Estate Planning – Superannuation death benefits and nominations

Nominating a beneficiary to receive your superannuation benefits upon your death gives you peace of mind knowing that the funds will be paid according to your wishes.

How it works

Generally, superannuation does not automatically form part of your estate when you pass away. This means that unless you take specific steps, the trustee of a superannuation fund may have the discretion to decide who should receive the balance of your account upon your death, regardless of what you might indicate in your Will, or direct payment to your estate.

To provide more estate planning certainty, you may be able to make a beneficiary nomination on your account to bind the trustee to follow your wishes or to give the trustee guidance as to who should receive your superannuation death benefit.

You're only able to nominate someone who meets the definition of a 'superannuation dependant' or to your estate. Whether or not the person meets the definition of a superannuation dependant will be determined at the time you pass away. A superannuation dependant includes:

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

Your beneficiary will generally receive the benefit as a lump sum. However certain beneficiaries may be able to choose to receive some or all of your super as a death benefit pension instead. Those eligible to be paid a death benefit pension includes:

- your spouse
- a child under 18
- a child age 18 – 25 who is financially dependent upon you, or
- a disabled child.

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. Any remaining benefit will be paid to the child as a tax-free lump sum.

Your benefit will only be distributed in accordance with the provisions of your Will if it is paid to your estate - either as a result of the trustee of the fund using their discretion, or in accordance with a valid binding nomination you may have implemented.

Beneficiary nominations

To ensure that your superannuation death benefit is paid to the person or people you wish, there are a variety of beneficiary nomination options which may be used. This can help 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 provided it is valid at the date of your death. To be valid, the nomination must be in writing, signed and dated by you and appropriately witnessed. The person nominated must also meet the definition of a superannuation dependant at the time you pass away.

  Some binding nominations only last for three years before they lapse, while others are valid indefinitely. 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 superannuation fund, the requirements to be a valid nomination will depend on the trust deed requirements. It is important that any nomination is in line with the rules of the fund, otherwise it may be invalid.

- **Non-binding nomination** – a non-binding nomination means that the trustee of your **superannuation** fund will consider your nomination as an indication, but will retain full 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. The trustee might pay the benefit directly to one or more individuals, or to your estate. This can take time to decide and to follow the correct processes.

  If the superannuation death benefit is paid to your estate and your Will does not make adequate provision for it or you pass away without a valid Will, your estate including super proceeds may be distributed in line with state based intestacy laws.

- **Reversionary nomination** – this type of nomination is only available if you own a superannuation income stream. It is important to get professional advice to understand whether a reversionary nomination is appropriate based on the type of pension you have, whether a particular product provider offers this option, and who you wish to nominate as a beneficiary.

  In the event of your death, the trustee will be bound to continue paying the pension to your valid nominated beneficiary. Your beneficiary may have flexibility to stop the pension and convert it into a death benefit lump sum if desired. Generally, you can only make a reversionary nomination when you start a pension and you may need to stop and restart the pension to make changes. The product provider would need to confirm whether or not they provide the ability to add, remove or modify a reversionary nomination once the pension has commenced, without the need to start a new pension. Before you stop and start your pension it is important to understand whether this may have any implications, for example, your eligibility and entitlement to any social security benefits, or aged care fees.

Taxation of death benefits

The tax payable on a superannuation death benefit depends on a number of factors, including:

- whether or not the beneficiary meets the definition of 'tax-dependant'
- whether the benefit is paid as a lump sum or pension
- the tax components of the interest
- whether the fund includes proceeds from certain insurance policies
- the age of the deceased at the time of their death and the age of the beneficiary, and
- whether the benefit is paid from an untaxed (unfunded) superannuation scheme or from a taxed (funded) scheme.

The definition of a tax-dependant is slightly different to superannuation dependant, with a tax-dependant 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
- 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 dependant 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 proceeds will be paid into your account and also form part of your superannuation death benefit. This can result in an untaxed element being created where a superannuation lump sum death benefit is paid. The untaxed element attracts a higher rate of tax on lump sums paid to a non-tax dependant.

Tax rates on super death benefits paid as a lump sum		
Tax component	**Paid to a tax dependant**	**Paid to a non-tax dependant**
Tax-free	Nil	Nil
Taxable (element taxed)	Nil	Up to 15%*
Taxable (element untaxed)	Nil	Up to 30%*

* Medicare and other levies may also apply. If the lump sum is paid to a non-dependant beneficiary directly from the super fund, the taxable amount will be included in the beneficiary's assessable income with a tax offset applied so that tax on the benefit does not exceed the rate indicated. However because the benefit is included in the beneficiary's assessable income, it may impact entitlement to certain benefits and concessions which are determined based on income.

Tax rates on super death benefits paid as a pension to a tax-dependant**		
Tax component	**Either deceased or beneficiary are age 60 or over**	**Both deceased and beneficiary are under age 60**
Tax-free	Nil	Nil
Taxable (element taxed)	Nil	Marginal rate less 15% offset*^
Taxable (element untaxed)	Marginal rate* less 10% offset	Marginal rate*^

**Different rates of tax may apply if a death benefit is received from a defined benefit fund. These rules are complex and it is important to seek professional tax advice.
* Medicare and other levies may also apply.
^ Once the beneficiary turns age 60, the concessional treatment applying to over age 60 may apply on pension payments received from that point.

Cap on transfers to a super pension

A cap exists to limit the total amount that can be transferred to certain superannuation income streams (known as 'retirement phase income streams') in your lifetime. This cap is known as the 'transfer balance cap' (TBC). In 2021/22, the general TBC is $1.7 million and may be indexed in the future. However, you may have a personal TBC of between $1.6 million and $1.7 million if you commenced a retirement phase income stream prior to 1 July 2021. Penalties apply where amounts in excess of your TBC are transferred to pension phase, and you will generally need to take steps to reduce the excess.

As well as certain super pensions you may receive when you retire after your preservation age or meet certain other conditions, death benefit pensions you receive are also within the definition of 'retirement phase income streams' and are therefore counted towards your TBC.

When you transfer an amount to a retirement phase pension, you receive a ‘credit’ to your transfer balance account. The type of death benefit nomination that is in place will impact the timing and amount of the credit to your transfer balance account.

It is important to understand the impact to your transfer balance account if you are entitled to receive a death benefit pension, including whether or not receiving some or all of the death benefit as a pension will cause you to exceed the TBC.

If you’re unable to receive the entire death benefit as a pension due to the TBC, you will need to consider alternative options. This could include:

- receiving the death benefit as a lump sum
- receiving some of the death benefit as a pension and some as a lump sum
- if you are in receipt of a super pension from your own member balance, you could consider commuting some of this pension back to your accumulation account to enable you to commence a larger death benefit pension, or
- commuting some or all of your own member pension as a lump sum out of superannuation and investing the proceeds outside superannuation to enable you to commence the death benefit pension.

You cannot retain any part of a superannuation death benefit in super accumulation, and you won’t be able to consolidate a death benefit pension with your own member pension.

The right option for you will depend on your individual circumstances, so it is important to make sure you receive personal advice that considers your personal set of circumstances to help you decide what is right for you.

The above rules apply to beneficiaries eligible to receive a death benefit as an income stream, except for a child. Child beneficiaries receiving a death benefit pension also have an assessment against a modified TBC. These rules are complex and you should seek specific advice.

Different rules will apply where death benefits are received from a defined benefit fund, and where death benefits are paid as a pension to a child of the deceased.

Pensions paid from a defined benefit interest are generally not commutable (which means you may be unable to exchange some or all of the pension for a lump sum to reduce your transfer balance account). As a result, additional tax may be payable on pension payments received from a defined benefit fund to provide similar outcomes. These rules are complex, and you should seek advice to understand the implications specific to you.

Benefits

These may include:

- Upon your death, your superannuation can be paid faster with a valid binding death benefit nomination and with fewer complications than if it is directed to your estate or wait for trustees of the fund to make a decision.
- Your superannuation is more likely to pass to your intended beneficiary.
- Family conflicts may be avoided.

Risks, consequences and other important things to consider

These include:

- Not all superannuation funds offer the opportunity to make a binding death benefit nomination. You should check with your superannuation fund.
- 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 or 'AFCA' may need to mediate or make a decision. Self-managed superannuation funds would need to resolve any disputes through the Courts.
- Superannuation does not automatically form part of your estate. This means that even if you outline in your Will who you would like to receive your super death benefit, the trustee of the fund is not obligated to take the terms of your Will into account when deciding who should receive your benefit.
- 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 continues to be valid.
- 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.
- If you have a self-managed superannuation fund, the rules and processes that apply when making a death benefit nomination and at the time a benefit becomes payable, can be very complex. It is important to seek the right legal and financial advice to make sure you make the appropriate arrangements.
- The Government may change superannuation legislation in the future. If this occurs, it is important that you review your circumstances and consider whether any changes need to be made to any of your superannuation death benefits and nominations.

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