



Australian Government

Commonwealth Superannuation Corporation

Family law and splitting super

How it's done and what happens next.



Military
Superannuation &
Benefits Scheme

Contents

| | |
|---|----|
| Who should read this? | 3 |
| What is a de facto relationship? | 3 |
| Where can you get more information about superannuation splitting? | 3 |
| Part A What steps are involved in superannuation splitting? | 5 |
| Step 1 Obtaining information about a member’s super | 6 |
| Step 2 Obtaining a valuation of a member’s super | 7 |
| Step 3 Seeking a court order (including serving a draft order on the Trustees) or entering a superannuation agreement | 7 |
| Step 4 Serving the final court order or superannuation agreement on CSC..... | 8 |
| Part B: What happens next? | 9 |
| Step 5 A new record is created for the associate | 10 |
| Splitting the benefit | 10 |
| Step 6 The member benefit is reduced | 11 |
| When is the member’s benefit reduced?..... | 11 |
| Step 7A Commencing split pension benefits to the member and associate (if the member is already receiving a pension—payment phase) | 12 |
| 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) Paying a benefit to an associate (where the member is a contributor or has a preserved benefit) | 13 |
| Part C More information on your super | 15 |
| Frequently asked questions | 16 |
| Basic terminology | 17 |
| Need more information | 18 |

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 member of Military Superannuation and Benefits Scheme (MilitarySuper), whether a contributor, pensioner or preserved 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 MilitarySuper 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 MilitarySuper member.

What is a de facto relationship?

From 1 March 2009 the *Family Law Act 1975* 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 *Family Law Act 1975* 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
- 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
- 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 suggest that you seek legal advice and/or advice from a licensed financial planner. The following sources of information are also available:

| | |
|--|---|
| MilitarySuper | 1300 006 727 |
| 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 | fcoa.gov.au |
| ATO Superannuation Info Line | 13 10 20 |

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

This page is
intentionally blank

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 order or superannuation agreement on your scheme Trustees

Part A: What steps are involved in splitting super?

This table sets out what must happen to split a MilitarySuper superannuation interest. To access the relevant family law splitting legislation, follow the Learning Centre/ Legislation link at csc.gov.au

| | What must happen | Legislation and forms |
|--------|--|---|
| Step 1 | Obtaining information about a member's super | Obtain a copy of Family Law Application for Superannuation Information Form <i>Family Law Act 1975</i> Family Law (Superannuation) (Provision of Information—Military Superannuation and Benefits 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 2) Actuarial Methodology & Factors |
| Step 3 | Seeking a court order (including serving a draft order on CSC) or entering into a superannuation agreement | Sample court orders <i>Family Law Act 1975</i> Family Law (Superannuation) Regulations 2001 |
| Step 4 | Serving the final court order or superannuation agreement on CSC | Separation Declaration (for superannuation agreements) Notice Under Reg 72 of Family Law (Superannuation) Regulations 2001 Tax File Number declaration Application for an Associate Pension |

Step 1. Obtaining information about a member's super

CSC, is required to provide information about a superannuation interest to assist 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
- or
- a party to a de facto relationship

Obtaining a court order or entering a superannuation agreement

A spouse of the member, the other party to a family law splitting order or superannuation agreement, is referred to as a non-member spouse.

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 meets 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 a relationship breakdown, separation or divorce.

Once a member's benefit is split and the non-member spouse is entitled to a separate interest in the scheme, the non-member spouse is referred to as an associate of the scheme.

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

In any of the above circumstances, the parties **may** seek information from MilitarySuper 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 MilitarySuper 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. The form is available from csc.gov.au

Complete both the **Application for superannuation information** form and the **Declaration to Accompany Application for superannuation information (Form 6)** form which is included in the application form) and lodge them with MilitarySuper together with the fee for the service provided by MilitarySuper. Contact details are in **Box A** on the back page of this publication.

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

We will provide information that can be given to the parties' legal representatives in order to calculate the value of the superannuation interest.

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

Further information on the process, and the information that we 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 application form and **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 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 MilitarySuper. However, CSC are required to release certain information to an eligible person for family law purposes. This will happen when a Family Law application form and 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 MilitarySuper 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 an Actuary or Financial Planner. Generally the court requires a valuation before an order can be sought.

Note: Valuations are not undertaken by MilitarySuper.

What factors are used for valuing a Military Super interest?

From 18 May 2004 scheme specific factors and methodology must be used for valuing a 'superannuation interest held in MilitarySuper.

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), available from 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 marriage or de facto relationship breakdown 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 which provide that certain superannuation interests 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 in MilitarySuper, the following criteria must be met.

Criteria for a separate MilitarySuper superannuation interest to be set up

- the operative time of the splitting order or agreement is after 28 December 2002
- 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 a child's or orphan's pension
- both 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 (whether 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— 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 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 MilitarySuper to assess on behalf of CSC. *The Family Law Rules 2004* give CSC 28 days in which 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 (e.g. if the proposed order seeks a release of a benefit at a time that is inconsistent with MilitarySuper's governing legislation) in which CSC will need to be involved.

Sample court orders

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

Sample court orders are available from 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 28 days in which to respond before having the order issued by the court. This is a **mandatory requirement** under the Family Law Rules 2004. Failure to give CSC 28 days in which to consider the order on behalf of CSC 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 CSC (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** for details regarding serving a superannuation agreement).

There is no legal requirement to provide an advance copy of the superannuation agreement to MilitarySuper. However, the parties, or their legal representatives may think it prudent to do this so that we 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 MilitarySuper 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 (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 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 MilitarySuper.



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 the Trustees

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

Contact details are in **Box B** on the back page of this publication.

Serving a court order or a superannuation agreement

A court order or superannuation agreement must be accompanied by:

- For payment phase cases (where a 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 MilitarySuper
 - an Australian Taxation Office (ATO) Tax File Number Declaration form available from 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 contributing 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.

In addition to the above requirements, a superannuation agreement must be accompanied by the following 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 threshold amount for 2008–09 is \$145 000 – go to ato.gov.au/super for more information on the thresholds.)

Part B:

What happens next?

- Step 5. A new record is created for the associate
- Step 6. The member benefit is reduced
- Step 7A. If the member is already receiving a pension (payment phase)
- Step 7B. If the member is a contributor or has a preserved benefit (growth phase)
- Step 7B (i). Keeping separate accounts and reporting
- Step 7B (ii). Paying a benefit to an associate

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 MilitarySuper 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 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 2 <i>Military Superannuation and Benefits Act 1991 (MSB Act 1991)</i> Parts 12 and 13 of MilitarySuper rules Actuarial Methodology and Factors |
| Step 6 | The member benefit is reduced | <i>MSB Act 1991</i> Part 13 of the MilitarySuper rules Actuarial Methodology and Factors |
| STEP 7A If the member is already receiving a pension (payment phase) | | |
| | Commencing split benefit payments to the member and associate | <i>MSB Act 1991</i> Part 13 of the MilitarySuper rules Actuarial Methodology and Factors |
| STEP 7B If the member is a contributor or has a preserved benefit (growth phase) | | |
| | (i) Keeping separate accounts and reporting (ii) Paying a benefit to an associate | <i>Superannuation Industry (Supervision) Act 1993</i> <i>MSB Act 1991</i> Part 13 of the MilitarySuper rules Superannuation Industry (Supervision) Regulations 1994 |

If you have further questions about splitting a superannuation interest, read the frequently asked questions on page 32 of this document.

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 MilitarySuper)
- notifying the member and associate of the action taken within 28 days of receiving a court order or superannuation agreement and either:

- commencing 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). superannuation agreement and either

Splitting the benefit

Payment phase

Where the member's interest is in the payment phase (i.e. the member is in receipt of a pension), the separate interest will be payable from the operative time in the form of an indexed pension. If a person in receipt of an associate 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 (i.e. the person is a contributor or has a preserved benefit), the non-member spouse will become an associate and will be allocated:

- an associate A benefit, of units in MilitarySuper, to the value of any taxed Member and taxed employer components of the transfer amount and any Member untaxed component of the transfer amount (*MSB Act 1991*, Rule 90 (3))
- an associate B benefit for any employer untaxed component of the transfer amount (*MSB Act 1991*, Rule 90 (4)).

The components of any associate A or B benefit will be allocated in the same proportions as those components which existed in the member's original interest.

Those benefits will be adjusted in accordance with scheme rules and may be paid as a lump sum to the associate in one of a number of circumstances. The member's benefits will be reduced to reflect this separate interest. An associate will have a choice of investment for an associate A benefit.

Calculating how the benefit is split

(*Military Superannuation and Benefits Act 1991*, Parts 12 and 13 of MilitarySuper rules)

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. 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), less the balance of the member's surcharge debt account, if any.

The **scheme value** is calculated in accordance with the *Military Superannuation and Benefits Rules (Rule 98)* and the associated Actuarial Methodology and Factors less the balance of the member's surcharge debt account, if any.

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:

$$\begin{array}{r} \text{Transfer amount} = \text{Scheme value} \\ \times \\ \text{Whole dollars in base amount} \\ \hline \text{Whole dollars in family law value} \end{array}$$

To determine the associate A benefit, the member's taxed Member and Employer components and untaxed Member component, if any, at the operative time are added together. This figure is then multiplied by the transfer amount and divided by the scheme value and any surcharge debt to give the associate A benefit.

The associate B benefit is the transfer amount, less the associate A benefit.


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 greater of the family law value or the scheme value by the specified percentage.

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

Comment

While the non-member spouse receives the benefit of the higher of the two methods the reduction to the member's benefit is independent of which method is used to calculate the transfer amount. 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 MilitarySuper.

 Note: Under relevant legislation and scheme rules, 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.

Making an investment nomination

The associate A preserved benefit will be held in the form of units in one or more Investment Divisions of MilitarySuper and will increase or decrease with the unit value. An associate may exercise investment choice in respect of an associate A benefit.

This nomination may be made at the time the splitting court order or agreement is served on CSC or at any time thereafter.

Investment nominations cannot be made in respect of associate B benefits.

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

If the associate fails to make an investment nomination, or CSC cannot comply with the nomination, the benefit will be allocated to the default Investment Division. See the *MSB Act 1991* (Parts 12 and 13 of the Rules).

Step 6—The Member benefit is reduced

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 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 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** (i.e. 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. MilitarySuper 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 preserved benefit may become payable in the future), the member's benefit is reduced with effect from the operative time of the family law split.

How is the member's benefit reduced?

Reduction of lump sum and pension components *MSB Act 1991*, Rule 90 and Actuarial Methodology and Factors.

Scheme rules specify that the reduction of the member's benefit is to be made in accordance with benefit reduction factors and methodology developed and maintained by an actuary.

The methodology developed by the Australian Government Actuary for CSC involves the following steps:

Each of the following elements of the member's benefit, at the operative time, is identified:

- the taxed Member component
- the untaxed Member component
- the benefit multiple (for active members)
- the untaxed Employer component
- the taxed Employer component.

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 using the formula:

$$\frac{\text{Scheme value + surcharge debt – transfer amount}}{\text{Scheme value + surcharge debt}}$$

Each of the values identified in Step 1 is multiplied by the reduction factor calculated in Step 2 to give the benefit entitlements (before any reductions for surcharge) immediately after the operative time.

* **Note:** Under relevant legislation and scheme rules, 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 (ie the split of a pension), is payable with effect from the operative time.

The commencement date of the associate pension will generally be the first available pension payday after the operative time, subject to receipt of a completed benefit application from the non-member spouse 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. Associates should be aware that there may be a delay in the commencement of the new pension for a similar time frame.

What benefits are payable?

If, at the operative time, an indexed pension (other than a pension payable in respect of a child) is payable to the member, then the associate is entitled to an associate pension from the operative time, at the rate calculated under *MSB Act 1991*, Part 13 of the Rules by reference to the transfer amount.

* **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 can be more or less than the pension benefit previously paid to the member.

When is the member's benefit reduced?

A member's 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 eight weeks to implement the split. Members should be aware that any overpayments of the unreduced pension will need to be repaid.

How are payment phase benefits increased?

The reduced member pension and the associate pension are indexed in the same way as the member's pension – ie 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 associates receive letters advising them of any increase to their pensions.

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

An associate may request information on the value of his or her entitlement at any time by contacting an MilitarySuper on **1300 006 727**.

How is the associate benefit increased?

The associate A preserved benefit will be held in the form of units in one or more Investment Divisions of the Fund and will rise or fall in accordance with changes in unit prices.

An associate may change an investment nomination in respect of an associate A benefit at any time.

The associate B benefit represents the untaxed employer component of the benefit and is adjusted by 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 benefit.

The Maximum Benefit Limit in relation to a member whose benefits have been subject to a family law split will be calculated as if there had been no benefit reduction.

Annual member statements

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

If the operative time of the benefit split is before 1 July, we will send out an annual 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 annual statement will be sent out before the end of the following calendar year.

Where a separate interest cannot be created for the non-member spouse (see page 12 Criteria for a separate MilitarySuper superannuation interest) 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.

The non-member spouse will receive an annual statement containing the updated value of the amount originally allocated in the court order or superannuation agreement.

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 (i.e. the split of the entitlement of a MilitarySuper contributor or person with a preserved benefit) will become payable to an associate in the circumstances set out in Division 13 of the Rules under the *MSB Act 1991*.

An associate is eligible to claim a benefit from the date he or she reaches preservation age 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 is under preservation age

| Situation | Options and conditions |
|---|--|
| Invalidity | Take the entire benefit as a lump sum. Conditions: CSC must be satisfied that the associate has become totally and permanently incapacitated (<i>MSB Act 1991</i> , Part 12 of the Rules). |
| Death before pension payments have commenced | A lump sum benefit is payable Conditions: Any surviving spouse/s or eligible children will be entitled to benefit. If there are none the benefit is payable to a nominated dependent for whom the associate has made provision in his or her will or to the person's personal representative (See <i>MSB Act 1991</i> , Rule 88). |

| | |
|---|--|
| Early release on compassionate grounds | Amount and conditions as approved by the Australian Taxation Office (ATO) Conditions: If the ATO determines that the person satisfies the conditions of release on compassionate grounds under subregulation 6.19A of the Superannuation Industry (Supervision) Regulations 1994. |
| Early release on grounds of financial hardship | Up to \$10 000 gross in any twelve month period Conditions: If CSC are satisfied that the person is in severe financial hardship within the meaning of subregulation 6.01 (5) of the Superannuation Industry (Supervision) Regulations 1994. |
| Roll over to another super fund | The associate may, at any time before the benefit becomes payable, request CSC to rollover an associate A benefit. An associate B benefit CANNOT be rolled over before age 55. |

Where the associate 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"> Take the entire benefit as a lump sum, subject to reaching preservation age or Rollover the entire benefit*. Conditions: The associate must have reached his or her preservation age and retired from the workforce to take the benefit as a lump sum although both associate A and B benefits can be rolled over after age 55 and before reaching preservation age. |
| *Rollover to another super fund | The associate may rollover the entire benefit to another superannuation fund or Retirement Savings Account on or after attaining age 55. |
| Invalidity | Take the entire benefit as a lump sum.. |
| Death before pension payments have commenced | A lump sum benefit is payable Conditions: Any surviving spouse/s or eligible children will be entitled to benefit. If there are none the benefit is payable to a nominated dependent for whom the associate has made provision in his or her will or to the person's personal representative (See <i>MSB Act 1991</i> , Rule 88). |

*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.

**This page is
intentionally blank**

Part C:

More information on your super?

- Frequently asked questions
- Basic terminology
- Need more information?

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 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 suggest 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 Superannuation Lump Sum Payments and taxed accordingly. Please refer to the **Tax on lump sums** factsheet for more information.

Is an associate pension subject to Pay As You Go (PAYG) income tax?

Yes. Associate pensions are subject to PAYG tax, but tax concessions may apply. Please see the MilitarySuper factsheet **Taxation Concessions - Superannuation Pension Rebates** for more information.

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 preserved benefit), the member will be responsible. However, this is allowed for as part of the valuation process in calculating how to split the benefit.

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 pension.

Can an associate make contributions to Military Super?

No. The associate cannot make contributions to Military Super.

Can an associate pay money from another superannuation fund into Military Super?

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

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

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

Basic terminology

Associate

A person to whom an associate benefit is payable and is the term used to describe the non-member spouse with an entitlement to MilitarySuper benefits following a family law split.

Associate A 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 VIIIIB or Part VIIIAB of the *Family Law Act 1975*. An associate A benefit comprises member and employer taxed components of the transfer amount and any member untaxed component of the transfer amount.

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 VIIIIB or Part VIIIAB of the *Family Law Act 1975*. An associate B benefit comprises employer untaxed component of the transfer amount.

Associate pension

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

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

Is defined under section 4AA of the *Family Law Act 1975* 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
- 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.

Employer taxed component of a MilitarySuper transfer amount

An amount based on the member's productivity benefit.

Employer untaxed component of a MilitarySuper transfer amount

That part of the employer benefit that is not taxed—e.g. an amount based on a former DFRDB member's untaxed productivity and employer benefit.

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 2).

Growth phase

The situation where the member spouse is a contributor or is a person to whom a preserved benefit applies.

Member spouse

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

Member taxed component of a MilitarySuper transfer amount

An amount based on the member's contributions and interest.

Member untaxed component of a MilitarySuper transfer amount

An amount based on the contributions made by the member to DFRDB prior to making an election to transfer to MilitarySuper.

Non-member spouse

The other party to the family law splitting order or superannuation agreement under Part VIIIIB or Part VIIIAB 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 pension from MilitarySuper.

Scheme value

The value of the person's super using factors and methodology determined by an actuary based on the most recent long-term cost report.

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.

Splitting percentage

A percentage amount set out in a court order or superannuation agreement 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*.

Total and permanent incapacity

A person is totally and permanently incapacitated:

‘if the Board 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 may reasonably be qualified after retraining.’

Transfer amount

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

Need more information?

Attorney General’s Department

familylaw.gov.au

Federal Court and Family Court of Australia

fccoa.gov.au

ATO Superannuation Info Line

Phone 13 10 20

CSC Fax

(02) 6275 7010

Email:

members@enq.militarysuper.gov.au

MilitarySuper information is:

AFSL: 238395 **USI:** 50925523120001 **ABN:** 50 925 523 120

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:

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@militarysuper.gov.au

or

Phone

1300 006 727

Handy hint for drafting your court order

In drafting your court order, the Board to refer to is the Commonwealth Superannuation Corporation Board.