



Australian Government
Attorney-General's Department

SUPERANNUATION SPLITTING LAWS – BASIC TERMS

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Superannuation splitting laws – basic terms

Accumulation interest

Most superannuation interests are accumulation interests. An accumulation interest is a bit like a bank account, except that because of preservation requirements you can't access the balance until a specific event happens - known as a 'condition of release', such as retirement.

An accumulation interest is relatively easy to value. The value of an accumulation interest is generally equal to the amount deposited on behalf of the member - either by the employer or as member contributions - plus any earnings on the balance less any administrative charges imposed by the fund.

This sort of accumulation interest is said to be fully vested - that is, the whole benefit is credited to the member's account in the fund.

An accumulation interest can be also be partially vested. This means that as well as the basic fully vested component of the accumulation interest there is an 'add on' component.

These are typically described as 'loyalty' schemes, where there is an additional amount that you will get if, for example, you remain with your employer for a specified number of years.

If, for example, your superannuation interest says "you are entitled to an additional \$10,000 if you remain with your employer for 10 years", it is a partially vested accumulation interest.

There are some worked examples for valuation of a partially vested accumulation interest using the valuation methods and factors set out in the Family Law (Superannuation) Regulations 2001.

Defined benefit interest

Defined benefit interests are most common in the public sector, though some people in the private sector also have this type of superannuation. A defined benefit interest is difficult to value because what you get depends on a number of things that happen during your working life - most typically length of service and final average salary.

These are things that will happen in the future and therefore can't be known with certainty now.

For this reason, it is necessary to calculate a value of a defined benefit interest on the basis of a number of assumptions about what is likely to happen.

This is referred to as **actuarially valuing** the interest. The superannuation splitting laws prescribe a method of doing an actuarial valuation of a defined benefit superannuation interest.

There are a number of worked examples of actuarial valuation of a superannuation interest, using the valuation methods and factors set out in the Family Law (Superannuation) Regulations 2001.

Percentage-only interest

The superannuation splitting laws allow some kinds of superannuation interests to be prescribed as 'percentage-only' interests. The reason for this is because the way in which the superannuation interests vests is unusual and it is therefore not possible to actuarially determine a value of the interest.

Interests in a number of public sector superannuation schemes, including the Judges' Pension schemes in New South Wales, Queensland and Tasmania, have been prescribed as percentage-only interests under the FL Super Regulations.

Following consultation with industry, superannuation annuities were prescribed as percentage-only interests in 2005.

Member spouse

You are the member spouse if you are the person who has the superannuation interest to which the superannuation splitting laws apply.

Non-member spouse

You are the non-member spouse if you are the spouse, former spouse or former de facto partner of the member spouse.

Splittable payment

A splittable payment is one that will be split in accordance with a splitting agreement or splitting order. Generally, most of the payments that are paid to the member spouse in respect of their superannuation interests will be splittable payments.

However, there are some payments made to a member spouse that are not splittable. These include a payment made on compassionate grounds and a payment made because the member spouse is in severe financial hardship. They also include pension payments made to the member spouse as a result of their ill health, but not on the grounds of permanent incapacity.

Condition of release

Generally you can't access a superannuation interest until you reach what is known as a condition of release.

The most common condition of release is retirement from the paid workforce. There are a number of other conditions of release defined in superannuation legislation - for example, invalidity and death.

If you are not in the paid workforce, your condition of release is when you reach age 65.

Growth phase

A superannuation interest is said to be in the growth phase before the member spouse has reached a condition of release and before any money has been paid out of the interest as a result of the member meeting a condition of release.

You should be aware that legally a superannuation interest can still be in the growth phase despite the fact that the member may have received some payment. For example, a payment that a member receives on the basis of financial hardship does not mean that the superannuation interest has stopped being in the growth phase just because that payment has been made.

Payment phase

A superannuation interest is said to be in the payment phase when the member spouse has reached a condition of release and money has been paid out of the interest - either as a lump sum payment or an income stream or a combination of the two.

Allocated pension

An allocated pension is an investment for your superannuation savings that provides you with a regular income when you retire. You invest a lump sum of money in an account that accumulates investment earnings, and from which you draw regular income payments within minimum and maximum limits set by the Government each year.

Separation declaration

You can make a superannuation agreement at any time before or during your marriage or de facto relationship or after your marriage or de facto relationship has broken down.

When you want the agreement to come into operation, you will also need to make a separation declaration. The separation declaration has to be served on the trustee of the superannuation fund with the superannuation agreement otherwise the

superannuation agreement won't be binding on the trustee. The separation declaration has to be made no more than 28 days before the time that you serve it on the trustee. If you made an earlier separation declaration, you will have to make a new one to serve on the trustee.

What the separation declaration has to say depends on the value of the superannuation interest(s) that you are dealing with.

Payment splitting

Under the superannuation splitting laws, an agreement or court order to split superannuation is, in effect, an agreement or order for **payment splitting**.

What this means is that as and when a payment from a superannuation interest becomes payable to the member spouse - usually because a condition of release has been met - a certain amount will be paid to the non-member spouse and the remainder will be paid to the member spouse.

The payment splitting done pursuant to an agreement or court order does **NOT** create a new superannuation interest for the non-member spouse.

Interest splitting

If there is a payment splitting agreement or order operating on a superannuation interest, it is also possible - in certain circumstances - for a new interest to be created for the non-member spouse in the member spouse's superannuation fund and credited with their entitlement under the agreement or order.

It may also be possible, if the spouse already has a superannuation interest or a retirement savings account, for their entitlement to be rolled over or transferred to that existing interest or account, or for it to be rolled over to a new superannuation interest in another fund.

These options, where they are available, are known as **interest splitting**.

These interest splitting options are available, for particular types of superannuation interests in Commonwealth regulated superannuation funds, under Part 7A of the SIS Regulations. The options are also available, for retirement savings accounts, under Part 4A of the RSA Regulations.

In addition, the governing rules of some superannuation funds permit one or more of the interest-splitting options available under Part 7A of the SIS Regulations.

It is important to remember that interest splitting is not possible unless there is a payment splitting agreement or order in effect under the superannuation splitting laws

It is also important to remember that interest splitting options are not available for all superannuation interests. Whether or not they will be available to you depends on the type of interest that the member spouse has and, sometimes, whether or not the rules of the superannuation fund have been amended to allow them to be offered. If you are interested in finding out whether or not the interest splitting options are available to you - and you haven't already been provided with this information - you should ask the trustee of the member spouse's superannuation fund.

Flagging a superannuation interest

Under the superannuation splitting laws it is possible to 'flag' a superannuation interest.

The effect of a flag on a superannuation interest is that the trustee of the superannuation fund is prevented from making any payments out of the interest until the flag has been lifted.

Regulated superannuation fund

A regulated superannuation fund is one that is regulated by the Superannuation Industry (Supervision) Act 1993 and the associated Superannuation Industry (Supervision) Regulations, including the amendments dealing with splitting superannuation interests.

The majority of superannuation funds are regulated superannuation funds.

However, some of the large superannuation funds - for example those established by the States under State legislation and covering State public servants, politicians and judges - are not regulated superannuation funds.

Self managed superannuation fund

A superannuation fund is a self managed superannuation fund (SMSF) if it meets the following conditions:

- has fewer than 5 members
- each individual trustee of the fund is a fund member
- each member of the fund is a trustee
- no member of the fund is an employee of another member of the fund, unless those members are related, and
- no trustee of the fund receives any remuneration for his or her services as a trustee

The requirement that all members be trustees ensures that each member is fully involved and has the opportunity to participate in the decision-making processes of the fund.

Retirement Savings Account

A retirement savings account (RSA) is an account offered by banks, building societies, credit unions, life insurance companies and prescribed financial institutions (RSA providers). It is used for retirement savings and is similar to a superannuation fund.

RSAs are capital guaranteed. This means that contributions and interest on the account can only be reduced by fees and charges. RSAs are fully portable. This means that the balance of the account can be transferred to another RSA or superannuation provider at your request.

Approved deposit fund

An approved deposit fund (ADF) is a type of rollover fund.

ADFs may only accept eligible termination payments (ETPs). If a person retires early, is retrenched or changes jobs, the ETP can be rolled over into the ADF, where it can remain (attracting tax concessions on investment earnings) until that person reaches the age of 65.

Eligible rollover fund

An eligible rollover fund (ERF) is a fund which is eligible to receive benefits automatically transferred from other funds, generally for members who have very low account balances which have been inactive for a substantial period of time, or when the member cannot be located.

Under the superannuation splitting laws, if a non-member spouse asks the trustee to transfer their entitlement to another fund but doesn't nominate which other fund, then the trustee may transfer the entitlement to an ERF.

Similarly, if the trustee decides to transfer the non-member spouse's entitlement and the non-member spouse doesn't reply when the trustee asks where the non-member would like the entitlement to go, the trustee may transfer it to an ERF.

Superannuation annuity

A superannuation annuity is a contract issued by a life insurance company or certain registered organisations to pay an income stream which satisfies relevant requirements under SIS Regulations or the RSA Regulations. These contracts are superannuation-like products, many having been purchased out of rolled over superannuation amounts. A superannuation annuity whose interest stream is yet to commence being paid is a deferred annuity.

Scheme specific valuation methods or factors

For some superannuation interests, the method of valuation or the valuation factors set out in the FL Super Regulations may not be appropriate. Regulations 38 and 43A of the FL Super Regulations say that the Minister may approve alternative methods or factors

for particular kinds of superannuation interest or categories of superannuation interest. If alternative method or factors have been approved and apply to the superannuation interest that you wish to value, then the scheme specific method or factors that have been approved will be the ones that have to be used to value the superannuation interest.