

Family law and superannuation splitting

Who should read this guide?

- Any SSS member, including a contributing, deferred or pension member in the process of separating or divorcing.
- A spouse or de facto partner in the process of separating from or divorcing a SSS member.

In this guide, a spouse includes a person who was married or in a de facto relationship with a SSS member prior to the breakdown of the marriage or de facto relationship.

Introduction

Under Family Law legislation (the *Family Law Act 1975*), superannuation is treated as property which can be divided or split on the breakdown of a marriage or de facto relationship.

This information guide describes the step by step process and information required to enable a superannuation benefit to be split under Family Law provisions.

The information in this guide is applicable to benefits payable from the State Superannuation Scheme (SSS) and the State Authorities Non-contributory Superannuation Scheme (SANCS).

The laws relating to the division or splitting of a superannuation benefit are complex. While this information guide provides a summary of the laws as they relate to SSS and SANCS, it is not intended to be a substitute for the actual Family Law requirements. Before acting on any information provided in this information guide, you should seek professional legal advice.

What is superannuation splitting?

Under Family Law legislation, on the breakdown of a marriage or de facto relationship, couples are able to split their superannuation entitlements in the same way as other assets. The legislation applies to the breakdown of all marriages and de facto relationships.

Part 1: What steps are involved in splitting superannuation?

There are a number of steps involved in splitting superannuation:

Step 1 – requesting information about a member's superannuation

Step 2 – valuing the member's superannuation

Step 3 – draft splitting Court Order or Superannuation Agreement

Step 4 – final splitting Court Order or Superannuation Agreement

Step 5 – implementing the Court Order or Superannuation Agreement

Step 6 – reducing the member's benefit after a split has been paid.

The STC schemes are administered by Mercer Administration Services (Australia) Pty Ltd on behalf of the schemes' trustee, SAS Trustee Corporation (STC). STC is governed by the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987*, the *State Authorities Non-contributory Superannuation Act 1987*, the *Superannuation Administration Act 1996* and the *Police Regulation (Superannuation) Act 1906*. The schemes are also subject to Commonwealth superannuation and tax legislation.

STC has published this fact sheet. STC is not licenced to provide financial product advice in relation to the STC schemes or to their members.

Reasonable care has been taken in producing the information in this fact sheet and nothing in it is intended to be or should be regarded as personal advice. If there is any inconsistency between the information in this fact sheet and the relevant scheme legislation, the scheme legislation will prevail. In preparing this fact sheet, STC has not taken into account your objectives, financial situation or needs. You should consider your personal circumstances, and possibly seek professional advice, before making any decision that affects your future.

To the extent permitted by law, STC, its directors and employees do not warrant the accuracy, reliability or completeness of the information contained or omitted from this fact sheet.

Step 1 – Requesting information about a member's superannuation

An eligible person (a SSS member, spouse of a member, or a person intending to enter into a superannuation agreement with the member) can request information from State Super about the member's entitlement in the scheme.

The request for information is generally for a valuation of the member's entitlement in the scheme at a certain date.

The Federal Circuit and Family Court of Australia has prepared a Superannuation Information Kit which provides forms that can be used to request information about a member's superannuation. The Superannuation Information Kit is available from your legal representative or the Family Law Court website at www.fcfoa.gov.au (click on 'Family Law', then select 'Forms' from the 'Resources' drop down menu).

If you are in Western Australia, the kit can be obtained from the Family Court of Western Australia at the following website: <https://www.familycourt.wa.gov.au> (look under 'Forms and Resources', 'Information Kits and Brochures', then 'Property and Financial')

The fees charged by State Super for requests for information are set out in the table below.

Membership type	Fee per request
Contributing member	\$275.00
Deferred benefit member	\$110.00
Pension member	\$110.00

The fee charged covers the cost of State Super providing information on a member's SSS and SANCS benefits at a specific date. If information is required for more than one date, a separate fee is charged for each date for which information is requested.

Under privacy legislation, only information specified in the Family Law legislation can be provided to a person other than the member without the member's consent. The legislation also requires that the member is not informed of the spouse's request for information.

The information provided will include:

- the Family Law value of the member's superannuation benefit at the relevant date specified in the application
- the information used in calculating the value
- other information required in order to apportion the superannuation entitlements between the respective parties.

Important!

The SSS and SANCS entitlements are considered separate benefits for the purpose of Family Law legislation. Therefore, it is important that requests for information are submitted for both entitlements.

State Super does not provide any advice on apportioning entitlements. These decisions are matters to be determined by the parties involved or the Family Law Court.

The member, spouse and/or their legal representatives may use the information provided by State Super to:

- **make a Superannuation Agreement** – The agreement can be made at any time. Generally, it is made after the breakdown of a marriage or de facto relationship.
- **prepare a draft Court Order** – A draft Court Order assists the Court to apportion the superannuation benefit as part of a property settlement.

Step 2 – Valuing the member's superannuation

There are different calculation methods used depending on whether a benefit is in the **growth** or **payment** phase. A benefit is in the payment phase where:

- a pension has commenced being paid, or
- a member has requested payment of a benefit, and a Court Order or Superannuation Agreement is received prior to finalising payment of the benefit.

All other entitlements are considered to be in the growth phase.

Important!

The Family Law value of a SSS or SANCS benefit is not able to be determined from information in your Annual Statement. The Family Law value is an actuarial calculation which takes into account a number of assumptions at certain times.

The method and formulae used to calculate the Family Law value of a SSS and SANCS benefit is specified in the legislation outlined below.

Legislative Reference Table

Scheme and benefit type	Valuation method	Information to be provided by State Super
<p>SSS – There are separate methods for contributory benefits, deferred benefits and pensions in payment.</p>	<p>Family Law (Superannuation) (Methods and factors for valuing particular superannuation interests) Approval 2003 – Volume 5 Schedule 2 Part 8.</p> <p>A SSS 37B special deferred benefit is valued in accordance with the Family Law (Superannuation) Regulations – Schedule 2 Part 6.</p>	<p><i>Family Law (Superannuation) (Provision of Information – NSW State Superannuation Scheme) Determination 2010.</i></p>
<p>SANCS – There are separate distinct methods for benefits of current employees and deferred benefits.</p>	<p>Family Law (Superannuation) (Methods and factors for valuing particular superannuation interests) Approval 2003 – Volume 5 Schedule 2 Part 9.</p>	<p><i>Family Law (Superannuation) (Provision of information – NSW State Authorities Non-contributory Superannuation Scheme) Determination 2010</i> in regards to the defined benefit component of the SANCS interest.</p> <p>Regulation 63 of the <i>Family Law (Superannuation) Regulations 2001</i> in regards to accumulation components of the SANCS interest.</p>

Step 3 – Draft splitting Court Order or Superannuation Agreement

Under the *Family Law Act 1975*, State Super must be given a copy of a draft splitting Court Order to review and comment on prior to the Order being finalised. This step, referred to as the procedural fairness stage, enables State Super to determine if the Order is in accordance with scheme rules and administrative processes. For further information, please refer to *Procedural fairness requirement* on page 5.

State Super will send a notification to all parties requesting amendments to the draft Order if it considers that these are needed to allow the scheme to comply.

Further information regarding the content of Court Orders or Superannuation Agreements can be found on page 5.

Note: It is not a legal requirement for the Superannuation Agreement to be provided to State Super before it is finalised. However, it is in the interests of all parties that this occurs in order to reduce the risk of the Agreement not being able to be processed by State Super.

Step 4 – Final splitting Court Order or Superannuation Agreement

A copy of the final Court Order or Superannuation Agreement is provided to State Super. The Order or Agreement will include a date from which it is effective (the operative date) and the amount of the spouse's entitlement at that date. This will commence the process for State Super to split the spouse's entitlement from the member's SSS and/or SANCS benefit.

State Super requires the following documents to split a member's superannuation benefit.

If splitting by Court Order:

- a Court Order which sets out the spouse's share of the superannuation benefit (or commonly referred to as the base amount), and
- a Regulation 72 notice from the spouse. This notice provides State Super with personal information about the spouse (full name, date of birth, address and contact details etc).

The split will become operative on the date specified in the Order, or if no date is specified, the day on which the Orders are received.

If splitting by Superannuation Agreement:

- a Superannuation Agreement or flag lifting agreement, and an annexure to the Agreement stating that both parties have been provided with advice from a legal practitioner, and
- a notice to State Super setting out the amount of the spouse's share of the superannuation benefit (the base amount), and
- a Regulation 72 notice from the spouse.

The split will become operative at the beginning of the fourth business day after all documentation is received by State Super.

Step 5 – Implementation of the splitting Court Order or Superannuation Agreement

On receipt of a Court Order or Superannuation Agreement, State Super will issue both parties with a payment split notice, which will provide information about the split.

The notice to the member will outline the date and amount to be paid to the spouse and the effect on the benefits that will ultimately be received by the member.

The notice to the spouse will set out the amount payable, together with information about the options for payment and a payment instructions form. This is because the spouse's share of the Family Law split cannot remain invested in SSS and/or SANCS.

When State Super receives the spouse's payment instructions, it will pay or rollover the relevant benefit amount as requested. However, if payment instructions are not provided within 28 days of the split notice being issued, the benefit will be transferred to Aware Super.

State Super will also inform the member of the final payment made to the spouse and will apply the relevant reduction factors to reflect the Family Law payment. If a member's account is or was subject to a Family Law split, then the effect on the benefit will be shown on Annual Statements and benefit estimates received after the payment split.

For information about how the amount is calculated and payment options, please refer to page 6.

Step 6 – Reducing the member's benefit after a split has been paid

Once the split amount has been paid to the spouse, the member's benefit will be reduced to take into account the amount paid to the spouse.

The member's benefit is reduced by a 'reduction percentage' which is calculated based on whether the member is a contributing, deferred or pension member. This reduction percentage is used to determine the reduction of all benefits that may be payable to the member. The method applied by State Super is based on actuarial advice.

For details on how the reduction percentage is applied, please refer to page 8.

Part 2: Further information for you and your legal representative

The following section contains further information to assist you and your legal representative with completing a superannuation splitting request. It includes information about:

1. flagging a benefit prior to a decision by the parties to split a superannuation benefit
2. procedural fairness requirement
3. specific matters to address in Court Orders or Superannuation Agreements
4. the amount payable to the spouse at the date of payment
5. payment options available to the spouse
6. reducing the member's benefits after a split has been paid
7. fees payable.

1. Flagging a benefit prior to a decision by the parties to split a superannuation benefit

A benefit payment flag can be placed on the superannuation benefit while the parties determine how the benefit will be split. This process stops State Super from paying out the benefit while the flag is in place. Generally, the flag will be placed on a benefit that is expected to be paid in the near future, but the apportioning of the benefit split has not yet been determined. However, the parties could agree at any time to flag the benefit as long as they are separated or divorced. It is not mandatory for a flag to be set.

Some payments are not subject to a payment flag, meaning that they can be paid irrespective of whether a payment flag request is received. Examples include financial hardship and payment requests made before the payment flagging request is received.

How can a benefit payment flag be set?

A benefit payment flag can be set by providing State Super with a:

- **Court Order** – the flag will be effective from the date the Court Order is served or at a later date as specified in the Court Order, or
- **Superannuation Agreement** – an agreement made between the parties of a marriage or de facto relationship who are separated or divorced. The benefit payment flag will be effective from the fourth business day after the agreement is served on State Super.

How is the flag set by a Superannuation Agreement?

A Superannuation Agreement must be served on State Super. It must clearly identify the superannuation benefit to be flagged and be accompanied by a:

- copy of the decree absolute dissolving the marriage, or
- separation declaration dated not more than 28 days before the date the declaration is served on State Super.

When does the flag cease to apply to a benefit?

A benefit payment flag ceases to apply when a:

- court orders the flag to be lifted, or
- Flag Lifting Agreement is served on State Super.

Generally, a benefit payment flag will be lifted when the parties have come to an agreement on how the benefit will be split. A Superannuation Agreement or Court Order to lift the flag will usually include instructions on how the superannuation benefit will be split.

To be valid, a Flag Lifting Agreement must:

- be signed by both parties, and
- contain a statement that each party has received independent legal advice regarding the Superannuation Agreement, and
- be accompanied by a certificate signed by the legal advisers, stating that the advice has been provided and is attached to the Superannuation Agreement, and
- be provided to each party.

2. Procedural fairness requirement

Generally, Court Orders will only be binding on the Trustee where there has been procedural fairness in relation to the making of the Orders. Procedural fairness for this purpose means that before the Orders are finalised by a Court, State Super has been given 28 days to review a copy of a draft of the Orders.

This period enables State Super to review and comment on the content of the draft Court Orders prior to being finalised. It also provides State Super with the opportunity to determine if the Orders are able to be acted on under the scheme rules and administration processes. For example, State Super will request that an Order specifies a base amount to be paid to the spouse and indicate separate base amounts for the SSS and SANCS benefits if the draft Orders have not specified this. State Super will also check that the base amount being proposed is consistent with the Family Law value of the benefit.

Although not a legislative requirement, it is considered useful for a draft Superannuation Agreement to be provided to State Super.

3. Specific matters to address in Court Orders or Superannuation Agreements

When drafting a Court Order or Superannuation Agreement, given the nature of the scheme rules, the following issues need to be addressed.

- The Court Order or Superannuation Agreement should indicate a lump sum base amount as being payable to the spouse.
- The base amount should not be greater than the Family Law value of the benefit provided to the parties as a result of the Request for Information for Family Law purposes.
- The SSS and SANCS benefits are considered to be separate benefits. The Court Order or Superannuation Agreement should separately detail how the SSS benefit and SANCS benefit are to be split. However, it is not essential for both benefits to be apportioned as the parties may decide that only one benefit should be split.
- The Court Order or Superannuation Agreement should not indicate that amounts are payable at different times. This is because the spouse cannot become a member of the scheme and their share will be paid out immediately after payment instructions are received.
- State Super should be provided with adequate time for the Court Orders to be implemented. For example, pensions are paid fortnightly in arrears and payment data (including any variations) are finalised within five working days before the pension payment date. Therefore in this situation the operative time to be specified in the Order should be at least four business days after the Order is served on State Super.

Note: State Super is not liable if a payment is processed and paid to a member prior to an Order being received, nor for a delay in payment where Orders are served after the operative time has already passed.

Standard wording of Court Orders

The general wording of Orders that State Super receive and consider appropriate for splitting benefits is as follows:

- 1) That a base amount of \$XX is allocated, as required by s.90XT (4) of the *Family Law Act 1975*, to <<non-member spouse name>> out of <<member name>>'s interest in **the State Superannuation Scheme**.
- 2) That a base amount of \$XX is allocated, as required by s.90XT (4) of the *Family Law Act 1975*, to <<non-member spouse name>> out of <<member name>>'s interest in **the State Authorities Non-contributory Superannuation Scheme**.
- 3) That in accordance with paragraph 90XT (1) (a) of the *Family Law Act 1975*:
 - a. <<non-member spouse name>> is entitled to be paid the amount calculated in accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001*, and
 - b. <<member name>>'s entitlement to payments out of their interest in the State Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme, and the entitlement of such other person to whom a splittable payment may be payable, is correspondingly reduced by force of these Orders.
- 4) That the Trustee of the State Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme ('the Trustee') shall do all such acts and things and sign all such documents as may be necessary to:
 - a. calculate, in accordance with the requirements of the *Family Law Act 1975* and the *Family Law (Superannuation) Regulations 2001*, the entitlement created for <<non-member spouse name>> by clause(s) <<1>> <<or/and>> <<2>> of these Orders, and
 - b. pay the entitlement whenever the Trustee makes a splittable payment out of <<member name's>> interest in the State Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme.
- 5) That these Orders have effect from the operative time and the operative time for this Order is <<insert date>>.
- 6) That these Orders bind the Trustee of the State Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme.

Note: It is up to the parties and their legal advisors to agree on the exact wording of the Orders.

4. The amount payable to the spouse at the date of payment

The amount payable to the spouse is calculated in accordance with Regulation 45A, 45B and 45D (3 and 4) of the *Family Law (Superannuation) Regulations 2001*. The Regulations require that at the time of payment, the amount to be paid to the spouse is the base amount stipulated in the Court Order or Superannuation Agreement adjusted with interest from the operative time up to the payment date.

The interest rate applied to the base amount is determined by the Australian Government Actuary and is published in the Commonwealth Gazette. The rate is 2.5% above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia, as published by the Australian Bureau of Statistics during the year ending with the November quarter immediately before the beginning of the adjustment period.

The rates for the current and previous four financial years are below.

Financial year	Interest rate p.a.
2023-24	5.9%
2022-23	4.7%
2021-22	5.7%
2020-21	5.7%
2019-20	4.8%
2018-19	4.9%

The actual scheme earning rate has no relevance in determining the interest rate to be applied.

Example

State Super receives a Court Order on 4 July 2023. The Order states that a base amount of \$200,000 is payable to the spouse with the operative date being the date the Order is received.

The spouse is then advised of payment options. Payment instructions are received and the spouse's share is paid out on 5 August 2023.

The amount paid to the spouse will be:

Base amount + interest adjustment from 4 July to 5 August 2023

$$\$200,000 + (\$200,000 \times 5.9\% \times 32 \text{ days}/365 \text{ days})$$

$$\$200,000 + \$1,034.52 = \$201,034.52$$

5. Payment options available to the spouse

Shortly after the Court Order or Superannuation Agreement is received, State Super will issue a payment split notice to the spouse together with a payment instructions form. The information provided will include details of the payment options available.

The spouse is given 28 days to return the payment instruction form together with the necessary certified proof of identity documentation. As the spouse's share cannot remain in the scheme, if instructions are not received within 28 days, the spouse's share will be transferred to Aware Super.

The payment options which are available to the spouse are determined by the preservation status of the superannuation benefit.

Spouse has met a condition of release

If the spouse has met a Commonwealth condition of release, the full amount of the benefit payable will be classified as unrestricted non-preserved (i.e. able to be cashed out).

The conditions of release include:

- retiring permanently from the workforce after reaching preservation age, or
- ceasing an employment arrangement after reaching age 60, or
- reaching age 65.

If a condition of release has been met, the spouse has the option to:

- cash out the benefit in full, or
- rollover the full benefit into another superannuation fund, or
- cash out part of their benefit and rollover the remaining amount into another superannuation fund.

Any amounts taken in cash may be subject to benefits tax. The amount of tax will be based on the taxation components of the payment and the age of the spouse.

Spouse has not met a condition of release

If a spouse has not met a condition of release, any portion of the benefit that is classified as unrestricted non-preserved can either be taken in cash or rolled over to another superannuation entity. The remainder of the benefit (classified as preserved and restricted non-preserved portions) must be rolled over to another superannuation fund until a relevant condition of release is met.

Unrestricted non-preserved benefit amount

The payment split notice will include details of the unrestricted non-preserved benefit amount. The unrestricted non-preserved amount is based on the member's circumstances at the time of the split and will be apportioned between the member and spouse.

A member will have an unrestricted non-preserved amount in the following circumstances.

- If the member is being paid a pension at the time of the split, the entire pension amount is considered to be unrestricted non-preserved. This means that the spouse's entire payment is also unrestricted non-preserved.
- If the member has reached age 65 at the time of the split, all benefits available to the member and spouse are considered to be unrestricted non-preserved.
- If the member has deferred a benefit in the scheme on leaving employment with the public service, then a portion of the benefits available in the scheme will be classified as unrestricted non-preserved. This means that the same portion of the spouse's payment will also be unrestricted non-preserved.

6. Reducing the member's benefit after a split has been paid

Once the split amount has been paid, the member's benefit will be reduced by the amount paid to the spouse.

The member's benefit is reduced by a 'reduction percentage' which is based on whether the member is a contributing, deferred or pension member.

Reductions for a contributing member at the date of the split

For contributing members, the reduction percentage applied to a member's benefit is called the 'initial reduction percentage' and is calculated as follows:

Initial reduction percentage =

Amount paid to the spouse ÷ value of benefit at the date of payment.

Note: The SSS and SANCS benefits are separate benefits and initial reduction percentages are calculated for each.

The initial reduction percentage is applied to the member's personal account balance at the date of the split. No other adjustment is required to the personal account after this time. For SSS, the benefit payable on withdrawal is largely based on the member's personal account balance and this post family law split balance will be used to calculate the Immediate Lump Sum benefit.

For SSS pension benefits and the SANCS benefit, the initial reduction percentage is recorded and adjusted down while the member continues in the scheme and accrues further years of eligible service. The downward adjustment ensures that the benefits that accrue after the split are not reduced.

Example – contributing member

John is a contributing member and has been in SSS for 20 years.

A summary of the value and reduction of John's benefits

Family Law value of SSS benefit = \$400,000 (using Family Law valuation methodology)

Split amount = \$200,000 (deducted from John's benefit)

Family Law value of SANCS benefit = \$60,000 (using Family Law valuation methodology)

Split amount = \$20,000 (deducted from John's benefit)

Initial personal account reduction and reduction percentage

John has an initial reduction percentage of 50% for his SSS benefit ($\$200,000 \div \$400,000$).

Immediate lump sum

John's SSS personal account is reduced by 50% of its value at the time of the split and is decreased from \$100,000 to \$50,000. No other adjustment is required to the personal account after this time. If a withdrawal benefit were to be paid to John at the same time as the split, the reduced personal account balance would be used to calculate the value of John's immediate lump sum payable.

Pension benefit

John will have an initial reduction percentage of 50% set for his SSS pension benefits. A SSS pension benefit would therefore be reduced by 50% if paid at this time.

SANCS benefit

The split amount paid from SANCS represents an initial reduction percentage of 33.33% of the total SANCS value ($\$20,000 \div \$60,000$). A SANCS benefit would therefore be reduced by 33.33% if paid at this time.

In practice member's benefits will normally be paid sometime after the split. The initial reduction factor is therefore adjusted to take into account superannuation benefits accruing after the date of the split as explained below.

Downward adjustment of initial reduction percentage

John continues contributing to SSS for another 10 years, at which time he takes his normal retirement pension benefit at age 60.

Pension benefit

John's normal SSS retirement pension benefit is yet to be reduced. The SSS initial reduction percentage of 50% is adjusted down to reflect the fact that John has accrued his full SSS entitlement after the date the benefit was split. For this purpose, the percentage is adjusted by dividing the number of years of eligible service membership up to the time of the split (20 years) by the number of years of eligible service up until the date of the benefit payment (30 years).

SSS pension final benefit reduction percentage = $50\% \times (20/30) = 33.33\%$

The SSS fortnightly pension benefit before the reduction is calculated at \$2,000 gross per fortnight. It would be reduced by 33.33% (\$666.60) to \$1,333.40.

SANCS benefit

John's SANCS benefit is also yet to be reduced. In a similar fashion to the above pension benefit, the initial reduction percentage of 50% is adjusted down to reflect the fact that John has accrued his full SANCS entitlement after the date the benefit was split. For this purpose, the percentage is adjusted by dividing the number of years of eligible service membership up to the time of the split (20 years) by the number of years of eligible service up until the date of the benefit payment (30 years).

SANCS final benefit reduction percentage = $33.33\% \times (20/30) = 22.22\%$

The SANCS benefit using normal scheme rules is \$100,000. It would be reduced by 22.22% (\$22,220) to \$77,780.

The total benefit payable to John consists of a retirement pension of \$1,333.40 gross per fortnight plus a lump sum benefit of \$77,780.

Note: The example has been simplified to show the general concept relating to benefit reductions. The actual benefit reduction methodology is based on the reduction methods of the scheme valuations methods in the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003*. If a member's account is subject to a Family Law split, then the effect on the benefit will be shown on Annual Statements and benefit estimates received after the payment split.

Reductions for a deferred member at the date of the split

If the split amount is paid to the spouse after the member has elected to defer their benefits in the scheme, it is assumed that no further accruals of benefits will occur.

At the time of the split, the initial reduction percentage will be calculated, as per the example for contributing members above using the valuation method for deferred benefits. The deferred benefits recorded at that time will be reduced by the initial reduction percentage. Benefits payable in the future will be based on the reduced benefits recorded.

When a contributing member elects to defer their benefits after a split has occurred, the downward adjustment occurs up to the date of the deferral. The amount recorded as being deferred is then the net benefit after the split has been taken into account. No further adjustments are made after the date of deferral.

Example – deferred member

Jane is a deferred member at the time of a split. Her deferred benefits at the time of the split include:

SSS benefit recorded as payable on immediate withdrawal = \$100,000

SSS benefit recorded as payable if the benefit remains deferred to age 58 = \$150,000

SANCS benefit = \$30,000

The Family Law value of the SSS and SANCS benefits at the date of the split are \$140,000 and \$30,000 respectively.

The amount of the Family Law split is \$70,000 from the SSS benefit and \$10,000 from the SANCS benefit.

The SSS initial reduction percentage is 50% and the SANCS percentage 33.33%.

Example – deferred member *continued*

The recorded deferred benefits will be reduced from the above amounts to:

SSS benefit payable on immediate withdrawal
 $\$100,000 - 50\% = \$50,000$

SSS benefit payable if benefit remains deferred to age 58
 $\$150,000 - 50\% = \$75,000$

SANCS benefit $\$30,000 - 33.33\% = \$20,000$

The new reduced recorded benefits will be increased by investment earnings up until the date of actual payment.

Lump sum value of pension = $\$39,135 \times 13.148 = \$514,546$

The pension reduction percentage is: split amount paid / lump sum value of pension

$\$100,000 / \$514,546 = 19.43\%$

Alan's fortnightly pension of \$1,500 is therefore reduced by 19.43%. His future fortnightly payments will therefore be \$1,208.55.

7. Fees payable

The table below outlines the fees payable for requesting information and processing a benefit split.

Membership type	Fee per request	Benefit split fee
Contributing member	\$275.00	\$1,347.50
Deferred benefit member	\$110.00	\$1,347.50
Pension member	\$110.00	\$1,347.50

All fees are inclusive of GST.

The request for information fee must be included with the application for the request. This fee can be paid by cheque or electronic funds transfer (EFT) (preferred).

All cheques should be made payable to:

SAS Trustee Corporation.

Payment by EFT should be sent to:

BSB: 062-000

Account number: 10226181

Payment lodgement reference: member number.

The benefit split fee is generally divided equally between the member and spouse. However, if the spouse is entitled to all of the member's benefit, the fee is payable by the spouse. The benefit split fee can be deducted from the final amount or paid by or EFT (preferred).

Reductions for pensions in payment

For pensions in payment, the pension will be reduced by a lump sum commutation to pay the spouse's share of the pension. This is because the spouse's share must be paid out of the scheme as a lump sum amount and cannot be paid a pension.

The reduction to the member's pension will be:

Amount of lump sum split paid ÷ Family Law lump sum value of the pension.

Example – pension member

Alan is 66 and is being paid a pension from SSS at the time of a split. His pension at the time of the split is \$1,500 per fortnight.

The Court Order states that the base amount to be paid to Alan's spouse is \$100,000. That amount is paid as a lump sum to Alan's spouse out of SSS.

To determine the reduction in Alan's pension as a result of the split, the first step is to determine the lump sum value of the pension at the date of the split. The lump sum value is calculated by using valuation factors specific to SSS pensions (the valuation factors are detailed in the *Family Law (Superannuation) (Methods and factors for valuing particular superannuation interests) Approval 2003 – Volume 5 Schedule 2 Part 8*).

Lump sum value of pension = annual pension x lump sum factor

Annual pension = $\$1,500 \times 26.09$ fortnights = $\$39,135$

Lump sum factor for age 66 male is 13.148

Glossary

Benefit payment flag	<i>A benefit payment flag is included on the member's superannuation benefit while the parties determine how the benefit will be split. It stops State Super from paying a superannuation benefit while the flag is in place.</i>
Benefit split	<i>A Family Law benefit split is the allocation of a member's superannuation benefit to a spouse in accordance with a Court Order or Superannuation Agreement. The member's superannuation benefit is reduced by the split amount.</i>
Court Order	<i>An order of the court which specifies the spouse's share of the member's superannuation benefit and the date the split will become operative.</i>
Payment split notice	<i>State Super will notify the member and the spouse if a member's superannuation benefit is subject to a Family Law split. This will be initiated by the receipt of a Court Order or Superannuation Agreement. Both parties will be provided with information about the split amount and the operative date for payment.</i>
Procedural fairness	<i>Before a Court Order is finalised, State Super is provided with a copy of the draft Orders for review and to assess the practicality of implementing the Court Order.</i>
Request for information	<i>An eligible person can make a request for information about the member's superannuation entitlement. State Super can only provide the spouse with information that is prescribed under the Family Law legislation.</i>
Regulation 72 notice	<i>The written information that is required to be provided by the spouse to State Super before a superannuation benefit split can be processed.</i>
Separation declaration	<i>A written statutory declaration. A separation declaration is only required to be signed by one of the parties.</i>
Superannuation Agreement	<i>An agreement made between the parties of a marriage or a de facto relationship on the splitting of a superannuation entitlement.</i>

01/08/2023

More information

If you need more information, please contact us:

Telephone: **1300 130 096** (for the cost of a local call, unless calling from a mobile or pay phone)
8.30 am to 5.30 pm, Monday to Friday.

Personal interviews: Please phone 1300 130 096 to make an appointment.

Postal address: State Super, GPO Box 2181, Melbourne VIC 3001

Internet: www.statesuper.nsw.gov.au

Email: enquiries@stc.nsw.gov.au