

Death and dependants' benefits

Military Super

AFSL: 238395
ABN: 50 925 523 120
Board ABN: 72 406 779 248

MB02 - April 2011

Introduction

If a member dies whilst a MilitarySuper contributor, a preserved benefit member or a pensioner, a benefit will be paid to eligible dependants, or to the estate if there are no eligible dependants. This factsheet describes benefits in general. Other matters of interest are detailed at the end of this factsheet under *General information*.

Benefits payable

The benefits payable vary according to whether the member dies:

- in service ie as a contributing member
- as a pensioner
- after exit but before receiving the employer benefit, i.e. as a preserved benefit member.

These are discussed in more detail on the following pages.

Death in service

Member benefit

A member benefit (that is, contributions and accumulated interest) is payable immediately as a lump sum to the person entitled—for example, to the member's eligible spouse or children. If there are no eligible dependants, this benefit will be paid to the estate.

Employer benefit

In this situation, the employer benefit is calculated the same as the Class A invalidity benefit. This is based on actual and prospective service—that is, the number of years served, plus the number of years served between the date of death and compulsory retiring age for rank. This would normally be age 60 unless the person has elected an earlier retiring age or has a later compulsory retiring age. The benefit, less an adjustment to recover any surcharge debt, is payable to the following recipients:

- *Spouse*

A spouse may take 100% of the employer benefit as a lump sum or convert 50% or more to an indexed pension. If the spouse wishes to convert the whole lump sum to a pension, the rate of pension will be 67% of the eligible pension. If there are eligible children, the pension benefit will be increased at the rate of 11% of the eligible pension for one child, 22%

for two children and 33% for three or more children. When the benefit is taken as a pension the amount payable to the spouse and children are identified separately. This is because once the child turns 18 and remains a full time student the relevant separate component ie 11% is paid directly to the child. On the other hand if the spouse chooses to take a lump sum, the children's benefits are included in that amount. That is the employer lump sum benefit is paid totally as a lump sum and no additional benefit becomes payable.

- *Dependants*

A child's benefit is also payable to each eligible child where no spouse's benefit is payable or where the spouse later dies. These pension benefits are payable at the rate of 45% of the Class A invalidity pension for one child, 80% for two children, 90% for three children and 100% for four or more children.

- *No dependants*

If a member:

1. has no eligible spouse or children, but a person or persons who is or are financially dependent on the member; and
2. has notified the Board in writing to this effect; and
3. has made provision for that person or those persons in their Will,

then the benefit is payable as a lump sum to, or for the benefit of, that person or those persons. In the event that there is no such person or persons, then the benefit is payable as a lump sum to the member's estate.

Death as a pensioner

If a member dies while a pensioner, the eligible spouse receives 67% of the pension that the member was receiving. If the member leaves eligible children, their pension entitlement will be added to the spouse's pension at the rates of 11% for one child, 22% for two children and 33% for three or more children. If the member dies while a pensioner leaving children but no eligible spouse, the children receive a pension benefit at the rate of 45% of the members benefit for one child, 80% for two, 90% for three and 100% for four or more children.

Customer Service Centre

1300 006727

FACT SHEET

Death and dependants' benefits

Death of an invalidity pensioner

Where the cause of death of a person in receipt of a class B pension is a result of the person's prescribed impairment, the pension payable to the spouse or child is calculated as if the person had been in receipt of class A pension.

A similar provision applies where the deceased was once in receipt of class A or class B but had been reclassified class C prior to death.

Death after exit but before receiving the employer benefit—preserved benefit members

If a preserved benefit member dies after leaving the Defence Force and before receiving their preserved employer benefit, eligible dependants will be paid the preserved employer benefit, less an adjustment to recover any surcharge debt, as either a pension, a lump sum or a combination of both. If there are no eligible dependants, a lump sum will be paid to the member's estate (see diagram MilitarySuper preserved death benefits).

Who is eligible for dependants' benefits?

In MilitarySuper, an eligible spouse and children are regarded as dependants. The eligibility requirements that need to be satisfied are explained as follows.

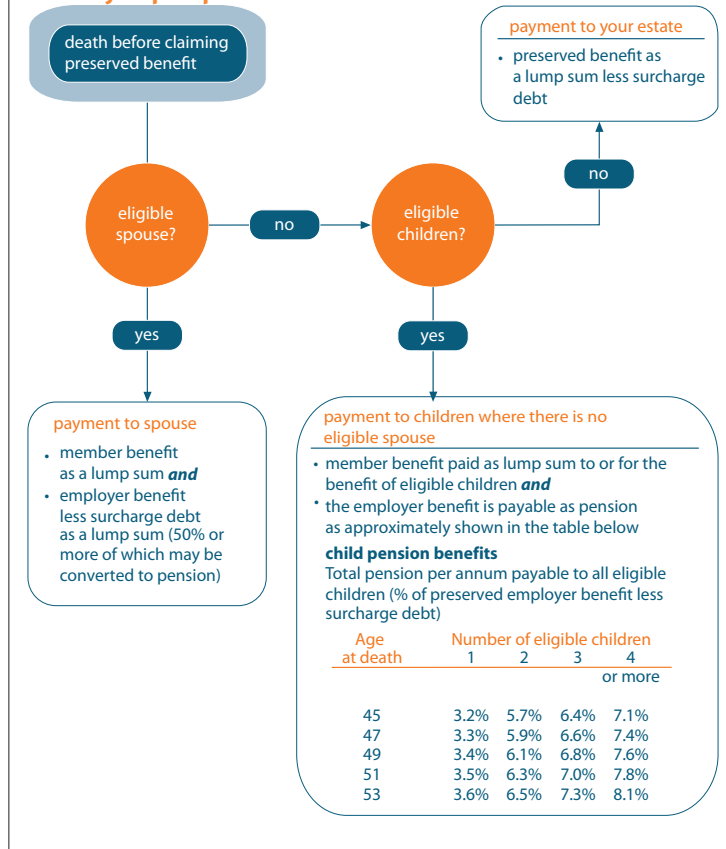
Spouse's benefit

An eligible spouse is a person with whom the member had a marital or couple relationship at the time of death—that is, a person with whom the member has been living on a permanent and bona fide domestic basis as husband, wife or partner for a continuous period of at least three years up to the time of death.

Where a marital or couple relationship had existed for less than three years at the date of death, the Board of Trustees may decide that your spouse is nevertheless an eligible dependant. In coming to this decision, the Trustees take into account evidence such as whether:

- the person was wholly or substantially dependent upon the member
- the person was legally married to the member
- the relationship was registered under a law of a state or territory as a prescribed kind of relationship

MilitarySuper preserved death benefits



- the member had a child born of the relationship, a child adopted during the relationship, or a child of both people within the meaning of the *Family Law Act 1975* (see **Child's benefit** section below for full definition)
- a home which was the usual place of residence was jointly owned.

The Board may also take into account any other evidence it considers relevant.

Where the member previously had a marital or couple relationship but the relationship had ended before the member's death, a benefit may still be payable to the spouse if:

- at the time of death, the member was legally married; and
- the person was wholly or substantially dependent upon the member at the time of death.

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Marital or couple relationship commencing after age 60

Where the post-retirement marital or couple relationship has existed for less than three years, a pro-rata of the spouse's pension will be payable. In this instance, where the pension is a small amount, the spouse can elect for a once only lump sum instead.

Child's benefit

After the member's death, benefits are paid to children if they are under 16 years of age or are full-time students between 16 and 25 years of age at the time of death. After age 25, benefits will no longer be payable to any children. Child includes a step-child, adopted child, foster child, ward, ex-nuptial child or a child within the meaning of the *Family Law Act 1975*. A child also includes a child, ex-nuptial child, or child within the meaning of the *Family Law Act 1975*, of your spouse, who was wholly or substantially dependent upon you at the time of your death.

The **meaning of child** in the *Family Law Act 1975* includes children:

- born to a woman as the result of an artificial conception procedure while that woman was married to, or was a de facto partner of, another person (whether of the same or opposite sex); and
- who are children of a person because of an order of a State or Territory court made under a State or Territory law prescribed for the purposes of section 60HB of the *Family Law Act 1975*, giving effect to a surrogacy agreement.

Arrangements for fulltime students over 16 years of age

A child's pension is stopped when the child reaches 16 years of age unless he or she is a full-time student. Before the pension is stopped, ComSuper will write to find out if the child is a full-time student and will send the parent or guardian the appropriate form to fill in. Where the child has reached 18 years of age, the form should be completed by the child. The form has to be signed by the Principal or Registrar of the educational institution attended by the child.

Also, an annual student review exercise is conducted for students aged between 16 and 25 years. In this case ComSuper sends out a form each year to the parent/guardian or student. The form must be completed and returned or the benefit will be ceased.

General information

Family Law

MilitarySuper dependants' benefits are subject to splitting arrangements under Family Law legislation. For example, under these arrangements a portion of the benefit may be paid to the spouse or de facto of a previous marriage or relationship.

Family Court orders/agreements splitting benefits can vary on a case-by-case basis and also according to different scenarios. For this reason, the discussion in this factsheet of benefits payable to dependants assumes no splitting arrangements are in place.

Further information regarding family law can be found in the booklet *Family Law and splitting super - How its done and what happens next* available through the MilitarySuper website www.militarysuper.gov.au.

Tax payable on a Death benefit

The tax payable on a Death benefit depends on how the benefit is paid. A pension will be subject to PAYG tax, like the tax you pay on your fortnightly salary. A lump sum paid to an eligible dependant is not subject to tax. However, a lump sum paid to an Estate may be taxed when the Estate is finalised.

Absence without leave

Unless mitigating circumstances apply, if the member dies whilst Absent Without Leave (AWOL) for greater than 21 days, the benefit payable to an eligible spouse, child or the estate is confined to a refund of the benefit based on actual service undertaken up to the date of death, rather than based on prospective service.

Surcharge debt

Should a member die in service or as a preserved benefit member any surcharge debt that may have accrued will be recovered from benefits payable to the member's estate or dependants. Please see the MilitarySuper leaflet Superannuation Contributions Surcharge for further details.

Ancillary Contributions

If the deceased has been making ancillary contributions these will be paid as a lump sum to the eligible spouse or dependants or estate as applicable.

Indexation of pensions

All pensions are indexed automatically twice yearly with effect from the first pension paydays in January and July.

Customer Service Centre

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FACT SHEET

Death and dependants' benefits

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The adjustment is based on any upward movement in the Consumer Price Index (CPI) for the six months ending 31 March and 30 September each year. If the CPI rises, we increase pensions. If the CPI falls, the pension will remain the same.

Pensions that have been paid for the whole six months before a January or July adjustment are varied by the CPI change for that six months. The first CPI adjustment to a pension is calculated as a proportion of the full amount, e.g. if the member had been in receipt of pension for three months the adjustment will be half of the full CPI amount for that six month period.

Statements will be issued in January and July showing the new rate of pension. Taxation information will be included in the PAYG Payment Summary issued in July.

Minimum pension benefits

In certain circumstances where a Class A or Class B invalidity pensioner dies without dependants and within ten years after retirement a lump sum benefit equal to the residual capital value of the pension may be payable to the estate.

In other cases where a pensioner dies before pension payments have reached the capital amount of the 3% productivity benefit, and there are no eligible dependants, the shortfall is paid to the deceased member's estate.

What forms are used to claim dependants' benefits?

The spouse of a deceased contributing or preserved MilitarySuper member, will need to complete and submit the form **M80, Spouse and Children of a Member or Preserved Benefit Member - Benefit Application Form and Information Leaflet**.

The spouse of a deceased MilitarySuper pensioner, will need to complete and submit the form **MS2SP, Spouse & Children of a Pensioner - Benefit Application Form and Information Leaflet**.

For a deceased contributing or preserved member, or pensioner where there is no dependant spouse the form **M85, Application for Child's Benefits (including Ancillary Benefits)** should be completed and submitted by the child or someone on their behalf.

Where there is no spouse, the person handling the estate of a deceased member should use the form **DM90, Application for Estate Benefit (including Ancillary Benefit)**. This should be used in conjunction with form **M85, application for Child's Benefits (including Ancillary Benefits)** where a deceased member is survived by a dependant child but not a dependant spouse.

All these forms are available from ComSuper or through the MilitarySuper website www.militarysuper.gov.au.

If you need more information...

Phone: Customer Service Centre 1300 006 727
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Web: www.militarysuper.gov.au
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