe financial hardship
- Regular payments to a member as a result of temporary incapacity, within two years of the first payment; payments made after two years are not exempt
- Death benefits paid to or in respect of a child of the member if the child is aged under 18
- Death benefits paid to or in respect of a child of the member, if the child is aged 18 or over but is in full-time education or requires special care resulting from physical or intellectual disability.

## A summary of the process

### Information request

A request for information on a policy or account is made by the spouse or non-member spouse. After a valid request is received, legally mandated information is sent to the requestor. This can be sent to them care of their solicitor if the requestor provides a valid authority.

The Trustee is prohibited under Family Law to disclose any information about such requests to the other party, even if that party is also a member of the fund.

### Payment flag

This is an instrument to prevent certain payments being made from an account. A payment flag can be imposed on a super account or policy via a valid Agreement under the Act, or by Court Order.

### Proposed order or agreement

Once terms of settlement are agreed upon, a draft of the proposed Court Order or agreement is sent to the Trustee (i.e. to the super fund) for review and comment. The Trustee must be afforded procedural fairness to ensure that the order or agreement is in terms with which the Trustee can legally comply. The Trustee will suggest any amendments (but not providing legal advice) that may be needed to enable compliance.

### Splitting instruction

The final sealed Court Order or executed Superannuation Agreement is then sent to the Trustee, along with a Regulation 72 notice (providing non-member spouse details). The Trustee will contact both parties and act on the order or agreement according to regulations and any restrictions on the policy.

### Useful websites

- Visit the Attorney-General’s Department website at **[www.ag.gov.au](http://www.ag.gov.au)**. Information about Family Law is available via the “Families and marriage” tab.
- The Federal Circuit and Family Court website has a range of information about the Family court process. Visit **[www.fcfcoa.gov.au](http://www.fcfcoa.gov.au)** or phone **1300 352 000**.

### What you need to know

Equity Trustees Superannuation Limited ABN 50 055 641 757, AFSL No. 229757, RSE Licence No. L0001458 (Trustee) as trustee of the Super Retirement Fund ABN 40 328 908 469 (Fund) is the issuer of this product. Resolution Life Australasia Limited ABN 84 079 300 379, AFSL No. 233671 (Resolution Life) and AIA Australia Limited ABN 79 004 837 861, AFSL No. 230043 (AIAA) are the issuers of life insurance policies to the Trustee for these products. The Trustee, as owner of the life insurance policies, will receive the applicable benefit from Resolution Life and AIAA, and in turn provides the benefit to eligible Fund members.

The information contained in this document is factual information only and it does not contain any financial product advice or make any recommendations about a financial product or service being right for you.

Resolution Life is part of the Resolution Life Group and can be contacted via [resolutionlife.com.au/contact-us](http://resolutionlife.com.au/contact-us) or by calling 133 731.

# Form 6 Declaration

**This form can be used for superannuation products.**

Declaration by applicant for information about a superannuation interest

## 1. Details of person requesting information

Title  Date of birth

Given name(s)

Surname

Residential address (a PO Box is not acceptable)

Suburb  State  Postcode

Postal address (if not the same as above)

Suburb  State  Postcode

Mobile number  Alternate phone number

Email address

## 2. Details of account

I make the following declaration in support of my application to the trustee of:

(name of eligible superannuation fund or plan from which information is sought) In regard to (select one of the following):

my superannuation interest

the superannuation interest of:

Full given name(s) (plan member)

Surname (plan member)

## 2. Details of account (continued)

Date of birth

Past dates for which valuation is requested<sup>1</sup>

Account number (if known)

## 3. Statement of relationship to member

I am (please select as appropriate):

a member of the plan

the spouse of:

Full given name(s) (of the member of the plan)

Surname (of the member of the plan)

intending to enter into a superannuation agreement under Part VIII B of the Family Law Act 1975 with:

Full given name(s) (of the member of the plan)

Surname (of the member of the plan)

<sup>1</sup> If no dates are indicated, a valuation will be provided for the current date only

#### 4. Reason for request

I require the information to (select as appropriate):

- assist me to properly negotiate a superannuation agreement
- assist me in connection with the operation of Part VIIIB of the Family Law Act

Signature of person making the declaration



Date

DDMMYYYY

#### Where to send this form

This form must be mailed to:

Resolution Life  
PO Box 234  
Parramatta NSW 2124

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