

Superannuation: Family Law – Separation

Article by Townsville Family Lawyer [Bridget Barrie](#).

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[Bridget Barrie](#) is an experienced Family Lawyer at O'Shea Dyer Solicitors Townsville. Bridget has been working exclusively in Family Law for many years - as a paralegal and as a solicitor.

When people separate, the issue of what happens with their superannuation, regularly comes up. I have addressed many of the questions that clients ask below.

Is my Superannuation included in the Property Pool?

The treatment of superannuation in family law matters is dealt with primarily under Part VIII B of *Family Law Act 1975 (Cth)*.

When a relationship breaks down, one of the first steps in separating finances is to identify the matrimonial property pool.

Superannuation interests of the parties *are treated* as property, alongside other assets like real estate, investments and personal belongings, and so are included in the matrimonial property pool.

When couples separate, superannuation accumulated by the parties is subject to division and it becomes necessary to assess the total value of superannuation interests of both parties in order to get an accurate picture of the matrimonial property pool.

How is a Division of Superannuation Achieved? What is a Superannuation Split?

Depending on the type of superannuation fund, obtaining a valuation may be complex and require the assistance of a financial expert. Once accurate values are obtained, various factors will be considered, such as the length of the relationship, contributions made by each party to the relationship property pool and any future needs factors.

If a division of a party's superannuation interest is necessary, this can be achieved through a superannuation split. A superannuation split is where either a percentage or specified amount of one party's superannuation is transferred to the other party's superannuation fund, or a separate interest is created for the other party with the original superannuation fund.

Splitting a superannuation interest of one party does not convert the super into a cash asset and it will still be subject to superannuation laws and is usually only accessible at retirement age.

The superannuation split will need to be documented in a Court Order, Binding Financial Agreement or Superannuation Agreement.

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Is my Partner Automatically Entitled to Half of my Superannuation?

Superannuation is not automatically subject to a 50/50 split when a relationship breaks down.

It is also not mandatory to include a superannuation split as part of a matrimonial property settlement. Parties can agree on alternative arrangements for the division of property, such as offsetting the value of superannuation against other assets or one party receiving a cash payment rather than a superannuation split.

However, it is important to note if you are documenting your agreement with a Consent Order, any agreement you reach will need to be considered just and equitable given all the circumstances of your relationship.

What if I don't know my Partner's Superannuation Balance?

If the name of the superannuation fund is known, the trustee of the superannuation fund can provide information about the superannuation interest to the non-member spouse, if the information is sought to assist in the negotiation of Court Orders or a Superannuation Agreement.

By completing a Superannuation Information Kit, the non-member spouse can obtain information about a Superannuation interest that will enable a valuation to be calculated.

Should I Seek Professional Advice?

The division of superannuation in family law matters aims to achieve a just and equitable outcome for both parties, taking into account the individual circumstances of each relationship.

Everyone's situation is unique, and we recommend people seek an experienced family lawyer to discuss your situation and obtain customized advice about how the law specifically applies to you.

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O'Shea Dyer Solicitors Townsville

We always recommend seeing an experienced Family Lawyer to discuss your situation and obtain customised advice about how the laws apply to you.

We offer first appointments with experienced family lawyers for \$330

Phone (07) 4772 5155 to make an appointment.

We would love to help you.

