



Death Benefits

This brochure is intended to provide you with general information about superannuation death benefits and the issues that the Tribunal considers in dealing with complaints about the distribution of these benefits.

Important: Strict time limits apply in relation to making complaints about the distribution of death benefits. See the Tribunal's website for details or contact the Tribunal – contact information is at the end of this brochure.

When a member of a superannuation fund dies the trustees of the fund must pay a death benefit in accordance with the fund's rules. Most superannuation fund rules allow the fund trustees to decide how the death benefit should be divided among a number of potential beneficiaries.

Superannuation legislation sets out the types of person who can be paid a death benefit, but the legislation does not determine which particular beneficiary should receive all or some of a death benefit, or set a priority ranking of beneficiaries. There are no government guidelines to assist fund trustees to decide the distribution of death benefits.

Also, some funds may have no discretion as to the distribution of death benefits. The fund rules might require payment under a binding death benefit nomination made by the member, or require death benefits to be paid to a deceased member's estate. The Tribunal will not be able to alter the distribution required by a member's valid binding nomination.

Superannuation Legislation

The *Superannuation Industry (Supervision) Regulations 1994* ('SIS Regulations') restrict the persons to whom a fund can pay all or part of a death benefit. Regulation 6.22 of the SIS Regulations requires that a fund can only pay a death benefit to either or both of:

- the member's legal personal representative (LPR) – the person handling the estate of the deceased member;
- one or more of the member's dependants.

Dependant

A "dependant" of a deceased fund member is defined as including:

- the spouse of the member – this can include a defacto or same-sex spouse;
- any child of the member;
- any person with whom the member had an interdependency relationship; and
- any person who was wholly or partially financially dependent on the member.

Interdependency relationship

With some exceptions, two persons (whether or not related by family) have an "interdependency relationship" if:

- they have a close personal relationship; and
- they live together; and
- one or each of them provides the other with financial support; and
- one or each of them provides the other with domestic support and personal care.



The SIS Regulations provide further guidance as to what factors should be taken into account to establish whether two persons had an interdependency relationship.

The SIS Regulations also enable two people who have a close personal relationship but who do not meet the other requirements of interdependency above because:

- they are temporarily living apart; or
- either of them suffers from a disability

to be in an interdependency relationship.

The SIS Regulations also require that if, after making reasonable enquiries, the trustee has not found either an LPR or a dependant, the benefit can be paid to another person.

The Fund's Rules

It is important to remember that the SIS Regulations do not determine which particular beneficiary should receive all or part of a death benefit. The trustee must decide this according to the fund's own rules. The Tribunal must also follow those rules when dealing with a complaint about the distribution of a death benefit.

Commonly, a fund's rules will state that a death benefit may be distributed among the deceased member's dependants, or to the LPR. However, a fund's rules do not have to permit payment of a death benefit to all of the types of "dependants" mentioned in the SIS Regulations.

Considerations in the contested distribution of death benefits

Purpose of superannuation

Tribunal determinations have consistently reflected the view that superannuation involves the member contributing income while working in order to provide for the member and his or her partner in retirement. On the death of the member the trustee is required to consider the position of persons who had a reasonable expectation of continuing regular financial support from the member had he or she not died. This will usually include the surviving partner, to provide continuing support.

The trustee is also required to consider the financial needs of any minor children, or children undertaking tertiary education, who had a reasonable expectation of continuing regular financial support from the member had he or she not died. The financial needs of these children are distinguished from the needs of financially independent adult children.

Who relied on the member for support?

The Tribunal has found that a useful test in cases of contested distribution is to ask who would have continued to benefit from the member's income if the member had not died.

Any person who was being financially supported by the member immediately before the member died must be considered as having a high priority. This would include children (even adult children, if they had special needs for which they were receiving financial support such as a disability, or whose further education was being financially supported by the member at the time of the member's death).



Adult children

The Tribunal has consistently affirmed decisions of trustees to pay a death benefit to a spouse or minor children in preference to financially independent adult children of the member. While adult children will be “dependants” as defined in the fund’s trust deed or for the SIS Regulations, the Tribunal looks for evidence of financial dependency on the member at the time of death and the need for continuing financial support.

The Tribunal is on record as determining that it is not appropriate to use a superannuation benefit to remedy any historical wrongs, such as failure to pay maintenance in relation to a child who is now an adult.

The length of any marriage-like relationship

The Tribunal may take into account the common law definition of a de-facto relationship, the length of the relationship and whether the member made contributions to the fund during the period of that relationship.

The nomination of the member

The weight attached to a non-binding nomination may depend on how soon before the member’s death it was made and whether, since the nomination, the member’s family or financial circumstances have changed. For instance, the nomination of a spouse made at the time of joining a fund would be of little assistance to the trustee if, although not divorced, a couple had separated and the member was established in another marriage-like relationship. A person who has been nominated is not, by reason only of that nomination, a dependant.

The Will

A superannuation benefit does not form part of the estate of a member except where the trustee decides to pay the benefit to the estate. However, the Tribunal will look to see if the member had a Will, and whether that Will sets out the member’s intentions with respect to the distribution of the superannuation death benefit.

In addition, while the Will may provide for the member’s estate to be distributed equally between children, a superannuation benefit may be distributed in different proportions. For example, a child who has not finished secondary education may receive a larger share of a superannuation benefit than a child who is working.

Are you seeking to have funeral expenses reimbursed?

Under superannuation legislation, there is no specific provision for permitting payment of funeral expenses from a death benefit. A person who has paid funeral expenses is not, by reason only of that payment, a dependant.

*For more information
please visit the
Tribunal’s website:
www.sct.gov.au*

Or contact us at:

*Superannuation
Complaints Tribunal*

*Locked Bag 3060
Melbourne VIC 3001*

*Phone: 1300 884 114
(for the cost of a local call
anywhere in Australia)*

Facsimile: 03 8635 5588