

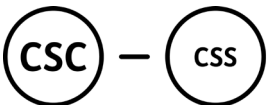


Australian Government

Commonwealth Superannuation Corporation

Family law and splitting super

How it's done and what happens next.



Commonwealth
Superannuation
Scheme

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Any financial product advice in this document is general advice only and has been prepared without taking account of your personal objectives, financial situation or needs. Before acting on any such general advice, you should consider the appropriateness of the advice, having regard to your own objectives, financial situation and needs. You may wish to consult a licensed financial advisor. You should obtain a copy of the **CSS Product Disclosure Statement** and consider its contents before making any decision regarding your super.

Commonwealth Superannuation Corporation (CSC) ABN: 48 882 817 243 AFSL: 238069 RSEL: L0001397
Trustee of the Commonwealth Superannuation Scheme (CSS) ABN: 19 415 776 361 RSE: R1004649

Reading and using this booklet

Who should read this booklet?

- Any CSS member, whether a contributor, pensioner or preserved benefit member, who:
 - is in the process of divorcing or separating from a marriage or de facto relationship
 - or
 - intends to enter into a superannuation splitting arrangement with a person.
- A spouse of a CSS member, who is in the process of divorcing, or separating from, the member.
- A person in a de facto relationship with a CSS member, who is in the process of separating from the member.
- A person who intends to enter into a superannuation splitting arrangement with a CSS member.

How do I use this booklet?

This booklet is designed to give you a step by step guide to how the superannuation splitting process works in CSS.

At the beginning of **Part A** you will find a list of the steps you need to follow and a summary of the legislation relevant to each step. At the beginning of **Part B** you will find a list of the things that will happen after your superannuation has been split and a summary of the relevant legislation. You will find more specific references to legislation in each of the steps.

For a glossary of terms used in this booklet please refer to **page 24**.

You can get more information online at csc.gov.au

Part A:

What steps are involved in splitting super?

- 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 CSC) or entering into a superannuation agreement
- Step 4. Serving the final court order or superannuation agreement on CSC

What is superannuation splitting?

Superannuation splitting can occur when a marriage or de facto relationship breaks down. It is not mandatory, but if a superannuation interest is to be split by agreement or court order, then a new and separate superannuation interest may be created.

Part A: What steps are involved in splitting super?

The following table sets out what must happen to split a superannuation interest.

| | What must happen | Legislation and forms |
|--------|--|---|
| Step 1 | Obtaining information about a member's super | Obtain a copy of Family law/property settlement application for superannuation information at csc.gov.au , <i>Family Law Act 1975</i> ; Family Law (Superannuation) (Provision of Information–Commonwealth Superannuation Scheme) Determination 2004 |
| Step 2 | Obtaining a valuation of a member's super | Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1 |
| Step 3 | Seeking a court order (including serving a draft order on CSC) or entering into a superannuation agreement | Sample court orders on the CSC website, <i>Family Law Act 1975</i> ; Family Law (Superannuation) Regulations 2001) Superannuation (Family Law–Superannuation Act 1976) Orders 2004 |
| Step 4 | Serving the final court order or superannuation agreement on CSC | Separation Declaration on the CSS website, Notice Under Reg 72 of Family Law (Superannuation) Regulations 2001, CSS Application for an associate pension, Tax File Number Declaration (TFND) (if splitting a payment phase (pension) interest) |

Step 1. Obtaining information about a member's super

We will provide information about a superannuation interest to help in negotiating a property settlement under the *Family Law Act 1975*. The information is used to calculate the value of a superannuation interest to assist in court proceedings or in the preparation of a superannuation agreement.

Who can apply for information?

Only 'eligible persons' may apply for this information. An 'eligible person' is defined in the *Family Law Act 1975* as:

- the member
- a spouse of the member (the non–member spouse)
- a person who intends to enter into a superannuation agreement (including a pre–nuptial agreement) with a member.

For the purposes of the *Family Law Act 1975* spouse means:

- a party to a marriage
- or
- a party to a de facto relationship

Obtaining a court order or entering a superannuation agreement

The parties may either agree on a superannuation split and obtain a consent order from the court or, if they cannot reach an agreement, allow the court to decide the matter.

Alternatively, parties may enter into a superannuation agreement that must meet the requirements of the *Family Law Act 1975*, on, or during their marriage or de facto relationship, or decide to enter one at the time of relationship break down, separation or divorce.

Should you apply for information about the member's benefit?

In any of the above circumstances the parties **may** seek information about the member's superannuation. This is not mandatory, however, it may be prudent to do so to provide the parties with the financial information necessary to value the superannuation interest and to ensure the agreement/court order is workable under CSS legislation. Parties should consider consulting their legal advisor to determine whether or not to obtain this information.

How to apply for information

An application for information should be lodged via the **Family law/property settlement–application for superannuation information form**. The form is available from csc.gov.au

Complete both the **Application for superannuation information form** and the **Form 6–declaration to accompany application for superannuation information form**, and lodge them together with the fee for the service provided. Contact details for this part of the process are on **page 17**.



Important Note: Section 90XZG of the *Family Law Act 1975* provides that false declarations served on CSC may be subject to a penalty of up to 12 months imprisonment.

We will then provide you with the information in order for your legal representative, financial advisor or actuary to calculate the value of the superannuation interest.

The information provided is **not a valuation** of the superannuation interest.

When you can apply for information

You may apply for information at any time by completing the **Family law/property settlement – application for superannuation information form**, and **Form 6 declaration**. It is not necessary for a separation to have occurred before starting this process.

Fee payable for providing super information

A fee of \$150 for members and \$165 (\$150 plus GST) for non-members is payable to CSS to gather this superannuation information made in accordance with family law legislation. This fee covers administrative costs and must accompany the request for information, otherwise the request will be returned.

The fee may be paid by cheque, money order or credit card (MasterCard or Visa).

What privacy rules apply to releasing information for family law purposes?

Family law matters are generally covered by the privacy legislation which apply to CSS. However CSC is required to release certain information to an eligible person, for family law purposes. This will happen when a **Family law/property settlement – application for superannuation information form**, **Form 6 declaration** together with the fee payable, is lodged by an eligible person.

The Family Law legislation prohibits CSC 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.

Step 2. Obtaining a valuation of a member's super

How is information about the superannuation interest used?

The information provided is used by the applicant, along with prescribed valuation factors, to calculate the value of the member's superannuation.

A valuation can be arranged by the applicant's legal representative or by consulting an actuary or financial planner. Generally the court requires a valuation before an order can be sought.

We do not undertake valuations.

What factors are used for valuing a CSS interest?

Scheme-specific factors and methodology are used for valuing a superannuation interest held in CSS.

The scheme-specific factors and methodology are set out in the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 (Volume 1) (as amended), available at csc.gov.au

Step 3. Seeking a court order (including serving a draft order on CSC) or entering into a superannuation agreement

The parties may either agree on a superannuation split and obtain a consent order from the court or, if they cannot reach an agreement, allow the court to decide the matter as part of a property settlement.

Alternatively, the parties can agree on a split of a superannuation interest in the event of a marriage or de facto relationship break down and enter into a superannuation agreement which meets the requirements of the *Family Law Act 1975*.

A court order or superannuation agreement must take account of the Family Law (Superannuation) Regulations 2001 (as amended), which provide that certain superannuation interests are not splittable (e.g. where the member's interest has a withdrawal benefit of less than \$5,000). In addition, for an order or agreement to result in the creation of a separate superannuation interest in CSS, the following criteria must be met:

- the operative time of the splitting order or agreement is on or after 28 December 2002
 - if the operative time of the splitting order or agreement is prior to 18 May 2004, and no benefits had become payable in respect of the interest before 18 May 2004
 - the member spouse's interest is not an orphan's CSS pension
 - both the member spouse and former spouse are alive at the time
- and
- if a base amount is allocated it is not more than the family law value or the scheme value of the interest.

If the separate interest legislation does not apply (whether because the above criteria are not met or the proposed split is unworkable within the terms of CSS legislation) the default arrangements under the *Family Law (Superannuation) Regulations* apply - i.e. the base amount or splitting percentage allocated to the non-member spouse in the family law court order or superannuation agreement remains 'tied' to the member spouse's entitlements and only becomes payable when that benefit becomes payable to the member.

Court order

Parties proceeding to a court order are generally required to provide a valuation to the court along with specified information. For more information, visit familycourt.gov.au Your legal representative will be able to advise on the relevant requirements.

Under the *Family Law Rules 2004* a proposed court order **must** be sent to us for assessment.

The *Family Law Rules* give CSC 28 days to consider the proposed court order and to make a decision whether or not to participate in the court proceedings. Contact details for this part of the process are on **page 17**. In most cases, CSC will not want to be involved in the proceedings. However, there may be some cases (e.g. if the proposed order seeks a release of a benefit at a time that is inconsistent with CSS's governing legislation) in which CSC will need to be involved.

Sample court orders

There are legal requirements under the *Family Law Act 1975* on what the court order must contain.

Sample court orders can be found at csc.gov.au to assist the parties and their legal representatives in drafting their own court order.

Please note that even if you use the sample court orders in preparing your own, you must still send a copy of the proposed order to us and allow 28 days for a response, before having the order issued by the court. This is a **mandatory requirement** under the *Family Law Act 1975*. Failure to give 28 days in which to consider the order before it is issued by the court may lead to further court proceedings at the expense of the parties.

The sample court orders are to be used as a guide and are **not a substitute for independent legal advice**.

Once the final order is made by the court, it should then be served on CSS (see **Step 4** for details regarding serving a court order).

Superannuation agreement

For a superannuation agreement to be binding, the parties must each obtain separate independent legal advice before the agreement is formally served on CSC (see **Step 4** regarding serving a superannuation agreement).

There is no legal requirement to provide an advance copy of a superannuation agreement. However, the parties or their legal representatives may think it prudent to do this so we can assess the agreement to see whether it is workable under CSS legislation. This will avoid difficulties that could occur later if a final superannuation agreement is served on CSC and is found to be unworkable under CSS legislation. If you wish to send an advance copy, contact details are on **page 17**.

Operative time of court orders and superannuation agreements

The 'operative time' is a term used in the *Family Law Act 1975* and means the date when the superannuation split takes effect:

For a court order, the operative time must be included in the order and:

- for cases where the benefit is in the growth phase (i.e. the benefit is still accruing because the member is contributing or has a preserved benefit), the operative time should be at least four business days after service of the order on CSC

or

- for cases where the benefit is in the payment phase (i.e. a CSS pension is currently being paid), the operative time should be at least seven business days after service of the order on CSC to allow time for the implementation of the order.

For a superannuation agreement, the operative time is always:

- four business days after service of the agreement on CSC.



Note: 'Growth phase', 'payment phase' and 'operative time' are terms used in the Family Law (Superannuation) Regulations 2001 and the *Family Law Act 1975*.

Step 4. Serving the final court order or superannuation agreement on CSC

A final court order or superannuation agreement that effects a split of CSS entitlements should be lodged with CSS.

Serving a court order or a superannuation agreement

A court order or superannuation agreement must be accompanied by:

- For payment phase cases (where a CSS pension is currently being paid):
 - an application form completed by the associate member providing the details required to set up a separate interest in CSS
 - and
 - an Australian Taxation Office (ATO) Tax File Number Declaration Form (TFND) completed by the associate member, only available from the ATO including through the ATO website at ato.gov.au

Failure to lodge these documents will delay the start of the fortnightly payments.

- For growth phase cases (where the benefit is still accruing because the member is contributing or has a preserved benefit):
 - a notice to CSC from the associate member under Regulation 72 of the Family Law (Superannuation) Regulations setting out the required personal information.

A superannuation agreement must also be accompanied by the following:

- if already divorced – a copy of the decree absolute
- if separated from a marriage or de facto relationship – a separation declaration stating that the couple are separated
- and
- a certificate signed by the legal representative for each party to the effect that they have provided independent legal advice.



Note:

1. This declaration may not be more than 28 days old at the time it is served on CSC and
2. If the value of the withdrawal benefit determined under the Family Law (Superannuation) Regulations exceeds the Low rate cap amount as per section 307-345 of the *Income Tax Assessment Act 1997* and Section 307-345 of the *Income Tax (Transitional Provisions) Act 1997* (for the financial year in which this declaration is being made), either or both parties must also declare that since the time of separation they have lived separately and apart for a continuous period of at least 12 months and there is no likelihood of cohabitation being resumed (go to ato.gov.au for information on the current thresholds).

Part B:

What happens next?

- Step 5. A new record is created for the associate
- Step 6. The member benefit is reduced (or is flagged for reduced entitlement)
- Step 7A. Split pension benefits to the member and associate (if the member is already receiving a pension – payment phase)
- Step 7B (i). Separate accounts and reporting (where the member is a contributor or has a preserved benefit – growth phase)
- Step 7B (ii). Payment of the benefit (where the member is a contributor or has a preserved benefit – growth phase)

Part B: What happens next?

The following table sets out what happens after a valid court order or superannuation agreement is served on CSC and a CSS superannuation interest is split.

If you have further questions about splitting a superannuation interest, see **Frequently asked questions** at the end of this booklet.

| | What happens next? | Legislation and forms |
|--|--|---|
| Steps 5 and 6 After the court order or agreement is received | | |
| Step 5 | A new record is created for the associate | Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1 <i>Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004</i> Superannuation (Family Law–Superannuation Act 1976) Orders 2004 |
| Step 6 | The member benefit is reduced (or flagged for reduced entitlement) | <i>Superannuation Act 1976</i> sub–section 146ME (2) <i>Superannuation Act 1976</i> sub–section 146ME (3) <i>Superannuation Act 1976</i> sub–section 146MG |
| STEP 7A If the member is already receiving a CSS pension (payment phase) | | |
| | Commencing split pension benefits to the member and associate | <i>Superannuation Act 1976</i> <i>Superannuation (Family Law–Superannuation Act 1976) Orders 2004</i> <i>Superannuation Act 1976</i> sub–section 146MG |
| STEP 7B If the member is a contributor or has a deferred benefit (growth phase) | | |
| | (i) Keeping separate accounts and reporting (ii) Paying the benefit | <i>Superannuation Industry (Supervision) Act 1993</i> <i>Superannuation Act 1976</i> Sections 146MA–146MD |

Step 5. A new record is created for the associate

Once a court order or superannuation agreement has been properly served we will put the order or agreement into effect. This will involve:

- calculating the non–member spouse entitlements based on the terms of the court order or superannuation agreement
- setting up a new record for the non–member spouse (who becomes an associate of CSS)
- notifying the associate of the action taken within 28 days of receiving a court order or superannuation agreement and either

- commencing CSS pension payments to the associate (if the member’s benefit is in the payment phase)

or

- keeping a separate account of the associate entitlement (if the member’s benefit is in the growth phase).

Splitting the benefit

Payment phase – when the member is receiving a CSS pension.

Where the member’s interest is in the payment phase, the associate member’s separate interest in the form of a CSS pension will be payable from the date the super split comes into effect. The pension will generally be an indexed pension but may include a non–indexed component if the member was receiving such a pension. If an associate receiving a pension dies, there is no residual benefit for beneficiaries. The benefit ends at that time.

Growth phase – when the member is still a contributor or is a deferred benefits member.

Where the member’s interest is in the growth phase, the associate deferred benefit will have both a taxed and an untaxed component. The member’s benefits will be reduced to reflect the associate’s separate interest.

Growth phase–taxed component

The taxed component of the associate deferred benefit will grow at Fund exit earning rates.

It will become payable as a lump sum when associate deferred benefits become payable to the associate member.

Growth phase–untaxed component

The untaxed component increases at the long–term Treasury bond rate. It will become payable as an indexed pension, without a residual benefit for beneficiaries, when associate deferred benefits become payable to the associate member.

Investment choice

An associate may make an investment choice for the taxed components of their associate deferred benefit. The associate may choose between the Default Fund (which is the option that will apply from the operative time) and the Cash Investment Option. A nomination to switch between investment options may be made at any time after the benefit has been split. Nominations received by the last Friday of the month will generally take effect on the following Wednesday. Visit csc.gov.au for more information about the cash investment option.

Calculating how the benefit is split

A court order or superannuation agreement under Part VIIIB or Part VIIAB of the *Family Law Act 1975* will specify how a superannuation interest is to be split. This will be either:

- a base (dollar) amount to be transferred to the non–member spouse or
- a splitting percentage of the member’s benefit to be transferred.

The **transfer amount** is the basis of the separate interest created for the non–member spouse, known as an associate deferred benefit. To set up the new record with the transfer amount, CSC will have regard to the base amount or splitting percentage and will calculate the family law value and the scheme value of the benefit.

The **family law value** is the valuation of the member’s benefit using the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1.

The **scheme value** is calculated in accordance with the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* and associated legislation, namely, the *Superannuation (Family Law–Superannuation Act 1976) Orders 2004*.

The calculations—where a base amount is specified

Where the family law value is equal to or more than the scheme value, the base (dollar) amount specified in the order or agreement will be the transfer amount.

Where the scheme value is more than the family law value, then the transfer amount will be calculated by multiplying the base amount by the scheme value and dividing by the family law value, as shown below:



Transfer amount

= scheme value x whole dollars in base amount ÷ whole dollars in family law value

The calculations where a splitting percentage is specified

If a splitting percentage is specified in the order or agreement, the transfer amount will be calculated by multiplying the specified percentage by the greater of the family law value or the scheme value.

If the splitting percentage affects a member’s pension, the separation amount (the amount allocated to the associate member) will be converted to a pension payable to the associate member.

This method of calculating the separation amount ensures that the non–member spouse receives the benefit of the higher of the two methods of valuation. The methods used to calculate the family law and scheme values are the same but the factors used to obtain the scheme value reflect the different actuarial assumptions that apply to CSS.



Note: Under relevant legislation, a superannuation split may result in an amount that is higher than the base amount or splitting percentage specified in the order or agreement being transferred to the non–member spouse.

Step 6. The member benefit is reduced (or flagged for reduced entitlement)

Once a court order or superannuation agreement has been properly served, we will put the order or agreement into effect. This will involve:

- calculating the member’s reduced entitlements based on the terms of the court order or superannuation agreement
 - flagging and amending the member’s record
 - notifying the member of the action taken within 28 days of receiving a court order or superannuation agreement and either
 - reducing CSS pension payments to the member (if the member’s benefit is in the payment phase
- or
- keeping a separate account of the member entitlement (if the member’s benefit is in the growth phase).

When is the member’s benefit reduced?

Payment phase

Where the member’s benefit is in the **payment phase** (i.e. the member is in receipt of a CSS pension), the member’s benefit is reduced with effect from the operative time of the family law split. We will implement the payment split as soon as possible after the operative time.

Growth phase

If the member’s benefit is in the growth phase (i.e. the member is a contributor or is a person to whom a deferred benefit may become payable in the future), the member’s benefit is not reduced at the operative time of the family law split. Instead, the member’s benefit will be reduced when it becomes payable.



Note: For growth phase splits: Although a member’s benefit is not reduced until it becomes payable, all benefit estimates and annual statements will reflect the impact of the family law split.

How is the member’s benefit reduced?

Reduction of lump sum components i.e. accumulated basic and supplementary contributions and accumulated employer (productivity) benefits.

The amounts allocated to the associate are based on the **transfer factor** (dividing the transfer amount by the scheme value).

The **transfer factor** is obtained by dividing the transfer amount (calculated in the previous section) by the scheme value. The member’s taxed components (e.g. member contributions and productivity contributions) are multiplied by the transfer factor to give the amount to be transferred to the associate member. Any remaining amounts needed to satisfy the transfer amount are drawn from the member’s untaxed component.

The member spouse's accumulated basic, supplementary and employer (productivity) contributions amounts are reduced by an amount of accumulated basic and supplementary contributions and employer (productivity) contributions equivalent to those allocated to the associate member at the operative time plus the earnings these amounts would have earned up to the date the member's benefit becomes payable.

Reduction of Pension Components

1. Where one or more components of the pension is based on final salary (e.g. age retirement, deferred pension, invalidity pension)

The pension is reduced to an amount calculated using the following formula:



Final annual rate of salary x (original pension amount ÷ final salary amount) - reduction factor)

The **final annual rate of salary** and **final salary amount** are, in effect, the same. The final salary amount is the number of whole dollars in the final annual rate of salary. This simply converts a dollar amount to a number.

The **original pension amount** is what the member's pension would have been without the reduction in respect of the family law split.

The **reduction factor** is a factor used to work out how much the benefit is to be reduced because of the family law split. It is calculated by multiplying a **service factor** by an **age factor** and by a **transfer factor** as follows:

- A service factor—this is based on the member's years and days of contributory service up to the operative time. The factors are based on the normal CSS pension accrual rates; i.e. 2% for the first 20 years, 1% for the next 10 years and 0.25% for each of the next 10 years up to a maximum of 40 years. Pro-rata rates apply for part years.
- An age factor – this is based on the age (in years) of the member at the date the benefit becomes payable. The age factor is 1 if the member is 65 and this is reduced by 0.02 for each year from 64 to 60 and then by 0.03 from 59 to 31. There is no reduction for invalidity retirement pensions so, in effect, the factor is 1. This applies to both standard and additional invalidity pensions. Pro-rata rates do not apply for part years.
- A transfer factor – which is calculated by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

2. Where the pension is based on a lump sum amount

If a member takes the benefit as a deferred pension, this pension is generally based on 2.5 times accumulated basic contributions times an age factor.

If the member's accumulated basic contributions have been reduced by the amount allocated to the associate member plus fund earnings then this, in turn, means that the deferred benefit payable to the member spouse is reduced accordingly.

If a member takes a lump sum only benefit (for example on retrenchment), again the employer part of the benefit is based on 2.5 times accumulated basic contributions. This benefit is, therefore, reduced because of the basic contributions allocated to the associate member.



Note: Under relevant legislation, a superannuation split may result in the member's benefit being reduced by an amount that is higher than the amount transferred to the non-member spouse.

Step 7A. Commencing split pension benefits to the member and associate member (if the member is already receiving a CSS pension—payment phase)

When is the associate benefit payable?

An associate CSS pension arising from the split of a member's benefit which is in the payment phase (i.e. the splitting of a pension) is payable with effect from the operative time.

The commencement date of the CSS pension will generally be the first available pension payday after the operative time provided CSC has received all the information necessary to commence payment. CSS pensions are paid fortnightly although this may vary to accommodate public holidays, especially around Christmas and New Year.

What benefits are payable?

If, at the operative time, a CSS standard pension is payable to the member, the associate member is also entitled to associate standard pension from the operative time, at the rate calculated under the *Family Law – Superannuation Act 1976 Orders 2004* by reference to the transfer amount.

If, at the operative time, a CSS additional pension is payable to the member, the associate member is also entitled to associate additional pension from the operative time, at the rate calculated under the *Family Law—Superannuation Act 1976 Orders 2004* by reference to the transfer amount.

When is the member benefit reduced?

A member's CSS pension arising from the split of a benefit will be reduced with effect from the operative time.

The actual commencement date of the reduced CSS pension will be the first available pension payday after the operative time although this may vary to accommodate public holidays, especially around Christmas and New Year.



Note: While the member and associate benefits are based on the member pension, the formula used to calculate the amount of each benefit has regard to the age and life expectancy of the parties. As a result, the sum of the split benefits may be more or less than the pension benefit previously paid to the member.

How are payment phase benefits increased?

The reduced member CSS pension and the associate pension are indexed in the same way as the member's pension was indexed prior to the family law split – i.e. twice yearly in January and July in line with changes in the Consumer Price Index (CPI) for the CSS CPI-indexed pension component of the benefit. Any part of the member benefit or associate benefit which is additional pension is a non-indexed pension and is not increased.

In January and July of each year, members and associates receive letters advising them of changes to their CSS pensions, if applicable.

Step 7B (i). Keeping separate accounts and reporting (where the member is a contributor or has a preserved benefit –growth phase)

How is the associate benefit increased in the growth phase?

The taxed components of the associated preserved benefits accrue earnings in accordance with Fund earning rates. An associate benefit will only accrue earnings up to the age of 65 and 3 months.

The untaxed component of the associate preserved benefit increases at the long-term Treasury bond rate between the operative time and the date when the associate pension becomes available.

How is the member's benefit increased in the growth phase?

The taxed **and** untaxed components of the member's benefit will be increased in the same manner as those components were increased prior to the split of the benefits.

As stated elsewhere, a member's benefit in the growth phase is not actually reduced at the operative time of the family law split. However, in order to accurately reflect the member's entitlement, any benefit estimates provided after the operative time of the split will be calculated having regard to the reduced entitlement of the member.

Where the member is a preserved benefit member at the time of the split, taxed components will accrue earnings in accordance with Fund earnings rates.

Annual member statements

The member and associate member will receive annual statements, which reflect the split benefit, in accordance with the requirements of the *Superannuation Industry (Supervision) Act 1993* (SIS).

If the operative time of the benefit split is before 1 July, we will send out a statement for the associate before the end of the calendar year and annually thereafter.

Where the operative time of the benefit split is after 1 July, the first statement will be sent out before the end of the following calendar year.

The member spouse will continue to receive annual statements in the normal manner.

A member or associate may request information on the value of his or her entitlement at any time by calling us on **1300 000 277**.

Step 7B (ii). Payment of the benefit (where the member is a contributor or has a preserved benefit –growth phase)

When is the benefit payable to the associate?

The benefit arising from the split of a member's benefit in the growth phase will become payable to an associate member in the circumstances set out on **pages 12 and 13**.

An associate member is eligible to claim a benefit from the date he or she reaches preservation age or earlier in the circumstances detailed on **pages 12 and 13**.

Where the associate member has not reached preservation age, eligibility to claim benefits is also subject to the Superannuation Industry (Supervision) legislation.

Where the associate member is under preservation age

| Situation | Options and conditions |
|--|--|
| Invalidity | <ul style="list-style-type: none">Lump sum refund of the taxed amounts (i.e. accumulated member and productivity components) at the time the benefit is paid and <ul style="list-style-type: none">A CSS pension based on the value of the untaxed component at the time the benefit is paid. Conditions: CSC must be satisfied that the associate member has become totally and permanently incapacitated in terms of section 54B of the <i>Superannuation Act 1976</i> . |
| Death before CSS pension payments have commenced | The entire benefit must be paid as a lump sum to the person's legal personal representative or, if no legal representative can be found, to an individual(s) that CSC determines. |
| Rollover to another super fund | The taxed component of the associate deferred benefit cannot be rolled out of CSS before it becomes payable. |
| Financial hardship or compassionate grounds | It is not possible to access CSS associate deferred benefit on hardship or compassionate grounds. |

Where the associate member is over preservation age

| Situation | Options and conditions |
|---|---|
| Date chosen by the associate or the associate's 65th birthday. | <ul style="list-style-type: none"> • A CPI indexed pension based on the value of the untaxed component at the time of claim. <p>and</p> <ul style="list-style-type: none"> • A lump sum refund of the taxed amounts (ie, accumulated member and productivity components) at the time the benefit is paid. <p>In order to claim a benefit you must meet the following conditions:</p> <ul style="list-style-type: none"> • The associate must have attained preservation age to access their benefit (pension and lump sum). <p>and</p> <ul style="list-style-type: none"> • They must have retired from the workforce to access the lump sum as cash. |
| Invalidity | Same options and conditions as before preservation age. |
| Death before CSS pension payments have commenced | Lump sum benefit payable to the legal personal representative. |

To be paid a benefit, the associate member must make a written application requesting that the benefits be paid and provide any necessary information to CSC.

A benefit application form is available by contacting CSS. Contact details are on **page 17**.

When an associate member nominates a date for payment of a CSS pension, the date nominated cannot be a date earlier than the date on which the application for benefit is made.



Commutation of small pensions

Where the value of a CSS pension is less than \$1,300 per annum (indexed twice yearly), the associate member may elect to commute the pension to a lump sum equivalent.

The amount of the lump sum payable is the amount of the untaxed benefit as accrued using the long-term Treasury bond rate from the operative date to the date the benefit becomes payable (keeping in mind that the taxed component already has to be taken as a lump sum). The lump sum amount will be reduced by any CSS pension paid before the election is made.

Where standard pension and additional pension are payable, the 'value' of the CSS pension refers to the value of the total pension payable.

The election must be made in writing to CSC no later than three months after the associate member becomes entitled to the pensions or pension.

Frequently asked questions

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 CSS pension subject to PAYG tax?

Yes. Associate CSS 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 CSS pension, the associate benefit will be based on the already reduced pension.

Can an associate make contributions to CSS?

No. The associate cannot make contributions to CSS.

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

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 under Part VIIIB or Part VIIIB of the *Family Law Act 1975* 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 CSS pension dies?

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

Glossary

Terms under Part VIIIB or Part VIIIB of the *Family Law Act 1975* or the *Family Law (Superannuation) Regulations 2001*

Base amount

A dollar figure set out in a court order or superannuation agreement that is allocated to the non-member spouse from the member spouse's superannuation entitlement.

Court order

An order issued by a court with family law jurisdiction such as the Family Court or the Federal Magistrates Court. A court order can be obtained by consent if the parties agree.

De facto relationship

The term has the meaning given by Section 4AA of the *Family Law Act 1975*. A person is in a de facto relationship with another person if:

- the persons are not legally married to each other
- the persons are not related by family
- and having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

For the purposes of this section, persons are related by family if:

- one is the child (including an adopted child) of the other
- one is another descendant of the other (even if the relationship between them is traced through an adoptive parent)

or

- they have a parent in common (who may be an adoptive parent of either or both of them).

Growth phase

The situation where the member spouse is a contributor or is a person to whom a deferred benefit may become payable in the future.

Member spouse

The party whose superannuation entitlement is being split under a family law splitting court order or superannuation agreement under Part VIIIB or Part VIIIB of the *Family Law Act 1975*.

Non-member spouse

The other party to the family law splitting order or superannuation agreement under Part VIIIB or Part VIIIB of the *Family Law Act 1975*.

Operative time

The date of effect of the split. This is the date specified in a court order; or four business days after a superannuation agreement is served on CSC.

Payment phase

The situation where the member spouse is in receipt of a pension from CSS.

Spouse

For the purpose of superannuation splitting under the *Family Law Act 1975*, spouse means:

- a party to a marriage
- or
- a party to a de facto relationship.

Superannuation Agreement

An agreement between the member spouse and non-member spouse that complies with certain legal requirements set out in the *Family Law Act 1975*.

Terms under the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*

Additional pension means a non-indexed CSS pension or part of a pension that is purchased with a member's contributions i.e. a pension taxed by the member and means any of the following:

- age or deferred age retirement pension
 - additional early retirement or deferred pension before age 65
 - spouse's additional pension
- or
- associate additional pension.

Associate member

The term used to describe the non-member spouse with an entitlement to CSS benefits following a family law split.

Associate deferred benefit

The associate member's entitlement in CSS as a result of the split of a member's benefit that is in growth phase under a court order or superannuation agreement under Part VIIIB or Part VIIIB of the *Family Law Act 1975*.

Associate deferred pension

The associate's entitlement in CSS as a result of the split of a member's benefit in the growth phase under a court order or superannuation agreement under Part VIIIB or Part VIIIB of the *Family Law Act 1975*.

Family law value

The value of the person's super under the Family Law (Superannuation) Regulations 2001 (using the scheme-specific factors and methodology approved by the Attorney-General in the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1.

Non-standard pension

Any pension that is not a standard pension or additional pension.

Scheme value

The value of the superannuation interest in the scheme for family law purposes using the factors set out in Ministerial orders.

Splitting percentage

A specified percentage, under section 90XT or 90XJ of the *Family Law Act 1975*, that is set out in a court order or superannuation agreement to be allocated to the non-member spouse.

Standard pension

Means a CSS indexed pension or part of a pension that is paid by the employer i.e. a pension which is not taxed by the member and means any of the following:

- pension payable to a member other than pre-assessment payment
- standard age retirement pension
- standard early retirement pension
- invalidity pension
- spouse's pension, other than spouse's additional pension
- extra spouse's pension
- associate standard pension

or

- associate deferred pension.
- Transfer amount

The amount that is being transferred to the non-member spouse as the starting value of their interest in CSS.

Terms under the *Superannuation Act 1976*

Total and permanent incapacity

A person is totally and permanently incapacitated if, because of a mental or physical condition, it is unlikely that the person will ever be able to work in any employment or hold any office for which the person:

- is reasonably qualified by education, training or experience
- or
- could become reasonably qualified after retraining.

Step 1. Contact details for:

Submitting 'requests for superannuation information' or family law court orders, superannuation agreements and related correspondence.

EMAIL formsandapplications@csc.gov.au

MAIL CSS
GPO Box 2252
Canberra ACT 2601

WEB csc.gov.au

 Please note, emailed court orders and superannuation agreements must be certified.

For general enquiries about family law and splitting super, please contact:

EMAIL members.aps@contact.css.gov.au

or

PHONE 1300 000 277



Where to 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 can also get information from:

CSS

Phone 1300 000 277

Federal Circuit and Family Court of Australia

fcfcoa.gov.au

ATO Superannuation Info Line

Phone 13 10 20



Email
members.aps@contact.css.gov.au



Phone
1300 000 277



Financial Advice
1300 277 777



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