



Family law and super – overview

Who should read this?

- Any member of the PSS, whether a contributor, pensioner or preserved benefit member, who:
 - is in the process of divorcing or separating or ending a de facto relationshipor
 - intends to enter into a superannuation agreement with a person.
- A spouse (including a de facto) of a PSS 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 PSS member.

How does Family Law apply to your super?

Under the *Family Law Act 1975*, superannuation can be split on the breakdown of a marriage or de facto relationship 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*).

It is important that you read the disclaimer at the bottom of this page.

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



Public Sector
Superannuation
Scheme

Legislation governing PSS allows a separate superannuation interest to be created in the scheme for a member's spouse or former spouse (including a de facto) once a valid family law court order or superannuation agreement splitting the member's interest in PSS has been received by Commonwealth Superannuation Corporation (CSC). The effect of the legislation is that:

- A member's interest will be split and a separate interest set up in PSS 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 pension, be paid separately
- An associate benefit is payable:
 - o if the member is already receiving a pension – as a pension, or
 - o when the release conditions provided for under the PSS 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
 - o on total and permanent incapacity, or
 - o on death.

These 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 usually will be created.

Who do the superannuation splitting laws apply to?

The superannuation splitting laws apply to people who:

- have been married and have divorced, or are still married but are separated
 - are in, or have been in, a de facto relationship
- and
- make arrangements to settle their property affairs by a court order or a 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 superannuation splitting laws?

The superannuation splitting laws do not apply to persons whose property arrangements have been legally finalised before the laws came into effect on 28 December 2002, unless the court sets aside an earlier order, and makes a new order under Part VIIIB 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 superannuation interest in PSS 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
- a court order or superannuation agreement does not meet the legal requirements of the scheme, or
- the amount to be split is more than the member's benefit.

In these cases the default arrangements under the *Family Law (Superannuation) Regulations 2001* apply.

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.

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. Commonwealth Superannuation Corporation, trustee of PSS is 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 can also be entered into by parties to a de facto relationship.

A superannuation agreement served on Commonwealth Superannuation Corporation after a 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 website at csc.gov.au

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 Commonwealth Superannuation Corporation 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 \$5000.
- 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 Commonwealth Superannuation Corporation) or entering a superannuation agreement.
- Step 4 Serving the final order or superannuation agreement on Commonwealth Superannuation Corporation.

Important note:

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

What happens next?

Step 5 A new record is created for the associate (the non-member spouse).

Step 6 The member benefit is reduced.

Step 7A If the member is already receiving a pension:

- separate split pension payments are made to the member and associate

or

Step 7B If the member is a contributor or has a preserved benefit:

- separate accounts are kept for the member and associate until the member and associate individually become eligible for payment of the benefit.

Valuation of the Super Interest

To get a valuation of the super interest, first you must obtain **Form 6** information about the member's interest from CSC. The cost is \$150.00 for members/pensioners and \$165 for non-member spouses. There is a Form 6 request form on the CSC website.

With the Form 6 information CSC provides, you can obtain a valuation of the interest from an actuary or experienced financial adviser.

Note: The value of the interest is not the amount on a person's annual member statement.

Please note
that CSC does
not provide
valuations

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. You will also obtain information from the following sources.

CSC Website

To find out more information go to the PSS publication *Family Law and Splitting Super – How It's Done and What Happens Next* available from the CSC website.

Customer Information Centre

Telephone: 1300 000 377
Fax: (02) 6275 7010
Email: members@pss.gov.au
Website: csc.gov.au

Attorney-General's Department

ag.gov.au (refer to 'other news and events—superannuation and family law')

Attorney-General's Department
Family Law Online website (familylaw.gov.au)

Family Court

familycourt.gov.au

ATO Superannuation Info Line

13 10 20

Public Sector Superannuation Scheme (PSS)

ABN: 74 172 177 893

Appendix

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 PSS. However, Commonwealth Superannuation Corporation is 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 Commonwealth Superannuation Corporation 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.

Can I request information for the purpose of a pre-nuptial agreement?

Yes. A member, or a person planning to marry or enter into a de facto relationship with a member, may request information for the purposes of entering into a pre-nuptial agreement. The process described in this publication should be followed to seek information and arrange a valuation for a pre-nuptial agreement. We recommend seeking legal advice before entering into a pre-nuptial agreement.

Can I split superannuation with my de facto partner if our relationship breaks down?

Yes. If you are not legally married, not related by family and meet the requirements for a de facto relationship under the *Family Law Act 1975*, then you may obtain a court order or enter into a superannuation agreement upon the break down of your relationship.

For more information and details on eligibility we recommend you seek independent legal advice.

What is my preservation age?

The law places restrictions on when you can access lump sums. One of these restrictions relates to you reaching your 'preservation age' and is in addition to the other restrictions on withdrawing your benefit.

You generally cannot access your entire benefit as a cash lump sum until you reach your preservation age.

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Is a lump sum payable to an associate a Superannuation Lump Sum Payment for tax purposes?

Yes. Growth phase lump sums are treated as a Superannuation Lump Sum Payment and taxed accordingly.

Is an associate PSS pension subject to PAYG tax?

Yes. Associate PSS pensions are subject to PAYG tax but tax concessions may apply.

Does the member spouse still have the responsibility for the payment of any surcharge debt after a family law split?

Yes. For members whose benefits are in growth phase (i.e. the member is a contributor or has a deferred benefit), the member will be responsible.

For members in payment phase who have chosen to discharge a surcharge debt by receiving a reduced PSS pension, the associate benefit will be based on the already reduced pension.

Can an associate make contributions to PSS?

No. The associate cannot make contributions to PSS.

Can an associate pay money from another superannuation fund into PSS?

No. The associate cannot pay in a transfer amount.

Can the member spouse's reduced entitlement be split again under another family law split?

Yes. The member spouse's reduced entitlement can be split again under another family law court order or superannuation agreement in the future.

Can the associate's entitlement also be split under another family law split?

Yes. The associate entitlement can also be split under another family law court order or superannuation agreement under Part VIIIB or Part VIIIB of the *Family Law Act 1975* in the future.

What happens when an associate member in receipt of an associate PSS pension dies?

If an associate member in receipt of an associate PSS pension dies, there is no residual benefit for beneficiaries. The benefit ends at that time.



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