



# Is Superannuation Included in a Deceased Estate?

Superannuation does not automatically form part of a person's estate when they pass away. In most cases, super is paid to the deceased person's dependents, however in some cases, a fund will pay death benefits to the deceased's legal representative to form part of the estate.

There are many frequently asked questions around superannuation death benefits and [Andersons Senior Associate Lynn Pham](#) addresses some of these FAQs below:

## Are superannuation death benefits (SDB) included in a deceased estate?

Superannuation does not automatically form part of a person's estate when he/she passes away.

SDB might include the balance of the member's entitlements, as well as any insurance policies attached to the membership.

Payment of SDB is governed by the terms of the Trust Deed and the Superannuation Industry (Supervision) Act 1993 ("SIS Act").

## Who receives payment of death benefits?

In general, eligible beneficiaries will receive payment of superannuation death benefits.

The eligible beneficiaries are either 'superannuation dependents' or the member's estate. The assessment of whether or not a beneficiary meets the definition of 'superannuation dependent' is determined at the time of death. Pursuant to section 10 of the SIS Act, a superannuation dependent can be:

- A spouse (legal or de-facto);
- Your children;
- A person who was financially dependent on the member at the time of death; or
- A person who was in an interdependency relationship with the member at the time of death.

If the proceeds of your superannuation death benefits are paid to your legal personal representative (your estate), these funds will then form part of the estate and are governed by the terms of the member's Will or intestacy.

## How are superannuation death benefits paid?

There are two ways that payment of superannuation death benefits can be made: a lump sum payment or pension payment.

A pension income stream payment is available exclusively to the member's spouse, a minor child, a child with disability (regardless of age), or a child aged 18 - 25 who is financially dependent on the member at the time of death. However, the pension would cease when the child turns 25 years old, unless they meet the disability requirement.

## Binding Nomination vs Preferred Nomination

Most superannuation funds allow their members to nominate how their superannuation death benefits should be dealt with when they pass away.

**There are two common types of nominations in superannuation death benefits - binding and preferred.**

**A binding nomination** is legally binding upon the trustee in the event of a member's death whereas **a preferred nomination** will only be used as a guide when the trustee exercises his/her discretion.

Advisers need to carefully consider the fund trust deed to determine what form of nomination is

allowed, and how the nomination is to be effected.

The trust deed may also specify whether an enduring power of attorney of an incapacitated member can make, revoke, vary or renew a member's binding death benefit nomination.

The legal representative needs to be aware if they will have a conflict of interest and/or duty to deal with the binding nomination, and whether the power conferred upon them allows a conflict transaction.

A binding nomination, unless revoked by the member, will lapse after three years or less as the fund's deed specifies. If the fund's deed allows, a member could also make a non-lapsing nomination.

## Do you have to pay tax on a death benefit?

A lump sum payment of superannuation death benefit is exempt from tax if it is paid to the dependents of the death benefit, who are defined under section 302—195 of the Income Tax Assessment Act 1997 as:

- The deceased member's spouse or ex-spouse;
- The deceased member's minor child;
- A person who had an interdependency with the deceased member just before his/her death; or
- A person who was dependent on the deceased member just before his/her death.

If superannuation death benefit is paid as a lump sum to a non-dependent beneficiary, the amount of tax payable is dependent on:

- Whether the beneficiary has reached 60 years old
- Whether the deceased was under 60 years old at the time of death;
- Taxable and non-taxable components of the SDB.

If you have a complaint about the distribution of superannuation death benefit funds you can contact the [Australian Financial Complaints Authority \("AFCA"\)](#).

The AFCA is an independent regulatory body providing consumers with resolution for financial complaints including complaints regarding trustees of non-self-managed-funds and the distribution of the fund's SDB.

However, AFCA is not empowered to provide a decision that is contrary to the Trust Deed or a current and valid binding beneficiary nomination made by the deceased member.

## How Can Andersons Solicitors Help?

If you have more questions about superannuation death benefits or anything relating to [Wills](#) or [Estate Administration](#) please contact today's author [Lynn Pham](#) or one of Andersons Solicitors

experienced [\*\*Wills and Estates lawyers.\*\*](#)