



Australian Government

Commonwealth Superannuation Corporation

Family law and splitting super

How it's done and what happens next.



Defence Force
Retirement & Death
Benefits Scheme

Contents

Who should read this?	3
Where can you get more information about superannuation splitting?	3
Part A: What steps are involved in superannuation splitting?	4
Step 1 Obtaining information about a member’s super	4
Step 2 Obtaining a valuation of a member’s super	5
Step 3 Seeking a court order (including serving a draft order on the Trustees) or entering a superannuation agreement	5
Step 4 Serving the final court order or superannuation agreement on the Trustees	7
Part B: What happens next?	8
Step 5 A new record is created for the associate	9
Step 6 The member benefit is flagged for reduced entitlement.....	10
Step 7a Commencing split pension benefits to the member and associate (if the member is already receiving a pension – payment phase).....	11
Step 7b (i) Keeping separate accounts and reporting (where the member is a contributor or has a preserved benefit – growth phase).....	12
Step 7b (ii) Payment of the benefit (where the member is a contributor or has a deferred benefit–growth phase).....	12
Frequently asked questions	13
Basic terminology	14
Need more information?	15

Who should read this?

- Any member of Defence Forces Retirement Benefits Scheme (DFRB) or Defence Force Retirement and Death Benefits Scheme (DFRDB) and Defence Force Productivity Benefit Scheme, whether a contributor, pension recipient or deferred benefit member, who:
 - is in the process of divorcing or separating from a marriage
 - is in the process of separating from a de facto relationship
 - intends to enter into a superannuation agreement with a person.
- A spouse of a member, who is in the process of divorcing, or separating from, the member.
- A person in a de facto relationship with a member, who is in the process of separating from the member.
- A person who intends to enter into a superannuation agreement with a member.

What is a de facto relationship?

From 1 March 2009 the *Family Law Act 1975* (the Act) was amended to allow same-sex and opposite sex de facto partners access to the Family Law courts in regards to superannuation splitting upon separation. A de facto relationship is defined under section 4AA of the Act which provides that 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 circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

A de facto relationship can exist even if one of the persons is legally married to someone else, or in another de facto relationship.

Some circumstances the court considers when determining if a de facto relationship exists between two persons are:

- the duration of the relationship
- the nature and extent of their common residence
- whether a sexual relationship exists
- the degree of financial dependence or interdependence, and any arrangements for financial support between them

- the ownership, use and acquisition of property
 - whether the relationship is or was registered under a law of a State or Territory as a prescribed kind of relationship
 - the care or support of children
- and
- the reputation and public aspects of the relationship.

Where can you get more information about superannuation splitting?

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

DFRDB

1300 001 677

Attorney General's Department

ag.gov.au

Family Law Online website

australia.gov.au/information-and-services/public-safety-and-law/family-law

Federal Circuit and Family Court of Australia

fcfcoa.gov.au

ATO Superannuation Info Line

13 10 20

Please note that Commonwealth Superannuation Corporation (CSC), does not provide legal or personal financial advice.

Part A:

What steps are involved in splitting super?

	What must happen	Where to find more information
Step 1	Obtaining information about a member's super	Obtain a copy of Family Law Form 6 <i>Family Law Act 1975</i> Family Law (Superannuation) (Provision of Information Defence Force Schemes) 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 2)
Step 3	Seeking a court order (including serving a draft order on the Trustees) or entering a superannuation agreement	Sample court orders <i>Family Law Act 1975</i> Family Law (Superannuation) Regulations 2001 Actuarial Methodology and Factors
Step 4	Serving the final order or superannuation agreement on the Trustees	Separation Declaration Notice under Regulation 72 of the <i>Family Law (Superannuation) Regulations 2001</i> Tax File Number Declaration form Application for an Associate Pension

Step 1 – Obtaining information about a member's super

Commonwealth Superannuation Corporation (CSC), will provide information about a superannuation interest to help in negotiating a property settlement under the operation of 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
- 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 a superannuation agreement that must meet the requirements of the *Family Law Act 1975*. This can occur on, or during their marriage or de facto relationship, or parties may decide to enter into one at the time of relationship breakdown, separation or divorce.

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

In any of the above circumstances, the parties **may** seek information from CSC about the member's superannuation. It is not mandatory that they seek any information about the member's superannuation interest. 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 court order or agreement is workable under the relevant scheme 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 must be lodged on the Application for Superannuation Information (Form 6) form. The form is available from csc.gov.au



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

Complete both the application and the Declaration to accompany the application for superannuation information relating to DFRDB and Productivity Schemes – (appended to the **Form 6** application) and lodge them with DFRDB together with the fee for the service provided. Contact details for DFRDB are in **Box A** on the back page of this publication.

CSC will provide information about interests in DFRB or DFRDB and Productivity Benefit Schemes for the parties to give to their legal representatives in order to calculate the value of the superannuation interest.

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

Further information on the process and the information that DFRDB will provide in response to a request for information, can be found in a superannuation kit at the Family Law Online website at australia.gov.au/information-and-services/public-safety-and-law/family-law

When you can apply for information

Information can be sought at any time provided you are an eligible person and complete the **Form 6** declaration. It is not necessary for a separation to have occurred before starting the above process.

Fee payable for providing super information

A fee of \$150 for members and \$165 (\$150 plus GST) for non-members per calculation date is payable for the preparation of a response to a request for superannuation information made in accordance with the Family Law legislation. The fee 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).

This fee is intended to cover the cost of the administration work required to respond to requests for information.

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

Family law matters are generally covered by the Privacy legislation requirements that apply to the schemes. However, CSC are required to release certain information to an eligible person, for family law purposes. This will happen when a Family Law 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 also prohibited.

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

How is information about the superannuation interest used?

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

A valuation can be performed by consulting an Actuary or Financial Planner. Generally the court requires a valuation before an order can be sought.



Valuations are not undertaken by DFRDB.

What factors are used for valuing a superannuation interest?

From 18 May 2004 scheme-specific factors and methodology must be used for valuing a superannuation interest held in DFRB or DFRDB and Productivity Benefit Schemes.

The scheme-specific factors and methodology used to obtain the family law value of a superannuation interest are set out in the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 (Volume 2).

Step 3 – Seeking a court order (including serving a draft order on CSC) 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 as part of a property settlement.

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

For family law purposes, DFRDB and the Productivity Benefit Scheme established under the *Defence Act 1903* are regarded as two separate schemes. Therefore, if the benefit is still in the growth phase, and the parties wish to bind the superannuation interests in both schemes, there will need to be a separate order, or separate clauses within a single order or agreement, for each scheme.

A court order or superannuation agreement must take into account the *Family Law (Superannuation) Regulations 2001* which provide that certain payments in respect of a superannuation interest are not splittable (e.g. the member's interest has a withdrawal benefit of less than \$5000). In addition, for an order or agreement to result in the creation of a separate superannuation interest the following criteria must be met.

Criteria for a separate DFRB or DFRDB or Productivity Benefit

Scheme superannuation interest to be created if:

- the operative time of the splitting order or agreement is after 28 December 2002 and no benefits had become payable before May 2004
- the member spouse's interest is not a child or orphan's pension
- the member spouse and former spouse are alive at the operative time
- the base amount is not more than the family law value or the scheme value of the interest.

If the separate interest legislation does not apply (because the above criteria are not met or the proposed split is unworkable within the terms of the scheme legislation), the default arrangements under the Family Law (Superannuation) Regulations apply – that is, the base amount or percentage split 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 australia.gov.au/information-and-services/public-safety-and-law/family-law.

Your legal representative will also be able to advise on the relevant requirements.

Under the *Family Law Rules 2004* a proposed court order **must** be sent to DFRDB to assess on behalf of CSC. The *Family Law Rules 2004* give CSC 28 days to consider the proposed court order and to make a decision whether or not they wish to participate in the court proceedings. Contact details for this part of the process are in **Box B** on the back page of this publication. In most cases, CSC will not want to be involved in the proceedings. However, there may be some cases (for example, if the proposed order seeks a release of a benefit at a time that is inconsistent with the Scheme's governing legislation) in which CSC will need to be involved. Once the final order is made by the court, it should then be served on CSC (see **Step 4** for details regarding serving a court order).

Sample court orders

There are legal requirements under the Family Law Act as to what the court order must contain.

Sample court orders have been placed on the DFRDB website 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 court order, you must still send a copy of the proposed order to CSC and allow CSC 28 days to respond, before having the order issued by the court. This is a requirement under the *Family Law Rules 2004*. Failure to give CSC 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**.

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** for details regarding serving a superannuation agreement).

There is no legal requirement to provide an advance copy of the superannuation agreement to DFRDB. However, the parties, or their legal representatives may think it prudent to do this so that DFRDB can assess whether the agreement is workable under the scheme 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 scheme legislation. If you wish to send an advance copy, the contact details for DFRDB are in **Box B** on the back page of this publication.

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:

- should be objectively ascertainable. Court orders containing ambiguous operative times cannot be implemented
- for cases where the benefit is in the growth phase (that is, the benefit is still accruing because the member is contributing or has a deferred 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 (that is, a scheme 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 and 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 DFRB or DFRDB or Defence Force Productivity Benefit Scheme entitlements should be lodged with CSC.

Contact details for CSC are in **Box B** at the end of this publication.

Serving a court order or superannuation agreement

A court order or superannuation agreement must be accompanied by:

For **payment phase** cases (where a scheme pension is currently being paid):

- an Associate Pension Application Form completed by the associate providing the details required to set up a separate account in the scheme
- an Australian Taxation Office (ATO) Tax File Number declaration form available from the ATO including through the ATO website, ato.gov.au

Failure to lodge these documents will delay the commencement of the fortnightly pension payments to the associate.

For **growth phase** cases (where the benefit is still accruing because the member is a contributor or has a preserved benefit):

- a notice to CSC from the associate under Regulation 72 of the Family Law (Superannuation) Regulations setting out the required personal information

A superannuation agreement must be accompanied by the following additional documents:

- if already divorced – a copy of the decree absolute (or divorce order)

or

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



Note:

- A Separation Declaration may not be more than 28 days old at the time it is served on CSC.
- If the value of the withdrawal benefit determined under the Family Law Regulations exceeds the low rate threshold amount 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 (the low rate cap amount for 2007–2008 is \$140,000). Visit ato.gov.au/super for more information on the thresholds.

Part B: What happens next?

This table sets out what happens after a valid court order or superannuation agreement is served on CSC and a DFRB or DFRDB or Productivity Benefit Scheme superannuation interest is split. Go to the legislation link at csc.gov.au to access the relevant legislation.

What happens (straight away)	Where to find more information
Steps 5 & 6	After the court order or agreement is received
Step 5	<p>A new record is created for the associate</p> <p>Family Law (Superannuation) (Methods and Factors for valuing Particular Superannuation Interests) Approval 2003 Volume 2 <i>Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004</i></p> <p>MSB Act 1991 MSB Rules 92, 93 DFRB (Family Law Superannuation) Orders 2004 DFRDB Act Sections 49D & 49E DFRDB (Family Law Superannuation Orders) 2004 Actuarial Methodology and Factors</p>

What happens (straight away)	Where to find more information
Step 6	<p>The member benefit is reduced (or flagged for reduced entitlement)</p> <p><i>DFRDB Act 1973</i> <i>DFRB Act 1948</i> DFRB (Family Law Superannuation Orders) 2004 DFRDB (Family Law Superannuation Orders) 2004 Actuarial Methodology and Factors</p>
Step 7A	If the member is already receiving a pension (payment phase)
	<p>Commencing split pension benefits to the member and associate</p> <p><i>DFRDB Act 1973</i> <i>DFRB Act 1948</i> DFRB (Family Law Superannuation Orders) 2004 DFRDB (Family Law Superannuation Orders) 2004 Actuarial Methodology and Factors</p>
Step 7B	If the member is a contributor or has a preserved benefit (growth phase)
Step 5	<p>(i) Keeping separate accounts and reporting</p> <p><i>Superannuation Industry (Supervision) Act 1993</i> <i>MSB Act 1991</i>. Part 13 of the MSB rules</p> <p>(ii) Paying the benefit</p> <p>Superannuation Industry (Supervision) Regulations 1994</p>

If you have further questions about splitting a superannuation interest, refer to the **Frequently Asked Questions** on page 13 of this document.

Step 5 – A new record is created for the associate

Once a court order or superannuation agreement has been properly served, CSC, 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 either DFRDB (if in the payment phase) or of Military Superannuation and Benefits Scheme (MSBS) (if in the growth phase)
- notifying the associate of the action taken within 28 days of receiving a court order or superannuation agreement and either:
 - commencing scheme 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

Where the member’s interest is in the payment phase (that is, the member is in receipt of a pension), the separate interest will be an associate DFRB or DFRDB pension. The scheme pension will generally be an indexed pension. If a person in receipt of an associate scheme pension dies, there is no residual benefit for dependants. The benefit ends at that time. Benefits are payable for the life of the associate.

Growth phase

Where the member’s interest is in the growth phase (that is, the person is a contributor or is a person to whom deferred benefits may become payable in the future), the non–member spouse does not become a member of DFRDB. Instead, the non–member spouse becomes an associate B member of MilitarySuper with a benefit based on the transfer amount.

Any split Productivity Scheme entitlement is also allocated to MilitarySuper associate B benefit. Those benefits will be adjusted in accordance with MilitarySuper scheme rules and become payable, as a lump sum, to the associate member in one of a number of circumstances. The member’s benefits will be reduced to reflect this separate interest.

The associate B benefit accrues interest at the long–term bond rate between the operative time and the date when the associate benefit becomes payable.

* Calculating how the benefit is split

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

The terms:

A court order or superannuation agreement under Part VIII B or Part VIII AB 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 benefit in MilitarySuper. To set up the new record with the transfer amount, CSC will have regard to the base amount or percentage split and will need to 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 2).

The **scheme value** is calculated in accordance with the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* and associated legislation, namely, DFRB (Family Law Superannuation) Orders 2004, DFRDB (Family Law Superannuation Orders) 2004 and Defence Force (Superannuation) (Productivity Benefit) Determination.

The calculations: where a base amount is specified

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

Where the scheme value is higher 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. This may be expressed according to the following formula:

$$\text{Transfer amount} = \text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

The calculations: where a percentage split is specified

If a percentage split 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 percentage split effects a pension, the transfer amount will be converted to a scheme pension payable to the associate member.

Comment

This method of calculating the transfer amount ensures that both parties receive 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 the schemes.

* **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 flagged for reduced entitlement

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

- calculating the member's reduced entitlements based on the terms of the superannuation agreement or court order
- 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 scheme 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 interest is in the payment phase (that is, the member is in receipt of a pension), the member's benefit is reduced with effect from the operative time of the family law split. DFRDB 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 (that is, 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 to the member.

* How is the member's benefit reduced?

Reduction of later standard pension

(Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004)

Where a standard pension becomes payable to a member spouse at a time after the operative time:

To calculate the member entitlement it is necessary to first calculate the non-member spouse (NMS) percentage of the benefit using the formula:

$$(1) \text{ Hypothetical \% age entitlement} \times \frac{\text{NMS entitlement}}{100}$$

The hypothetical percentage entitlement is the percentage of the annual rate of salary that would have been attributable to the member spouse as pension immediately before the operative time if the member had been able to retire at the operative time.

This percentage is calculated using factors determined by an Actuary.

The non-member spouse entitlement is the percentage amount to be allocated to the non-member spouse under the terms of the splitting order or agreement.

The pension payable to the member spouse is then reduced to an amount calculated using the following formula:

$$(2) (\text{pre-split retirement \%age} - \text{NMS \%age}) \times \text{Member salary on retirement}$$

The non-member spouse percentage (NMS %age) is the proportion of the hypothetical pension entitlement of the member that relates to the non-member spouse calculated using the formula in (1) above.

The pre-split retirement percentage is the percentage of the annual rate of salary that would have been applicable to the member spouse at retirement if there had not been a payment split.

Reduction of lump sum components

(Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004)

Where a lump sum benefit becomes payable to a member spouse at a time after the operative time:

To calculate the member entitlement it is necessary to first calculate the non-member spouse amount of the benefit using the formula:

$$(1) \text{ NMS Amount} = \frac{\text{Hypothetical member amount} \times \text{Transfer amount}}{\text{Scheme value} + \text{surcharge debt}}$$

The hypothetical entitlement is the amount of the lump sum that would have been attributable to the member spouse immediately before the operative time if the member had been able to retire at the operative time. This amount is calculated using factors determined by an Actuary.

Transfer amount is the amount payable to the non-member spouse under the terms of the splitting order or agreement.

The lump sum payable to the member spouse is reduced to an amount calculated using the following formula:

(2) pre-split retirement amount – NMS amount

The non-member spouse (NMS) amount is the amount of the hypothetical entitlement of the member that relates to the non-member spouse calculated using the formula in (1) above.

The pre-split retirement amount is the lump sum that would have been applicable to the member spouse at retirement if there had not been a payment split.

Reduction of the Defence Act (Productivity Benefit Scheme) entitlements of DFRB members (Actuarial Methodology and Factors)

- At the operative time CSC will identify the 3% benefit and the Superannuation Guarantee (SG) top-up amount (if any).
- An adjustment factor is calculated as follows:

$$\text{Adjustment Factor} = \frac{\text{Transfer amount}}{\text{Scheme value} + \text{surcharge debt}}$$

- Amounts in the notional Productivity and SG accounts that should be established at the operative time are then obtained by multiplying each of the values in step (i) by the reduction factor identified in step (ii).
- The accounts accumulate with the interest rate applying to the productivity benefits until the time of payment.
- Where, at the time benefits are payable, no SG top-up is payable to the member (because the member has an entitlement to pension) the top-up amounts in the notional SG account are reset to zero.

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 (if the member is already receiving a pension – payment phase)

When is the associate benefit payable?

An associate pension arising from the split of a member's benefit which is in the payment phase (that is, the split of a pension) is payable with effect from the operative time (Section 80D of the *DFRB Act 1948* or Section 49E of the *DFRDB Act 1973*).

The commencement date of the scheme pension will generally be the first available pension payday after the operative time subject to receipt of a benefit application from the associate which provides CSC with all the information necessary to commence payment of the pension. Pensions are normally paid fortnightly on Thursdays although this may vary to accommodate public holidays, especially around Christmas and New Year.

* Commutation of Small Pensions

(Section 80C of the *DFRB Act 1948* and *DFRB Orders 2004* or Section 49C of the *DFRDB Act 1973* and *DFRDB Orders 2004*.)

Where the value of an associate standard pension is less than \$1300 per annum (indexed twice yearly from 1 January 2005), then the associate member may elect to commute the pension to a lump sum equivalent to the value of the transfer amount from which the pension is derived.

The election must be made in writing to CSC no later than three months after the non-member spouse becomes entitled to the pension.

What benefits are payable?

If, at the operative time, the standard scheme pension is payable to the member, then the associate is entitled to associate scheme pension from the operative time, at the rate calculated under *DFRB (Family Law Superannuation Orders) 2004* and *DFRDB (Family Law Superannuation Orders) 2004* by reference to the transfer amount.

Note: While the member and associate member 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 can be more or less than the pension benefit previously paid to the member.

When is the member's benefit reduced?

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

Due to administrative constraints and pension cut-off dates, please note that there may be a delay in reducing the member's pension to reflect the family law split, following the service of orders upon CSC. An indicative time frame is four to six weeks to implement the split. Members should be aware that any overpayments of the reduced pension will need to be repaid. Associates should be aware that there may be a delay in the commencement of the new pension for a similar timeframe.

How are payment phase benefits increased?

The reduced member benefit and the associate benefit are indexed in the same way the member's scheme pension benefit was indexed prior to the family law split – that is, twice yearly in January and July in line with increases in the Consumer Price Index (CPI).

In January and July of each year, members and associate members receive letters advising them of any increases to their pensions.

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?

The benefit of a non-member spouse arising from a member's interest in DFRDB is created as an associate B benefit in MilitarySuper.

The associate B benefit represents an untaxed employer component of the benefit and increases at the long-term Treasury bond rate between the operative time and the date when the associate benefit becomes payable.

How is the member's benefit increased?

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 annual member statements and benefit estimates provided after the operative time of the split will be qualified as being subject to a reduced entitlement for the member as a result of the split.

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, DFRDB will send out a statement for the associate member 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. However, details of entitlements after adjustment to take account of the family law split will be advised in a separate attachment to the annual statement.

A member or associate member may request information on the value of his or her entitlement at any time by contacting DFRDB on **1300 001 677**.

STEP 7B (ii) – Payment of the benefit (where the member is a contributor or has a deferred 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 (that is, the split of the entitlement of a DFRDB contributor or person with a deferred benefit) will become payable to an associate member in the circumstances set out in Division 13 of the MSB rules.

An associate is eligible to claim a lump sum benefit from the date he or she reaches preservation age and retires from the workforce, or in the circumstances detailed in the following tables. Where the associate 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"> take the entire benefit as a lump sum <p>Conditions: The CSC Board must be satisfied that the associate member has become totally and permanently incapacitated (see Part 12 of the MSB rules).</p>
Compassionate grounds	<ul style="list-style-type: none"> amount and conditions as approved by the Australian Taxation Office (ATO). <p>Conditions: If the ATO determines that the person satisfies the conditions of release on specified compassionate grounds under sub-regulation 6.19A of the <i>Superannuation Industry (Supervision) Regulations 1994</i>.</p>
Financial hardship	<ul style="list-style-type: none"> up to \$10,000 gross in any twelve month period <p>Conditions: If CSC are satisfied that the person is in severe financial hardship within the meaning of sub-regulation 6.01 (5) of the <i>Superannuation Industry (Supervision) Regulations 1994</i>.</p>
Roll over to another super fund	<p>An associate B benefit CANNOT be rolled over before age 55.</p> <p>The associate may roll over the entire benefit to another superannuation fund or retirement savings account on attaining age 55.</p>

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.

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 the 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 strongly suggest seeking legal advice prior to 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 breakdown 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 scheme pension subject to Pay As You Go (PAYG) tax?

Yes. Associate 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 (that is, 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 pension, the associate benefit will be based on the already reduced scheme pension.

Can an associate make contributions to the scheme?

No. The associate cannot make contributions to the scheme.

Can an associate pay money from another superannuation scheme into MilitarySuper?

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 VIII B or Part VIII AB of the *Family Law Act 1975* some time in the future. (This answer applies to DFRDB even though the member's benefit is not actually reduced until it becomes payable.)

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 VIII B or Part VIII AB of the *Family Law Act 1975* some time in the future.

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

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

Basic terminology

Key terms

Terms under Part VIII B 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 – has the meaning given by Section 4AA of the *Family Law Act 1975*.

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 order or superannuation agreement under Part VIII B or Part VIII AB of the *Family Law Act 1975*.

Non-member spouse – the other party to the family law splitting order or superannuation agreement under Part VIII B or Part VIII AB 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 4 business days after a superannuation agreement is served on a Trustee.

Payment phase – the situation where the member spouse is in receipt of a scheme pension from DFRB or DFRDB.

Specified percentage – a percentage amount set out in a splitting order under section 90XT or a payment split agreement under section 90XJ that is to be allocated to the non-member spouse.

Spouse – for the purpose of superannuation splitting under the *Family Law Act 1975* 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 *Defence Force Retirement and Death Benefits Act 1973*

DFRDB is Defence Force Retirement and Death Benefits scheme established under section 8 of the *DFRDB Act* and has responsibility for the general administration of DFRB, DFRDB and Defence Productivity Benefits Schemes.

It comes under the extended meaning of 'trustee' contained in section 90XDA of the *Family Law Act 1975*. All references in this publication to Trustees are references to the CSC Board.

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

Associate – the term used to describe the non-member spouse with an entitlement to DFRDB benefits following a family law split.

Associate pension – the associate member's entitlement in DFRDB as a result of the split of a member's benefit in payment phase under a court order or superannuation agreement under Part VIII B of the *Family Law Act 1975*.

Family law value – the value of the person's super under the Family Law (Superannuation) Regulations (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 2.

Non-standard pension – any scheme pension that is not a standard pension.

Scheme value – the value of the person's super using Ministerial Orders.

Standard pension – any scheme pension other than one that cannot be split (e.g. children's pension and orphans' pensions).

Splitting percentage – a percentage amount set out in a court order or superannuation agreement that is to be allocated to the non-member spouse.

Transfer amount – the amount that is being transferred to the non-member spouse as the starting value of their interest in the scheme.

Terms under the *Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1)*

Associate B benefit – the entitlement of an associate in MilitarySuper 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 VIII B of the *Family Law Act 1975*. An associate B benefit comprises employer untaxed component of the transfer amount.

Employer untaxed component of MilitarySuper transfer amount – is the amount based on a former DFRDB member's untaxed productivity benefit.

Transfer amount – the amount that is being transferred to the non-member spouse as the starting value of their interest in the scheme.

Total and permanent incapacity – a person is totally and permanently incapacitated: 'if CSC decides that by reason of the person's physical or mental incapacity, the person has become unlikely ever to be able to work in employment for which he or she is reasonably qualified by education, training or experience or for which the person reasonably be qualified after retraining'.



Need more information?

DFRDB

1300 001 677

Post:

GPO Box 2252,
Canberra ACT 2606

Fax:

(02) 6275 7010

Website:

www.csc.gov.au/dfrdb/

Email:

members@dfrdb.gov.au

Contact details for:

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

Email: formsandapplications@csc.gov.au

Mail: GPO Box 2252
Canberra ACT 2601

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

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

Email: members@dfrdb.gov.au

or

Phone: 1300 001 677