

Family law and how it affects super in the Mercer Super Trust

July 2025

Under the Family Law Act married and de facto* couples have the option of splitting their super entitlements on marriage or relationship breakdown. This document contains important information about Family Law matters and how they will be handled by the trustee of the Mercer Super Trust. Please note that all references to trustee in this document refer to the trustee of the Mercer Super Trust.

1. Requesting information from the Mercer Super Trust

Who can ask for information?

The law allows 'eligible persons' to ask for information about a member's benefits in a super fund.

An eligible person includes:

- The member,
- The member's spouse, or
- A person who intends to enter into a superannuation agreement with the member.

How do I ask for information?

You must complete a 'Superannuation Information Request Form' and submit it to the trustee. You must also complete a 'Form 6 Declaration' as set down in the legislation – to declare that you are eligible to ask for the information. You will find the Information Request form and Declaration on the Family Court website at familycourt.gov.au. Alternatively, speak to your lawyer.

When completing the Superannuation Information Request form and Declaration, you **must** provide all information requested from you and you **must** specify both the name of the member's super plan and that it is a plan in the Mercer Super Trust (eg XYZ Superannuation Plan, a plan in the Mercer Super Trust). If you do not complete these details, we will be unable to provide you with this information as the legislation requires that such information be provided to the trustee.

What information will I get?

The trustee will only provide information to you as required by law.

In the event that a 'Superannuation Information Request Form' is received from someone other than the member of the Mercer Super Trust, the trustee cannot tell the member that the Information Request has been received. This is a legislative requirement.

How can I contact the trustee?

In order to ensure prompt action by the trustee in relation to all Family Law matters, it is important that 'Superannuation Information Request Forms' and other documents dealing with super are sent to the correct address. The trustee may be unable to take action on a Family Law matter if the documents are not sent to the correct address.

All documents relating to Family Law matters should be sent to:

**Family Law Officer
Mercer Super Trust
GPO Box 4303
Melbourne Vic 3001**

2. Professional advice

The trustee is not permitted to provide you with any advice in relation to Family Law matters. If you have any queries, it is recommended that you seek legal advice from an appropriately qualified person.

It may also be in your best interest to speak to a licensed, or appropriately authorised, financial adviser about the impact of the Family Law Act on your particular circumstances.

* Restrictions apply where a de facto relationship has been in existence for less than 2 years.

3. Fees payable to the Trustee

The fees currently payable to the trustee in relation to Family Law matters are as follows:

- Processing and responding to a 'Superannuation Information Request Form': \$0
- Splitting a benefit under a 'Splitting Agreement or Order': \$541
- Flagging a benefit under a 'Flagging Agreement or Order': \$0
- Removing a flag under a 'Flag Lifting Agreement or Court Order': \$0

4. How super can be split

The superannuation benefit can be split as part of the property settlement but only by a Financial Agreement between the parties, or by Court Order.

A benefit can be "flagged" – by a 'Flagging Agreement or Order', or "split" – by a 'Splitting Agreement or Court Order'.

"Flagging" means that the decision on how to split the benefit is deferred until a later date and cannot be paid until that later date.

"Splitting" means that a decision on how to split the benefit has been made and that a portion is to be paid to the non-member spouse (that is, the member's spouse or former spouse as referred to in the Agreement or Order).

When an Agreement or Order is first being considered, a draft should be provided to the trustee so that it can confirm that the Agreement or Order is valid or otherwise advise if any modifications are required.

You should note that if the trustee has not previously had the opportunity to comment on a draft Order, then the Court is not able to make such an Order. However, if for some reason an Order or Agreement is made without comment from the trustee, then it may mean that the trustee is unable to administer the terms set out in the Order or Agreement. In such circumstances, the trustee can approach the parties and/or the Court to make a determination. **It is important that the trustee is given the opportunity to review a draft Agreement or Order prior to it being finalised so that it can be confirmed that the Agreement or Order is able to be complied with.**

Please direct any questions you may have about how to split or flag a super benefit to your legal adviser. The trustee is unable to provide legal advice to any member, non-member spouse or third parties in respect of Family Law matters.

5. When an agreement or order is made

When an Agreement or Order is made relating to a member's super in the Mercer Super Trust, a copy must be provided to the trustee along with any other required documents (your legal adviser will tell you what needs to be done).

6. Splitting agreements or orders

If the 'Splitting Agreement or Order' is valid, then once the 'Splitting Agreement or Order' is in place, the trustee will notify both parties. This notification will also include details of the options available to the non-member spouse in respect of their share of the member's benefit. It will also set out what action needs to be taken by the non-member spouse, by when, and the implications if the trustee does not receive a reply.

The amount payable to the non-member spouse under a valid 'Splitting Agreement or Order' will normally need to be rolled over to another superannuation fund, nominated by the non-member spouse, as it is not usually immediately available in cash. It must remain in the superannuation system until the non-member spouse meets one of the legal conditions that allows for their benefit to be paid in cash. These conditions include (but are not limited to):

- Attaining age 65,
- Becoming permanently incapacitated, or
- Death (whereby the entitlement would be paid to the non-member spouse's legal personal representative).

Further information on when a non-member spouse's entitlement can be taken in cash will be included within the notification issued by the Trustee on receiving a copy of the valid 'Splitting Agreement or Order'.

The amount allocated to the non-member spouse under an Agreement or Order will be adjusted to take into account any investment earnings that may apply and any fees that may apply (refer to item 3 for fee details).

When allocating the required amount to the non-member spouse, the trustee must also split some of the tax and preservation components of the member's benefit. The components to be split, and the method by which they are to be divided between the parties, are set down in the legislation.

The exact amount of a non-member spouse's final entitlement and its breakdown into the relevant preservation and taxation components, cannot be determined until the day their entitlement is paid from the Mercer Super Trust.

The member's benefit in the Mercer Super Trust will be reduced to reflect the amount paid to the nonmember spouse, plus any fees payable by the member as outlined in item 3. The reduction in the member's benefit will be shown on the next 'Member Benefit Statement'.

^{*} This fee is generally split equally between you and your former spouse (unless your former spouse is entitled to be paid the whole amount). This fee is indexed annually each 1 January to Average Weekly Ordinary Time Earnings.

7. Flagging agreements or orders

When a 'Flagging Agreement or Order' is made, a flag is placed on the member's record. If a benefit becomes payable to the member while a flag is in place, the benefit cannot be paid and the trustee must notify the parties, or the Court. The trustee must then wait for further instructions from the parties or the Court before paying the benefit.

If you have any queries regarding the Mercer Super Trust, please call **1800 682 525**, or visit **mercersuper.com.au**

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