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New law helps super visibility in a divorce

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The federal government has passed a new law that will improve the visibility of superannuation assets in family law proceedings, allowing more partners to claw back what is rightfully theirs if they are going through a messy divorce.

The legislation allows the Australian Taxation Office (ATO) to release super information to a family law court upon request.

To obtain this information, an applicant would have to be a party to a family law property proceeding and apply to the court registry to request their former partner's super information, which is held by the ATO.

"These amendments will make it harder for parties to hide or under disclose their superannuation assets in family law property proceedings, and will reduce the time, cost and complexity for parties seeking information about their former partner's superannuation," says Superannuation Minister Jane Hume. "Access to this information will better support separated couples to divide their property on a just and equitable basis."

It is welcome news for many, given that getting full visibility of super assets can be complex, often requiring parties to go on fishing expeditions using subpoenas.

The law may also go some way to addressing the equality to super balances of women nearing retirement, which are, on average, 42 per cent lower than those of men.

"For many Australians, super is the largest asset they own after the family home," says Super Consumers Australia director Xavier O'Halloran. "One person not disclosing their super in divorce proceedings can have disastrous financial consequences for the other."

More than 60 per cent of women suffer from financial hardship within 12 months of separation.

This is often perpetuated by a lack of financial disclosure by a former partner, meaning women receive a smaller share of property to which they are entitled.

'These amendments will make it harder for parties to hide or underdisclose their superannuation assets.'
Superannuation Minister Jane Hume

SPLITTING SUPER

While the super pool held between two parties is considered joint property, that does not mean that both parties walk away with a 50/50 split. "The family court will look at what is fair and equitable for both parties, which will be signed off by the courts through a consent order or a binding financial agreement," explains Jordan Vaka, of Planning Solo, which provides divorce advice.

Considerations include what you brought into the marriage, what you contributed during the marriage, capacity after the marriage and number of dependents.

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Stay-at-home parents who have not worked for some years are recognised as contributing equally, he adds.

The same lens is applied to both married and de facto relationships. However, the rules do not apply to de facto couples in Western Australia.

A recent study by Relationships Australia found that family therapists and lawyers have noted a jump in clients seeking counselling for divorce, while 42 per cent of people admit they have experienced a negative change in their relationship with their partner resulting from hardship conditions emerging during the pandemic.

COVID-19 restrictions have also led to the cancellation of many marriages. Australian Bureau of Statistics data from January to June 2020 show a 31.9 per cent decrease in unions.

Partners Wealth Group head of wealth Patrick Barry has seen a 30 per cent increase in business from couples separating in the past 18 months. "COVID-19 has definitely contributed to that," he says.

Superannuation Minister Jane Hume says better access to information will help separated couples "divide their property on a just and equitable basis". Photo: Alex Ellinghausen

Barry says it is important to remember that the way super is split during a divorce can be negotiated.

"There's no hard-and-fast formula for calculating how super should be split," he says.

However, there are complications. A commercial property held in super cannot be split, while the split for self-managed super funds can also be tricky, he says.

SUPER VISIBILITY

A person cannot exclude a partner from the splitting decision-making process, or ignore requests to redeem assets or roll super into another fund, Barry says.

Planning Solo's Vaka says funds are usually transferred into your super fund within 28 days of a divorce settlement.

He also advises new divorcees to contact their fund and change their insurance beneficiary nomination.