

Court orders

Guide to superannuation splitting by court orders

13 11 84 australianretirementtrust.com.au

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Separation and Superannuation

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.

This factsheet is for Super Savings accounts within Australian Retirement Trust. If you or your ex-partner have a QSuper (Government Division) account, please see the [QSuper website](#) as the requirements may be different.

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)

If you and your ex-partner have reached an agreement and are attempting this process without legal representation or legal assistance, the [Federal Circuit and Family Court of Australia website](#) has an Application for Consent Orders (do it yourself kit).

If you and your ex-partner are in Western Australia, you can access the relevant information and application on the [Family Court of Western Australia website](#).

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.

Please note, the procedural fairness responsibilities set out under section 90XZD of the *Family Law Act 1975* and Rule 10.06 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* require that a copy of the draft orders that the parties intend to apply for be provided to the Trustee **at least 28 days before filing the application**.

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 [Australian Retirement Trust 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 orders. If you choose to use husband/wife or applicant/respondent, please ensure the orders refer to the correct party in each clause; it must be clear who the split is from and to.

We will 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 orders.

If the account holder is known by different surnames, such as married name and maiden name, please ensure the name in the orders 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 equation or formula. We cannot split an unknown amount. Please ensure the amount you are intending to split is clearly stated in the orders and has the correct legislative reference to match.

If the split is subject to another event happening, you will need to have a separate paragraph about when and who will serve the sealed orders on the fund. The orders 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

We will not accept an operative time less than four business days after when we are served. You may select a larger time frame but please ensure you state “business days” as we cannot process your split on weekends or public holidays.

We cannot backdate your split to the date of the orders, or a day in the past. The operative time must also be an exact date so we cannot accept phrases such as ‘at least’ or ‘within’.

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 copy of your court orders 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 court orders will be rejected.

Other clauses

Make sure the other clauses in your court orders 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 orders are correct. If you've changed your orders 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 court orders that specify a base amount

Pursuant to section 90XT(1)(a) 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}.

This order has effect from the operative time, and the operative time is four (4) business days after the date of service of sealed orders upon the trustee.

For court orders that specify a percentage

Pursuant to section 90XT(1)(b) 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}.

This order has effect from the operative time, and the operative time is four (4) business days after the date of service of sealed orders upon the trustee.

For WA de facto couples

For de facto couples in Western Australia, the legislative reference for court order base amount splits is 90YY(1)(a), and for court order percentage splits in 90YY(1)(b).