

# Understanding Family Law and Super

If you are going through a relationship break up, your superannuation may be part of the financial settlement. This fact sheet is intended to provide you with general information around the process.

## Family Law Legislation

Family Law legislation in Australia regulates the division of property (including superannuation) of married couples and couples (including persons of the same sex) in a bona fide de-facto relationship.\*

A non-member spouse is the spouse (wife, husband, de-facto or same-sex partner) or former spouse of the member. It is possible that the spouse, or former spouse, could also be a member of smartMonday. However, they will still be referred to as a non-member spouse in this fact sheet.

\*At the date of publication, the Federal Family Law regime applies to de-facto couples whose relationships break down in all states and territories, except Western Australia.

## What is Splitting?

The legislation allows couples who are separated or divorcing to 'split' their super benefits as part of a Family Law property settlement. The amount allocated may be an agreed dollar value or a percentage of the member's benefit, when it is paid.

## What is Flagging?

The legislation allows couples who are separated or divorcing to 'flag' their super benefit as part of a Family Law property settlement. A flag will generally stop smartMonday from paying all or part of a member's benefit until the flag has been lifted. A flag can be set either by a Court Order or an Agreement by both parties. Any flag on a member's benefit must be lifted before a Family Law split can be made.

Please note there are certain types of payments which cannot be split and may still be paid even in the presence of a flag. For example, payments made to the member under a severe financial hardship application, compassionate grounds releases, and death benefits paid to children may still be paid even if a flag is in place.

## Types of Splits

Superannuation splits under Family Law Legislation may be divided by a dollar amount or a percentage of the total balance. Investment returns will impact the final payment made.

### Base amount splits

Where a dollar amount (base amount) is allocated to a non-member spouse, the final amount paid will be adjusted to reflect the investment returns paid to the account between the agreed date of the split ('operative time' as specified in the court order / agreement) and the date the non-member spouse's entitlement is paid. **This means that the final amount paid, could be higher or lower than the allocated base amount** (depending on investment returns).

### Percentage splits

Percentage splits also take into account investment returns, as the amount is calculated as at the date the entitlement is paid.

### When is payment made?

Splitting or flagging can occur either by a Family Court Order (Order) or by a Superannuation Agreement (Agreement). Payment can only be made once smartMonday receives the final Court Orders or Agreement and payment instructions.

### Access to the Entitlement

Splitting superannuation does not convert it to a cash asset.

Split amounts remain subject to superannuation law and, depending on the age of the non-member spouse, will remain 'preserved' in a superannuation account until a 'condition of release' is met.

#### Conditions of release include:

- Reaching 'preservation age' and permanently retiring from the workforce (see table on the following page)
- Medical grounds such as permanent incapacity or terminal medical conditions
- Death
- Reaching age 65 or ceasing employment after reaching age 60
- Severe financial hardship as defined in superannuation law (partial release only – limits apply)
- Permanent departure from Australia if you are a temporary resident (excluding New Zealand residents)

#### Preservation age depends on the date you were born

Your date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

## Requesting a Family Law Split

### 1. Submit a request for valuation

An 'eligible person' (the member, a spouse or de-facto partner) can request a valuation of the member's superannuation interest at any time.

The request must include the following forms available from the Family Court Website in the Superannuation Information Kit:

- Form 6 Declaration
- Superannuation Information Request Form (and appropriate Superannuation Information Form)

You must also pay a \$200 fee for a Family Law valuation (per date requested).

Upon receiving a valuation request, smartMonday will provide a response that specifies the value of the member's account for Family Law purposes at the requested date(s).

The form required to submit a request for validation can be found [here](#).

### 2. Provide draft Order or Agreement to smartMonday

Your solicitor(s) can assist you in drafting an Order or Agreement that complies with the relevant legislation.

The Order or Agreement will allocate either a base amount or percentage split.

We request that a copy of the draft Order or Agreement is provided to smartMonday for review. This process is known as 'procedural fairness'. The Trustee will review the proposed terms and wording of the Order and confirm whether it can be accepted in its current state. Either party or their solicitor is able to provide documents.

Although procedural fairness does not apply for an Agreement, it is recommended that a draft be provided to ensure that smartMonday is able to accept and implement the terms of the Agreement, prior to finalising.

### 3. Provide the final Order or Agreement to smartMonday

Once the final Order is made by the court (or the Agreement is executed by the parties) you need to provide the final Order or Agreement to smartMonday (you must provide either the **original** or a **certified** copy of the original document).

If you are entering into an Agreement (as opposed to a Court Order) there are additional documents which need to be provided along with the final Agreement. Your solicitor can advise you about these additional requirements.

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#### 4. The non-member spouse provides payment instructions

Upon receipt of a final splitting Order or Agreement, smartMonday will request payment instructions from the non-member spouse.

If the non-member spouse has met a full condition of release, the entitlement can be paid in cash. Otherwise, it must be transferred to a complying superannuation fund nominated by the non-member spouse.

If no payment instructions are received from the non-member spouse within 90 days of smartMonday writing to seek those instructions, then the entitlement will be transferred to an Eligible Rollover Fund or as legislation requires.

#### Further Information

For further information about how Family Law splitting or flagging works within smartMonday, please contact us.

**It all adds up**



**Done today**  
Smart easy actions



**Positive actions**  
Grow your wealth



**Brighter futures**  
Someday starts today

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