

FACT SHEET

FAMILY LAW AND SUPERANNUATION

The purpose of this fact sheet is to provide general information on how superannuation entitlements may be dealt with on the breakdown of a marriage or de facto relationship. It is not legal advice. You should seek independent legal advice before making any decision on the splitting or flagging of superannuation benefits.

Overview

Since 2002 superannuation benefits have been treated as matrimonial property which may be split or flagged by a superannuation Trustee as part of a family law property settlement. From 1 March 2009 the superannuation benefits of certain de facto couples may also be split or flagged on the breakdown of the de facto relationship.

The splitting or flagging of superannuation benefits on the breakdown of a relationship is not compulsory. You may wish to consider other options when deciding on the division of assets.

Splitting a superannuation entitlement will not convert it into a cash asset. The split superannuation interest remains subject to superannuation law. For example, a split superannuation interest will usually not be available until retirement age.

Eligibility

Superannuation splitting and flagging has been available since 2002 to married couples on the breakdown of their marriage.

From 1 March 2009 superannuation splitting and flagging has also become available to de facto couples (including same-gender couples) who are entitled to access the Commonwealth Family Law Courts for property and maintenance matters.¹

A superannuation split may only be made in respect of superannuation which is not less than \$5,000.

Requesting information

For the purposes of being able to properly negotiate a superannuation agreement or to assist in the operation of the superannuation splitting laws, an 'eligible person' may apply for information from the Fund Trustee about a member's superannuation.

An 'eligible person' is:

- the member;
- the spouse or de facto partner of the member; or
- a person who intends to enter into a superannuation agreement with the member (for example, a pre-nuptial agreement).

The Fund Trustee is not permitted to:

- inform the member that an application for information has been received; or
- provide the non-member spouse/ de facto partner with the address of the member.

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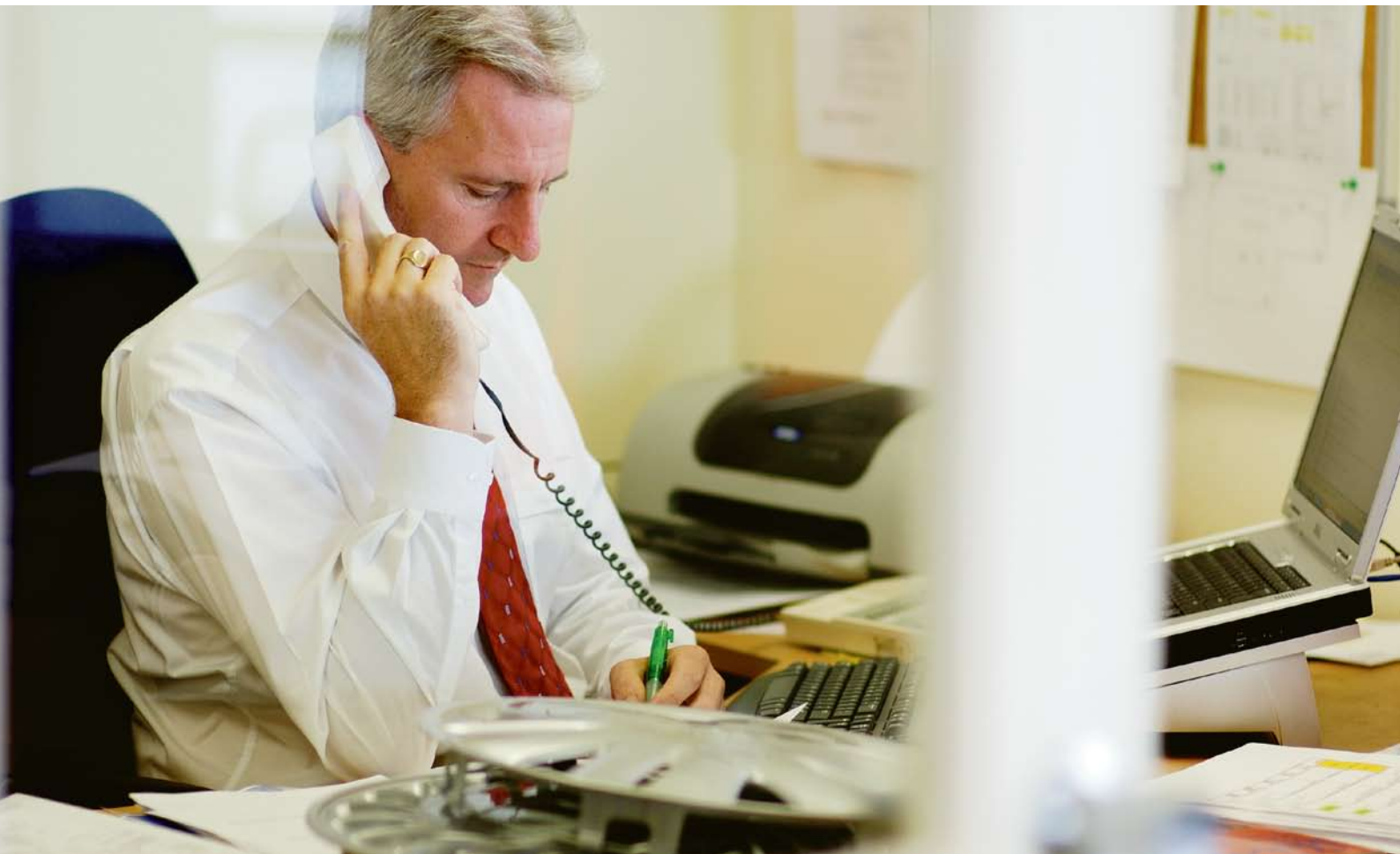
Telephone: 1300 362 415

Facsimile: 1300 365 142

1. The new laws affecting de facto couples currently apply to couples whose de facto relationship has a geographical connection with NSW, Victoria, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory or Norfolk Island.



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What must be provided to the Fund Trustee when requesting information?

When seeking information about the superannuation of a member of the Fund, you must provide the Fund Trustee with:

- a Form 6 Declaration (for the purpose of satisfying the Fund Trustee that you are entitled to seek the information);
- a Superannuation Information Request Form (together with the appropriate Superannuation Information Form); and
- the fee charged by the Fund Trustee.

Further information about requesting information from the Fund Trustee and copies of these documents are available in the Superannuation Information Kit issued by the Family Court of Australia at www.familylawcourts.gov.au.



Splitting and Flagging Superannuation Benefits

'Splitting' means that a decision has been made to split a member's superannuation benefit and allocate a certain portion of that benefit to the superannuation account of the member's spouse/de facto partner.

'Flagging' means that a decision on how to split a member's superannuation benefit has been deferred until a later date. If the benefit becomes payable to the member while a flag is in place, the benefit cannot be paid and the Fund must notify the parties or the Court. The Fund will then wait for further instructions from the parties or Court before paying the benefit.

Superannuation can be split or flagged either under:

- a formal written superannuation agreement made by the couple under the Family Law Act; or
- a court order made by the Family Court.

You will need to seek legal advice from an appropriately qualified legal practitioner about these options.

What happens when a superannuation split occurs?

The formal superannuation splitting agreement or court order, which must be served on the Fund Trustee, will provide instructions to the Trustee as to how the superannuation interest is to be split.

Unrestricted non-preserved, restricted non-preserved and preserved benefits are shared between the parties in proportion to their share of the overall benefits.

The Fund Trustee may split the member's superannuation entitlements by creating a new account in the name of the non-member spouse/de facto partner and allocating the split amount to that account. Alternatively, the non-member spouse/ de facto partner may request that the superannuation interest be rolled over to another complying superannuation fund. A non-member spouse or de facto partner who has met a condition of release may request payment of the split superannuation benefit.

Fees and Charges²

A fee of \$79 is payable by the person making the request for information at the time the request is made.

The payment split fee of \$60 is generally divided between both parties; \$30 will be deducted from the member's account and \$30 will be deducted from the amount transferred to the spouse's account. Where 100% of the member's account balance is to be split to the spouse, a \$60 fee will be deducted from the amount to be transferred.

Further Information

For further information on the splitting of superannuation upon the breakdown of a marriage or de facto relationship please call us on **1300 362 415**.

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