

# ● SUPERANNUATION DEATH BENEFITS

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The value of your superannuation, whether it is still accumulating or paid as an income stream can be treated as an asset outside your Will.

Nominating a beneficiary to receive your superannuation or income stream can allow your superannuation funds to be paid faster and reduce the complications associated with probate and/or superannuation trustee decision making.

## BENEFITS

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- Nominating your superannuation beneficiary can direct your superannuation to your intended beneficiary, rather than be determined by your executor.
- Nomination may also allow you to ensure that beneficiaries receive funds tax-effectively.
- Family conflicts may be avoided.

## HOW IT WORKS

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The trustee of a superannuation fund has the discretion to decide who should receive the balance of your account, including any life insurance proceeds, upon your death. However, it can only be paid to someone who meets the definition of 'superannuation dependent' or to your estate. A superannuation dependent is defined as:

- your current spouse (legal or de-facto, including same-sex)
- your child (including step-children and adopted children)
- someone who was financially dependent on you at the time of your death
- someone who was in an interdependency relationship with you at the time of your death.

Your superannuation fund may permit you to nominate your directions to the trustee for the payment of your total superannuation death benefit. The limitations on who can be a beneficiary will remain the same.

A superannuation beneficiary will then receive the benefit as a lump sum, which can be taken in cash or rolled over. If the beneficiary is also a 'tax dependent', the beneficiary may be able to commence or continue a superannuation pension/income stream.

If your benefit is paid to your estate, it will be dealt with according to the terms of your Will.

## BENEFICIARY NOMINATIONS

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There are a variety of nomination options which can be used so that your superannuation bypasses your estate and is paid directly to your nominated beneficiary. This can give you more confidence that the right person will receive your benefit.

- Binding nomination – this nomination is binding on the trustee of your superannuation fund providing it is valid at the date of your death. To be valid, the nomination must be in writing, signed by you and witnessed by someone over the age of 18 who is not a beneficiary. Most binding nominations only last for three years, however it is a good idea to review your nomination regularly (preferably annually) to ensure the nomination continues to be appropriate. If your superannuation is in a self-managed fund, the requirements to be a valid binding nomination will depend on the trust deed requirements. A binding nomination only binds the trustee as to who will receive the benefit; it may not bind the trustee as to whether the benefit should be paid as a lump sum or pension.
- Non-binding nomination – a non-binding nomination means that the trustee of your superannuation fund will consider your nomination but retains discretion to override it. The trustee will attempt to identify all potential beneficiaries and make their own decision about who is the most appropriate beneficiary. A non-binding nomination also gives the trustee the discretion to protect the interests of beneficiaries if circumstances change. For example, if a beneficiary becomes bankrupt, the trustee can take this into account and avoid putting the superannuation benefit into the hands of creditors instead of the beneficiaries. This can take time to decide and to follow the correct processes.
- Non lapsing binding nomination nomination is a binding death benefit nomination that does not lapse. Unlike binding death benefit nominations which lapse every three years, will remain in force until such time it is amended or revoked by the client.
- Reversionary nomination – this type of nomination is only available for superannuation pensions. The trustee will be bound to continue paying the pension to your nominated beneficiary after your death. Your beneficiary may have flexibility to stop the pension and convert it into a lump sum if desired, depending on the pension type. You can only nominate a reversionary when you start a pension and may not to stop and restart the pension to make changes.

## TAXATION OF DEATH BENEFITS

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The tax payable on a superannuation death benefit depends on whether or not the beneficiary meets the definition of 'tax-dependent' and whether the benefit is paid as a lump sum or pension. The tax on a pension paid from an untaxed (unfunded) superannuation scheme is higher than if paid from a taxed (funded) scheme.

The definition of a tax-dependent is slightly different to superannuation dependent, with a tax-dependent being:

- a spouse of the deceased (current or former spouse, including legal, de-facto or same-sex)
- a child of the deceased who is under age 18 or under age 25 and still dependent (including step-children and adopted children)
- someone who was financially dependent on you at the time of your death
- someone who was in an interdependency relationship with you at the time of your death.

A non-tax dependent will pay a higher rate of tax and can only receive the death benefit as a lump sum.

If your life insurance is held inside your superannuation account the claim proceeds will be paid into your account and will also form part of your superannuation death benefit. This can result in an untaxed element being created. The untaxed element attracts a higher rate of tax on lump sums paid to a non-tax dependent.

Please refer to the References section at the end of this document for current tax rates.

## WHAT YOU NEED TO CONSIDER

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- The rules of your superannuation fund will determine the types of nominations available. You should check with your superannuation fund.
- You should review your nomination regularly to ensure it continues to be appropriate for your circumstances. Your nomination may need to be updated to reflect a change in your personal circumstances, a change in your beneficiary situation or to continue to remain valid.
- Your superannuation death benefit will include the value of a life insurance policy held inside the superannuation fund that may be subject to tax if paid to a non-dependent.
- Beneficiaries who select pension payment for the superannuation death benefit, or will receive death benefits as an income stream, will have the pension measured against their individual Transfer Balance Cap. It is important to seek advice if you are a reversionary beneficiary or wish to commence a death benefit income stream.
- Specific rules apply for income streams associated with children and defined benefit schemes. If a pension is paid to a child under age 25 it must cease when that child reaches age 25, unless they meet the disability requirements.
- A superannuation death benefit can be received as a cash lump sum or rolled over for dependant beneficiaries. The rolled over amount is subject to the proportioning rule and considered non-assessable non-exempt income for the beneficiary, but cannot remain in accumulation mode or mixed with the beneficiary's other superannuation- it is important to seek advice.
- If trustee discretion applies and disputes arise in relation to who is to be a beneficiary it can take a long period of time to resolve the dispute as the Australian Financial Complaints Authority may need to mediate or decide.
- The validity of a binding nomination is only verified after the member's death. It is important to seek advice to ensure it is correctly completed and effective.
- In certain circumstances, a binding nomination can be overruled by a court order. This risk can be minimised if your binding nomination is considered in conjunction with your Will.

## REFERENCES

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You may wish to refer to the following websites for further information about superannuation death benefits:

- [www.ato.gov.au](http://www.ato.gov.au)
- [www.moneysmart.gov.au](http://www.moneysmart.gov.au)

The information in this document is of a general nature and does not take into account your own financial objectives, circumstances or needs. You should consider your own personal situation and requirements before making a decision.