

Binding financial agreement

Guide to superannuation splitting by binding financial agreement

13 11 84 australianretirementtrust.com.au

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Separating or divorcing from your spouse, including de facto partners, can be stressful and is likely to impact your finances. You may wish to consider getting legal advice before making these decisions, because a lawyer can advise you about your options, the advantages and disadvantages, and how the law applies to your situation.

How does separation or divorce impact my super?

You and your ex-partner may be going through the process of choosing who keeps what, and superannuation balances are often considered in this process. You may not need to split your super, but if you do, it can be split from one ex-partner to the other by one of two ways:

- Sealed court orders / Sealed consent orders
- A signed binding financial agreement (BFA)

What do I need to do?

Below is the general process to follow if you or your ex-partner have a Super Savings account with Australian Retirement Trust.

Step 1: Work out how much super you both have

Head to [our website](#) for information about how to get a valuation.

Step 2: Prepare your documents

If you've decided to split your super or your ex-partner's super as part of your property settlement, you'll need to prepare your documents. A binding financial agreement must be drawn up by a lawyer and you'll both need independent legal advice. Court orders, however, can be obtained with or without a lawyer. You or your lawyer will need to send us a copy of the documents **before** they're finalised to ensure they contain everything we need to clearly instruct us how we'll be splitting your super. We'll respond and let you know if there's anything we need changed in the documents.

We've provided a guide below to help you prepare your documents.

Step 3: Finalising your super split

If you've opted for a binding financial agreement, you'll need to send us a **certified copy** of the signed agreement which includes either a separation declaration dated within 28 days of being received by Australian Retirement Trust or a copy of the divorce certificate.

If you've obtained court orders, please send us a copy of the sealed orders. If your orders specify that a certified copy be served on the trustee, please ensure you send us a certified copy.

We also ask that you please include a document that provides us with all the relevant information for both you and your ex-partner to help us split the superannuation without any hassles. You can find this form on the [our website](#).

Where do I send my documents?

The correct address depends on the type of account you hold with us. Please see the contact information below to ensure you send your documents to the right place.

Super Savings accounts

Email: familylaw@australianretirementtrust.com.au

Post: GPO Box 2924 Brisbane QLD 4001

In person: 266 George Street Brisbane QLD 4000

Need help? Call us: 13 11 84
(overseas +61 7 3333 7400)

QSuper accounts (Government Division)

Email: qsuper@qsuper.qld.gov.au

Post: GPO Box 200 Brisbane QLD 4001

In person: 266 George Street Brisbane QLD 4000

Need help? Call us: 1300 360 750
(overseas +61 7 3239 1004)

When emailing us documents, please send us a clear, scanned copy. **Photographs of documents may be rejected.**

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The fund name / plan name / trustee

Please ensure you use the correct fund name in your agreement:

- **Australian Retirement Trust**
If you are referring to the trustee in your agreement, the name of the trustee is:
 - **Australian Retirement Trust Pty Ltd**
You may insert “(the fund)” at the end of the fund name and use “the fund” throughout the rest of the agreement if Australian Retirement Trust is the only superannuation fund in the agreement.
If you hold both Super Savings and QSuper accounts, please use the following fund names respectively:
 - **Super Savings interest in Australian Retirement Trust**
 - **Government Division of Australian Retirement Trust**
- Other variations of the above fund names may be rejected.

The parties

Please ensure you include the full name of both parties in the agreement. If you choose to use husband/wife, please ensure the agreement refers to the correct party in each clause; it must be clear who the split is from and to.

We'll need to know what account the split relates to. Please provide enough information to identify the account holder. If you know the member number or client number, it's helpful to include it in the agreement.

If the account holder is known by different surnames, such as married name and maiden name, please ensure the name in the agreement matches the name on the Australian Retirement Trust account. If in doubt, include both (one in brackets) so we can make a match.

The amount

We can only split a base amount **OR** a percentage.

We cannot split a range. We cannot split an unknown amount. Please ensure the amount you are intending to split is clearly stated in the agreement and has the correct legislative reference to match.

If your base amount is a calculation method, please ensure you complete the calculation and provide it to us when the signed agreement is served on the fund.

If the split is subject to another event happening, you will need to have a separate paragraph about when and who will serve the agreement on the fund. The agreement would also need to state that Australian Retirement Trust will not be held responsible for confirming if the prior event has occurred.

Please note, we cannot split an account that has a balance below \$5,000.

The operative time

The operative time for a payment split under a superannuation agreement is **'the beginning of the fourth business day after the day on which a copy of the agreement is served on the trustee'**. We cannot accept any other operative time.

Multiple accounts

If you have more than one account (for example, a Retirement income account and an Accumulation account) we may require you to specify exactly how much is being split from which product. Without clear instructions, we'll always split the Accumulation account first.

Serving the final documents

When serving us a certified copy of your BFA we require the entire document, not just the relevant pages. The copy we receive must also be a clear, scanned copy. If we cannot clearly read it, we cannot accept it. Photographs of agreements will be rejected.

Other clauses

Make sure the other clauses in your BFA are correct. For example, if you state that the applicant will retain all of their super, but the other clause says we're paying part of their super to their ex-partner, the instructions are contradictory.

Also please ensure that your references to other clauses in the agreement are correct. If you've changed your agreement a few times you may need to update any paragraph references that may also have changed.

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Western Australia

Western Australia has its own Family Court and some of the legislation that applies to parties in Western Australia is different. This is covered in our preferred wording below.

Language

We refer to the person paying the entitlement as the “member” or “member spouse” and the person receiving the entitlement as the “non-member spouse”, even if they are also a member of the fund.

Preferred wording

For agreements that specify a base amount

Pursuant to section 90XJ(1)(c)(i) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of {member spouse full name}'s interest in the Australian Retirement Trust (member/client number XXXXXXXXX), {non-member spouse full name} is entitled to be paid an amount calculated in accordance with the Family Law (Superannuation) Regulations 2001, using a base amount of \$X (provided that such base amount shall not exceed the value of the member's superannuation interest) and there be a corresponding reduction in the entitlement of {member spouse full name}.

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

For agreements that specify a base amount calculation method

Pursuant to section 90XJ(1)(c)(ii) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of {member spouse full name}'s interest in the Australian Retirement Trust (member/client number XXXXXXXXX), {non-member spouse full name} is entitled to be paid an amount calculated in accordance with the Family Law (Superannuation) Regulations 2001, using a base amount calculation method (provided that such base amount shall not exceed the value of the member's superannuation interest) and there be a corresponding reduction in the entitlement of {member spouse full name}.

{insert calculation method}

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

For agreements that specify a percentage

Pursuant to section 90XJ(1)(c)(iii) of the *Family Law Act 1975*, whenever a splittable payment becomes payable in respect of {member spouse full name}'s interest in the Australian Retirement Trust (member/client number XXXXXXXXX), {non-member spouse full name} is entitled to be paid an amount calculated in accordance with the Family Law (Superannuation) Regulations 2001, using a percentage of X% of the splittable payment and there be a corresponding reduction in the entitlement of {member spouse full name}.

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

For WA de facto couples

For de facto couples in Western Australia, the legislative references differ. Please use the below legislative references in your wording:

- For agreements that specify a base amount – 90YN(1)(c)(i)
- For agreements that specify a base amount calculation method – 90YN(1)(c)(ii)
- For agreements that specify a percentage – 90YN(1)(c)(iii)

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Separation Declaration wording

Where the member spouse's balance is greater than the **low rate cap amount** for the financial year, as set by the ATO, you and your ex-partner (the parties) must be separated for a minimum of 12 months before a split may occur by binding financial agreement. The agreement must state the date of separation for clarity and the separation declaration must be worded correctly.

Please ensure the separation declaration is signed and dated within 28 days of when the signed agreement is served on the fund. The declaration may be signed by one or both of the parties.

For balances under the low rate cap

Separation declaration pursuant to Section 90DA of the *Family Law Act 1975 (Cth)*

We, {member spouse full name} and {non-member spouse full name} declare as follows:

1. That we are separated and are living separately and apart as at the date of this declaration; and
2. That, in our opinion, there is no reasonable likelihood of cohabitation being resumed.

For balances over the low rate cap

Separation declaration pursuant to Section 90XP of the *Family Law Act 1975 (Cth)*

We, {member spouse full name} and {non-member spouse full name} declare as follows:

1. That we are married or lived in a de facto relationship
2. That we are separated and have thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
3. That, in our opinion, there is no reasonable likelihood of cohabitation being resumed.