



## Family law and splitting super

How it's done and what happens next



# Prepare

# Contents

Reading and using this booklet	3	Part B: What happens next?	11	Frequently asked questions	21
Part A: What steps are involved in splitting super?	5	Step 5 A new record is created for the associate	12	Glossary	23
Step 1 Obtaining information about a member's super	6	Step 6 The member benefit is reduced	14	Contacting us and further information	27
Step 2 Obtaining a valuation of a member's super	8	Step 7A Commencing split pension benefits to the member and associate (If the member is already receiving a pension – payment phase)	16		
Step 3 Seeking a court order (including serving a draft order on the Trustee) or entering a superannuation agreement	8	Step 7B (i) Keeping separate accounts and reporting (where the member is a contributor or has a preserved benefit – growth phase)	17		
Step 4 Serving the final court order or superannuation agreement on the Trustee	10	Step 7B (ii) Payment of the benefit (where the member is a contributor or has a preserved benefit – growth phase)	17		



Support

# Reading and using this booklet

Who should read this booklet?

How to use this booklet

## Who should read this booklet?

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

## How do I use this booklet?

This booklet is designed to provide you with a step by step guide to how the superannuation splitting process works in the PSS.

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

For a glossary of terms used in this booklet please refer to **page 23**.

You can get more information online at [www.pss.gov.au](http://www.pss.gov.au) Click on **About the PSS**, then **Family law and your super** for relevant PSS legislation and any forms you may need.

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

## What is superannuation splitting?

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

### Part A: What steps are involved in splitting super?

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

	What must happen	Legislation and forms
Step 1	Obtaining information about a member's super	Obtain a copy of <b>family law/ property settlement application for superannuation information form</b> from the PSS website <i>Family Law Act 1975</i>  Family Law (Superannuation) (Provision of Information—Public Sector Superannuation Scheme) Determination 2004
Step 2	Obtaining a valuation of a member's super	Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1

Step 3	Seeking a court order (including serving a draft order on the Trustee) or entering into a superannuation agreement	<i>Family Law Act 1975</i>  Family Law (Superannuation) Regulations 2001  Sample court orders on the PSS website.
Step 4	Serving the final court order or superannuation agreement on the Trustee	Separation Declaration on the PSS website  Notice Under Reg 72 of Family Law (Superannuation) Regulations 2001  Tax file number declaration

#### Step 1. Obtaining information about a member's super

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

#### Who can apply for information?

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

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

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

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

#### Obtaining a court order 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.

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

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

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

### How to apply for information

An application for information should be lodged via the **Family law/property settlement–application for superannuation information form**. The form is available from [www.pss.gov.au](http://www.pss.gov.au)

Complete both the **Application for superannuation information form** and the **Form 6–declaration to accompany application for superannuation information form** and lodge them together with the fee for the service provided. Contact details for this part of the process are on *page 26*.

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

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

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

Further information on the process, and the information that will be provided in response to a request for information, can be found in a superannuation kit at the Family Law Online website at [www.familylaw.gov.au](http://www.familylaw.gov.au)

### When you can apply for information

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

### Fee payable for providing super information

A fee of \$150 per date requested is payable to the PSS to gather this information for you. This fee covers administrative costs and must accompany the request for information, otherwise the request will be returned.

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

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

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

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

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

### How is information about the superannuation interest used?

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

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

We do not undertake valuations.

### What factors are used for valuing a PSS interest?

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

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

## Step 3. Seeking a court order (including serving a draft order on the Trustee) 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 break down and enter into a superannuation agreement which meets the requirements of the *Family Law Act 1975*.

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

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

If the separate interest legislation does not apply (whether because the above criteria are not met or the proposed split is unworkable within the terms of the PSS 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 [www.familylaw.gov.au](http://www.familylaw.gov.au). Your legal representative will be able to advise on the relevant requirements.

Under the *Family Law Rules 2004* a proposed court order **must** be sent to us for assessment. The *Family Law Rules* give the Trustee 28 days to consider the proposed court order and to make a decision whether or not to participate in the court proceedings. Contact details for this part of the process are on **page 28**. In most cases, the Trustee will not want to be involved in the proceedings. However, there may be some cases (if the proposed order seeks a release of a benefit at a time that is inconsistent with the PSS's governing legislation) in which the Trustee will need to be involved.

### Sample court orders

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

Sample court orders can be found at [www.pss.gov.au](http://www.pss.gov.au) to assist the parties and their legal representatives in drafting their own court order.

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

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

Once the final order is made by the court, it should then be served on the PSS (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 the Trustee (see **Step 4** on the following page for details regarding serving a superannuation agreement).

There is no legal requirement to provide an advance copy of a superannuation agreement. However, the parties or their legal representatives may think it prudent to do this so we can assess the agreement to see whether it is workable under the PSS legislation. This will avoid difficulties that could occur later if a final superannuation agreement is served on the Trustee and is found to be unworkable under PSS legislation. If you wish to send an advance copy, the contact details are on **page 28**.

## Operative time of court orders and superannuation agreements

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

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

- > for cases where the benefit is in the growth phase (i.e. the benefit is still accruing because the member is contributing or has a preserved benefit), the operative time should be **at least four business days** after service of the order on the Trustee  
or
- > for cases where the benefit is in the payment phase (i.e. a PSS pension is currently being paid), the operative time should be **at least seven business days** after service of the order on the Trustee 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 the Trustee.

*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 Trustee

A final court order or superannuation agreement that effects a split of PSS entitlements should be lodged with the PSS. Contact details for this part of the process are on **page 28**.

### Serving a court order or a superannuation agreement

A court order or superannuation agreement must be accompanied by:

- > For **payment phase cases** (where a PSS pension is currently being paid):
  - an application form completed by the associate providing the details required to set up a separate account in the PSS and
  - an Australian Taxation Office (ATO) Tax file number declaration form completed by the associate, only available from the ATO including through the ATO website: **www.ato.gov.au**

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

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

A superannuation agreement must also be accompanied by the following:

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

*NOTE:*

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

## Part B: What happens next?

Step 5. A new record is created for the associate

Step 6. The member benefit is reduced

Step 7A. Split pension benefits to the member and associate (if the member is already receiving a pension – payment phase)

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

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

## Part B: What happens next?

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

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

	What happens next?	Legislation and forms
<b>Steps 5 and 6 After the court order or agreement is received</b>		
Step 5	A new record is created for the associate	Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 Volume 1 PSS Trust Deed and Rules – Part 16
Step 6	The member benefit is reduced	PSS Trust Deed and Rules – Part 16
<b>STEP 7A If the member is already receiving a pension (payment phase)</b>		
	Commencing split pension benefits to the member and associate	PSS Trust Deed and Rules – Part 16
<b>STEP 7B If the member is a contributor or has a preserved benefit (growth phase)</b>		
	(i) Keeping separate accounts and reporting (ii) Paying the benefit	<i>Superannuation Industry (Supervision) Act 1993</i> PSS Trust Deed and Part 16 Superannuation Industry (Supervision) Regulations 1994

### 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 the PSS)
- > notifying the associate of the action taken within 28 days of receiving a court order or superannuation agreement and **either**
- > commencing PSS pension payments to the associate (if the member's benefit is in the payment phase)
- or
- > keeping a separate account of the associate entitlement (if the member's benefit is in the growth phase).

## Splitting the benefit

### *Payment phase - when the member is receiving a PSS pension.*

Where the member is receiving a pension from the PSS, a separate pension will be payable to the associate member from the operative time.

If you are an associate member and you die whilst receiving a pension, there is no residual benefit for beneficiaries. The benefit ends at that time.

### *Growth phase - when the member is still a contributor or is a preserved member.*

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

### *Growth phase - taxed component*

The taxed component of the associate preserved benefit will accrue in accordance with Fund earning rates. The associate may choose to take the preserved benefit as a lump sum or pension when associate preserved benefits become payable in the circumstances outlined later in this document.

### *Growth phase - untaxed component*

Any untaxed component accrues interest at the long-term Treasury bond rate. It will become payable as an indexed pension, without a residual benefit for beneficiaries, or lump sum when associate preserved benefits become payable to the associate in the circumstances outlined later in this document.

### *Investment choice*

An associate may make an investment choice in respect of the taxed component of their associate preserved benefit. The associate may choose between the Default Fund (which is the option that will apply from the operative time) and a Cash Investment Option. A nomination to switch between investment options may be made at any time after the benefit has been split. Nominations received by the last Friday of the month will generally take effect on the following Wednesday. See **The facts about the Cash Investment Option for Preserved Benefit and Associate Members** available at [www.pss.gov.au](http://www.pss.gov.au) for more information.

## Calculating how the benefit is split

A court order or superannuation agreement under Part VIIIIB or Part VIIIAB 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 **separation amount** is the basis of the separate interest created for the non-member spouse, known as an associate preserved benefit. To set up the new record with the separation amount, the Trustee will have regard to the base amount or splitting percentage 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 1.

The **scheme value** is calculated in accordance with the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* and associated legislation, namely, the *Public Sector Superannuation Scheme Trust Deed and Rules*.

### The calculations – where a base amount is specified

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

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

Separation amount  
=  $\frac{\text{scheme value} \times \text{whole dollars in base amount}}{\text{whole dollars in family law value}}$

### The calculations where a splitting percentage is specified

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

If the splitting percentage affects a member's pension, the separation amount will be a pension payable to the associate.

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

### 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
- > 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 PSS pension payments to the member (if the member's benefit is in the payment phase)  
or
- > keeping a separate account of the member entitlement (if the member's benefit is in the growth phase).

## When is the member's benefit reduced

### *Payment phase*

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

### *Growth phase*

Where 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 accumulated member contributions, accumulated productivity contributions and accumulated transfer amounts and transfer multiples**

The amounts allocated to the associate are based on the separation factor.

The separation factor is obtained by dividing the separation amount (calculated in the previous section) by the scheme value. The member's taxed

components (e.g. member contributions and productivity contributions) are multiplied by the separation factor to give the amount to be transferred to the associate. Any remaining amounts needed to satisfy the separation amount are drawn from the member's untaxed component.

The member spouse's accumulated member contributions, productivity contributions and any transfer amount and transfer multiple arising out of an inwards transfer value are then reduced by amounts equivalent to those allocated to the associate at the operative time.

### ***Reduction of Multiple for Member Spouse***

The member's accrued benefit multiple is reduced by what is called the reduction multiple.

The reduction multiple is calculated by multiplying the member's accrued benefit multiple (immediately before the operative date of the order or agreement) by the separation factor.

The separation factor is the ratio of the total amount allocated to the associate (the separation amount) divided by the scheme value at the operative time.

### ***Maximum Benefits Limits (MBL)***

In most cases, you can contribute to the PSS until your potential lump sum benefit has grown to the maximum that is allowed under the scheme's rules. Once you reach this maximum limit you stop contributing to the PSS. This upper limit is known as the Maximum Benefit Limit (MBL).

The PSS rules specify that the reduction multiple is not taken into account when determining the date a member reaches their MBL.

This means that a member must cease paying contributions when they reach what would have been their normal MBL, even though their actual benefit multiple will eventually be reduced to take into account the reduction multiple.

### ***Transfer values paid into the PSS***

The accumulated transfer amount, and the transfer multiple amount for the member, are reduced by the additional accumulation component.

The additional accumulation component is the accumulated transfer amount (i.e. the actual amount paid into the PSS plus Fund earnings to the operative time) multiplied by the separation factor. The separation factor is the ratio of the total amount allocated to the associate (the separation amount) divided by the scheme value at the operative time.

Rule 11.3.1 has then been amended so that, when calculating the transfer multiple amount for the member spouse, the transfer multiple amount is also reduced by the additional accumulation component.

This, in effect, means that when calculating the lump sum benefit to be derived from a pre-1 January 1996 transfer value, when comparing which is the greater of the accumulated transfer amount or the transfer multiple amount, both figures are reduced by the additional accumulation component i.e. the portion of the accumulated transfer amount that has been allocated to the associate.

Similarly, if the transfer value is being taken as a pension, the reduced transfer multiple amount is used.

For a post-1 January 1996 transfer value, the reduction of the member's benefit is covered by the allocation of a portion of the accumulated transfer amount to the associate.

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

#### **When is the associate benefit payable?**

An associate PSS standard pension arising from the split of a member's benefit which is in the payment phase (i.e. the split of a pension) is payable with effect from the operative time (Division 2 of Part 3 of the PSS Rules under the *Superannuation Act 1990*).

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

#### **What benefits are payable?**

If, at the operative time, a PSS standard pension is payable to the member, the associate is also entitled to associate standard pension from the operative time, at the rate calculated under the Public Sector Superannuation Scheme Trust Deed and Rules by reference to the separation amount.

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

#### **When is the member benefit reduced?**

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

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

### How are payment phase benefits increased?

The reduced member PSS pension and the associate pension are indexed in the same way as the member's pension was indexed prior to the family law split— i.e. twice yearly in January and July in line with changes in the Consumer Price Index (CPI).

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

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

#### How is the associate benefit increased in the growth phase?

The taxed components of the associate preserved benefit accrue earnings in accordance with Fund earning rates.

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

### How is the member benefit increased in the growth phase?

The reduced 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.

Where the member is a contributing member of the PSS, the member will receive the full value of any benefit accrual received **after** the operative time of the split. However the total benefit accrual will be reduced by the reduction multiple (calculated at the time of the split) before being multiplied by the member's final average salary when the benefit is claimed.

Where the member is a preserved benefit member at the time of the split, taxed components will accrue earnings in accordance with Fund earning rates. Untaxed components increase in line with upward movement in the Consumer Price Index.

#### 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* (SIS).

The member spouse will continue to receive annual statements in the normal manner. These statements will reflect the impact of the family law split on the member's benefit.

A member or associate may request information on the value of his or her entitlement at any time by calling us on 1300 000 377.

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

#### When is the benefit payable to the associate?

The benefit arising from the split of a member's benefit in the growth phase will become payable in the circumstances set out in Part 16 of the PSS Rules.

An associate is eligible to claim a benefit from the date he or she reaches preservation age (and has retired from the workforce) or earlier in the circumstances detailed on the following page. 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 55

Situation	Options and conditions
<b>Invalidity</b>	<ul style="list-style-type: none"> <li>&gt; take the entire associate preserved benefit as an associate PSS preserved pension</li> <li>or</li> <li>&gt; convert at least all of the associate untaxed component to a PSS pension and convert the taxed component to a lump sum</li> <li>or</li> <li>&gt; take the entire benefit as a lump sum.</li> </ul> <p><b>Conditions:</b> The Trustee must be satisfied that the associate has become totally and permanently incapacitated (See section 13 of the <i>Superannuation Act 1990</i> and PSS Rule 1.2.1) and, to be able to convert to full or part PSS pension, the associate preserved benefit must include all of the taxed component that had been included in the separation amount.</p>
<b>Terminal illness</b>	<ul style="list-style-type: none"> <li>&gt; same as invalidity</li> </ul>
<b>Death before PSS pension payments have commenced</b>	<ul style="list-style-type: none"> <li>&gt; the entire benefit must be paid as a lump sum to the person's legal personal representative or, if no legal representative can be found, to an individual(s) that the Trustee determines.</li> </ul>
<b>Leaving Australia permanently</b>	<ul style="list-style-type: none"> <li>&gt; take the entire benefit as a lump sum</li> </ul> <p><b>Conditions:</b> Release of the benefit must be permitted under SIS—the Trustee must be satisfied that the person is a temporary resident permanently departing Australia.</p>
<b>Compassionate grounds</b>	<ul style="list-style-type: none"> <li>&gt; amount and conditions as approved by the Australian Prudential Regulation Authority (APRA)</li> </ul> <p><b>Conditions:</b> APRA must determine that the person satisfies the conditions of release on compassionate grounds under subregulation 6.19A of the SIS Regulations 1994</p>
<b>Financial hardship</b>	<ul style="list-style-type: none"> <li>&gt; up to \$10,000 gross in any twelve month period</li> </ul> <p><b>Conditions:</b> The Trustee must be satisfied that the person is in severe financial hardship within the meaning of subregulation 6.01 (5) of the SIS Regulations 1994.</p>
<b>Rollover to another super fund</b>	The associate preserved benefit cannot be rolled out of the PSS before it becomes payable.

## Where the associate member is over age 55

SITUATION	OPTIONS AND CONDITION
<b>Date chosen by the associate or the associate's 65th birthday</b>	<ul style="list-style-type: none"> <li>&gt; take the entire associate preserved benefit as an associate PSS preserved pension</li> <li>&gt; convert at least half of the associate preserved benefit to a PSS pension and convert the balance to a lump sum</li> <li>&gt; take the entire benefit as a lump sum</li> <li style="padding-left: 20px;">or</li> <li>&gt; rollover the entire benefit*.</li> </ul> <p><b>Conditions:</b> (1) The associate must have attained preservation age and have retired from the workforce.  (2) To be able to convert to full or part PSS pension, the associate preserved benefit must include all of the taxed component that had been included in the separation amount.</p>
<b>*Rollover to another super fund</b>	The associate may rollover the entire benefit to another superannuation fund or Retirement Savings Account on attaining age 55.
<b>Invalidity before age 60</b>	Same options and conditions as before age 55
<b>Terminally ill benefit before age 60</b>	Same options and conditions as before age 55
<b>Death before PSS pension payments have commenced</b>	Same option as before age 55
<b>Leaving Australia permanently</b>	Same options and conditions as before age 55

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



Gather

# Frequently asked questions

## Frequently asked questions

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

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

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

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

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

### What is my preservation age?

Superannuation laws 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.

### Is an associate PSS pension subject to PAYG tax?

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

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

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

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

### Can an associate make contributions to the PSS?

No. The associate cannot make contributions to the PSS.

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

No. The associate cannot pay in a transfer amount

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

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

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

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

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

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

# Glossary

## Glossary

### Terms under Part VIII B or Part VIII AB 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*. A person is in a de facto relationship with another person if:

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

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

- > one is the child (including an adopted child) of the other
- > one is another descendant of the other (even if the relationship between them is traced through an adoptive parent)  
or
- > they have a parent in common (who may be an adoptive parent of either or both of them).

#### Growth phase

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

#### Member spouse

The party whose superannuation entitlement is being split under a family law splitting court order or superannuation agreement under Part 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 four business days after a superannuation agreement is served on the Trustee.

#### Payment phase

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

#### Spouse

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

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

#### Superannuation Agreement

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

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

#### Associate benefit

The associate's entitlement in the PSS 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*.

### Terms under the *Superannuation Act 1990* and the *PSS Rules*

#### Associate

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

#### Associate preserved benefit

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

#### Associate preserved pension

The associate's pension entitlement in the PSS as a result of the split of a member's benefit in the growth phase under a court order or superannuation agreement under Part VIIIIB or Part VIIIAB of the *Family Law Act 1975* where the associate, on becoming entitled to claim a benefit, elects for full or part pension.

#### Associate standard pension

The associate's entitlement in the PSS as a result of the split of a member's benefit in payment phase under a court order or superannuation agreement under Part VIIIIB 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 1.

#### Non-standard pension

Any pension that is not a standard pension.

#### Separation amount

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

#### Scheme value

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

#### Splitting percentage

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

#### Standard pension

Means any of the following indexed pensions:

- > pension payable to a member other than pre-assessment payment or partial invalidity pension
- > pension payable to a spouse
- > associate preserved pension
- > associate standard pension.

#### Total and permanent incapacity

Applies in relation to a person who is under the age of 60 and means that:

'because of a physical or mental condition, the incapacitated person is unlikely ever to work again in a job for which he/she:

- > is reasonably qualified by education, training or experience
- or
- > could be so qualified after retraining.'



Value

# Contacting us and further information

**Step 1. Contact details for requests for superannuation information.**

Mail PO Box 22  
Belconnen ACT 2616

Fax 02 6272 9613

Hand delivery Unit 4  
Cameron Offices  
Chandler St  
Belconnen ACT 2617

**Steps 3 and 4. Contact details for family law court orders, superannuation agreements or related correspondence.**

Mail PO Box 22  
Belconnen ACT 2616  
(express post preferred)

Fax 02 6272 9838  
This fax number is  
only for family law court  
orders, superannuation  
agreements and any related  
correspondence

Hand delivery Unit 4  
Cameron Offices  
Chandler St  
Belconnen ACT 2617

## 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. You can also get information from:

**PSS**

Phone 1300 000 377

**Attorney General's Department**

[www.familylaw.gov.au](http://www.familylaw.gov.au)

**Family Court**

[www.familycourt.gov.au](http://www.familycourt.gov.au)

**ATO Superannuation Info Line**

Phone 13 10 20

www.pss.gov.au  
Email members@pss.gov.au  
Phone 1300 000 377



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**Warning - This Document Contains General Advice or Information Only**

Any advice in this document has been prepared without taking account of your personal objectives, financial situation or needs. Because of this, you should, before acting on any advice in this document, consider the appropriateness of the advice, having regard to your objectives, financial situation and needs. You may wish to consult a licensed financial planner to do this.

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