

How Family Law may affect your superannuation, life insurance and other investments

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A  **National** Company

Throughout this guide:

| REFERENCE TO: | TO BE READ AS: |
|---------------------|--|
| “we” or “us” | The entities listed in Section I – Completing Forms and Checklists, as appropriate |
| “member spouse” | Member of any superannuation Funds or other interest under consideration |
| “non-member spouse” | Spouse, spouse-to-be or ex-spouse of the member spouse |
| “owner spouse” | Owner of non-superannuation interest, eg. investments or insurance |
| “non-owner spouse” | Spouse or ex-spouse of the owner spouse |
| “legal entity” | Trustee or Life Company that provided the financial product |
| “Trustee” | The trustee of the superannuation Fund in which a member spouse has an interest |
| “you” or “your” | Both the member spouse and the non-member spouse, or owner spouse and non-owner spouse, unless otherwise specified |
| “Fund” | The superannuation Fund |

About this guide

This Guide provides general information only and is intended to answer some of the questions you may have about how the Family Law Act may affect superannuation, life insurance and other investments. The information contained in this Guide was current at 30 September 2004. 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.**

This Guide does not address all of the issues that relate to self-managed superannuation funds (SMSFs). If you are a trustee or an Eligible Person in respect to an SMSF, this Guide will not provide all the details that a member will need in order to request information, flag or split a superannuation interest. Enquiries should be directed to the Trustee of the relevant SMSF.

At the end of this Guide, you will find a prescribed form, **Declaration to accompany application to Trustee for information about a superannuation interest (Form 6)**, and various checklists. It is important to read these in conjunction with the rest of this Guide. **Form 6** must be completed, signed and forwarded to the Trustee if you wish to request information about a superannuation interest. The checklists will assist you when you assemble the documentation that you will need to submit to the Trustee if you wish to flag, lift a flag or split a superannuation benefit or to injunct or enforce an order on any other non-superannuation interest.

Forms 1–5 are also prescribed forms for superannuation splitting and need to be used only in special circumstances. These are mentioned in **Section I – Completing Forms and Checklists**, but are not included in this Guide.

In preparing this Guide, the financial situation or specific needs of any particular person were not taken into account. This Guide deals with complex issues that may be difficult to understand. **Therefore, before making any decision, you should seek independent legal, taxation and financial advice.**

This Guide uses terms that have special meanings. Where possible, we explain these terms as we use them, or explain them in **Section H – Glossary of Terms**.

Contents

| | |
|--|----|
| Overview – What is Family Law? | 2 |
| Section A – Family Law, Superannuation and Non-Superannuation Interests | 4 |
| Section B – Accessing Information on Superannuation and Non-Superannuation Interests | 6 |
| Section C – Flagging a Superannuation Interest and Injunctions on a Non-Superannuation Interest | 7 |
| Section D – Lifting or Terminating a Flag on a Superannuation Interest | 8 |
| Section E – Splitting Superannuation Interests and Orders on Non-Superannuation Property Interests | 9 |
| Section F – Taxation Implications | 13 |
| Section G – Contact Details and Further Information | 17 |
| Section H – Glossary of Terms | 18 |
| Section I – Completing Forms and Checklists | 22 |
| Section J – Forms and Checklists | 25 |

Overview – What is Family Law?

In broad terms, Family Law legislation enables superannuation, certain life insurance policies and other investments to be divided between parties on marriage breakdown. Changes were introduced for superannuation on 28 December 2002 and amendments were made to the Family Law Act in 2003 to apply to third parties in relation to non-superannuation interests from 17 December 2004.

The changes that came into effect from 17 December 2004 are intended to allow the Family Court to make orders binding third parties¹ when making property settlements in the event of marriage breakdown in relation to non-superannuation property interests. The Court may however continue to utilise existing powers to order a spouse to share payments or transfer property to the other spouse (where this is possible) without directing orders to a third party.

An order to a third party can only be made by the Court if it is reasonably necessary or appropriate to effect a division of property between parties to the marriage and must also be just and equitable. In making these amendments to bind third parties, the Government stated that they are “not intended...to extinguish or modify the underlying substantive rights of third parties.” The nature of the property (or interest), which includes a debt for this purpose, cannot be changed by virtue of such orders. That is, it must at least be possible for the third party to implement an order taking into account the nature and relevant terms and conditions relating to the property/interest.

Note: Certain types of annuities (which are similar to superannuation interests and pensions)² have been excluded from the amendments which commenced from 17 December 2004. These annuities will be brought into the same regime as superannuation interests. It is expected that provisions applying to third parties who provide these annuities will come into effect in June 2005. However, under existing law, the Court can generally order a spouse receiving income from some of these annuities to pay a share (or all) of the income to the other spouse.

¹ A third party is any person or entity who is not a party to the marriage (ie not a spouse).

² These annuities can only be purchased by rolling over Eligible Termination Payments (ETPs).

Who does Family Law legislation apply to?

The treatment under the Family Law legislation of superannuation (including pensions provided by the Funds) and non-superannuation interests applies to married couples and does not apply to de facto or same-gender couples.

In relation to superannuation, the legislation also applies to those couples whose marriage has been dissolved prior to 28 December 2002, but where no property settlement has been finalised.

In relation to non-superannuation, the legislation applies to those couples whose marriage has been dissolved prior to 17 December 2004, but where no property settlement has been finalised. In other words, the legislation doesn't apply to couples who have had final property settlements made prior to 28 December 2002 or 17 December 2004 respectively, unless the property settlement have first been set aside by the Court.

In addition, specific provisions apply to persons who are planning to marry at some future date, but only in respect to the making of a Superannuation Agreement as part of a pre-nuptial agreement which can bind the superannuation trustee with regard to the division of superannuation on marriage breakdown.

Family Law legislation may deal with property settlements of de facto couples

Various Australian states and territories enacted legislation to give to the Commonwealth the power to deal with property settlements of de facto couples, in the same manner as that for de jure (legally married) couples.

Recognising this referral of states' and territories' powers in relation to the property of de facto couples, the Commonwealth foreshadowed appropriate Family Law amendment legislation.

The purpose of the foreshadowed legislation is to give effect to the reference of powers from the states and territories to deal with property settlements for heterosexual de facto couples. In other words, it can be expected that once the legislation has been enacted Trustees will be required to split the superannuation and other property of de facto couples in similar circumstances to those of legally married couples, namely, upon the break-down of the relationship.

Do I need a lawyer to help me split my superannuation and non-superannuation interests?

We strongly recommend you seek assistance from a lawyer if you need advice regarding your rights and entitlements in property settlements upon marriage breakdown.

If you apply to the Court to obtain a property settlement, you are not required to have legal representation, but many people prefer to obtain legal assistance. If you wish to obtain general information about processes and options in relation to matters following marriage breakdown, there is a dedicated Family Court hotline and website that may be of assistance. These services do not provide any legal advice. Details can be found in **Section G – Contact Details and Further Information** (refer to page 17).

If you need assistance in obtaining a lawyer, we recommend you contact the relevant Law Society or Law Institute in your state. Alternatively, you may be able to obtain assistance from the Family Court of Australia. Contact details can be found within **Section G – Contact Details and Further Information** (refer to page 17).

Superannuation

It is also a requirement of the law that if you wish to enter into your own binding Superannuation and/or Financial Agreement without recourse to the Courts, each party must obtain their own independent legal advice. Unfortunately, you may not be able to use the proceeds of the superannuation split to pay legal fees, as some superannuation interests may need to be preserved within the superannuation system.

Do I need to discuss splitting my superannuation or non-superannuation interests with a financial adviser?

Your financial adviser may be the best person to assist you with obtaining copies of relevant information for the purposes of making a settlement following marriage breakdown. For example, your financial adviser would be able to assist you with detailing your current assets and liabilities. You also need to consider what impact there may be to your existing financial plan. Also depending on your own personal circumstances, we would recommend that you seek taxation advice specific to your proposed settlement. Once a property settlement has been finalised, you may need to amend your financial plans and strategies. A financial adviser is unable to provide legal advice regarding property or financial settlements.

Legal Personal Representative

If either party dies, their Legal Personal Representative (ie. executors or administrators of deceased estates of the parties to the marriage) may continue proceedings to divide property. After death the Courts formally recognise Legal Personal Representatives by making Grants of Probate or Grants of Letters of Administration to them, where appropriate to do so.

It is not possible for a Legal Personal Representative to actually commence flagging or splitting proceedings or to seek orders after the death of either the member spouse or non-member spouse or owner spouse or non-owner spouse, as applicable – they may only continue instituted proceedings or existing Court orders. For this reason, we recommend that parties keep their nominated executors informed of their intentions regarding any potential property settlement.

Fees

At the date of issue, the imposition of all specific Family Law fees has been deferred. Once the imposition of these fees commences, we will provide details at the time we receive requests for information or Superannuation Agreements and Court Orders for splitting and flagging.

Family Law fees may be payable by an Eligible Person (e.g. spouse, spouse-to-be or ex-spouse) who requests information about a superannuation or non-superannuation interest from the legal entity. Fees may also be charged to cover the costs of implementing Agreements or Orders for flagging and/or splitting a superannuation or non-superannuation interest. In addition, where the legal entity incurs legal fees in responding to matters arising from the flagging and/or splitting of a superannuation or non-superannuation interest, these fees will be deducted from the relevant superannuation or investment interest(s).

Note: Any fees, charges or taxes otherwise attributable to the superannuation or non-superannuation interest continue to apply. A split, division, or transfer may trigger applicable fees. Information on fees or charges may be obtained from the relevant Product Disclosure Statement or contracts.

Section A – Family Law, Superannuation and Non-Superannuation Interests

Superannuation and Family Law

From 28 December 2002 the Family Law legislation allowed the following to take place in relation to Family Law matters:

- where an Eligible Person (e.g. spouse, spouse-to-be or ex-spouse) informs us that they need information about a superannuation interest, such as to properly negotiate a Superannuation Agreement with the member spouse, we are required to provide the information and cannot tell the member spouse about the enquiry;
- on marriage breakdown, superannuation interests will be treated as property capable of being divided (i.e. split) between the parties to a marriage, just as other assets, such as a house, or investments. Where the parties can reach agreement, they may make a binding Superannuation Agreement or they may apply to the Court for Consent Orders. If the parties are unable to agree, an application may be made to the Court to make an Order for a settlement of property, including the division of superannuation; and
- a Superannuation Agreement (with evidence that the parties are separated or divorced) or Court Order can be served on the Trustee. The Trustee is obliged to fulfil the terms of valid Superannuation Agreements (where they are accompanied by the required documentation) or Court Orders, (where procedural fairness was accorded – refer to **Section H – Glossary of Terms** page 18).

A binding Superannuation Agreement or Court Order may operate to place a ‘flag’ on the member spouse’s interest (which generally prevents payment or transfer from the Fund) or to effect a permanent split of the superannuation between the member spouse and the non-member spouse.

The legislation requires that the non-member spouse must receive their entitlement when a benefit actually becomes payable to the member spouse, for example, when preserved benefits become payable in cash on satisfaction of a Condition of Release, or on transfer or rollover from the Fund. However, subject to certain legislated requirements, the Trustees may meet the non-member spouse’s entitlement prior to a benefit becoming payable and thereby achieve a ‘clean break’ at the time of receiving a request to split by reducing the member spouse’s superannuation interest and providing the non-member spouse with one or a combination of the following:

- a new superannuation interest in the Fund;
- a transfer of the entitlement to another complying superannuation or approved deposit fund or retirement savings account; and/or

- a payment in cash (subject to legislated preservation requirements).

Binding death benefit nominations to be reported to former spouses and not paid

The governing rules of some superannuation funds may permit a member to give the Trustee a binding death benefit nomination in respect to the legal personal representative, a dependant or interdependent of the member.

Where a member lodges a binding death benefit nomination in favour of a minor child of the member and any death benefit payment would otherwise be a splittable payment, the Trustee is required to report the nomination to the member’s spouse or former spouse. The Trustee is not required to comply with the binding death benefit nomination where the Trustee is subject to a court order that has the effect of restraining or prohibiting the Trustee from paying a benefit in respect of the deceased member.

Additionally, the Trustee is not required to comply with the binding death benefit nomination where the Trustee is aware that the member of the Fund is subject to a court order. Namely, if it contravenes a court order that requires the member to amend or revoke the nomination; or restrains or prohibits the member from giving a nomination.

Legislation will make annuities purchased with ETP money splittable

Recent legislation has added a further category to the definition of an “eligible superannuation plan” to extend the definition of that term to include an eligible annuity. These are annuities purchased with ETPs.

Additional amendments are required and once the amendments come into effect (expected to be June 2005) the courts will be able to make orders (or parties might agree) to:

- split future annuity payments that are or become payable; or
- where possible, commute (convert) income payments in whole or part to a lump sum in order to meet the entitlement of the non-member spouse.

Non-Superannuation interests and Family Law

Amendments were made in 2003 to the Family Law Act. These deal with property of the parties to a marriage and apply to non-superannuation interests under the administration of third parties. Family Law orders can be made in respect to a number of different assets and liabilities.

Very broadly the Family Court has been given jurisdiction to make orders and injunctions binding third parties in relation to property settlements. With limited exceptions relating to certain annuities, the provisions commenced on 17 December 2004. The orders and injunctions can only be made if it is reasonable, necessary or appropriate to effect the division of property of the parties to the marriage.

The non-superannuation provisions (in Family Law Act Part VIII(AA)) broaden the property definition in the Family Law Act to include debts as part of settlement agreements. Thus property will include assets and liabilities and as such, ownership of life insurance products (but usually not those for insurance cover only eg. those contingent on death or disability alone), unit trusts, mortgages and loans. All are within the scope of the new provisions. The Family Court has jurisdiction over property owned jointly or severally by the parties to the marriage. It has the power to either change the ownership of the interest or to deprive an owner of their interest.

Note: Legal status of the Investor Directed Portfolio Service (IDPS) Operator

In broad terms, an IDPS is a service through which an investor can acquire, hold and dispose of available investments.

The MasterKey Custom Investment Service is an example of an IDPS operated by MLC Investments Limited – details can be obtained from the financial services guide. An investor provides investment instructions to MLC as the Operator who aggregates and passes them to the Custodian. The Custodian holds the legal title to the assets and the investor has the beneficial ownership and control of them.

It is our expectation that Family Law orders or injunctions affecting beneficial ownership of the IDPS assets would be directed to MLC as the operator of the relevant IDPS. In our view any order or injunction issued by the Family Court would therefore appropriately be treated as an instruction, as if it had come from the investor. Because the assets are held in the name of the Custodian, there would be no change to the legal title as a result of the implementation of the court order or injunction. However, the beneficial ownership would change and so the Operator (ie. MLC) would need to amend its records to record the name of the new beneficial owner.

Section B – Accessing Information on Superannuation and Non-Superannuation Interests

Requesting information about a superannuation interest

An Eligible Person can request information about a superannuation interest. There is no need for consent by the member spouse to do this. As we are unable to provide this information over the phone, an Eligible Person will need to submit a request in writing to us and complete a declaration confirming their eligible status – see **Form 6** in **Section J – Forms and Checklists ‘Declaration to accompany application to Trustee for information about a superannuation interest’**. This declaration is a serious matter and there are penalties for people making false declarations.

The information we will provide in response to a request will be a summary of information relating to a superannuation interest. This summary includes information that we are required to provide, such as whether the superannuation interest is splittable (as described in **Section E – Splitting Superannuation Interests and Orders on Non-Superannuation Property Interests** refer page 9), the estimated withdrawal value¹ at the appropriate date and basic information about preservation and tax components.

A member spouse may also contact us as usual, either directly or via their authorised representative (e.g. their financial adviser). We cannot tell the member spouse that information has been requested by, or provided to, an Eligible Person.

Obtaining information about non-superannuation interests

Legal representatives might obtain information from third parties by subpoena and in accordance with the Family Law legislation. Form 6 cannot be used to request information from us about any non-superannuation interests. Unlike the superannuation requirements there is no similar ability under the non-superannuation third party provisions for a non-owner spouse to make information requests to third parties for information about non-superannuation interests.

Note: It is expected that Form 6 will be modified to cater for ETP annuities when the legislation binding third party providers of such products comes into effect (anticipated in June 2005).

¹ This estimated value does not contain any details about, or values of, potential insurance cover.

Section C – Flagging a Superannuation Interest and Injunctions on a Non-Superannuation Interest

Flagging a superannuation interest

A flag essentially puts a superannuation interest on hold. This generally means that the superannuation interest can't be paid out, transferred from the Fund or rolled over while it is flagged. Unless otherwise specified in the Superannuation Agreement or Court Order, a superannuation interest generally means all accounts within a Fund. Flagging doesn't preclude everything. For example, applicable fees and charges will continue to be deducted, investment earnings will continue to apply and, subject to standard product and superannuation rules, contributions and transfers into the superannuation interest can continue to be made. Product specific details are provided in information sheets and Product Disclosure Statements or contracts. Please see **Section I – Completing Forms and Checklists** for contact details to obtain copies (refer page 22).

Pension interests cannot be flagged.

There are some exceptions where a flagged superannuation interest can still be paid out, including:

- 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, have educational or special needs.

The non-member spouse cannot prevent such payments being made.

A flag can only be imposed by a Superannuation Agreement or Court Order. As a general rule, parties and Courts endeavour to conclude property settlements quickly and finally. Delays can mean changes in circumstances and introduce a greater element of unpredictability. However, in some instances, it may not be possible to conclude matters equitably at a point in time. Hence, the option to flag a superannuation interest may be considered in some situations, such as where parties are unable to come to an agreement for some time, or where the value of the superannuation interest is likely to change substantially in the near future. We recommend that you seek independent legal and financial advice to discuss your personal circumstances.

If it is determined that no split of the superannuation interest is required or if the terms of the split are finalised, there is no need to flag a superannuation

interest. In this situation, the superannuation interest will be split in accordance with the Superannuation Agreement or Court Order, if any. Please see **Section E – Splitting Superannuation Interests and Orders on Non-Superannuation Property Interests** for further details on splitting a superannuation interest (refer page 9).

To flag an interest, you will need to serve a Superannuation Agreement or Court Order that states that a superannuation interest is to be subject to a payment flag. Please also complete the **Apply Payment Flag Checklist** that indicates the documentation that you need to provide. This checklist can be found in **Section J – Forms and Checklists** (refer page 25).

Before making a Superannuation Agreement to flag a superannuation interest, parties should check to determine which type of Separation Declaration is required. One type may involve a separation period of at least 12 months. Alternatively, parties can apply to the Court for a Court Order to flag an interest, if that period has not expired.

Where a flagged superannuation interest becomes payable, we are required to notify both the member spouse and the non-member spouse within 14 days after the interest became payable. The Trustee is not required to take any further action in relation to either the payment or the flag after providing this notification, unless a Flag Lifting Agreement or Order is received. However, if the member spouse is over age 65 please refer to **Section E – Splitting Superannuation Interests and Orders on Non-Superannuation Interests**, 'Over 65 years of age rules' on page 12.

Injunctions on a non-superannuation interest

The obtaining of court ordered injunctions in respect to non-superannuation assets and liabilities might be viewed as being in the nature of a superannuation payment flag ie. puts a stop on payments or transfers. They would bind third parties on whom they were served.

Before parties to a marriage are granted an injunction the court must ensure that the injunction takes into account a number of issues. These include the taxation effect on the parties to the marriage or on the third parties, the social security effect, the third-party's administrative costs, the capacity of a party to the marriage to repay a debt, and the economic, legal or other capacity of the third-party to comply with the injunction.

Section D – Lifting or Terminating a Flag on a Superannuation Interest

When a superannuation interest is flagged, the flag must be lifted by a Flag Lifting Agreement or terminated by Court Order before a payment split can be processed. Lifting a flag allows the superannuation interest to be paid out, transferred or rolled over. It also allows the member spouse to deal with their interest if a payment split is not ultimately being pursued.

The member spouse and non-member spouse can make a Flag Lifting Agreement at any time, even if a flag was put on via a Flagging Order. A Flag Lifting Agreement may simply restore the superannuation interest to its normal pre-flagged state or it may provide that the superannuation interest is to be split. The Flag Lifting Agreement is only binding if certain conditions are met (such as independent legal certification).

If a party wants to lift a flag on a member spouse's superannuation interest **without splitting** that interest, the flag can be lifted by a Flag Lifting Agreement or terminated by a Court Order. You will need to serve a request to lift a payment flag or order to terminate a payment flag. Please also complete the **Flag Lifting Checklist** that indicates the documentation that you need to provide. This checklist can be found in **Section J – Forms and Checklists** (refer page 25).

If the intention is to split a member spouse's superannuation interest after lifting the flag, a payment split must be provided for in the Flag Lifting Agreement or Court Order terminating the flag. Otherwise, the member spouse's superannuation interest will revert to its 'normal' status. This means that the Trustee can once again pay out, transfer from the Fund or roll over the interest at the direction of the member spouse only.

To lift a flag by Agreement or terminate a flag by Court Order on a superannuation interest **before making a payment split**, you won't need to complete the **Flag Lifting Checklist** as mentioned previously. Instead, you will need to serve a request to lift a payment flag and make a payment split. To do this, please complete either Section A or B of the **Payment Split Checklist** that indicates the documentation that you need to provide. This checklist can be found in **Section J – Forms and Checklists** (refer page 25).

Section E – Splitting Superannuation Interests and Orders on Non-Superannuation Property Interests

Splitting a superannuation interest

When a marriage breakdown occurs, spouses are able to provide for the splitting of superannuation interests by a binding Superannuation Agreement or by Court Order.

Before a member spouse's superannuation interest can be split, any flag on a member spouse's superannuation interest must be lifted. See **Section C – Flagging a Superannuation Interest and Injunctions on a Non-Superannuation Interest** (refer page 7) for further details on flagging a superannuation interest and **Section D – Lifting or Terminating a Flag on a Superannuation Interest** (refer page 8) for further details on lifting or terminating a flag on a superannuation interest.

Before a superannuation interest can be split, you should find out from the Trustee whether it is capable of being split (i.e. whether it is splittable). If you do not already have this information, an Eligible Person may request information about a superannuation interest from the Trustee (as described in **Section B – Accessing Information on Superannuation and Non-Superannuation Interests** refer page 6).

There are other restrictions that may prevent an interest from being split and these are discussed under the heading 'Which superannuation interests cannot be split?' (refer this page).

What is included in a superannuation interest?

Superannuation interests generally consist of the benefits that a member has in a superannuation fund, whether they are in the growth phase (i.e. when superannuation savings are accumulating) or in the payment phase (i.e. the interest has commenced to be paid as a pension). There may also be insurance proceeds included in a superannuation interest.

It is possible to make a binding Superannuation Agreement prior to the superannuation interest coming into existence.

Because of the complexity of the legislation, the variability of personal circumstances and the intricate nature of insurance in respect to a superannuation interest, we recommend that you seek independent legal, taxation and financial advice to determine what may be included in a superannuation interest.

Which superannuation interests cannot be split?

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

- a superannuation interest of less than \$5,000;
- 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, have education or special needs.

Most other superannuation interests are generally splittable.

Our approach

In general, for allocated and term allocated pensions and accumulation interests, we will reduce the member spouse's interest to give effect to the non-member spouse's entitlement as soon as possible rather than waiting for a benefit to become payable to the member spouse. This achieves a clean break and allows each party to deal with and control their entitlement within a relatively short period from the time when we are served with the Superannuation Agreement or Court Order. For lifetime and fixed term income streams it may not be possible to split the interest although the income payments to the member spouse may be reduced and paid to the non-member spouse.

Whilst a value may be estimated at a point in the past, an actual split can only be processed at the time an Agreement or order is served (allowing time for administration – usually 4 business days).

What methods can be used to split a superannuation interest?

Generally, a split will occur soon after the Superannuation Agreement or Court Order is served on the Trustee. For Agreements or Orders that require the split to occur at some future date (e.g. upon retirement), see the heading 'Can I split a superannuation interest in the future?' (refer page 11). Where court orders are sought, the Trustee must be accorded with procedural fairness (as described in **Section H – Glossary of Terms** refer page 18).

Section E (continued)

The legislation specifies three methods that can be used when developing a basis for splitting a superannuation interest for the purposes of a Superannuation Agreement or Court Order:

- a specified fixed-dollar amount (e.g. \$50,000). This is known as a “base amount”;
- for superannuation or Flag Lifting Agreements, a formula by which a fixed-dollar amount (a base amount) may be established. For example, this may be a percentage of the underlying interest at a certain date, or it may be a formula based on period of marriage, less amounts accrued prior to the marriage; or
- a percentage (e.g. 40%).

Ultimately, there is considerable freedom in specifying how a superannuation interest should be split. However, it would be advantageous to ensure that the method you use, and the instructions you give, are clear and unambiguous.

If a formula is used to calculate a base amount under a Superannuation Agreement, documentation must be provided that sets out the dollar value of the amount resulting from the formula used. In most cases, using a formula is only useful in the Agreement if the Superannuation Agreement is being made prior to marriage breakdown. Otherwise, parties should include the fixed dollar base amount even if they have used a formula to arrive at this amount.

Where a fixed dollar base amount is specified, generally we will reduce the member spouse’s superannuation interests in order to meet the non-member spouse’s entitlement. Where the interest is in the growth phase, the base amount may be adjusted by earnings in the period from the Operative Time to the date that this adjusted base amount is transferred to a new interest in the Fund, rolled over, or paid for the benefit of the non-member spouse. However, if the adjusted base amount is less than the specified fixed dollar base amount, (which may occur as a result of investment performance, fees and taxes) the non-member spouse’s entitlement is limited to the adjusted base amount.

If a percentage is specified, the following will generally apply:

- for interests in the growth phase, we will apply the specified percentage to the withdrawal value at the date of creation of the new interest, transfer, or payment to the non-member spouse;
- for interests in the payment phase (ie pensions), we will:
 - for ‘allocated’ and ‘term allocated pension’ commute the pension (in whole or in part) so that the amount to be split comprises a lump sum amount. The percentage will be applied to the commuted net lump sum.

- for lifetime and fixed term pensions either commute the pension and apply the percentage to the commuted lump sum, or if this is not possible or appropriate, apply the percentage to income payments.

We recommend parties seek independent legal advice as to what approach is suitable to meet their personal needs. To split a superannuation interest by Superannuation Agreement or Court Order, please complete **Section A, B, C or D** of the **Payment Split Checklist** that indicates the required documentation that you need to provide. The checklist can be found in **Section J – Forms and Checklists** (refer page 25).

When does the payment split occur?

The split can only occur after serving the Superannuation Agreement or Order (following separation or divorce).

In accordance with the legislation, when a superannuation interest becomes subject to a payment split, we undertake to send a **Payment Split Notice** to both the member spouse and non-member spouse within 28 days.

In most cases, the non-member spouse then has up to 28 days after receiving the **Payment Split Notice** to instruct us on how they wish to deal with their proceeds. These instructions to the Trustee would be actioned by the Trustee, subject to any limitations imposed by the Family Law legislation. If the non-member spouse does not provide instructions we will, in most cases, either create a new interest in the Fund, or transfer the non-member spouse entitlement to an Eligible Rollover Fund (ERF). Contact details can be found in **Section G – Contact Details and Further Information** (refer page 17).

If the superannuation interest becomes payable before we have reduced the member spouse’s interest to meet the non-member spouse’s entitlement, any of the following types of payments (subject to the exceptions above) must be split to meet the non-member spouse’s entitlement:

- a) a payment to the member spouse;
- b) a payment to another person for the benefit of the member spouse;
- c) a payment to the Legal Personal Representative of the member spouse, after the death of the member spouse;
- d) a payment to a Reversionary Beneficiary, after the death of the member spouse; and
- e) a payment to the Legal Personal Representative of a Reversionary Beneficiary covered by point (d), after the death of the Reversionary Beneficiary.

Can I split a superannuation interest in the future?

Where parties do **not** want to split a superannuation interest immediately (i.e. when serving a Splitting agreement or Court Order on the Trustee), the superannuation interest may need to be initially flagged. If, for example, the member spouse is aged 45 and the split is to be calculated and implemented at age 65, the superannuation interest will need to be flagged for 20 years. In this situation, when the member spouse turns 65 years of age, the flag must be lifted by the spouse or the Court before the Splitting Agreement or Court Order can be served on the Trustee. There are, however, risks associated with flagging for an extended period. For example, if either the member spouse or the non-member spouse cannot be located, this may result in the superannuation interest being treated as unclaimed money.

When can a superannuation entitlement be cashed?

There are legislative restrictions on when superannuation benefits can be accessed. In general, superannuation interests are preserved within the superannuation system and cannot be paid until you have reached age 65, or have reached your preservation age (which is between age 55 and 60, depending on when you were born) and have retired.

A superannuation interest may comprise one or more different preservation components. There are different requirements in respect to the retention of those components within the superannuation system.

Unrestricted non-preserved benefits – these may be cashed at any time.

Preserved benefits – these must be retained within the superannuation system until at least one Condition of Release is met (refer to the Glossary).

Restricted non-preserved benefits – these may be cashed only when gainful employment has been terminated with an employer or associates of that employer who had, at any time, contributed to the superannuation fund, or when a Condition of Release applying to preserved benefits is met.

The non-member spouse's entitlement will generally have the same preservation components and be divided in the same proportions as the member spouse's original interest, immediately prior to the split. We recommend that you seek financial advice to find out more about whether you may be impacted by any Conditions of Release.

How should a non-member spouse respond to the Payment Split Notice?

If you are entitled to a portion of your spouse's superannuation interest, then when you receive a **Payment Split Notice** from us, you must advise in writing what you would like us to do with the proceeds. You have three options:

1. request that we create a new superannuation interest for you, subject to any conditions that may apply;
2. request that we rollover or transfer your payment split to another superannuation fund (i.e. external to our business); or
3. request that we pay the amount as a lump sum. This option is generally only available if you have met certain Conditions of Release in your own right.

Depending on your choice, there are different checklists that you can use. Further information is included in **Section I – Completing Forms and Checklists** (refer page 22).

In some instances, you may make alternative property settlement arrangements with your spouse or ex-spouse different to those arrangements described in the Splitting Order or Splitting Agreement, after we have sent out a **Payment Split Notice**. In this situation you must use **Form 1 – Notice to Trustee that non-member spouse's entitlement satisfied in respect of particular payment split**. Further information is included in **Section I – Completing Forms and Checklists** (refer page 22).

What happens if a non-member spouse doesn't respond to the Trustee's Payment Split Notice?

If you are entitled to a portion of your spouse's superannuation interest and don't respond to our **Payment Split Notice** within 28 days, we may create a new superannuation interest, or pay your superannuation interest to The Australian Eligible Rollover Fund. Contact details can be found in **Section G – Contact Details and Further Information** (refer page 17).

If you are 65 years of age or more and you don't respond to the Trustee's **Payment Split Notice** within 28 days, and if the Trustee is unable to contact you, the Trustee is required to treat your superannuation interest as unclaimed money and pay it to the appropriate Government authority. You will then need to contact the particular authority to make arrangements to recover your superannuation interest. Contact details can be found in **Section G – Contact Details and Further Information** (refer page 17).

Section E (continued)

How can a non-member spouse claim back their superannuation interest?

If your superannuation interest has been paid to the Australian Eligible Rollover Fund, you will need to contact that Fund directly to be paid your superannuation interest. Contact details of The Australian Eligible Rollover Fund can be found in **Section G – Contact Details and Further Information** (refer page 17).

Over 65 years of age rules

Where a member spouse of a Fund is over 65 years of age and their interest is not a pension interest, the member spouse must tell us about their employment status. If they don't, we may be legally required to pay out their benefit. Generally, the member spouse's attainment of age 65 triggers a splittable payment. If this happens where a member spouse's superannuation interest is subject to a payment flag, we are required to notify the member spouse and the non-member spouse within 14 days that a splittable payment (as described in 'Splitting a superannuation interest', refer page 9) will become payable. It is not possible to pay anything to either the member spouse or the non-member spouse because the flag has not been lifted and no Splitting Agreement or Splitting Order has been served on us.

If the member spouse can't be located and we are unable to pay the non-member spouse because we have not received a Splitting Agreement or Splitting Order, we are required to treat the entire interest as unclaimed money. If the member spouse can be located but the non-member spouse can't, the member spouse will need to get an Order to Terminate the Operation of the Payment Flag before their superannuation interest can be paid out to them.

The only exception to the rule requiring us to pay out benefits where the member spouse is not gainfully employed after age 65 is in relation to mandated "employer financed benefits" where mandated contributions are expected to continue. For members over 65 years of age, mandated contributions are Superannuation Guarantee contributions or those required under an award certified by an industrial authority.

What happens if the legal entity is unable to make a payment to a non-owner?

In the event that we are unable to make payment to you (eg. you change your address without notifying us), we are required to treat these monies as unclaimed money. We will pay them to the appropriate Government authority. You will then need to contact the particular authority to make arrangements to recover your unclaimed monies. Contact details can be found in **Section G – Contact Details and Further Information** (refer page 17).

Orders that alter non-superannuation rights, liabilities or property interests

The court is to make orders that are in the best interests of the parties or their children. This may mean that we might be required to record a change of ownership of property or to split property in accordance with the order.

Before parties to a marriage may obtain an order the court must ensure that the order takes into account a number of issues. These include the taxation effect on the parties to the marriage or on the third parties, the social security effect, the third-party's administrative costs, the capacity of a party to the marriage to repay a debt, the economic, legal or other capacity of the third party to comply with the order.

Unlike the incidental changes enacted for superannuation splitting, the Government did not bring in similar consequential legislation for third-party non-superannuation interest splits. In the absence of consequential changes for example, to taxation law, it may not be possible to implement some types of third party splits.

The court must consider the rights of third parties before making any orders ("just terms").

Finally where court orders are to be sought, you must first provide the legal entity with procedural fairness as described in **Section H – Glossary of Terms** (refer page 18).

The court must ensure that the third party has been given procedural fairness. If, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters, the court must be satisfied that these matters have been taken into account before making the order.

Section F – Taxation Implications

Taxation implications of splitting a superannuation interest

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 interest. The following information is of a general nature only, and provides a brief overview of some of the tax consequences. This information is based on the tax laws that were current at 30 September 2004. The ultimate tax impact associated with a payment split will vary depending on your own circumstances and we strongly recommend that you seek advice from a tax specialist regarding your own taxation position.

If there are tax consequences associated with splitting a superannuation interest, the final amount that a member spouse and/or non-member spouse will be entitled to, will be affected. The following separately address the broad tax consequences of a payment split occurring where the superannuation interest is in the growth phase (i.e. superannuation savings are accumulating) or the payment phase (i.e. the interest has commenced to be paid as a pension).

Growth phase – a payment split applies

Non-member spouse entitlement is met by a lump sum cash payment

If a split occurs and the non-member spouse's entitlement is met by a lump sum, this amount is treated as an Eligible Termination Payment (ETP). This applies regardless of whether the amount is paid in cash or is retained within the superannuation system. This ensures that the non-member spouse receives the favourable tax treatment afforded to ETPs. In general, we reduce the member spouse's growth or payment (pension) phase superannuation interests by the lump sum value of the non-member spouse's entitlement¹.

The lump sum is broken down into its component parts, since each component is taxed differently. The non-member spouse receives broadly the same proportion of the "fixed dollar" ETP components contained in the member spouse's superannuation interest. These "fixed dollar" components are:

- the concessional component;
- the post-June 1994 invalidity component;
- the Capital Gains Tax (CGT) exempt component;
- the undeducted contributions component; and
- the untaxed element of the post-June 1983 component.

¹ In certain cases this will apply to interests in the payment (phase) where the pension is commuted to a lump sum.

As a consequence of a split to the non-member spouse, the fixed dollar components in the member spouse's superannuation interest are reduced. After taking into account the proportional entitlement to fixed dollar components the balance of the non-member spouse's entitlement will be classed as a post-30 June 1983 component, since the number of days in the eligible service period (ESP) is taken to be zero. That is, even if a member spouse has a Pre-1 July 1983 start date, the non-member spouse does not receive the benefit of this earlier start date.

If the non-member spouse has an ESP start date prior to 1 July 1983, they can consolidate their superannuation interests by rolling over their benefits from other funds in order to utilise their own earliest ESP start date.

Non-member spouses entitlement is taken as a lump sum

If you are the non-member spouse and you receive a lump sum in cash, you should include that amount in your tax return. Whilst we are required to withhold tax from certain components, further tax may be assessed on the lump sum payment, or a refund of overpaid tax may be available. We are required to report the payment to the Australian Taxation Office (ATO) for the purposes of determining the amount of the benefit to be counted towards your Reasonable Benefit Limit (RBL). If the benefit is determined to exceed your RBL, the excess may be taxed at rates up to the highest marginal tax rate.

Non-member spouse's entitlement is retained in a new interest or is rolled over into another superannuation fund

Tax does not become payable on a superannuation interest until it is taken in cash. Where a payment split amount is rolled over within the superannuation system or a separate interest is created for the non-member spouse, the payment of tax is deferred, except where the benefit rolled over includes an untaxed element of post-June '83 component. In this case, the Trustee may deduct an amount representing Contributions Tax from the untaxed element.

Pension phase – tax and reasonable benefit limits (RBL)

The RBL and hence tax treatment for the member spouse and non-member spouse depends on how the pension is split – a split of income payments or a split of lump sum (commuted) amounts.

Once a pension commences, we must notify the ATO. The ATO assesses how much should be counted for RBL purposes. Amounts in excess of the RBL generally do not receive the full concessional tax treatment.

Section F (continued)

The tax rules relating to the Family Law legislation aim to ensure that any superannuation payment split provided to the non-member spouse in cash is assessed separately against their own RBL. Where a pension interest is split, an adjustment is also made for any amount originally counted towards the member spouse's RBL. We will undertake the revised reporting to the ATO to ensure that the pension amount is reassessed. If you qualified for the pension RBL before a payment split, then the pension should continue to qualify for the pension RBL.

Within the pension phase, there are alternative mechanisms by which a non-member spouse can obtain their entitlement. The following highlights the main tax implications.

Pension payments are split

Where pension payments are split, the pension income is assessable in the hands of the separate recipients – the member spouse and the non-member spouse respectively. In a similar way to lump sums, the non-member spouse will receive a portion of any Undeducted Purchase Price (UPP) attributable to the pension (details about how this is calculated will be available from the ATO in separate rulings or determinations). The UPP simply determines how much of the pension payments in a financial year may be exempt from tax.

In addition, the member spouse and the non-member spouse may be entitled to a tax off-set of up to 15% on the assessable portion of their pension income where the pension is assessed as being within their respective RBLs and the usual rebate eligibility rules are satisfied.

You should include your pension income in your tax return. Although we may withhold tax from the cash amount as required, you should still include the full cash amount, less any amount attributable to the Undeducted Purchase Price, in your tax return.

The pension is commuted (to a lump sum)

The position for a non-member spouse

Rather than receiving a share of the pension payments, the underlying pension may be commuted (in whole or in part) so that the amount allocated to you consists of a lump sum amount. The lump sum is treated as an ETP in the same way as a lump sum split in the growth phase.

A benefit will not be measured against your RBL or be subject to tax until it is taken in cash as an ETP, pension or a combination of the two. Please refer to **Section H – Glossary of Terms** (refer page 18) for a brief outline of the taxation terms ETPs and RBLs.

The position for a member spouse

Where a pension is fully commuted to give effect to

a payment split, and you take any remaining benefits as a new pension (or ETP), we will report to the ATO that the amount originally counted toward your RBL, has reduced. In general terms, this is to ensure that there is no double-counting and that you will only have your reduced pension benefit (or ETP) counted for RBL purposes.

Capital Gains Tax (CGT) implications

The following rules have been introduced to ensure no unintended CGT consequences arise from splitting a superannuation interest.

CGT event involving small superannuation funds

Rollover relief is available where an asset is transferred from one small superannuation fund (i.e. a complying superannuation fund with fewer than five members) to another as a result of a marriage breakdown. The relief is only available on the assets relating to a split of the member spouse's interest in favour of the non-member spouse. The rollover relief will apply automatically, such that any capital gain or loss arising at the time of transfer, is deferred until a later CGT event happens in relation to that asset.

Extension of existing superannuation CGT exemptions

There are rules that allow certain capital gains or losses to be disregarded by an individual. For example, a capital gain or loss is disregarded if an individual is entitled to an allowance payable by a superannuation fund. These rules apply to situations where a Superannuation Splitting Agreement or Court Order directs a payment split to be made.

Superannuation Agreements under the Family Law Act

A capital gain or loss is disregarded that might otherwise arise for the spouses:

- on the making of a Superannuation Agreement;
- on the termination or setting aside of such an Agreement; or
- on such an Agreement otherwise coming to an end.

Note: Except for CGT rollover relief applying to small funds, it is anticipated that similar taxation rules will apply to ETP annuities when they are bought into the superannuation regime – expected to occur from June 2005.

The Superannuation Surcharge

Surcharge tax is imposed in respect of certain member spouse contributions where the member spouse has a high "adjusted taxable income" or has not quoted their Tax File Number (TFN) to their superannuation Fund. Surcharge tax may be deducted from the member spouse's superannuation interest where the Trustee has received an assessment from the ATO prior to the implementation of a superannuation payment split.

Where the ATO issues a surcharge assessment after a superannuation payment split, but in respect of a period prior to that split, the Fund that receives the contributions is liable to pay the assessment (by a reduction of the member spouse's interest). If at the time a surcharge assessment is received, there are insufficient benefits remaining for the member spouse to cover the payment of the assessed amount after a superannuation payment split, the member spouse becomes personally liable (i.e. the surcharge liability of the member spouse is never attributed to the non-member spouse as a result of a superannuation payment split being made). We recommend you seek independent legal, taxation and financial advice to understand how the implications of this surcharge may affect your personal circumstances.

As a member spouse, you should note that where you have another account within the same superannuation Fund, the total balance of all accounts (i.e. your total superannuation interest) can be used to pay the ATO's surcharge assessment.

Contributions tax

Where the Trustee is entitled to deduct an amount from a superannuation interest, including charging a fee for Contributions Tax, the Trustee can make that deduction prior to calculating a superannuation payment split.

Where members are entitled to claim a tax deduction for their personal contributions they must notify the Trustee of the amount they will be claiming for the relevant financial year. A claim for a tax deduction in relation to personal contributions is only valid where a notice is provided to the Trustee and the Trustee provides an acknowledgement of the notice; in accordance with Income Tax Assessment Act 1936 (ITAA36) section 82AAT (1A and 1E). Contributions claimed as a tax deduction by the member are generally taxable to the Fund at a rate of 15%.

Before we can implement a family law split, member spouses intending to claim a tax deduction for their personal contributions need to provide us with a notice in respect of personal superannuation contributions paid into the Fund in the year in which the split is to occur, (and for previous financial year(s) if a notice has not been provided and deductions are being claimed in respect of those years). A "Superannuation Contributions Tax Deduction Eligibility" form is available, if you need one please call us (refer to **Section I – Completing Forms and Checklists** page 22). The completed form should then be sent to the Trustee.

Taxation implications of splitting a non-superannuation interest

There are a number of tax consequences that the owner and non-owner spouse may need to take into consideration when splitting a non-superannuation interest. The following information is of a general nature only, and provides a brief overview of some of the tax consequences. This information is based on the tax laws that were current at 30 September 2004. The ultimate tax impact associated with a payment split will vary depending on your own circumstances and we strongly recommend that you seek advice from a tax specialist regarding your own taxation position.

General taxation implications of a marriage breakdown

No specific consequential taxation amendments were introduced as part of the third-party non-superannuation split legislation. As a result, the existing provisions of the Tax Act relating to a marriage breakdown need to be considered when such a split occurs.

Capital Gains Tax rollover

Currently a compulsory same-asset roll-over happens if a Capital Gains Tax (CGT) event involves an individual disposing of an asset to, or creating an asset in, his/her spouse or former spouse because of (amongst other things) a court order under the Family Law Act 1975 or court approved maintenance agreement. If such a rollover occurs, any capital gain or loss from the CGT event made by the transferor is ignored. The transferee obtains the asset at the cost base of the transferor immediately before the transfer. The asset may also retain its pre-CGT character.

The following information contains some general comments on the tax consequences of splitting certain assets you may have acquired from us on the assumption that the assets are held by one or both spouses (and not another party).

Section F (continued)

Specific taxation implications of splitting certain types of non-superannuation interests

Investment Trusts

If you hold your investment on capital account and are required to transfer the investment to your spouse, you should be able to utilise the CGT rollover outlined previously. If the investment is not held on capital account the original owner-spouse may be subject to tax on transfer to the non-owner spouse.

All subsequent disposals whether CGT rollover relief applied or not, may be subject to tax in the hands of the recipient.

You should seek specialist tax advice to determine the tax impacts of acquisition or disposal of these types of investments.

Life Insurance Policies/Bonds

If you hold the life policy for personal purposes and you are required to transfer the policy to your spouse, you should be able to utilise the CGT rollover set out above. Provided the non-owner spouse obtains the life policy for no consideration any ultimate proceeds should not be subject to CGT in their hands. You should however consider the overall settlement to determine whether the non-owner spouse has actually provided consideration.

Certain life policies are however taxable under other provisions of the Tax Act for which there are currently no rollover provisions available in these circumstances. Accordingly whether you transfer the policy or terminate it, the taxation consequences will be the same, that is you may be subject to tax at the time of transfer. You should seek specialist tax advice to confirm the tax impact specific to your particular policy.

Annuities

Different rules apply to annuities depending upon specific contractual features. In some cases, ownership of the annuity may be able to be transferred from one spouse to another. In this case, the original owner spouse may be subject to CGT at the time of transfer as there may not be any rollover relief. Income payable from the annuity may be taxable in the recipient's hands.

If the annuity is not transferable it may be possible (or otherwise preferable) to commute (terminate) the annuity to a lump sum with proceeds payable to either or both the spouses as determined by the Court order. Tax may be payable on any assessable portion by each party in respect of their entitlement.

If a transfer is not possible, or appropriate, or the annuity cannot be commuted, income payments may be able to be split. Once again, tax may be payable on any assessable portion in the recipient's hands.

Other Non-Superannuation Interests

There are other types of assets that could be the subject of a non-superannuation split. We have not covered all of those here in detail. Again the tax impacts will depend on your own tax profile which will require specific tax advice.

Section G – Contact Details and Further Information

If you would like further information, a dedicated hotline and website have been established by the Federal Government. These services do not provide any legal advice:

Family Court Hotline – 1800 050 321

Family Court Website – www.familycourt.gov.au

Family Law Website – www.familylaw.gov.au

The Law Society or Law Institute in each state may also provide you with further information about Family Law lawyers:

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.lssa.asn.au

Tasmania
www.taslaw.society.asn.au

Victoria
www.liv.asn.au/

Western Australia
www.lawsocietywa.asn.au

If you have any queries or would like further information, please contact the relevant customer service centre (outlined on pages 22-24):

Contact details – Australian Eligible Rollover Fund

The Australian Eligible Rollover Fund (Administrator)
Jacques Martin Administration and Consulting Pty Ltd
Locked Bag 5429
Parramatta NSW 2124

Telephone 1800 677 424

Fax (02) 9947 4411

Contact details – Government authorities for unclaimed money

For unclaimed money enquiries relating to the products listed on pages 22-24, please contact:

Superannuation Unclaimed Monies
NSW Office of State Revenue
Unclaimed Money
GPO Box 4042
Sydney NSW 2001

Telephone (02) 9685 2123 or 1300 366 016

Fax (02) 9689 6345

www.osr.nsw.gov.au

Other Unclaimed Monies
Australian Securities & Investments Commission (ASIC)

Telephone 1300 300 630

www.asic.gov.au/fido

Section H – Glossary of Terms

Conditions of Release

Generally, a superannuation benefit that is classified as “preserved” cannot be cashed unless you meet at least one of the following Conditions of Release:

- you are aged 65 or over;
- you are aged 60 or over and cease work with an employer;
- you have reached your preservation age and have permanently retired;
- you are granted release by the Trustee on the grounds of permanent incapacity*;
- you are granted release by the Australian Prudential Regulation Authority on compassionate grounds having satisfied their specific criteria*;
- the amount of the preserved benefit is less than \$200, and you have terminated employment with an employer who contributed to the Scheme on your behalf;
- you are granted release by the Trustee on the grounds of severe financial hardship having satisfied the specific criteria*;
- you are a temporary resident who holds, or has held a specified class of visa, and have permanently departed Australia (**Note:** certain evidence must be submitted to the Trustee before early access to benefits can be allowed*). Citizens of Australia and New Zealand will not meet the eligibility criteria for release on these grounds.

Your benefit, including any preserved component, is also payable to your dependants and/or estate upon your death.

* *Conditions apply. For more information or specific criteria, we recommend you seek independent legal or financial advice.*

Consent Order

This is an order of the Family Court, setting out various terms dealing with the property and arrangements for children of the marriage, to which the parties to the marriage have given prior consent.

When applying for a consent order you will be required (by Family Law Rule 10.15) to complete and file Family Court Form 11. However you must first provide the Trustee with procedural fairness, where the order sought will impose an obligation on the Trustee to take particular action in relation to the interest (for example, under a splitting order). Family Law Rule 10.16 requires that at least 28 days before filing the Form 11 or lodging the draft consent order, you provide procedural fairness by serving on the Trustee a copy of the draft consent order.

Decree Absolute

This is an order made by the Family Court which dissolves a marriage after the Court is satisfied that the parties are separated, and have lived separately and apart for a continuous period of 12 months or more.

Deductible Amount

Pay as you go (PAYG) tax is deducted from income (pension) payments. However, part of your income payments may be tax exempt. This amount is called the Deductible Amount. The Deductible Amount is worked out by a formula which, in general terms, spreads the “undeducted purchase price” (UPP) over the likely period that the pension will be paid, for example, over a fixed term or life expectancy. The UPP, after 4 June 1998, comprises certain ETP tax components, usually the undeducted contributions and any post 30 June 1994 invalidity component or CGT exempt component. Income streams commencing prior to 4 June 1998 were subject to different rules for the purposes of calculating the UPP. If you would like further information, please see your financial or tax adviser.

Eligible Person

An Eligible Person includes the member spouse, their spouse, ex-spouse or spouse-to-be.

For an ex-spouse, where the Family Court has approved a property settlement, there is generally no opportunity to re-negotiate the terms of the settlement to include any superannuation interest (in the absence of property settlements being varied or set aside by the Court).

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

A member spouse’s financial or legal adviser is not an Eligible Person, but they can provide assistance and advice in relation to Family Law Superannuation matters.

Eligible Termination Payment (ETP)

In relation to a superannuation benefit, an ETP is a lump sum value comprising different components that are subject to tax at different rates. Your financial adviser can provide you with further information on how ETPs may impact your individual circumstances.

Financial Agreement

A Financial Agreement is an agreement that can be entered into between spouses (during marriage), between intended spouses (a Pre-nuptial Agreement) or between ex-spouses after the dissolution of marriage. A Financial Agreement sets out the manner in which the property of both parties will be disposed of upon marriage breakdown. This Agreement is binding on both parties, subject to satisfying certain conditions (such as legal certification that both parties received independent legal advice prior to signing the Agreement.) For this reason, it is not possible to make a binding Financial Agreement or Superannuation Agreement without each party having consulted their own lawyer.

Flagging Order

This is an order made by the Family Court that identifies the member spouse's superannuation interest and would direct us to flag it and not to make any splittable payment from it without authority from the Court, unless a valid Flag Lifting Agreement or Court Order terminating the flag has first been served on us.

Flag Lifting Agreement

A Flag Lifting Agreement is an agreement to lift a flag on a superannuation interest. It can be made either without any payment split or by specifying the details of the payment split of the superannuation interest to be implemented by us.

Injunction

Where a court orders a person to do or refrain from doing a particular thing. As an example, the Court may order us not to 'cash' an investment interest.

Legal Personal Representative

A Legal Personal Representative is the executor or administrator of the estate of a deceased person. When we use the term executor, we mean a person appointed by the person making a will to carry out the provisions of the will. When we use the term administrator, we mean a person appointed by the Court to administer an estate that doesn't have an executor.

Operative Time

The Operative Time is the time from which the Trustee must identify that a flag or split applies to the member spouse's interest. An actual split may not occur until the interest is payable to the member spouse or until the time when the Trustee reduces the member spouse's interest, and creates a new interest for the non-member spouse, or transfers or rolls over the non-member spouse's entitlement. In general, for allocated pensions and accumulation interests, we will reduce the member spouse's interest to give effect to

the non-member spouse's entitlement as soon as possible rather than waiting for a benefit to become payable to the member spouse.

The Operative Time can be in respect to a Court Order or a Superannuation Agreement.

a) Court Order

A Court Order to flag or split a superannuation interest must be implemented at the Operative Time, namely the time specified in the Order.

b) Superannuation Agreement

A request under a Superannuation Agreement to flag a Self Managed Superannuation Fund (SMSF) interest must be implemented at the Operative Time, this being as soon as it is served on the Trustee. For all other superannuation interests, the Operative Time is the beginning of the 4th business day after the Superannuation Agreement was served on the Trustee, together with a copy of the Decree Absolute or Separation Declaration.

The Operative Time under a Superannuation Agreement or Flag Lifting Agreement to split a superannuation interest is the beginning of the 4th business day after the Agreement was served on the Trustee, together with a copy of the Decree Absolute or Separation Declaration, where not provided to the Trustee earlier.

Order to Terminate the Operation of a Payment Flag

This is an order made by the Family Court that identifies the member spouse's superannuation interest and would direct us to terminate the operation of the payment flag. It has a similar effect to a Flag Lifting Agreement.

Procedural Fairness

Procedural fairness is sometimes called 'natural justice'. Put simply, it means that where a legal entity (eg a Trustee or Life Company) fails to implement a court order, the legal entity can't be found to have breached the order's terms if the legal entity was not provided with procedural fairness. In other words you must first have given the legal entity details of what is proposed to be ordered and also to have given the legal entity the opportunity of explaining why it can't comply with the proposed order **before** the court makes the order.

An example of an inconsistent court order would be one that when received by the legal entity contains provisions in which the operative date is a date in the past. How can a legal entity split a payment at a date before the legal entity received service of the court order?

Section H (continued)

The provision of procedural fairness to legal entities is important for several reasons. It provides an opportunity for the parties to remove inconsistent provisions from draft court orders. In doing so it avoids unnecessary delay and possible conflict. It also avoids wasting the court's time in having to make amendments to unsuccessful orders.

To enable the Trustee to agree that it has been provided with procedural fairness in respect to proposed consent orders, you or your legal representative must satisfy the requirements of Family Court Rule 10.16. That Rule states that at least 28 days before filing the application, or lodging the draft consent order, you must serve on the Trustee a copy of the draft consent order that the parties intend to apply for, signed by the parties or the parties' lawyers. Additionally you must serve on the Trustee 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 within 28 days. Further to this, that the Trustee has 28 days from receiving the notice from the party to give the parties written notice of the objection.

Alternatively, where you are to seek orders other than consent orders, you must provide Trustees with procedural fairness not less than 28 days before the date fixed for the trial. You must do this by "a written notice of the orders that will be sought at the trial in relation to the superannuation interest" (Rule 14.06).

Reasonable Benefit Limit (RBL)

The Government has restricted the amount of superannuation and related benefits that can be received by a person at a concessional tax rate over a person's lifetime. There are two legislated thresholds that are known as Reasonable Benefit Limits (RBLs):

- a "Lump Sum Reasonable Benefit Limit" (LRBL) which is \$619,223 in 2004/05;
- a "Pension Reasonable Benefit Limit" (PRBL) which is \$1,238,440 in 2004/05.

Some people may have been eligible for a higher Transitional RBL. This must be registered with the ATO.

The "pension RBL" is higher than the "lump sum RBL" to encourage people to take their benefits as an income stream. Certain conditions must be met in order for the higher pension RBL to apply. Briefly, in order to qualify for the pension RBL, a person must take at least 50% of the qualifying portion of their benefits or 50% of their pension RBL (whichever is lesser), in the form of a pension or annuity meeting specified standards.

The portion of a pension or an annuity that exceeds the RBL does not receive the 15% tax off-set and is taxed at a person's marginal rate. The portion of an ETP (lump sum) payment that exceeds the RBL is taxed at the highest marginal rate plus Medicare levy.

Reversionary Beneficiary

A Reversionary Beneficiary is a person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after that spouse dies.

Separation Declaration

This is a written declaration, made in accordance with the Family Law Act, usually by the non-member spouse, where the parties are separated but generally have not been granted a Decree Absolute, and wish to settle their property proceedings.

The date of the declaration (i.e. 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.

There are two types of declarations:

1. The member spouse's total withdrawal value of all superannuation interests is equal to or less than the ETP threshold:

Where the withdrawal value of the member spouse's superannuation interests in all eligible superannuation arrangements is equal to or less than the ETP threshold (\$123,808 in 2004/05), the declaration must state that the parties are married but are separated at the time the declaration was signed.

2. The member spouse's total withdrawal value of all superannuation interests is greater than the ETP threshold:

Where the withdrawal value of the member spouse's superannuation interests in all eligible superannuation arrangements is greater than the ETP threshold (\$123,808 in 2004/05), the declaration must state that the spouses:

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

There are serious penalties for making false declarations.

Splitting Order

This is an order made by the Family Court 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.

Subpoena

A court order which 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. As an example, the provision of a copy of an investment account statement to the Court.

Superannuation Agreement

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

If a Superannuation Agreement is made prior to marriage, the Superannuation Agreement has no effect unless and until the parties marry each other.

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 Agreement is made, then special care is needed to ensure there is a sufficient description. We recommend you seek independent legal advice about this when making a Superannuation Agreement.

The Superannuation Agreement may provide that:

- the member spouse's superannuation interest should be flagged (to remove the ability to transfer or pay a benefit from the Fund); and/or
- the member spouse's superannuation interest should be split.

Legally, the parties have flexibility in terms of how they deal with their superannuation interests. For example, if they had decided to split their property and financial assets on a 50/50 basis, they may elect to trade-off superannuation for other assets such as the family home.

Section I – Completing Forms and Checklists

You will need to seek assistance from your lawyer and/or financial adviser to explain how you may be impacted by the legislation. This Guide is not meant to replace legal assistance. If you are impacted by the legislation, you may not be able to complete some of the necessary documentation without legal assistance.

For most of the forms and checklists, if your instructions pertain to more than one Trustee and/or legal entity, separate forms and checklists must be completed for each entity. A complete list of the names and correspondence addresses of relevant Trustees and legal entities is included on all the forms and checklists. The following table provides details of relevant Trustees, 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 Product | Customer Service | |
|---|---|---|-------------------------|--------------|
| MLC Nominees Pty Limited | The Universal Super Scheme | MLC MasterKey Superannuation | 133 433 | |
| | | MLC Personal Superannuation | | |
| | | MLC MasterKey RSA | | |
| | | MLC Capital Guaranteed Personal Super Savings Plan | | |
| | | MLC Capital Guaranteed Personal Super Bond | | |
| | | MLC Guaranteed Personal Super Bond | | |
| | | MLC MasterKey Allocated Pension | | |
| | | MLC MasterKey Term Allocated Pension | | |
| | | National FlexiSuper | | 132 295 |
| | | National FlexiSuper Plus | | |
| | | National Flexible Pension Plan | | |
| | | National Super Pension Plan | | |
| | | National Business All In One Super | | |
| | | MLC MasterKey Business Super (including MLC MasterKey Personal Super) | | 132 340 |
| | | The Employee Retirement Plan (TERP) | | 1800 803 446 |
| MLC Life Cover Super | 133 442 | | | |
| MLC MasterKey Protection Essentials Super | | | | |
| MLC Whole of Life Superannuation | 133 771 | | | |
| MLC Endowment Superannuation | | | | |
| MLC Pure Endowment Superannuation | | | | |
| MLC Maturity Growth Superannuation Plan | | | | |
| MLC Investments Limited | MasterKey Custom Superannuation Fund | MasterKey Custom Superannuation | 1800 647 009 | |
| | MLC MasterKey Approved Deposit Fund | MLC MasterKey Approved Deposit Fund | 131 831 | |
| | HML Superannuation Fund | OneSource Personal Superannuation & Rollover Fund | 1800 678 848 | |
| | | OneSource Personal Pension Plan | | |
| | National Approved Deposit Funds | National Australia Balanced Approved Deposit Fund National Australia Income Approved Deposit Fund National Australia Equities Approved Deposit Fund National Australia Property Approved Deposit Fund National Australia Capital Stable Approved Deposit Fund | 132 295 | |
| National Australia Approved Deposit Fund | Income Linked Fund Investment Linked Fund | 132 295 | | |
| National Australia Superannuation Pty Ltd | National Australia Personal Superannuation Fund | National SuperStar | 132 295 | |
| | | National Personal Super Bond | | |
| National Australia Bank Limited | RSA | National Retirement Savings Account | 132 295 | |
| A Trustee of a MasterKey Custom Self Managed Super Fund | A MasterKey Custom Self Managed Super Service | MasterKey Custom Self Managed Super | 1800 647 009 | |

In completing Form 6 '*Declaration to accompany application to Trustee for information about a superannuation interest*', the Family Law legislation does not permit your lawyer or financial adviser to make an application for information to us on your behalf. Therefore, the application must be signed by you. However, your lawyer or financial adviser may assist you in completing the declaration.

In completing the *Payment Split Checklist*, please specify an amount, method or percentage for payment, transfer or rollover. Please see Section E – *Splitting Superannuation Interests and Orders on Property Interests* (refer page 9) for further information on specifying a method to split a superannuation interest.

In completing your response to the *Payment Split Notice*, there are different forms, depending on which option you select. Where you select option 1 or 2 (as described in Section E – *Splitting Superannuation Interests and Orders on Non-Superannuation Property Interests* refer page 9), please complete the *Payment Request Form*. You should receive this with the *Payment Split Notice*. Where you select option 3 (as described in Section E – *Splitting Superannuation*

Interests and Orders on Non-Superannuation Property Interests refer page 9) and request that we pay the amount as a lump sum, there are three variations of base amount splits, each requiring a different form:

Remaining adjusted base amount – use Form 2 – *Request to Trustee by non-member spouse for payment, as lump sum, of all or part of remaining adjusted base amount;*

Adjusted base amount – use Form 3 – *Request to Trustee by non-member spouse for payment, as lump sum, of all or part of adjusted base amount;*

Remaining base amount – use Form 4 – *Request to Trustee by non-member spouse for payment, as lump sum, of all or part of remaining base amount.*

To serve a waiver of rights, Form 5 – *Waiver notice in respect of payment split must be used*. However, this form is unlikely to be relevant to our products.

Neither the *Payment Split Notice* nor Forms 1, 2, 3, 4 or 5 are included in this Guide. If you need any of these forms, please call us. Contact details can be found in Section I – *Completing Forms and Checklists* (refer page 22-24).

| Legal Entity | Annuity Products | Customer Service |
|---|--|-------------------------|
| MLC Limited | MLC MasterKey Annuity | 133 433 |
| National Australia Financial Management Limited | National Flexible Income Plan National Guaranteed Income Plan | 132 295 |
| Trustee – Legal Entity | Non-Superannuation Products | Customer Service |
| MLC Lifetime Company Limited | MLC Whole of Life | 133 771 |
| | MLC Endowment | |
| | MLC Pure Endowment | |
| | MLC Maturity Growth Plan | |
| | MLC Corporate Guaranteed Capital Fund | 02 8220 5488 |
| MLC Investments Limited | MLC Non-MasterKey Ordinary Cap Guaranteed | 133 433 |
| | MLC Non-MasterKey Capital Guaranteed Rollover Bond | |
| | MLC MasterKey Unit Trust | 131 831 |
| | MLC MasterKey Cash Management Trust | |
| | National Investment Trusts | 132 295 |
| | National All In One Investment Service | 132 123 |
| | National Corporate Investment Trust | 02 8220 5400 |
| MasterKey Custom Investment Service | 1800 647 009 | |
| OneSource Investment Trust | 1800 678 848 | |

Section I (continued)

| Trustee – Legal Entity | Non-Superannuation Products | Customer Service |
|---|--|-------------------------|
| MLC Limited | MLC MasterKey Investment Bond | 133 433 |
| | MLC Non-MasterKey Ordinary Unit Linked Savings | |
| | MLC Savings Bonds | |
| | MLC MasterKey Rollover | |
| | MLC Non-MasterKey Investment Linked Rollover Bond | |
| MLC Limited | MLC Personal Protection Portfolio | 133 442 |
| | MLC MasterKey Protection Essentials | |
| | MLC Group Insurance | |
| MLC Limited | MLC Corporate Investments Only | 02 8220 5400 |
| | National At Call Common Fund A1 | 1800 036 171 |
| National Australia Trustees Limited | | |
| National Australia Financial Management Limited | Fortis Protector Term Life | 132 295 |
| | Fortis (AMEV) Income Protector | |
| | Fortis/Adelaide Bank Accident Plan - Paid | |
| | Fortis/Adelaide Bank Accident Plan - Free Cover | |
| | National Accident Cover (NAC) | |
| | National Australia Accident Plan | |
| | National Australia Accident Plan - Free Cover | |
| | National Australia Extra Cash Hospital Plan - Single | |
| | National Australia Extra Cash Hospital Plan - Family | |
| | National Business Expenses | |
| | National Business Life | |
| | National Credit Card Cover | |
| | National EasyCover | |
| | National Family Life | |
| | National Guaranteed Cover Plan | |
| | National Income Protection Insurance | |
| | National Income Protection Plus | |
| | National Life Builder | |
| | National LifePlus | |
| | National LoanCover (Series 2) | |
| | National LoanCover | |
| | National Loansafe | |
| | National Mortgagesafe | |
| | National Protection Plan | |
| | National PrimeCare | |
| | National Tailored Business Protection | |
| | National Tailored Personal Protection | |
| | National Term Life | |
| | National Term Life/Yearly Renewable Term | |
| | National Australia Term Life Insurance | |
| | National Australia Term Life Cover | |
| | National Australia Term Life | |
| | National TraumaCare | |
| | National FlexiBond | |
| | National Investment Bond | |
| Tax Paid Savings Bond | | |
| National Asset Builder | | |
| National Rollover Bond (Series 1-3) | | |
| National Rollover Parking Bond | | |

Section J – Forms and Checklists

Forms and Checklists

Form 6 – Declaration to accompany application to Trustee for information about a superannuation interest

Apply Payment Flag Checklist

Flag Lifting Checklist

Payment Split Checklist

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Declaration to accompany application to Trustee for information about a superannuation interest (Form 6)

REGULATION 62 FAMILY LAW (SUPERANNUATION) REGULATIONS 2001
SECTION 90MZB(2) FAMILY LAW ACT 1975

MLC Limited
ABN 90 000 000 402
MLC Investments Limited
ABN 30 002 641 661

National Australia Financial
Management Limited (NAFiM)
ABN 56 000 176 116

MLC Lifetime Company Limited
ABN 94 000 000 420
National Australia Bank Limited
ABN 12 004 044 937

Declaration by applicant for information about a superannuation interest

I, (name)

of, (postal address)

| | | | |
|----------|--|--|--|
| | | | |
| | | | |
| | | | |
| Postcode | | | |

born on, (date of birth)

 / /

make the following declaration in support of my application to the Trustee of (name of eligible superannuation plan from which information is sought)

(the plan) for information about:

- A. my superannuation interest*
- B. a superannuation interest of (full name of member)*

born on (date of birth of member)

 / /

who is a member of the plan

1. I am:

- A. a member of the plan*
- B. the spouse of (name)

who is a member of the plan*

- C. intending to enter into a Superannuation Agreement under Part VIII B of the *Family Law Act 1975* with (name)

who is a member of the plan*

* Omit if not applicable.

2. I require the information to:

- A. assist me to properly negotiate a Superannuation Agreement*
- B. assist me in connection with the operation of Part VIII B of the *Family Law Act 1975**

Dated

 / /

Signature of person making declaration

Please note that there are severe penalties for making 'false declarations'. 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.

This application should be served on the Trustee of the plan. The relevant Trustees, and their associated plans and products, are listed in *How Family Law may affect your superannuation, life insurance and other investments*.

Please forward this declaration to the appropriate correspondence address below. A separate application should be submitted for each Trustee you are requesting information from. For requests relating to MasterKey Custom Self Managed Super please forward these requirements to a Trustee of your Fund.

Attention Family Law Team
MLC Nominees Pty Limited
MLC Investments Limited
Ground Floor, 105–153 Miller Street
North Sydney NSW 2060

Attention Family Law Team
National Australia Superannuation Pty Ltd
National Australia Bank Limited
800 Bourke Street
2367UB
Docklands VIC 3008

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The information below is prescribed in accordance with **PART VIIIB (Superannuation Interest) AND PART VIIIAA (Orders & Injunctions binding third parties) FAMILY LAW ACT 1975**

MLC Limited
 ABN 90 000 000 402
 MLC Investments Limited
 ABN 30 002 641 661

National Australia Financial
 Management Limited (NAFiM)
 ABN 56 000 176 116
 National Australia Trustees
 Limited ABN 80 007 350 405

MLC Lifetime Company Limited
 ABN 94 000 000 420
 National Australia Bank Limited
 ABN 12 004 044 937

Name of member or owner whose interest is to be flagged

of, (postal address)

Postcode

born on, (date of birth)

 / /

Name of eligible interest in which the interest is to be flagged

Name of person submitting this request

Before sending the application to the Trustee or legal entity, please ensure the following checklist has been completed.

Check one of the following that matches the basis on which you are requesting a payment flag:

- Apply Payment Flag under a Payment Flag Agreement – go to **Section A** below.
- Apply Payment Flag under a Payment Flag Court Order or Injunction – go to **Section B** below.

Section A – Apply Payment Flag under a Payment Flag Agreement

- Please attach an original or attested* copy of the Superannuation Agreement which includes:
 - A. The Superannuation Agreement signed by both spouses
 - B. The Superannuation Agreement identifying the member's superannuation interest
 - C. A statement that the member's superannuation interest is to be subject to a Payment Flag under Part VIIIB of the *Family Law Act 1975*

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

- D. A statement (in respect of each spouse) to the effect that each spouse has been provided with independent legal advice from a legal practitioner before signing the Agreement, as certified in an annexure to the Agreement
- E. An annexure to the Agreement (one in respect of each spouse) stating that the spouse has been provided with legal advice from a legal practitioner on:
 - i) the effect of the agreement on the rights of that party; and
 - ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement.
- F. The annexure to the Agreement contains a certificate (one in respect of each spouse) signed by the person providing the independent legal advice stating that the advice was provided.

- A statement from the spouse serving the request for flagging that the Financial Agreement of which the Superannuation Agreement is included as a part, is still binding on both the parties.
- Please attach an original or attested copy of the Decree Absolute or a written Separation Declaration.

If you are attaching an original or attested* copy of the Decree Absolute there are no further requirements. If you are attaching a written Separation Declaration continue with the requirements below.

- The Separation Declaration signed by at least one of the spouses.
- The Separation Declaration signed by the last spouse to sign it not more than 28 days prior to its service on the Trustee.
- If the superannuation interest which is to be subject to a Payment Flag is **less than or equal** to the ETP threshold (e.g. for the year ending 30 June 2005, this is \$123,808) your Separation Declaration must state that the spouses are married, but are separated, at the time when the declaration is signed.
- If the superannuation interest which is to be subject to a Payment Flag is **in excess** of the ETP threshold (e.g. for the year ending 30 June 2005, this is \$123,808) your Separation Declaration must state that:
 - a) the spouses are married;
 - b) the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the time when the declaration is signed; and
 - c) in the opinion of the spouse (or spouses) signing the declaration, there is no reasonable likelihood of cohabitation being resumed.

Section B - Apply Payment Flag under a Payment Flag Court Order or Injunction

- Trustee or legal entity was accorded procedural fairness prior to order being obtained.
- Please attach an original or attested* copy of the Court Order (please note that a Court Order must be dated on or after 28 December 2002 for superannuation products and on or after 17 December 2004 for non-superannuation products).

Please note that a Payment Flag will not operate on the superannuation interest where any of the following situations apply:

- the superannuation interest is unflaggable;
- the non-member spouse has served a Waiver Notice on the Trustee under section 90MZA in respect of the interest;
- a Payment Flag is already operating on the superannuation interest.

Please forward all these requirements to the appropriate correspondence address below. A separate application should be submitted for each Trustee and/or legal entity. For requests relating to MasterKey Custom Self Managed Super please forward these requirements to a Trustee of your Fund.

MLC Nominees Pty Limited
MLC Investments Limited
MLC Limited
MLC Lifetime Company Limited
Ground Floor, 105–153 Miller Street
North Sydney NSW 2060

National Australia Superannuation Pty Ltd
National Australia Bank Limited
National Australia Financial Management Limited (NAFiM)
800 Bourke Street
2367UB
Docklands VIC 3008

The information below is prescribed in accordance with
SECTION 90MN AND SECTION 90K FAMILY LAW ACT 1975

MLC Limited
ABN 90 000 000 402
MLC Investments Limited
ABN 30 002 641 661

National Australia Financial
Management Limited (NAFiM)
ABN 56 000 176 116

MLC Lifetime Company Limited
ABN 94 000 000 420
National Australia Bank Limited
ABN 12 004 044 937

This checklist should be used if you are applying only to lift a Payment Flag. The Payment Split Checklist should be used if you intend to both lift a Payment Flag AND split the superannuation interest.

Name of member on whose interest the flag lifting is to take place

of, (postal address)

 Postcode

born on, (date of birth)

 / /

Name of eligible superannuation plan in which flag is to be lifted

Name of person submitting this request

Before sending the application to the Trustee, please ensure the following checklist has been completed.

Check one of the following that matches the basis on which you are requesting flag lifting:

- Flag Lifting under a Flag Lifting Agreement – go to Section A.
- Flag Lifting under a Court Order Terminating the Operation of a Flag – go to Section B.

Section A – Flag Lifting under a Flag Lifting Agreement

- Please attach an original or attested* copy of the Flag Lifting Agreement which includes:
- A. The Flag Lifting Agreement signed by both spouses
 - B. A statement (in respect of each spouse) to the effect that each spouse has been provided with independent legal advice from a legal practitioner before signing the Agreement as to the legal effect of the Agreement.

- A certificate must be attached to the Flag Lifting Agreement (one in respect of each spouse) signed by the person who provided the legal advice, and stating that the advice was provided.
- Each spouse has been provided with a copy of the Flag Lifting Agreement.

The following documentation must be attached if you are the legal representative of the deceased member or deceased spouse or ex-spouse of the member of the superannuation plan:

- Please attach an original or attested copy of Grant of Probate or Letters of Administration.

Section B – Flag Lifting under a Court Order Terminating the Operation of a Flag

- Please attach an original or attested copy of the Court Order.

Please forward all these requirements to the appropriate correspondence address below. A separate application should be submitted for each Trustee. For requests relating to MasterKey Custom Self Managed Super please forward these requirements to a Trustee of your Fund.

MLC Nominees Pty Limited
MLC Investments Limited
Ground Floor, 105–153 Miller Street
North Sydney NSW 2060

National Australia Superannuation Pty Ltd
National Australia Bank Limited
800 Bourke Street
2367UB
Docklands VIC 3008

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

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Payment Split Checklist



The information below is prescribed in accordance with PART VIII B (Superannuation Interest) AND PART VIII A A (Orders & Injunctions binding third parties) FAMILY LAW ACT 1975

MLC Limited
 ABN 90 000 000 402
 MLC Investments Limited
 ABN 30 002 641 661

National Australia Financial
 Management Limited (NAFiM)
 ABN 56 000 176 116
 National Australia Trustees
 Limited ABN 80 007 350 405

MLC Lifetime Company Limited
 ABN 94 000 000 420
 National Australia Bank Limited
 ABN 12 004 044 937

Name of member or owner whose interest is to be split

born on, (date of birth)

 / /

of, (postal address)

 Postcode

Name of eligible superannuation plan or non-superannuation product in which interest is to be split

Name of person submitting this request

Before sending the application to the Trustee or legal entity, please ensure the following checklist has been completed.

Check one of the following that matches the basis on which you are requesting a Payment Split:

- Flag Lifting and Payment Split under a Flag Lifting Agreement – go to **Section A**.
- Flag Lifting under a Flag Lifting Agreement and Payment Split under a Superannuation Agreement – go to **Section B**.
- Payment Split under a Superannuation Agreement – go to **Section C**.
- Payment Split and/or property transfer under a Court Order – go to **Section D** (over page).

Requirements for Sections A to C

| A | B | C | A CHECKBOX BESIDE AN ITEM INDICATES THAT THIS ITEM MUST BE COMPLETED BEFORE THE TRUSTEE CAN CARRY OUT YOUR INSTRUCTIONS |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | | Please attach an original or attested* copy of the Flag Lifting Agreement which includes: |
| <input type="checkbox"/> | <input type="checkbox"/> | | 1 The Flag Lifting Agreement signed by both spouses. |
| <input type="checkbox"/> | <input type="checkbox"/> | | 2 A statement (in respect of each spouse) to the effect that each spouse has been provided with independent legal advice from a legal practitioner before signing the Agreement as to the legal effect of the Agreement. |
| <input type="checkbox"/> | | | 3 The Flag Lifting Agreement identifying the member's superannuation interest. |
| <input type="checkbox"/> | | | 4 The Flag Lifting Agreement specifying whether it is to be a fixed dollar base amount, formula or percentage split. |
| <input type="checkbox"/> | | | 5 If the Flag Lifting Agreement specifies a formula split, a document setting out a dollar value base amount which has been calculated using the formula set out in the Agreement. |
| <input type="checkbox"/> | | | A certificate must be attached to the Flag Lifting Agreement (one in respect of each spouse) signed by the person who provided the legal advice, and stating that the advice was provided. |
| <input type="checkbox"/> | <input type="checkbox"/> | | Each spouse has been provided with a copy of the Flag Lifting Agreement. |
| | <input type="checkbox"/> | <input type="checkbox"/> | Please attach an original or attested copy of the Superannuation Agreement which includes: |
| | <input type="checkbox"/> | <input type="checkbox"/> | 1 The Superannuation Agreement signed by both spouses. |
| | <input type="checkbox"/> | <input type="checkbox"/> | 2 The Superannuation Agreement identifying the member's superannuation interest. |
| | <input type="checkbox"/> | <input type="checkbox"/> | 3 The Superannuation Agreement specifying whether it is to be a fixed dollar base amount, formula or percentage split. |
| | <input type="checkbox"/> | <input type="checkbox"/> | 4 If the Superannuation Agreement specifies a formula split, a document setting out a dollar value base amount which has been calculated using the formula set out in the Agreement. |
| | <input type="checkbox"/> | <input type="checkbox"/> | 5 A statement (in respect of each spouse) to the effect that each spouse has been provided with independent legal advice from a legal practitioner before signing the Agreement, as certified in an annexure to the Agreement. |

(this Section continued overleaf)

Requirements for Sections A to C (continued)

| A | B | C | A CHECKBOX BESIDE AN ITEM INDICATES THAT THIS ITEM MUST BE COMPLETED BEFORE THE TRUSTEE CAN CARRY OUT YOUR INSTRUCTIONS |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6 An annexure to the Agreement (one in respect of each spouse) stating that the spouse has been provided with legal advice from a legal practitioner on: |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | i) the effect of the agreement on the rights of that party; and |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7 The annexure to the Agreement contains a certificate (one in respect of each spouse) signed by the person providing the independent legal advice stating that the advice was provided. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | A statement from the spouse serving the request for splitting that the Financial Agreement of which the Superannuation Agreement is included as a part, is still binding on both the parties. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The following documentation must be attached if you are the legal representative of the deceased member or deceased spouse or ex-spouse of the member of the superannuation plan: |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Original or attested copy of Grant of Probate or Letters of Administration. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Please attach an original or attested copy of the Decree Absolute or a written Separation Declaration. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If you are attaching an original or attested copy of the Decree Absolute there are no further requirements. If you are attaching a written Separation Declaration continue with the requirements below. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The Separation Declaration signed by at least one of the spouses. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The Separation Declaration signed by the last spouse to sign it not more than 28 days prior to its service on the Trustee. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the superannuation interest which is to be subject to a Payment Flag is less than or equal to the ETP threshold (e.g. for the year ending 30 June 2004, this is \$123,808) your Separation Declaration must state that the spouses are married, but are separated, at the time when the declaration is signed. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the superannuation interest which is to be subject to a Payment Flag is in excess of the ETP threshold (e.g. for the year ending 30 June 2004, this is \$123,808) your Separation Declaration must state that: |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1 the spouses are married; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2 the spouses separated and thereafter lived separately and apart for a continuous period of at least 12 months immediately before the time when the declaration is signed; and |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3 in the opinion of the spouse (or spouses) signing the declaration, there is no reasonable likelihood of cohabitation being resumed. |

SECTION D

Payment Split and/or property transfer under a Court Order

- Trustee or legal entity was accorded procedural fairness prior to order being obtained.
- Please attach an original or attested* copy of the Court Order (please note that a Court Order must be dated on or after 28 December 2002 for superannuation products and on or after 17 December 2004 for non-superannuation products).

Please forward all these requirements to the appropriate correspondence address below. A separate application should be submitted for each Trustee. For requests relating to MasterKey Custom Self Managed Super please forward these requirements to a Trustee of your Fund.

MLC Nominees Pty Limited
 MLC Investments Limited
 MLC Limited
 MLC Lifetime Company Limited
 Ground Floor, 105–153 Miller Street
 North Sydney NSW 2060

National Australia Superannuation Pty Ltd
 National Australia Bank Limited
 National Australia Financial Management Limited (NAFiM)
 800 Bourke Street
 2367UB, Docklands VIC 3008

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

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Where to get help

For more information call the Service Centres listed below, or contact your adviser.

| | |
|---|--------------|
| MLC MasterKey Service Centre | 133 433 |
| MLC MasterKey Business Super Service Centre | 132 340 |
| MLC Lifetime Service Centre | 133 771 |
| MLC Protection Services | 133 442 |
| National Australia Financial Management Service Centre | 132 295 |
| MasterKey Custom Adviser Services | 1800 647 009 |
| OneSource Service Centre | 1800 678 848 |
| The Employee Retirement Plan Service Centre | 1800 803 446 |

105-153 Miller Street
North Sydney, NSW 2060

52684 MLC 12/04



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