



# Family law and your super

## Who should read this?

- Any member of the Defence Force Retirement Benefits (DFRB) Scheme, or the Defence Force Retirement and Death Benefits (DFRDB) Scheme and the Defence Force Productivity Benefits Scheme, whether a contributor, pensioner or preserved benefit member,
- who is in the process of divorcing or separating,
- or intends to enter into a superannuation agreement with a person.
- A spouse of a DFRB or DFRDB member, who is in the process of divorcing, or separating from, the member.
- A person who intends to enter into a superannuation agreement with a DFRDB or DFRB member.

## How does Family Law apply to your super?

From 28 December 2002, changes to the *Family Law Act 1975* came into effect. The new legislation allows for superannuation to be split on marriage breakdown either by:

- a court order (i.e. an order made by a court exercising Family Law jurisdiction such as the Family Court or the Federal Magistrates Court)
- or
- a superannuation agreement between the parties (i.e. an agreement between the parties that meets the requirements in the Family Law Act).

From 18 May 2004, changes to the legislation governing the DFRB, DFRDB and Defence Force Productivity Benefits Schemes came into effect. These changes allow a separate superannuation interest to be created for a member's spouse or former spouse once a valid court order or superannuation agreement has been received.

The effect of the legislation is that:

This information sheet provides an overview only. For more detailed information on how Family Law splitting works in the DFRB or DFRDB you should refer to the publication *Family Law and Splitting Super—How It's Done and What Happens Next*.

These new laws create a framework for splitting superannuation if required. Splitting is not mandatory, but if a superannuation interest is to be split by agreement or court order, then a separate superannuation interest will be created.



Defence Force  
Retirement & Death  
Benefits Scheme

- A member's interest will be split and a separate interest set up for the spouse (or former spouse) of the member, who becomes an associate.
- Member and associate interests will accrue separately, or, if the member is already receiving a DFRB or DFRDB pension, be paid separately.
- An associate benefit will be payable immediately (if the member is already receiving a DFRB or DFRDB pension) or when the release conditions provided for under the *Scheme Legislation and Superannuation Industry (Supervision) Act 1993* and associated legislation are satisfied, e.g. when a person has reached preservation age and has left the workforce, or on total and permanent incapacity or on death.

## Who do the new superannuation splitting laws apply to?

The new superannuation splitting laws apply to people who:

- have been married and have divorced, or are still married but are separated and
- make arrangements after 28 December 2002 to settle their property arrangements by a court order or superannuation agreement.

The superannuation splitting laws also apply to people who have entered a superannuation agreement, either before or during a marriage, or after separation, which prescribes how, in the event of marriage breakdown, superannuation interests are to be split.

## Who is not covered by the new superannuation splitting laws?

The superannuation splitting laws do not apply to persons in a de facto relationship because such relationships are dealt with under State and Territory laws rather than Commonwealth laws.

The superannuation splitting laws also do not apply to persons whose property arrangements have been legally finalised before the new laws came into effect on 28 December 2002, unless the Court sets aside an earlier order and makes a new order under Part VIII B of the Family Law Act after that date.

## In what circumstances won't a separate superannuation interest be created?

The laws do not allow creation of a separate interest in the schemes where:

- a court order or superannuation agreement was made on or after 28 December 2002 but the member's benefit became payable before 18 May 2004
- either party to a court order or superannuation agreement dies before the order or agreement takes effect,

or

- a court order or superannuation agreement does not meet the legal requirements of the scheme—e.g. the proposed amount for the spouse of the member is greater than the value of the benefit.

In these cases the default arrangements under the Family Law (Superannuation) Regulations 2001 apply. This means that the non-member spouse's entitlement would only be recorded as a notional debt against the member's benefit and would only be payable to the non-member spouse when the member claimed his or her benefit.

## What are the differences between a court order and a superannuation agreement?

In general, parties can either seek a court order, or enter a superannuation agreement, that specifies how a scheme member's superannuation interest is to be split. For family law purposes the DFRDB Scheme and the Productivity Benefit Scheme established under the *Defence Act 1903* are regarded as two separate schemes, so any order or agreement should deal separately with superannuation interests in both.

### Court orders

Superannuation benefits may be split where:

- the parties agree and they obtain a consent order from the court
- or
- the parties cannot agree and the Court decides the matter.

In either situation, the court order is obtained from a Court exercising family law jurisdiction as part of a property settlement order. Trustees are bound by a court order that meets legal requirements.

## Superannuation agreements

A superannuation agreement can be entered into before marriage, during marriage or after separation.

A superannuation agreement served on the Trustees after separation or divorce

is binding if it complies with the legal requirements of the Family Law Act and has attached:

- certificates of independent legal advice for each party
- and
- a copy of either the decree absolute (or divorce order) ending the marriage or a separation declaration. A separation declaration is available from the CSC website.

### A flagging order or flagging agreement

In some circumstances, parties may feel that they want to wait before seeking a court order or making a superannuation agreement to split superannuation. To prevent the Trustees paying a benefit in the meantime, the splitting laws allow for a flagging order or flagging agreement to be put in place.

## Are there any superannuation interests that can't be split by a court order or superannuation agreement?

The following superannuation interests or payments are 'unsplittable':

- Any interest that has a withdrawal benefit of less than \$5,000.
- Certain payments made to eligible children after the death of a member spouse.

## What is involved in superannuation splitting?

- Step 1: Obtaining information about a member's super.
- Step 2: Obtaining a valuation of a member's super.
- Step 3: Seeking a court order (including serving a draft order on the Trustees) or entering a superannuation agreement.
- Step 4: Serving the final order or superannuation agreement on the Trustees.

## What happens next?

- Step 5: A new record is created for the associate member (the non-member spouse).
- Step 6: The member benefit is reduced (or flagged for reduced entitlement).
- Step 7A: If the member is already receiving a DFRB or DFRDB pension:
  - Separate split DFRB or DFRDB pension payments are made to the member and the associate or
- Step 7B: If the member is a contributor or has a deferred benefit:
  - Separate accounts are kept for the member and associate member until
  - the member and associate member individually become eligible for payment of the benefit.

To find out more information go to the publication *Family Law and Splitting Super—How It's Done and What Happens Next*.

### Important note:

The legal requirements include providing a copy of the draft order to the Trustees and allowing 28 days for comment. Failure to follow this procedure may result in further court proceedings.

## Frequently asked questions

### What privacy rules apply to releasing information for Family Law purposes?

Family Law matters are generally covered by the Privacy legislation requirements which apply to the Schemes. However, the Trustees are required to release certain information to a member of the scheme, or to a spouse of the member, for Family Law purposes. This will happen when a Family Law Court Form 6 declaration, together with the fee payable, is lodged by the member or spouse of the member.

The Family Law legislation prohibits the Trustees from providing any indication to either party, or their representatives, that a request has been made for information for Family Law purposes. Release of a member's address or non-member spouse's address (including postal addresses) is prohibited.

### Where can members or spouses get more information about superannuation splitting?

If you are affected by this legislation we suggest that you seek legal advice, and/or advice from a licensed financial planner. The following sources of information are also available:

DFRDB Information Officers

Telephone: 1300 001 677

Attorney-General's Department

**ag.gov.au**

Family Court

**familycourt.gov.au**

ATO Superannuation Info Line

Telephone: 13 10 20

### How can I get more information?



**EMAIL** [members@dfldb.gov.au](mailto:members@dfldb.gov.au)

**PHONE** 1300 001 677

**FAX** 02 6272 9613

**MAIL** DFRDB  
GPO Box 2252  
Canberra ACT 2601

**WEB** [csc.gov.au](http://csc.gov.au)