

Family Law

**How it may affect your
superannuation, life insurance
and other investments**



Important notes

This Guide provides general information only and is intended to answer some of the questions you may have about how the Family Law Act 1975 may affect superannuation, certain annuities, life insurance and other investments. The information contained in this Guide was current at 28 February 2010. There may be changes to the legislation after this date that will impact how the legislation will operate. We recommend you seek expert advice before taking any action in relation to Family Law matters.

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Overview

In broad terms, legislation enables superannuation, certain annuities, life insurance policies and other investments to be divided between parties upon the breakdown of a marriage or De Facto Relationship.

The legislation applies to married couples where:

For superannuation:

- The couple is currently married, or
- The couple divorced on or after 28 December 2002, or
- The couple divorced prior to 28 December 2002 and they have not finalised their property settlement.

For non-superannuation interests:

- The couple is currently married, or
- The couple divorced on or after 17 December 2004, or
- The couple divorced prior to 17 December 2004 and they have not finalised their property settlement.

Couples who have had final property settlements for superannuation and non-superannuation interests made prior to 28 December 2002 or 17 December 2004 respectively, would first need to have their property settlement set aside by the Court. They would then need to obtain a new replacement order. You should contact your legal representative for further assistance.

The legislation applies to de facto couples where:

For superannuation and non-superannuation interests:

- The couple is currently in a **De Facto Relationship**, or
- The couple's **De Facto Relationship** broke down on or after 1 March 2009, or
- The couple's **De Facto Relationship** broke down prior to 1 March 2009 and the couple have 'opted' into the new regime, and

- The couple have a geographical connection to a State or Territory which has referred its power to the Commonwealth.

Neither South Australia nor Western Australia have referred the necessary state powers governing the splitting of de facto couples' property to the Commonwealth. As a result, no parties to a **De Facto Relationship** will be able to split their superannuation if one or more of them are ordinarily resident in South Australia or Western Australia.

Do I need a lawyer?

We cannot provide you with legal assistance and strongly recommend that you seek advice from a lawyer regarding your rights and entitlements in property settlements upon the breakdown of a marriage or **De Facto Relationship**.

Each party must obtain their own independent legal advice if you wish to enter into a **Financial Agreement**, that includes a binding **Superannuation Agreement**.

If you apply to the court to obtain a property settlement you are not required to obtain legal representation, but many people prefer to obtain legal assistance.

How do I find a lawyer?

Please refer to page 5 for details of the Law Society or Law Institute in your state.

Superannuation interests

Following the breakdown of a marriage or **De Facto Relationship**, spouses are able to provide for the splitting of superannuation interests either by:

- applying for a **Court Order**, or
- executing a **Financial Agreement** that includes a binding **Superannuation Agreement**, or
- applying for a **Registered Arbitration Award**.

Can the superannuation interest be split?

Only certain superannuation interests or payments can be split. The following are examples of where a member's superannuation interest or a payment to the member spouse cannot be split:

- a superannuation interest of less than \$5,000.00;
- payments made to the member spouse on compassionate grounds;
- payments made to the member spouse as a result of severe financial hardship;
- some payments made to the member spouse on the grounds of ill health;
- payments made to the member spouse's children after the death of the member spouse – where the children are less than 18 years of age, or regardless of age if they have educational or special needs.

How do I request information about a superannuation interest?

An **Eligible Person** can submit a Form 6 Declaration to accompany a Request for Information about a member's superannuation interest. The **Eligible Person** is required to clearly and specifically identify the name of the Eligible Superannuation Plan or Fund on the Declaration.

We cannot tell the member spouse about the enquiry. Due to privacy law, we also cannot tell the non-member spouse the correct Eligible Superannuation Plan or Fund name.

Where can I find a Form 6 Declaration?

- You can obtain a Superannuation Information Kit from the Family Court. For contact details please refer to page 5.
- Alternatively, please refer to the back of this booklet for a copy of a **Request for Information Form (Form 6)**.

Do I need to flag the superannuation interest?

We strongly suggest that you seek advice from your legal representative regarding the use of Payment Flags.

A Payment Flag essentially puts a superannuation interest on hold. It may be imposed by a **Court Order**, or by a binding **Superannuation Agreement** or a **Registered Arbitration Award**.

However, a flag does not stop everything. A flagged superannuation interest can still be paid out for:

- payments made to the member spouse on compassionate grounds;
- payments made to the member spouse as a result of severe financial hardship;
- some payments made to the member spouse on the grounds of ill health;
- payments made to the member spouse's children after the death of the member spouse – where the children are less than 18 years of age, or regardless of age if they have educational or special needs.

When do I tell the Trustee?

At least twenty eight (28) days before you seek a **Court Order** or a **Registered Arbitration Award** to flag or split a member's superannuation interest, you must provide the Trustee with details of what is proposed.

This is called **Procedural Fairness**.

Procedural Fairness is important. It provides you and your legal representative with an opportunity to remove inconsistent provisions from draft **Court Orders** and **Registered Arbitration Awards**. In doing so it also avoids unnecessary delay and possible conflict. It also avoids wasting the Court's time in having to make amendments to unsuccessful orders.

If, as a result of being accorded **Procedural Fairness** we raise any other matters, the Court must be satisfied that these matters have been taken into account before making the **Court Order** or **Registered Arbitration Award**.

Additional note: While there is no legal obligation to provide the Trustee with **Procedural Fairness** before executing a **Superannuation Agreement** to flag or split a member's superannuation interest, you may find it beneficial for you to do so.

What happens when you split the superannuation interest?

Generally, a superannuation split can only occur after the service of a **Court Order**, or a binding **Superannuation Agreement** or a **Registered Arbitration Award** on the Trustee or Legal Entity.

When the superannuation interest becomes subject to a payment split, we will send a Payment Split Notice to both the member spouse and non-member spouse. The non-member spouse then has up to 28 days to instruct us on how they wish to deal with their proceeds.

Additional information:

Please refer to the back of this booklet for a copy of our **Payment Split Checklist**. This checklist will assist you when serving documents on the Trustee or Legal Entity.

Non-Superannuation interests

Family Law **Court Orders** can also be made in respect to non-superannuation interests (ie assets and liabilities that are under the administration of a Third Party). Non-superannuation interests may include debts, ownership of some life insurance products, unit trusts, mortgages and loans.

Very broadly, the Family Court has jurisdiction to make Orders and Injunctions binding Third Parties such as MLC, in relation to Family Law property settlements. However the legislation works very differently to that which provides for the splitting of superannuation interests.

How do I request information about non-superannuation interests?

A Form 6 Declaration cannot be used to request information from us about any non-superannuation interests. Legal representatives might need to obtain information from Third Parties by **Subpoena** and in accordance with Family Law legislation.

What is an injunction?

Unlike superannuation, you cannot place a Payment Flag on a non-superannuation interest.

However, a Court ordered Injunction in respect of a non-superannuation interest would have a similar effect as a Payment Flag on a superannuation interest (ie the Injunction puts a stop on payments and transfers). They would bind **Third Parties** on which they were served.

When do I tell the Third Party?

The Court must consider the rights of Third Parties prior to making any Orders. Before the parties to a marriage or **De Facto Relationship** may obtain an Order in regards to a non-superannuation property interest, they must first provide the Third Party with **Procedural Fairness**. Please refer to the section 'When do I Tell the Trustee?' for more information about **Procedural Fairness**.

How do orders on a non-superannuation interest work?

Unlike the legislation enacted for superannuation splitting, the Government did not bring in consequential legislation for Third Party non-superannuation property interest splits. So it may not be possible to implement some types of Third Party splits.

Additionally, the Court must ensure that the Order takes into account a number of issues. These include:

- the taxation effect on the parties to a marriage, **De Facto Relationship** or Third Parties;
- the social security effect;
- the Third Parties' administrative costs;
- the capacity of a party to a marriage or **De Facto Relationship** to repay a debt; and
- the economic, legal or other
- capacity of the Third Party to comply with the Order.

Additional information

Should I discuss my Family Law matter with my financial adviser?

Your financial adviser may be able to assist you with obtaining copies of relevant information for the purposes of making a settlement following the breakdown of a marriage or **De Facto Relationship**.

You also need to consider what impact there may be to your existing financial plan. Once a property settlement has been finalised, you may need to amend your financial plan and strategies.

What are the taxation implications?

There are a number of tax consequences that the member spouse and non-member spouse may need to take into consideration when splitting a superannuation or non-superannuation property interest. We recommend that you seek taxation advice specific to your proposed settlement.

Are there any fees or other costs?

At this time we do not charge a specific Family Law fee.

However, any fees, charges or taxes otherwise attributable to the superannuation interest continue to apply. A split, division or transfer may trigger applicable fees.

What if I need additional information about Family Law?

The Law Society or Law Institute in each state may assist you with further information about legal representatives:

Australian Capital Territory	www.lawsocact.asn.au/
New South Wales	www.lawsocnsw.asn.au/
Northern Territory	www.lawsocnt.asn.au/
Queensland	www.qls.com.au/
South Australia	www.lawsocietysa.asn.au/
Tasmania	www.taslawsociety.asn.au/
Victoria	www.liv.asn.au/
Western Australia	www.lawsocietywa.asn.au/

If you would like further information about Family Law, the Federal Government has a dedicated hotline and website. These services do not provide any legal advice:

Family Relationship Advice Line	1800 050 321 (Free call)
Family Relationship Online	www.familyrelationships.gov.au
Family Court of Australia Website	www.familycourt.gov.au/
Family Law Website	www.familylaw.gov.au/

Additional information:

Information on fees or charges may be obtained from the relevant Product Disclosure Statement or Contract.

To obtain a copy for MasterKey Custom Superannuation or HML Superannuation Fund products, please contact us on **1800 647 009** or visit masterkeycustom.com.au

For all other products please contact us on **132 652** or visit mlc.com.au

Additional information

Privacy

Privacy notification

MLC Limited and its subsidiaries are members of the National Australia Group (Group). The Group includes banking, financing, funds management, financial planning, superannuation, insurance, broking and e-commerce organisations. This statement is an outline of certain matters relating to the collection and handling of your personal information by Group organisations.

Collecting your personal information

Group organisations will collect personal information for the purposes of:

- providing you with a product or service (including assessing your application);
- managing and administering the product or service;
- identifying you and protecting against fraud;
- verifying your authority to act on behalf of a customer;
- determining whether a beneficiary will be paid a benefit upon a person's death;
- letting you know about products or services from across the Group that might better serve your financial, e-commerce and lifestyle needs or promotions or other opportunities in which you may be interested.

If you provide us with incomplete or inaccurate personal information, the Group organisation may not be able to process your requests and applications or manage or administer your products or services. It may also not be possible to tell you about other products or services from across the Group that might better serve your financial, e-commerce and lifestyle needs.

Using and disclosing your personal information

Group organisations may disclose your personal information to other organisations:

- involved in providing, managing or administering the products and services the Group offers, including third party suppliers (eg printers, posting services etc), other Group organisations, its advisers and loyalty and affinity program partners;
 - who are your financial or legal advisers or representatives and their service providers;
 - involved in maintaining, reviewing and developing the Group's products, business systems, procedures and infrastructure including testing or upgrading the Group's computer systems.
- involved in a corporate re-organisation or involved in a transfer of all or part of the assets or business of a Group organisation;
 - involved in the payments system including financial institutions, merchants and payment organisations;
 - which are Group organisations which wish to tell you about their products or services that might better serve your financial, e-commerce and lifestyle needs or promotions or other opportunities, and their related service providers, except where you tell the Group not to;
 - as required or authorised by law and/or where you have given your consent.

Your personal information may also be used in connection with such purposes. Because the Group operates throughout Australia and overseas, some of these uses and disclosures may occur outside your State or Territory and outside Australia.

Gaining access to your personal information

Subject to some exceptions allowed by law, you can gain access to your personal information. If access is denied, you will be given reasons for this. In some cases, your request may be dealt with over the telephone. For more information about your personal information and privacy on MasterKey Custom Superannuation or HML Superannuation Fund products, please contact us on **1800 647 009**. For all other products please contact us on **132 652**.

Glossary of terms

Court Order (see also **Splittable Payment and Splitting Order**)

The Family Court has the power to make Orders dealing with property (including superannuation) and making arrangements for the children of the marriage or **De Facto Relationship**. Orders can be made by consent (ie in terms to which the parties to the marriage or **De Facto Relationship** have given prior consent) or alternatively the Court will make a determination on behalf of the parties.

Court Orders cannot direct a trustee to split a superannuation interest. They can only direct the trustee to split a splittable payment in accordance with the terms of the splitting order.

De Facto Relationship

A person is in a **De Facto Relationship** with another person if the persons are not legally married to each other; not related by family and having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis. The term 'de facto' also applies to same sex relationships.

To determine whether a **De Facto Relationship** exists, a Court will look at a number of facts listed in the legislation. These include but are not limited to the duration of the relationship, financial dependence, ownership and use of property, children, the existence of a common residence and public recognition of the relationship.

Eligible Person (see also **Spouse**)

An **Eligible Person** includes the member or the legal personal representative of the member if the member died and the spouse of the member or the legal personal representative of the spouse if the spouse of the member has died.

A member spouse's legal or financial representative is not an Eligible Person. However, they can provide assistance and advice in relation to Family Law superannuation matters.

A spouse-to-be or another person will only be an **Eligible Person** where they intend on entering into a **Superannuation Agreement** as part of a **Financial Agreement** in contemplation of a marriage (commonly known as a Pre-nuptial Agreement) or a **De Facto Relationship** with a member spouse.

Financial Agreement (see also **Superannuation Agreement**)

A **Financial Agreement** is an agreement that can be entered into: between spouses during marriage or **De Facto Relationship**, between intended spouses (a Pre-nuptial Agreement) and between ex-spouses after the dissolution of marriage or breakdown of a **De Facto Relationship**.

A **Financial Agreement** sets out the manner in which the property of both parties will be disposed of upon the breakdown of a marriage or **De Facto Relationship**. The **Financial Agreement** is binding on both parties, subject to satisfying certain conditions. For this reason, it is not possible to make

a binding **Financial Agreement** or **Superannuation Agreement** without each party having obtained legal advice.

Flagging Order

This is a **Court Order** that identifies the member spouse's superannuation interest and directs us to flag it and not to make any splittable payments from it without authority from the Court.

Operative Time

For some interests, an actual split may not occur until the interest is payable to the member spouse.

In respect to a **Court Order, Superannuation Agreement** or **Registered Arbitration Award**, the **Operative Time** is the time from which the Trustee must identify that a flag or split applies to the member spouse's interest.

A **Court Order** or **Registered Arbitration Award** to flag or split a superannuation interest must be implemented at the **Operative Time**; namely the time specified in the Order or Award.

For **Superannuation Agreements**, the **Operative Time** is the beginning of the 4th business day after the **Superannuation Agreement** is served on the Trustee, together with a copy of the **Divorce Order** or **Separation Declaration**.

Procedural Fairness

In respect to proposed Orders, to enable the Trustee/Third Party to agree that it has been provided with **Procedural Fairness** you or your legal representative must satisfy the requirements of Family Court Rule 10.16(2) or 14.06(2). At least 28 days before filing the application, or lodging the draft Consent Order, you must serve on the Trustee/Third Party the terms of the Order that you intend to seek from the Court to bind the Trustee/Third Party. Additionally you must serve on the Trustee/Third Party a written notice stating that the parties intend to apply for the Order sought if no objection to the Order is received from the Trustee/Third Party within 28 days.

The Trustee/Third Party has 28 days from receiving the notice from the party to give the parties written notice of any objection.

Registered Arbitration Award

Parties to a marriage or **De Facto Relationship** in dispute can present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute. This determination is an **Arbitration Award**. It would then need to be registered in accordance with section 13H of the Family Law Act 1975 and Regulation 67Q of the Family Law Regulations 1984.

Prior to registration the parties to the marriage or **De Facto Relationship** must have served a copy of the application on the Trustee and must have given the Trustee 28 days in which to give reasons why the **Arbitration Award** should not be registered.

Separation Declaration

A valid **Separation Declaration** must be included when serving an executed **Financial Agreement** including a binding **Superannuation Agreement** on the Trustee or legal entity. There are serious penalties for making false declarations.

The date of the declaration (ie the date it is signed) must not be more than 28 days before service on the Trustee. It must be signed by at least one party to the marriage or De Facto Relationship.

Splittable Payment

A **Splittable Payment** includes a payment to a **Spouse** (either the member themselves, or the non-member as a result of a **Superannuation Agreement**, **Registered Arbitration Award** or **Court Order**); a payment to another person for the benefit of the **Spouse** (eg where the member rolls over a superannuation interest into a new fund); a payment to the legal personal representative of the **Spouse**, after the member's death; a payment to a reversionary beneficiary, after the death of the **Spouse** and a payment to the legal personal representative of a reversionary beneficiary, after the death of the reversionary beneficiary.

Splitting Order

A **Splitting Order** is a **Court Order** that identifies the member spouse's superannuation interest, and would direct us to make payment to the non member spouse in accordance with the terms of the Order.

Spouse

The term **Spouse** refers to a party to a marriage or a party to a **De Facto Relationship** including same sex couples.

Subpoena

A **Subpoena** is a **Court Order** that requires a person to appear in Court to give evidence or produce documents. In practice, financial institutions generally produce documents in lieu of appearing in Court. The production to the Court of a copy of an investment account statement would be an example.

Superannuation Agreement

A **Financial Agreement** can include a **Superannuation Agreement** that deals with the superannuation interests of either or both parties to the **Financial Agreement**, in the same way that other assets can be dealt with. The superannuation interests do not need to be in existence at the time the **Superannuation Agreement** is made.

For a **Superannuation Agreement** to be effective, it should include a sufficient description of the relevant superannuation interests to enable us to correctly identify those interests. Of course, if the superannuation interests are not in existence at the time the **Superannuation Agreement** is made, then special care is needed to ensure there is a sufficient description. If a **Superannuation Agreement** is made prior to a marriage, the **Superannuation Agreement** has no effect unless and until the parties marry each other. Similarly, if a **Superannuation Agreement** is made prior to a **De Facto Relationship** the **Superannuation Agreement** has no effect unless and until the relationship breaks down. We recommend you seek independent legal advice about this when making a **Superannuation Agreement**.

Useful forms & checklists

What is it that you need to do?

Do you want to request information about a member's superannuation interest?	An Eligible Person can submit this form to obtain information about a member's superannuation interest.	Refer to the Request for Information Form (Form 6).
Do you want to send us a Court Order or Registered Arbitration Award?	Did you remember to accord us Procedural Fairness prior to the Court Order or Arbitration Award being made? There is also additional information we need from you so that we can proceed.	Refer to the Payment Split Checklist - Court Order or Registered Arbitration Award for details.
Do you want to send us a Superannuation Agreement?	There is also additional information we need from you so that we can proceed.	Refer to the Payment Split Checklist - Superannuation Agreement for details.

Request for Information Form (Form 6)



Regulation 62 Family Law Superannuation Regulation 2001
Section 90MZB(2) Family Law Act 1975

MLC Limited
ABN 90 000 000 402
AFSL 230694

MLC Nominees Pty Limited
ABN 93 002 814 959
AFSL 230702
RSE L0002998

The Universal Super Scheme
ABN 44 928 361 101
SFN 281 440 944
RSE R1056778

MasterKey Custom
Superannuation
ABN 30 205 064 560
SFN 277 813 945
RSE R1056990

HML Superannuation Fund
ABN 43 633 450 113
SFN 270 565 944
RSE R1057003

I, [name]

Of, [postal address]

Postcode			

Born on [date of birth]

Make the following declaration in support of my application to

the Trustee¹: [tick the name of the eligible superannuation plan from which information is sought]

- The Universal Super Scheme
- MasterKey Custom Superannuation
- HML Superannuation Fund

OR

Make the following declaration in support of my application to

the Trustee¹ of the following superannuation product: [insert details]

Product Name

Account Number

¹ Details of the relevant Trustee and Legal Entity is included overleaf.

For information about: [tick as necessary]

- my superannuation interest
- a superannuation interest of [full name of member]

Born on [date of birth]

Who is a member of the plan.

I am: [tick as necessary]

- the member
- the legal personal representative of the member (if the member died)
- the spouse of the member

- the legal personal representative of the member (if the spouse has died)
- intending on entering into a Superannuation Agreement under Part VIIIB of the Family Law Act 1975 with the member (ie applicable to marriage)
- intending on entering into a Superannuation Agreement under Part VIIIAB of the Family Law Act 1975 with the member (ie applicable to De Facto Relationship)

I require the information to: [tick as necessary]

- assist me to properly negotiate a Superannuation Agreement
- assist me in connection with the operation of Part VIIIB of the Family Law Act 1975 (ie applicable to marriage)
- assist me in connection with the operation of Part VIIIAB of the Family Law Act 1975 (ie applicable to De Facto Relationship)

The information/valuation is sought as at: [day month year]

Please forward your response to: [tick as necessary]

- me
- my lawyer [full name of legal representative]

at, [postal address]

Postcode			

Signed [signature of eligible person]

Dated

This form is only to be used by an eligible person for requesting information about a member's superannuation interest. There are severe penalties for making a 'false declaration'. If you make a declaration to us that you know to be false or misleading, you may be prosecuted under the provisions of the Family Law Act. If guilty, you may be sentenced to a term of imprisonment for a period of up to 12 months.

Please forward the originally completed declaration to:

**Attention: MLC Family Law Team
Ground Floor, 105 – 153 Miller Street
North Sydney NSW 2060**

The following tables provide details of the relevant Funds and the products administered within those Funds as well as the legal entities and the products they issue or administer.

Trustee	Fund (Eligible Superannuation Plan)	Superannuation Products	Customer Service Centre
MLC Nominees Pty Ltd ABN 93 002 814 959 AFSL 230702 RSE L0002998	The Universal Super Scheme ABN 44 928 361 101 SFN 281 440 944 RSE R1056778	MLC MasterKey Super MLC MasterKey Super Fundamentals MLC MasterKey Superannuation MLC Personal Superannuation MLC Capital Guaranteed Personal Super Savings Plan MLC Capital Guaranteed Personal Super Bond MLC MasterKey Pension MLC MasterKey Pension Fundamentals MLC MasterKey Allocated Pension MLC MasterKey Term Allocated Pension MLC MasterKey Business Super (including MLC MasterKey Personal Super) MLC Life Cover Super	132 652
		MLC Whole of Life Superannuation MLC Endowment Superannuation MLC Pure Endowment Superannuation MLC Maturity Growth Superannuation Plan	133 771
		MLC Super Pension Plan	132 295
		The Employee Retirement Plan (TERP)	132 652
	MasterKey Custom Superannuation ABN 30 205 064 560 SFN 2778 139 45 RSE No. R1056990	MasterKey Custom Superannuation MasterKey Custom Pension	1800 647 009
HML Superannuation Fund ABN 43 633 450 113 SFN 2705 659 44 RSE No. R1057003	OneSource Personal Superannuation & Rollover Fund OneSource Personal Pension Plan	1800 647 009	

Legal Entity	Superannuation Annuities*	Customer Service Centre
MLC Limited ABN 90 000 000 402 AFSL 230694	MLC MasterKey Rollover MLC Capital Guaranteed Rollover Annuity	132 652
	National Rollover Bond (Series 1 – 3) National Rollover Parking Bond	132 295

Legal Entity	Immediate Annuities	Customer Service Centre
MLC Limited ABN 90 000 000 402 AFSL 230694	MLC MasterKey Annuity	132 652
	National Guaranteed Income Plan	132 295

* A Superannuation Annuity is defined in section 995.1(1) of the Income Tax Assessment Act 1997 and Regulation 995-1.01 as meaning: (a) an income stream: (i) that is issued by a life insurance company or registered organisation; and (ii) that commenced before 20 September 2007; and (iii) that is an annuity within the meaning of: (A) subsection 10 (1) of the SIS Act; or (B) sub regulation 1.07 (1A) of the RSA Regulations; or (b) an income stream that: (i) is issued by a life insurance company or registered organisation; and (ii) meets the standards set out in sub regulation 1.05 (1) of the SIS Regulations.

Payment Split Checklist



MLC Limited
ABN 90 000 000 402
AFSL 230694

MLC Nominees Pty Limited
ABN 93 002 814 959
AFSL 230702
RSE L0002998

The Universal Super Scheme
ABN 44 928 361 101
SFN 281 440 944
RSE R1056778

MasterKey Custom
Superannuation
ABN 30 205 064 560
SFN 277 813 945
RSE R1056990

HML Superannuation Fund
ABN 43 633 450 113
SFN 270 565 944
RSE R1057003

Court Order or Registered Arbitration Award

Marriage or De Facto Relationship

When sending the Trustee a **Court Order or Registered Arbitration Award** to split a member's superannuation interest, please include:

- An original or originally verified* copy of the **Court Order or Registered Arbitration Award**.
- A Regulation 72 Notice completed by the non-member spouse.

Superannuation Agreement

Marriage

When sending the Trustee a **Superannuation Agreement** to split a member's superannuation interest, please include:

- An original or originally verified* copy of the **Superannuation Agreement**.
- If the parties are divorced, an original or originally verified* copy of the **Divorce Order**.
- If the parties are separated but not divorced, an original or originally verified* copy of the **Separation Declaration**.
- A Regulation 72 Notice completed by the non-member spouse.

De Facto Relationship

When sending the Trustee a **Superannuation Agreement** to split a member's superannuation interest, please include:

- An original or originally verified* copy of the **Superannuation Agreement**.
- An original or originally verified* copy of the **Separation Declaration**.
- A Regulation 72 Notice completed by the non-member spouse.

* Verified means, that a document was verified by, or signed or acknowledged before, a justice of the peace, lawyer or notary public, if it purports to have been so verified, signed or acknowledged (Section 148 of the Evidence Act).

Additional information:

Please refer to the following pages of this booklet for a copy of a **Regulation 72 Notice** and **Separation Declaration**.

Please forward the completed documentation to:

**Attention: MLC Family Law Team
Ground Floor, 105 – 153 Miller Street
North Sydney NSW 2060**

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Separation Declaration



Sections 90MP & 90MQ Family Law Act 1975

MLC Limited
ABN 90 000 000 402
AFSL 230694

MLC Nominees Pty Limited
ABN 93 002 814 959
AFSL 230702
RSE L0002998

The Universal Super Scheme
ABN 44 928 361 101
SFN 281 440 944
RSE R1056778

MasterKey Custom
Superannuation
ABN 30 205 064 560
SFN 277 813 945
RSE R1056990

HML Superannuation Fund
ABN 43 633 450 113
SFN 270 565 944
RSE R1057003

If the parties are married and not divorced (i.e. separated) or in a **De Facto Relationship**, when sending the Trustee or legal entity a **Superannuation Agreement** to split a member's superannuation interest, at least one of the parties must provide a valid **Separation Declaration**.

There are two types of declaration and you should obtain independent legal advice if you are unsure about making a declaration.

Any declaration you make must be appropriate to your circumstances. As there are serious penalties for making a false declaration, you should not complete any declaration if it would result in a false declaration.

I, [Full name of spouse making the declaration]

Born on,

Declare,

- If, at the declaration time, the total value for all the superannuation interests of the member spouse is less than or equal to the member spouse's low rate cap amount* for the income year in which you make the declaration, then refer to Declaration A if you are a party to a marriage or Declaration C if you are a party to a De Facto Relationship.
- If, at the declaration time, the total value for all the superannuation interest of the member spouse is greater than the member spouse's low rate cap amount* for the income year in which you make the declaration, then refer to then refer to Declaration B if you are a party to a marriage or Declaration D if you are a party to a De Facto Relationship.

*The low rate cap amount for the 2009 – 2010 income year is \$150,000.00.

MARRIED

DECLARATION A [Tick as necessary]

- that the spouses are married, but are separated, at the declaration time.

OR

DECLARATION B [Tick as necessary]

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

Signature

Dated

Please forward the originally completed notice to:

Attention: MLC Family Law Team
Ground Floor, 105 – 153 Miller Street
North Sydney NSW 2060

DE FACTO RELATIONSHIP

DECLARATION C [Tick as necessary]

- that the spouses lived in a De Facto Relationship, but are separated, at the declaration time.

OR

DECLARATION D [Tick as necessary]

- that the spouses lived in a De Facto Relationship;
- the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the declaration time; and
- in the opinion of the spouse (or spouses) making the declaration, there is no reasonable likelihood of cohabitation being resumed.

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How to contact MLC

For more information
call MLC from anywhere
in Australia on 132 652
or contact your adviser

Website: mlc.com.au

Postal address:

MLC Limited, PO Box 200
North Sydney, NSW 2059