

# A guide to family law and super

### What's this about?

- Separation and divorce can be hard
- This pack aims to help you navigate the system when family law matters affect your super
- Call us if you want help understanding this pack or need to know more details

Under the Family Law Act, married and de facto\* couples have the option to split their super entitlements during divorce or separation. This pack contains important information about family law matters, explains how we manage them, and includes standard wording to help your legal representative prepare an Order or Agreement. It also includes consent and release forms for members in defined benefit divisions.

## 1 Getting information from us

### Who can ask for information?

The law allows the following people to ask for information about a member's benefits in a super fund:

- 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 an Application for Information. This includes a Superannuation Information Request Form and Form 6 Declaration (required by law) which declares that you're eligible to ask for information. You'll find the Form 6 and the Superannuation Information Request Form on the Family Court website at [www.familycourt.gov.au](http://www.familycourt.gov.au) (look for Forms – Superannuation Information Kit). Alternatively, speak to your lawyer.

Once you've completed the Application for Information (including the Form 6 Declaration and Superannuation Information Request Form), you'll need to submit it to us to process and prepare a response. A fee applies (see point 3 on the next page). You'll need to make the payment when you submit the forms.

### What information will I get?

We'll only provide the information required by the legislation. If the member is in an accumulation division, the information provided may be enough to value the member's superannuation entitlement.

If the member has a defined benefit, the information provided may be enough to allow you to get an external valuation of the member's superannuation entitlement.

\* Restrictions apply where a de facto relationship has been in existence for less than two years. Restrictions also apply in relation to de facto couples living in Western Australia as currently the Commonwealth laws in relation to de facto couples do not apply to this state.

**Note:** We don't provide valuations relating to members with a defined benefit. Determining the valuation for a defined benefit interest in accordance with regulations must be obtained from an external actuary. You may wish to seek legal advice about this.

The information we provide will also include the current tax components and preservation details of the member's superannuation entitlement if they voluntarily left Qantas Super.

In the event that an Application for Information is received from someone other than the member of Qantas Super, we are not permitted to inform the member that we have received the request.

### How do I contact Qantas Super?

So we can act promptly in relation to all family law matters, it's important that applications for information and other documents dealing with super are sent to the correct address. We 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  
Qantas Superannuation Plan  
GPO Box 4303  
MELBOURNE VIC 3001

## 2 Professional advice

We are 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 interests to speak to a licensed financial adviser about the impact of the changes to the Family Law Act in your particular circumstances.

### 3 Fees

Here are the current fees (as at 1 July 2016) that must be paid in relation to family law matters.

Processing and responding to an Application for Information (Gateway members) <sup>1</sup>	\$100.00
Processing and responding to an Application for Information (Other divisions) <sup>1</sup>	\$150.00
Determining the value of an interest in accordance with the Regulations <sup>2</sup>	N/A
One-off split fee – payable when splitting a benefit under a Splitting Agreement or Order (Gateway members) <sup>3,4</sup>	\$120.68
One-off split fee – payable when splitting a benefit under a Splitting Agreement or Order (Other divisions) <sup>3</sup>	\$0.00
Flagging a benefit under a Flagging Agreement or Order <sup>3</sup>	\$0.00
Removing a flag under a Flag Lifting Agreement or Court Order <sup>3</sup>	\$0.00

<sup>1</sup> Payable by the applicant and must accompany the Application for Information (Form 6 Declaration and Superannuation Information Request Form) as outlined above. This fee is payable for each date requested by the applicant. Cheques must be made payable to 'Qantas Superannuation Plan'.

<sup>2</sup> Qantas Super does NOT provide valuations for defined benefit members. Determining the valuation of an interest in accordance with Regulations must be obtained from an external actuary.

<sup>3</sup> Generally split equally between the parties and deducted from the entitlement of each party.

<sup>4</sup> This is an exit fee and reflects the charge paid to the administrator. This fee is effective 1 April 2018 and will increase each 1 April by the annual increase, if any, in the private sector average weekly ordinary time earnings (AWOTE). This increase is currently based on the change in AWOTE in the 12 months to 30 November of the previous year.

### 4 How super can be split, and informing Qantas Super

The superannuation benefit can be split as part of the property settlement either by a formal written agreement between the parties (also known as a Superannuation Agreement), or by Court Order.

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

"Flagging" means that the decision on how to split the benefit is deferred until a later date. 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. We must then wait for further instructions from the parties or the Court before paying the benefit.

"Splitting" means that a decision on how to split the benefit has been made and that a portion is to be allocated to the non-member spouse<sup>5</sup>.

A copy of the draft Splitting Agreement or Order must be provided to us before they are finalised as we must have an opportunity to comment on any Agreement or Order that the parties are seeking. This is called providing the Trustee with 'procedural fairness'.

When a Splitting Agreement or Order is made, it is necessary to provide a final copy of the Agreement or a sealed copy of the Order to us, along with consent forms from both the member and non-member spouse if required (refer point 5, right).

We will check that the Agreement or Order is valid and will then notify both parties that the Agreement or Order is in place (refer to point 6 for further information).

<sup>5</sup> The non-member spouse is the member's spouse or former spouse as referred to in the Agreement or Order

### 5 Additional requirements for defined benefit members

The Trustee requires defined benefit members (with the exception of Division 15 members) and their non-member spouse to consent to the splitting of the member's superannuation benefit. The Trustee will request consent from both parties when a response for procedural fairness has been issued by the Trustee.

Consent forms must be signed by both parties to enable the implementation of a superannuation split.

If both parties do not agree to pay out the non-member spouse entitlement, then the non-member spouse entitlement remains in Qantas Super until a splittable payment becomes payable to the member. Broadly, a "splittable payment" is a payment from Qantas Super to, or on behalf of, the member and it becomes payable if the member meets a condition of release as set down in relevant legislation or the member's benefit is transferred or rolled over to another superannuation fund.

## 6 When an Agreement or Order is made

Once we have confirmed that the Agreement or Order is valid, a notification will be issued to the member and non-member spouse. This notification (known as a Payment Split Notice) will also include details of the options available to the non-member spouse in respect of their share of the member's benefit, and include relevant forms for completion by the non-member spouse. The Payment Split Notice will also set out what action needs to be taken by the non-member spouse, by when and what happens if we don't receive a reply.

In the Payment Split Notice, the non-member spouse will also be asked to provide the following information to us. (This is known as a Regulation 72 notice.)

- Their full name;
- Their postal address;
- Their date of birth; and
- If they're already a member of Qantas Super, their membership number in Qantas Super.

### Accumulation members (Divisions 3A, 5, 6, 7, 10, or Gateway)

When an Agreement or Order is made, the member's benefit entitlement in Qantas Super is reduced by the amount allocated to the non-member spouse, plus any fee for splitting. This amount is taken proportionately from the member's current assets in Qantas Super.

### Defined benefit members (Divisions 1, 2, 3, 4, 12, or 15)

When an Agreement or Order is made and consent is provided by both parties (with the exception of Division 15 members), a Family Law Account is created in the member's record. **This account is a negative account and consists of the amount allocated to the non-member spouse, plus any fee for splitting, plus interest (either positive or negative).** The interest rates applied to the Family Law Account are outlined in the Payment Split Notice.

The Family Law Account will be deducted from any benefit payable on exit.

## 7 Important notes

- The amount allocated to the non-member spouse will be adjusted to take account of any fees that may apply (refer to point 3 for fee details).
- In certain circumstances, it may be possible for a portion or all of the amount allocated to the non-member spouse to be paid directly to them. This option is only available if the nonmember spouse meets one of the conditions set down by the Federal Government. These conditions, which apply to the non-member, include:
  - If the non-member spouse has retired permanently from the workforce after their preservation age;
  - If the non-member spouse has ceased employment after age 60;
  - The non-member spouse is at least 65 years of age;
  - The non-member spouse is totally and permanently disabled; or
  - In the event of the non-member spouse's death (in which case their entitlement will be paid to their legal personal representative).
- We may require evidence that the non-member spouse has met one of the above conditions before the benefit can be paid directly to them.
- A non-member spouse cannot apply for payment on grounds of financial hardship as payment on these grounds is not one of the legal conditions available.
- The member's benefit in Qantas Super will be reduced to reflect the amount allocated to the non-member spouse, plus any fees payable by the member as outlined in point 3. The reduction in the benefit will be shown on the next member benefit statement.
- When allocating the required amount to the non-member spouse, we, as the Trustee, must also split some of the tax 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 fees payable to us as set out in point 3 are subject to review from time to time.

This provides a brief summary of family law legislation as it applies to superannuation. It is not intended and should not be relied upon as advice. You should always seek professional advice for your specific circumstances.



## Contact us

**Phone**  
1300 362 967 (within Australia)  
+61 3 8687 1866 (outside Australia)

**Fax**  
+61 3 9245 5827

**Postal address**  
Qantas Superannuation Plan  
GPO Box 4303, Melbourne VIC 3001  
[www.qantassuper.com.au](http://www.qantassuper.com.au)

The information in this document is of a general nature and is not intended to constitute personal financial product advice as it has not been prepared taking account of your objectives, financial situation or needs. In addition, the information contained in this document is generic and may not be applicable to members across all divisions. We recommend that before acting on any information contained in this document, you consider its appropriateness and seek financial advice tailored to your personal circumstances from a licensed financial adviser.

Issued by Qantas Superannuation Limited ABN 47 003 806 960 AFSL 288330  
(Trustee, we, our, us) as trustee for the Qantas Superannuation Plan ABN 41 272 198 829  
(Qantas Super). April 2018

**Important note:** This document is intended as a guide for the wording which may be used for “standard” family law splitting provisions when drafting an Agreement or Order. A copy of the draft Splitting Agreement or Order must be provided to the Trustee before it is finalised, as the Trustee must have an opportunity to comment on any Agreement or Order that the parties are seeking. This is called providing the Trustee with ‘procedural fairness’.



## Wording for “standard” family law splitting provisions

### 1 Court Orders and Superannuation Agreements – standard wording

#### a) Example of wording for base amount split in Court Orders:

1. That in accordance with section 90MT(1)(a) of the Family Law Act 1975, whenever a splittable payment becomes payable from the interest of [name of member] in the Qantas Superannuation Plan (“Plan”), the trustee shall pay to [name of non-member spouse] the entitlement calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001, using a base amount of \$[amount] and there is a corresponding reduction in the entitlement [name of member] would have had in the Plan but for these Orders.
2. That the above Order shall take effect from the operative date, being the fourth business day after service of a copy of the sealed Orders on the Trustee of the Plan.

#### b) Example of wording for percentage split in Court Orders:

1. That in accordance with section 90MT(1)(b) of the Family Law Act 1975, whenever a splittable payment becomes payable from the interest of [name of member] in the Qantas Superannuation Plan (“Plan”), the Trustee shall pay to [name of non-member spouse] the entitlement calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001, being [percentage]% of the interest of [name of member] in the Plan, as at the operative time, and there is a corresponding reduction in the entitlement [name of member] would have had in the Plan but for these Orders.
2. That the above Order shall take effect from the operative date, being the fourth business day after service of a copy of the sealed Orders on the Trustee of the Plan.

#### c) Example of wording for base amount split in a Superannuation Agreement:

1. That pursuant to section 90MJ(1)(c)(i) of the Family Law Act 1975, whenever a splittable payment becomes payable in respect of [name of member] in the Qantas Superannuation Plan (“Plan”), the Trustee shall pay to [name of non-member spouse] the entitlement calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001, using a base amount of \$[amount] and there is a corresponding reduction in the entitlement [name of member] would have had in the Plan but for this Agreement.
2. That the operative time for [paragraph 1 above] shall be the beginning of the fourth business day after the day on which a signed copy of this Agreement is served on the trustee of the Plan (“Trustee”).
3. [Optional]: That the Trustee and each of the parties, in accordance with the obligations set out under the Family Law Act 1975, the Family Law (Superannuation) Regulations 2001 and the Superannuation Industry (Supervision) Act and Regulations 1994, shall do all such acts and things and sign all such documents as may be necessary to calculate the entitlement of, and make payment to [name of non-member spouse] in accordance with [paragraph 1] of this Agreement.

#### d) Example of wording for a percentage split in a Superannuation Agreement:

1. That pursuant to section 90MJ(1)(b)(i) of the Family Law Act 1975, whenever a splittable payment becomes payable in respect of [name of member] in the Qantas Superannuation Plan (“Plan”), the Trustee shall pay to [name of non-member spouse] the entitlement calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001, being [percentage]% of the interest of [name of member] in the Plan, as at the operative time, and there is a corresponding reduction in the entitlement [name of member] would have had in the Plan but for this Agreement.
2. That the operative time for [paragraph 1 above] shall be the beginning of the fourth business day after the day on which a signed copy of this Agreement is served on the trustee of the Plan (“Trustee”).
3. [Optional]: That the Trustee and each of the parties, in accordance with the obligations set out under the Family Law Act 1975, the Family Law (Superannuation) Regulations 2001 and the Superannuation Industry (Supervision) Act and Regulations 1994, shall do all such acts and things and sign all such documents as may be necessary to calculate the entitlement of, and make payment to [name of non-member spouse] in accordance with [paragraph 1] of this Agreement.

## 2 Superannuation Agreements: Provision of Separation Declaration or Divorce Order / independent legal advice certificates

### a) Separation Declaration

A Separation Declaration is a declaration that the parties to a marriage or de facto relationship have separated. The Declaration must comply with section 90MP(3) of the Family Law Act 1975 and accompany a Superannuation Agreement when the final executed Agreement is served on the Trustee.

The Declaration must be signed by at least one of the parties and the date on which the declaration is signed must be no more than 28 days before it is served on the Trustee.

The form of the Declaration depends on the total withdrawal value of the member's superannuation interests and whether it is more or less than the low rate cap amount in the relevant income year<sup>1</sup>.

#### (i) Value of all Superannuation Interest is more than low rate cap amount (\$195,000<sup>2</sup>)

1. That in accordance with section 90MT(1)(a) of the Family Law Act 1975, whenever a splittable payment becomes payable from the interest of [name of member] in the Qantas Superannuation Plan ("Plan"), the trustee shall pay to [name of non-member spouse] the entitlement calculated in accordance with Part 6 of the Family Law (Superannuation) Regulations 2001, using a base amount of \$[amount] and there is a corresponding reduction in the entitlement [name of member] would have had in the Plan but for these Orders.
2. That the above Order shall take effect from the operative date, being the fourth business day after service of a copy of the sealed Orders on the Trustee of the Plan.

(a) if both spouses are alive at the declaration time – at the declaration time; or

(b) otherwise – at the most recent time when both spouses were alive;

the total withdrawal value for all the superannuation interests of the member spouse is more than the member spouse's low rate cap amount for the income year in which that time occurs.

Where section 90MQ applies to the Declaration, then the Declaration must state that:

1. the spouses are married; and
2. the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
3. in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

#### (ii) Value of all Superannuation Interest is more than low rate cap amount (\$195,000<sup>2</sup>)

Where section 90MQ does not apply to the Declaration, then the Declaration must state that the spouses are married but are separated at the declaration time.

### b) Divorce Order

If the parties are divorced, then a copy of the Divorce Order must accompany the final executed Superannuation Agreement when served on the Trustee (instead of a Separation Declaration).

### c) Provision of independent legal advice certification

A Superannuation Agreement must also contain Certificates of Independent Legal Advice for each party under Section 90G of the Family Law Act 1975 providing that, before signing the Agreement, each party was provided with independent legal advice from a legal practitioner about the effect of the Agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of entering into the Agreement.

## 3 Defined Benefit splits: Consent Forms required for immediate split

The Defined Benefit division of the Plan requires consent forms to be signed by both parties to enable **immediate** splitting of the member spouse's superannuation entitlement from the Plan in accordance with superannuation splitting provisions contained in Court Orders or a Superannuation Agreement.

**If signed consent forms are not received from both parties**, any amount allocated to the non-member spouse will only be payable when a splittable payment, as defined in the Family Law Act 1975, becomes payable from the Plan. This means that until this occurs, the non-member spouse will not be able to have his or her entitlement transferred out of the Plan.

<sup>1</sup> Please note this amount changes every year, the Trustee will need to enquire on the low rate cap amount for the relevant period.

<sup>2</sup> For 2016-2017 income year.

<sup>3</sup> For 2016-2017 income year.

## Member consent and release for the early splitting of superannuation payments

I, [Name], \_\_\_\_\_  
of [Address] \_\_\_\_\_  
in the [State/Postcode/Country] of \_\_\_\_\_

a member of the Qantas Superannuation Plan (Plan) hereby consent, to the early splitting of my superannuation entitlements from the Plan in accordance with the annexed court order or agreement.

I acknowledge that:

- a) I have obtained professional advice regarding the consequences of the early splitting of my superannuation entitlements;
- b) the Trustee of the Plan has not provided or purported to provide either me and/or my professional adviser with any advice regarding the consequences of the early splitting of my superannuation entitlements or any advice in relation to whether the early split is in my best interests;
- c) an early splitting of my superannuation entitlements may or may not be in my best interests in light of my present and future circumstances;
- d) the Trustee has afforded me and/or my professional adviser the opportunity to have access to all necessary information for the purpose of providing this consent to the early split.

In consideration of the Trustee agreeing to the early split, I hereby release the Trustee from any claim liability or other consequences in respect of the split of my superannuation entitlements.

Dated this [Day/Month] \_\_\_\_\_ of \_\_\_\_\_ [Year]

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Name of member (please print)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (please print)

## Non-member spouse consent and release for the early splitting of superannuation entitlements

I, [Name], \_\_\_\_\_

of [Address] \_\_\_\_\_

in the [State/Postcode/Country] of \_\_\_\_\_

a member of the Qantas Superannuation Plan (Plan) hereby consent, to the early splitting of my superannuation entitlements from the Plan in accordance with the annexed court order or agreement.

I acknowledge that:

- a) I have obtained professional advice regarding the consequences of the early splitting of my superannuation entitlements;
- b) the Trustee of the Plan has not provided or purported to provide either me and/or my professional adviser with any advice regarding the consequences of the early splitting of my superannuation entitlements or any advice in relation to whether the early split is in my best interests;
- c) an early splitting of my superannuation entitlements may or may not be in my best interests in light of my present and future circumstances;
- d) the Trustee has afforded me and/or my professional adviser the opportunity to have access to all necessary information for the purpose of providing this consent to the early split.

In consideration of the Trustee agreeing to the early split, I hereby release the Trustee from any claim liability or other consequences in respect of the split of my superannuation entitlements.

Dated this [Day/Month] \_\_\_\_\_ of \_\_\_\_\_ [Year]

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Name of member (please print)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (please print)