

Separation, divorce and super

Separation or divorce can be a difficult time – emotionally and financially. While it may be the last thing on your mind, it's important to understand the impact it can have on your retirement savings and finances.

This fact sheet provides information to help guide you through the process of splitting your super.



Your financial future

Super can be one of the most valuable assets you accumulate in your lifetime. And like other assets – such as the family home, valuables and investments – many couples choose to split their super during the process of separation or divorce. Separation or divorce can impact your income, super, housing and assets, and may continue to affect you later in life. You may be earning less on a single income and this can make it challenging to keep your super growing.



Your first steps

The end of a relationship doesn't have to mean the end of your financial plans. But you may need to develop a new approach. It might take some time to adjust to your situation, but there are a few important things you can consider doing to stay on track.

1. Assess your financial situation

When a relationship breaks down, it can help to take a good look at your financial position.

The first step is getting across all of your financial assets and debts. Having copies of bank account statements, super balances, bills, financial commitments and other legal documents can give you a clear picture of your financial situation.



If you're an AustralianSuper member, you can check your super balance and track down your lost super in the mobile app or via your online account.



2. Get legal help

It may be best to seek legal advice before deciding what to do next. A lawyer can help you understand your rights and responsibilities, and explain how the law applies to your particular case. They may be able to help you reach an agreement with your ex-partner without having to go to court.



When coming to an agreement about super, some possible approaches include:

- prepare a formal written agreement with the help of a lawyer. The agreement must be accompanied by a signed certificate, stating both you and your former partner have taken independent legal advice about the agreement, or
- seek a consent order to split super. If you and your former partner have reached an agreement from the outset, you can file an application for consent orders in

Community legal centres and Legal Aid agencies offer free legal advice to people who meet certain eligibility requirements, with services available in every state and territory. You can find a list on the Australian Government's MoneySmart website at moneysmart.gov.au



the Family Court, accompanied by a consent order recording the agreement. The orders can be made in chambers without either of you needing to go to court, or

- if you can't reach an agreement with your former partner, you will need to file an application for a court order. Your lawyer or the Family law registry staff can tell you what forms you need to file. Even when an application is made to a court, it is possible to reach an agreement at any stage without the need for a court hearing.

Even if you don't need to go to court, certain parts of the super splitting process require you to declare that you have received independent legal advice – AustralianSuper can't split a separating couple's super until we receive confirmation of this, or a court order.

3. Seek expert financial advice

Making important decisions can be overwhelming at a time of significant change and heightened emotions. A financial adviser can provide you with knowledge and guidance to help you feel more confident about the decisions you make.



If you are an AustralianSuper member, you have access to professional financial advice¹ and your first consultation is at no extra cost.

A financial adviser can help you:

- decide on how to invest your part of any super payment
- decide what to do about your super contributions going forward – as you may need to adjust to a change in income.

Financial advisers¹ must comply with the 'best interests duty' when providing personal advice to clients. We never pay advisers incentives, bonuses or commissions.

Call **1300 300 273** or visit findadviser.australiansuper.com to make an appointment with an adviser near you.



¹ Personal financial product advice is provided under the Australian Financial Services Licence held by a third party and not by AustralianSuper Pty Ltd. Some personal advice may attract a fee, which would be outlined before any work is completed and is subject to your agreement. With your approval, the fee for advice relating to your AustralianSuper account may be deducted from your AustralianSuper account subject to eligibility criteria.

The process of splitting your super

To help navigate the process for splitting super, we've outlined the steps you'll need to take and what will happen if your super is being split.

1. Find out about the super accounts

Before you can work out how to split the super you both have (or whether to split it at all), you need to find out how much super is available. You should also note that there are some limited circumstances where superannuation cannot be split.

Your super

Your ex-partner has the right to request information about your super from your super fund. If an agreement is made to split your super, your ex-partner will be asked where their part of your super should be paid. If you're with AustralianSuper, it's easy to find your super account balance — log into your online account, use the mobile app or call us.

Your ex-partner's super

You're entitled to ask your ex-partner's super fund to inform you how much they have in their super account. You can request this by filling out a form available in the Superannuation Information Kit on the Family Court of Australia website at fcfcoa.gov.au or Family Court of Western Australia at familycourt.wa.gov.au. You may need to pay a fee to the fund.

If your ex-partner's super is with AustralianSuper, you can complete and return the *Request family law information* form at australiansuper.com/forms to enable us to tell you how much super they have.

Where a person can't obtain the information through a super fund then it can be requested through the ATO in certain circumstances and the information will go directly to the court, who will then provide it to the parties: ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/superannuation-and-relationship-breakdown

2. Decide how you will split super

You may decide to include superannuation as part of a broader agreement covering the division of other previously shared assets.

The agreement must be accompanied by a signed certificate, stating both you and your ex-partner have taken independent legal advice about the agreement.

You can also seek a consent order to split super.

If you and your ex-partner have reached an agreement

- You can file an application for consent orders in the Family Court, together with a consent order recording the agreement. Both draft and final orders can be completed and return a scanned copy to us via our website at australiansuper.com/email or posted to GPO Box 1901, Melbourne VIC 3001. Once we receive final orders or the final agreement, it will be actioned within the time frame set out by legislation.

- If you can't reach an agreement with your ex-partner You'll need to file an application for a court order. Your lawyer or Family law registry staff can tell you what forms you need to file. And if you have super with AustralianSuper, you must tell us in writing that you are seeking a court order, and provide yours and your ex-partner's member numbers.

Even when an application is made to a court, it is possible to reach an agreement at any stage without the need for a court hearing.

3. Apply to AustralianSuper

If your ex-partner's super is not with AustralianSuper, please refer to their superannuation fund directly to determine their process for splitting super.

If your ex-partner's super is with AustralianSuper, once an order is made or you reach an agreement, you'll need to submit it to us along with a completed *Apply for a payment (family law)* form at australiansuper.com/forms

When the super becomes available

The split amount will be processed as follows:

1. If the Non-Member Spouse (NMS) holds an AustralianSuper account, the split will be processed to the NMS account.
2. If the NMS does not hold an AustralianSuper account, the NMS's entitlement remains in the member's account:
 - a) until NMS provides payment instructions in which case the split is then processed in accordance with the payment instructions.
 - b) unless NMS does not respond after 28 days in which case an AustralianSuper account is set up for the NMS and the split processed to the newly created account.

The amount you receive may differ from what you requested because investment earnings (or losses) have been applied to the final split amount.

Taking your super as cash

In some limited circumstances, you may be able to take the super as cash where you meet a condition of release. For example, this may apply if you're experiencing financial hardship, you've reached preservation age or if a portion of your super is classed as 'unrestricted non-preserved'. Refer to the *Can you access your super?* fact sheet for more information.



Forms we need

Superannuation arrangement

- A copy of your superannuation agreement
- Certificates from your and your former partner's legal practitioners verifying that you both obtained independent legal advice, and
- A copy of your decree absolute or a separation declaration.



The agreement can state either a fixed dollar amount or a portion of the superannuation benefit that will be divided. If the agreement states how to calculate a base amount, you will also need to give the calculated amount and the method used.

Court orders

We need a draft court order on super entitlements before the court approves the order. The trustee of the super fund must have a chance to look over the draft court orders and make sure that the clauses about the payment split of superannuation in the draft are accurate and feasible.

Once the court has approved and sealed the order, we will require a certified copy of that court order that details how the super will be divided.



Access information and support

There is information and support available to help you understand and cope with the difficulties of going through a separation or divorce. Ranging from the financial strain of living on a reduced income to the practical and emotional challenges of adjusting to your new situation.

- Depending on where you reside, you can visit **fccoa.gov.au** or **familycourt.wa.gov.au** for information on how to:
 - apply for divorce
 - get legal advice
 - deal with property and money, and
 - make arrangements for children during and after separation.
- Family Relationships Australia is the Government's main resource about family relationship issues, including the range of services to help people who separate. Visit **familyrelationships.gov.au** to find out more.
- To access information on Government support for separated parents, visit Services Australia at **servicesaustralia.gov.au**
- Women's information and referral services are available in each state and territory. These services provide women with free and confidential support, referrals, information and advice for women on the financial impact of separation and divorce.
- Mediator locator is a simple tool for locating a mediator to help you come to an agreement with your ex-partner, without going to court. Visit **familymediator.com.au** to find your nearest family mediator.

For further considerations during separation and divorce, visit moneysmart.gov.au/family-and-relationships/getting-divorced-or-separating



Contact us

Call **1300 300 273**
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