

## Superannuation and Life Insurance (Death Benefit)

It is the duty of the trustee of the Fund (i.e., Colonial, MLC, AXA, etc.) under the rules governing the Fund and under superannuation legislation, to pay a member's death benefit to the dependants of the deceased and/or legal personal representative of the deceased. A payment may be made to some other person only where the Trustee is unable to find a dependant or a legal personal representative.

The definition of dependant includes the spouse (including de facto spouse) and any children (including step-children, adopted or ex-nuptial children) of the deceased, and any other person who was dependent on the deceased at the time of their death or whom the deceased had a legal or moral obligation to support at the date of their death.

A legal personal representative means the executor appointed under a Will, or a person who has been granted Letters of Administration for the estate of the deceased by a Court.

The trustee of the Fund has the final say in how the benefit will be allocated amongst the potential beneficiaries.

### 1. Role of the trustee

Under the superannuation legislation, assets held in a superannuation fund are treated differently to other assets.

Superannuation benefits do not form part of the estate. So, if there is a will, a superannuation benefit is not automatically distributed in accordance with a will.

The trustee of the funds, after considering all relevant information, distributes the assets in accordance with the trust deed and relevant legislation.

### 2. Who will receive the benefit?

Legislation requires the fund to pay the benefit, where possible to:

- (i) one or more dependants; and
- (ii) the legal personal representative (ie. the estate).

If there are no dependants and no legal personal representative, the fund may pay the benefit to one or more non-dependants.

### 3. Dependant

Dependant means:

- (i) a spouse;
- (ii) a child; and
- (iii) any other person who the trustee determines was dependant on the deceased, or whom the deceased had a legal or moral obligation to support at the relevant date.

### 4. Legal Personal Representative

A legal personal representative is the executor of the will or administrator of the estate of a deceased person.

If there is no will, someone may choose to apply for Letters of Administration. If granted, the person to whom they are granted plays a similar role to the executor of a will in the distribution of the estate's assets.

## 5. **Non-Dependant**

In certain circumstances a benefit is paid to a non-dependant beneficiary. If the deceased left no dependants and there is no legal personal representative, the benefit may be paid to, for example, one or both parents. Both parents of the deceased should submit Statutory Declarations, even if only one parent is claiming the benefit. The person not claiming the benefit should make it clear in the Statutory Declaration that he or she would like the whole benefit to be paid to the other spouse.

## 6. **Adult children**

Because superannuation legislation does not distinguish between adult and minor children, an adult child is classified as a dependant. However, any payment to an adult child will be taxed because he or she is classified as a non-dependant under taxation legislation (unless the adult child was financially dependent on the deceased).

In most cases a Statutory Declaration/dependency statement is not required from adult children. However, if there is no surviving spouse, or legal personal representative, it would be appreciated if the statutory declaration/dependency statement could be completed by all the deceased's children.

## 7. **The Will**

A will is taken into account when the trustee makes a decision about the payment of the benefit. Please note, however, that the trustee is not required to pay benefits in accordance with the will.

For example, payment may be made to a dependant who is not included in the Will. If the deceased left a will, a certified copy is required.

## 8. **Nominated Beneficiaries**

Nominated beneficiaries are taken into account when a decision is made about payment of the benefit. For example consider binding nominations.

In certain circumstances the trustee may decide to pay part or all of the benefit to another person (for example, a dependant) even if that person is not recorded as a nominated beneficiary.

## 9. **Forms to Complete**

All potential beneficiaries should complete a statutory declaration and statement.

## 10. **Children**

For children under the age of 15 years, the statutory declaration should be completed by the person having authority to act on the child's behalf (eg by the parent or the legal guardian). If the child is over the age of 15 years, the statutory declaration should be counter-signed by the child.

## 11. **Supporting Evidence**

Documents that may support a claim for dependency include a marriage certificate, bills and bank accounts in joint names and birth certificates for any children.

## 12. Divorce

If the deceased was divorced then a copy of the "decree nisi" will need to be supplied.

## 13. Conflicting Claims

If two or more individuals lodge claims, the trustee will, after assessing all of the information provided, notify the relevant parties of its decision.

If a claimant is not satisfied with the trustee's decision, he or she is given the opportunity to make a written objection.

In an objection is received, the trustee considers the objection under the fund's inquiries and complaints procedures.

If a claimant is not satisfied with the proposed distribution following the review by the trustee, he or she may lodge a written complaint with the Superannuation Complaints Tribunal (SCT).

## 14. Taxation of Death Benefits

The amount of tax deducted from a death benefit depends on who receives the money and whether the relevant tax file numbers have been supplied.

If the deceased's tax file number is not provided (or already recorded), tax is deducted at the highest rate plus the Medicare Levy (48.5%).

If the deceased's tax file number is provided:

- (i) Tax is not deducted from a payment to a dependant;
- (ii) 16.5% tax is deducted from a payment to a non-dependant who has provided their tax file number;
- (iii) 48.5% tax is deducted from a payment to a non-dependant who has not provided their tax file number; and
- (iv) tax is not deducted from a payment to an estate. The executor of the estate may need to deduct tax before making payments to the beneficiaries of the estate.