

Superannuation and marriage breakdown

Divorce and separation are all too common but what happens when a CSS or PSS contributing member or pensioner has a marriage breakdown? This is the full version of the article. The shorter version can be found in the February 2012 SuperTime.

The Family Law Act 1975 provides arrangements for splitting superannuation entitlements resulting from marriage breakdown including the breakdown of de facto relationships.

Under the superannuation splitting laws, superannuation is treated as property for the purposes of a property settlement on marriage breakdown. Therefore, superannuation is treated in the same way as other assets such as houses and shares. Superannuation can be split by the direction of the court or by an agreement between the parties to the marriage.

Splitting a superannuation interest

A superannuation interest is the value of the person's superannuation held in a superannuation fund at a particular time. In order to split a superannuation interest between the parties to a marriage the superannuation interest of each person must be valued. The method of valuing a superannuation interest is complex and based on formulae issued by the Government. There are specific formulae to value CSS and PSS defined benefit (PSSdb) members.

Different splitting arrangements apply to contributing members and to pensioners.

Superannuation can be split by an order given by the court. This is a last resort and occurs when the parties cannot agree to a specific amount to be transferred from one spouse to the other spouse or a percentage of the superannuation interest to be transferred to the other spouse.

Where the parties can agree (the preferred option) a superannuation agreement can be served on the superannuation fund to implement the split. Before making a superannuation agreement, the parties must receive separate and independent legal advice. The agreement must be in writing and must be endorsed by a qualified legal practitioner.

If the parties are not divorced at the time the superannuation agreement is served on the superannuation fund then there must be a declaration stating that the parties have separated.

Requesting information to calculate the value of a superannuation interest

Where a person is contemplating superannuation splitting due to marriage breakdown the first step is to obtain information about the superannuation interests of the parties to the marriage. ComSuper will provide information about the superannuation interest of CSS and PSSdb members to allow the value of the

superannuation interest to be calculated. Each party to the marriage can ask for information about their own superannuation interest or the superannuation interest of their spouse.

ComSuper does not calculate the value of the superannuation interest of CSS and PSSdb members. However, ComSuper will provide details about the superannuation interest from which the value of the superannuation interest can be calculated. A Financial Planner or Family Law specialist can calculate the value of a person's superannuation interest in a particular superannuation fund from information provided by the fund.

To obtain the information required to calculate the superannuation interest a request needs to be made to ComSuper using "Family Law/Property Settlement – Application for Superannuation Information Form and a Family Law Form 6 – Declaration to Accompany Application for Superannuation Interest Form". ComSuper charge a fee, currently \$150, to provide this basic information.

Calculation of the value of a superannuation interest

Once the information about the person's membership in the superannuation fund is received from the superannuation fund the calculation of the value of the superannuation interest can be undertaken. This will enable parties to the marriage to agree on a specific value to be split or a percentage of the value to be split and transferred to the superannuation account in the name of the other party of the marriage.

Agreement to the split

Once the agreement has been reached, the agreement is then served on the trustees of the superannuation fund in which each party is a member. If there is no agreement but there is a court order the court order is served on the Trustees of the superannuation fund. The superannuation interest of the member will then be split in accordance with the agreement or court order. The split takes affect from the "operative time". The "operative time" is generally four business days after the agreement has been served on the Trustees or seven business days if the superannuation interest is being paid as a pension. Court orders usually specify the operative date.

Determining the amount of superannuation to be transferred

The split of a superannuation interest in the CSS or PSSdb occurs at the "operative time" (generally four days after final orders have been served on Commonwealth Superannuation Corporation - the CSS/PSS Trustee). With effect from the "operative time" ComSuper calculates the scheme value of the superannuation interest that is to be split.

The amount to be split is transferred to a newly created account within the CSS or PSSdb in the name of the former spouse of the CSS/PSSdb member. This account is referred to as a "non-member spouse" account. The amount to be transferred to

the non-member spouse account is based on the scheme value at the “operative time”.

Reduced member benefits

As a result of transferring an amount from the member’s account to a non-member spouse account a CSS or PSSdb member will have a reduction in their benefits on retirement or to their pension, if a pension is being received.

Non-member spouse benefits

A funded and a notional unfunded account are opened in the CSS or PSSdb for the non-member spouse to receive the amounts transferred from the member’s superannuation interest in the CSS or PSSdb. The funded account receives the funded component of the transfer amount. This is generally the member’s accumulated member contributions and employer productivity contributions transferred to the non-member spouse. The notional unfunded account is to record the unfunded component of the transfer amount transferred to the non-member spouse. The unfunded component of the transfer amount is the transfer amount less the funded component of the transfer amount.

If the superannuation interest was in the growth phase when the amount was transferred to the non-member spouse the benefit becomes a deferred benefit in the CSS or a preserved benefit in the PSSdb. The funded component of the deferred/preserved benefit accumulates with interest at the crediting rate of the CSS or PSSdb until the amount becomes payable to the non-member spouse.

Similarly, the unfunded component of the transfer amount transferred to the non-member spouse accumulates with interest at the Treasury 10 year bond rate until the superannuation benefit becomes payable to the non-member spouse.

If the superannuation interest was in the payment phase at the time of transfer the superannuation benefits become immediately payable to the non-member spouse.

CSS non member spouse benefits growth phase

Where the superannuation interest is in the growth phase a non-member spouse cannot claim a benefit from the CSS until attaining age 55. The non-member spouse is entitled to an indexed pension based on the unfunded component transferred to the non-member spouse at the time of transfer plus interest on that amount at the Treasury 10 year bond rate divided by a pension conversion factor relating to the non-member spouse’s age at the time of commencing the non-member spouse pension. In addition, the non-member spouse is entitled to a lump sum of the funded amount of the transfer amount plus interest at the crediting rate of the fund. The lump sum becomes payable under normal superannuation release arrangements, which is generally preservation age and permanent retirement from the workforce or age 65, whichever occurs first.

CSS non-member spouse benefits payment phase

Where the CSS member is receiving a CSS pension at the time of transfer an immediate pension is payable to the non-member spouse. Where the CSS member is receiving an indexed pension the non-member spouse will also be entitled to an indexed pension based on the unfunded transfer amount transferred to the non-member spouse. The appropriate pension conversion factor is applied to the unfunded amount to determine the amount of indexed pension payable to the non-member spouse.

If the CSS member was receiving a non-indexed pension, in addition to the indexed pension, the non-member spouse will also be entitled to a non-indexed pension in addition to the indexed pension.

PSSdb non-member spouse benefits growth phase

Where the superannuation interest is in the growth phase a non-member spouse cannot claim a benefit from the PSSdb until attaining age 55. The non-member spouse is entitled to a lump sum based on the unfunded and funded components transferred to the non-member's spouse account at the time of transfer plus interest on the unfunded component at the Treasury 10 year bond rate and at the PSSdb interest crediting rate on the funded component.

Instead of taking a lump sum benefit the non-member spouse may convert the lump sum into a fully indexed pension or take at least 50% of the lump sum as an indexed pension.

The pension conversion factor to convert the lump sum to a pension is based on the non-member spouse's age at the time of commencing the non-member spouse pension.

A lump sum cannot be cashed until normal superannuation release arrangements have been met, which is generally preservation age and permanent retirement from the workforce or age 65, whichever occurs first.

PSSdb non-member spouse benefits payment phase

Where the PSSdb member is receiving a PSSdb pension at the time of transfer an immediate pension is payable to the non-member spouse. The PSSdb indexed pension payable to the non-member spouse is based on the transfer amount paid from the member spouse to the non-member spouse with the appropriate pension conversion factor applied to the transfer amount to determine the amount of indexed pension payable to the non-member spouse.

On the death of a divorced or separated spouse

On the death of a CSS or PSS contributing member or pensioner, a divorced or separated spouse is not entitled to receive a spouse's pension. The only way to receive a benefit from the CSS or PSS is through a Family Law split.