



The facts about CSS Family law and your super

This Fact Sheet provides an overview only. For more detailed information on how Family Law splitting works in the CSS you should refer to the publication: **Family law and splitting super: how it's done and what happens next.**

Who should read this

- > Any CSS member, whether a contributor, pensioner or deferred benefit member, who is in the process of divorcing or separating or intends to enter into a superannuation agreement with a person.
- > A spouse of a CSS member who is in the process of divorcing, or separating from, the member.
- > A person who intends to enter into a superannuation agreement with a CSS member.

What is in this fact sheet?

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- > Who do the superannuation splitting laws apply to?

- > Who is **not** covered by the superannuation splitting laws?
- > In what circumstances won't a separate superannuation interest be created?
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How does Family Law apply to my super?

Superannuation may be split on marriage breakdown either by:

- > a court order (i.e. an order made by a court exercising family law jurisdiction such as the Family Court or the Federal Magistrates Court); or

- > a superannuation agreement between the parties (i.e. an agreement between the parties that meets the requirements of the *Family Law Act 1975*).

A separate superannuation interest can be created in the CSS for a member's spouse, or former spouse, once a valid court order or superannuation agreement has been received:

- > A member's interest will be split and a separate interest set up in the CSS for the non-member spouse who becomes an associate member.
- > Member and associate member interests will accrue separately, or, if the member is already receiving a CSS pension, be paid separately.
- > An associate member benefit will be payable immediately (if the member is already receiving a CSS pension) or when the release conditions provided for under the CSS and Superannuation Industry (Supervision) legislation are satisfied—e.g. when a person has reached preservation age and has left the workforce, or on total and permanent incapacity, or on death.

Splitting is not mandatory, but if a superannuation interest is to be split by agreement or court order, then a separate superannuation interest will be created.

Who do the superannuation splitting laws apply to?

The superannuation splitting laws apply to people who:

- > have been married and have divorced, or are still married but are separated; and
- > make arrangements to settle their property affairs by a court order or a superannuation agreement.

The superannuation splitting laws also apply to people who have entered a superannuation agreement, either before or during a marriage, or after separation, which prescribes how, in the event of marriage breakdown, superannuation interests are to be split.

Who is not covered by the superannuation splitting laws?

The superannuation splitting laws do not apply to anyone in a de facto relationship because such relationships are dealt with under State and Territory laws rather than Commonwealth laws.

In what circumstances won't a separate superannuation interest be created?

The laws which allow creation of a separate superannuation interest in the CSS do not allow a separate interest to be created where:

- > either party to a court order or superannuation agreement dies before the order or agreement takes effect; or
- > a court order or superannuation agreement does not meet the legal requirements of the CSS—e.g. the proposed amount for the spouse of the member is greater than the value of the benefit.

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

What are the differences between a court order and a superannuation agreement?

In general, parties can either seek a court order, or enter into a superannuation agreement, that specifies how a CSS member's superannuation interest is to be split.

Court orders

Superannuation benefits may be split where:

- > the parties agree and they obtain a consent order from the court; or
- > the parties cannot agree and the court decides the matter.

In either situation, the court order is obtained from a court exercising family law jurisdiction as part of a property settlement order. The Trustees are bound by a court order that meets these legal requirements.

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

Superannuation agreements

A superannuation agreement can be entered into before marriage, during marriage or after separation.

A superannuation agreement is binding on the trustees if it complies with the legal requirements of the Family Law Act, is served on the Trustees and has attached:

- > certificates of independent legal advice for each party; and
- > a copy of either the decree absolute (or divorce order) ending the marriage or a separation declaration. A separation declaration form is available from www.css.gov.au

A flagging order or flagging agreement

In some circumstances, parties may feel that they want to wait before seeking a court order or making a superannuation agreement to split superannuation. To prevent the trustees paying a benefit in the meantime, the Family Law Act allows for a flagging order or flagging agreement to be put in place.

Are there any superannuation interests that can't be split by a court order or superannuation agreement?

The following superannuation interests or payments are 'unsplittable':

- > Any interest that has a withdrawal benefit of less than \$5 000.
- > Some invalidity related benefits—e.g. invalidity pre-assessment payments and CSS partial invalidity pension.
- > Certain payments made to eligible children after the death of a member spouse.

What is 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 trustees) or entering a superannuation agreement.
- STEP 4 Serving the final order or superannuation agreement on the trustees.

What happens next?

- STEP 5 A new record is created for the associate member (the non-member spouse).
- STEP 6 The member benefit is reduced (or flagged for reduced entitlement).
- STEP 7A If the member is already receiving a CSS pension:
 - > Separate split CSS pension payments are made to the member and the associate.
- STEP 7B If the member is a contributor or has a deferred benefit:
 - > Separate accounts are kept for the member and associate member until the member and associate member individually become eligible for payment of the benefit.

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

Family law matters are generally covered by the Privacy legislation requirements which apply to the CSS. However, the trustees are required to release certain information to a member of the CSS, or to a spouse of the member, for family law purposes. This will happen when a family law Court Form 6 declaration, together with the fee payable, is lodged by the member or spouse of the member.

The family law legislation prohibits the trustees 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.

Where can I get more information about family law and my super?

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:

CSS publication	CSS publication Family law and splitting super: how it's done and what happens next
Attorney General's Department	www.familylaw.gov.au
Family Court	www.familycourt.gov.au
ATO Superannuation Info Line	13 10 20

Where can you get more information?

EMAIL	members@css.gov.au
PHONE	1300 000 277
FAX	02 6272 9612
MAIL	CSS PO Box 22 Belconnen ACT 2616
WEB	www.css.gov.au