

# Death Claims

## Frequently Asked Questions

### What is the general process for a death claim?



### How long does it take for a death claim to be assessed?

Whilst we will do everything we can to ensure a death claim is assessed and a decision provided as soon as possible, it is important to note that if a member doesn't have a valid binding beneficiary nomination in place (or a valid reversionary beneficiary nomination for pension accounts) we need to spend more time investigating the member's circumstances at the time of death. It is important for us to understand who was financially dependent on the member and who would have expected to benefit, had they lived and accessed their superannuation during their retirement.

We rely on claimants to promptly provide us information in order to continue the assessment process. Delays in obtaining claims requirements can occur and this could mean that finalisation of a death benefit payment could take several months. It is not unusual for claims to be finalised in about four months but this will depend on each case.

It is important that you answer all questions truthfully and fully and share contact details of all relevant potential claimants. Any gaps in information will slow down the claims assessment process. It is also important we have a complete understanding of the member's circumstances at the time of their death as early as possible, to avoid delays.

### What factors do the Trustee consider when making its decision?

If a valid binding beneficiary nomination is in place at the time of death then the Trustee is obliged under its trust deed and superannuation law to follow it. Binding beneficiary

nominations are valid for a period of three years from the date they are signed and witnessed or renewed.

If the member was a pensioner and a valid reversionary beneficiary was nominated, we must follow this nomination provided the nominee was still an eligible dependant of our member when they passed away.

We ask a series of questions to claimants so we can understand who was financially dependent on the member and in what capacity. Adhoc payments such as a birthday present wouldn't generally be evidence of financial dependency. The amounts would typically need to be regular and relied upon by the person receiving them and have ceased because the member has passed away. For example, if the member was paying for the costs of accommodation, food and/or other essentials for a claimant it is possible that the claimant might be considered financially dependent on the member at the time of death. In addition to other evidence, the claimant may wish to provide statutory declarations made by themselves and/or other parties to support the claim. To make a statutory declaration please refer to <https://www.ag.gov.au/legal-system/statutory-declarations> where a Commonwealth statutory declaration can be made using digital identification. Alternatively, claimants can discuss this directly with their case officer.

When making a decision about a death benefit allocation between claimants we would consider how long any financial dependency would have been expected to last. For example, a parent is generally expected to provide for a child until they are old enough to live an independent life (generally to age 18) unless they suffer certain disabilities. This is typically factored into the decision we make when multiple claimants might exist.

We also take into consideration who would have been expected to share the superannuation benefits had the member not passed away – for example, a member in a relationship would be expected to share superannuation with their spouse throughout their retirement.

## My family member made a non-binding nomination, why don't you simply follow it?

Non binding nominations provided by a member are considered when a decision is made.

However, non-binding nominations are not automatically followed by the Trustee when it makes a decision for the following reasons:

1. The circumstances of the member may have changed over time, particularly if the nomination was made several years ago; and
2. As the nomination is non-binding the Trustee should consider other factors that were present at the time of the member's death. We must be fair and reasonable in the way discretion is exercised.

## Why don't you pay the benefit to the member's estate?

Superannuation does not form part of a member's estate unless the Trustee decides to pay a benefit in this way or the member had a valid binding death beneficiary nomination requesting that the benefit is paid to their estate.

Superannuation is primarily for the member's dependants and sometimes estates can be impacted by the debts of the deceased and other costs. If dependants exist, not paying to an estate could alleviate costs and time associated with obtaining Letters of Administration or Probate for the surviving family members which is usually a requirement in these cases. Case Officers should be able to provide claimants further information around this.

## What are Letters of Administration or Probate?

Letters of Administration are obtained by a legal personal representative if the member has passed away without a Will. Where a member has passed away without a Will, the estate assets are expected to be distributed in accordance with prevailing state law. Probate is a process where a legal personal representative is appointed to manage an estate where a Will exists at the time of death.

## Who is in an interdependency relationship with the member when they pass away?

An interdependency relationship can exist between the deceased and another party if they:

- have a close personal relationship
- live together
- one or both provides the other with financial support
- one or both provides the other with domestic support and personal care

Where two individuals have a close personal relationship but do not satisfy the other requirements outlined above,

they could still be in an interdependency relationship if they suffer an illness that prevents them from satisfying the other requirements.

Individuals that are merely flat mates would not be expected to be in an interdependency relationship. Interdependency is generally expected to indicate a commitment to a shared life. Children (particularly at a younger age) are not usually considered to be in an interdependency relationship with their parents as ordinarily there is an expectation that they will, at some stage, move out of the family home and live independent lives. Exceptions can exist based on specific circumstances so it is important that all relevant information is provided so we can understand the facts in each case.

The factors that could support an interdependency relationship could include sharing costs, supporting each other through an illness, domestic support, personal care and financial support existing between the parties.

Other factors will also be considered as required by the Superannuation Industry (Supervision) Regulations Cwth.1994 to the extent they are relevant.

For example, James (age 50) has moved in with his sister Veronica (age 55) and intends to live with her permanently. They both have a shared life together and Veronica has been taking James to his medical appointments as he suffers a serious medical condition. She provides James with emotional support, domestic care and they mutually own the property they reside in. James passes away, Veronica may be considered by the Trustee to be living in an interdependency relationship with James at the time of death given the nature of their relationship.

In addition to any other evidence, claimants may also wish to provide a statutory declaration made by themselves and/or other parties to support the claim. To make a statutory declaration claimants may refer to <https://www.ag.gov.au/legal-system/statutory-declarations> where a Commonwealth statutory declaration can be made using digital identification. Alternatively, claimants can discuss this directly with their case officer.

## What defines a spouse?

The definition of a spouse is someone who was either married to the member or was in a defacto relationship with them. Under superannuation law two parties could be considered to have a spousal relationship where they live together as a couple on a genuine domestic basis.

## Who is considered to be a child of the deceased member?

A child of the member can be an adopted child, stepchild or an ex-nuptial child of the person or a child of the person's spouse or a child within the meaning of the Family Law Act 1975.

When a member passes away, we might seek to get in touch with their children to understand if they may have been financially dependent on the member at the time of death and to determine if they are seeking to make a claim.

## Can I get funeral costs reimbursed?

The Trustee can only pay claimants in accordance with superannuation law and our Trust Deed. We typically are unable to pay benefits for the purpose of paying debts of the estate including any funeral costs.

If you are suffering financial hardship, please discuss your situation with your case officer to understand any options that might be available to you.

## What should I do if I believe the death claim might be contested?

If you believe that a death claim might be contested, then providing further evidence to support your dependency at the start of the claim will assist the Trustee when it is making its decision. It will also reduce the need for further evidence to be provided at a later point. In addition to the evidence suggested within the legalsuper Death Claim form you might also provide statutory declarations from independent sources to confirm the existence of a relationship in addition to copies of bills, evidence of the co-ownership of property, financial dependency, joint bank accounts and any other evidence you believe may support your claim. A statutory declaration can be prepared through <https://www.ag.gov.au/legal-system/statutory-declarations> where a Commonwealth statutory declaration can be made using digital identification. Alternatively, you can discuss this with your case officer.

## What about circumstances that existed long before the member's death?

The Trustee should look at the circumstances that existed at the time of a member's death rather than historical circumstances.

For example, Jane commenced living and caring for her elderly mother Silvia and had done so for several years. A couple of years prior to her death, Silvia moves in with another of Jane's siblings who is providing personal and domestic care and financial support. Jane is no longer responsible for the day-to-day care of her mother and her sibling was looking after Silvia at the time of death and was taking her to hospital appointments and providing care beyond what would normally be expected. Jane might not be considered to be in an interdependency relationship with her mother at the time of death whereas her sibling might be. This could influence the Trustee's decision in respect of how the death benefit is paid.

## Are there other factors that I should be aware of?

Payments of a death benefit to a claimant can have tax, Centrelink and other implications. It is important that you ensure you are informed of the implications before lodging a claim.

For example, our member John passes away and his spouse Joan decides that she does not wish to claim and would rather that the benefits are paid to their non-financially dependent adult child, Sarah. If a death benefit were paid to Joan, it would be tax-free as payments for spouses, minor children (Under 18), financial dependents\* and those in an interdependency

relationship are generally tax-free. Non-financially dependent\* recipients might be taxed at 15% (plus the medicare levy) on the taxable component (taxed element) and 30% (plus the medicare levy) on the taxable component (untaxed element).

Claimants should consider their circumstances when lodging a claim and seek independent financial advice in respect to specific circumstances if necessary.

\*It should also be noted that how the Tax office defines financial dependency can differ to how it is defined for superannuation purposes in some circumstances.

## How will I know when a decision has been made?

Once a decision has been made in respect of a death benefit, we will write to relevant claiming parties to advise them accordingly. Where considered appropriate, claimants will be given 28 days to advise us if they object to the Trustee's decision.

If the Trustee changes its decision following an objection, then relevant parties are given a further 28 days to object to the Trustee about any new decision. The Trustee has a period up to 90 days following the expiration of the 28-day period to respond to any complaint about its decision.

Where the Trustee maintains a decision after an objection is received, parties will be advised that they can lodge a complaint with Australian Financial Complaints Authority (AFCA) within a period of 28 days.

AFCA contact details  
phone: 1800 931 678  
email: [info@afca.org.au](mailto:info@afca.org.au)

postal address:  
Australian Financial Complaints Authority Limited  
GPO Box 3  
Melbourne VIC 3001

## Are there resources that can assist me in understanding how a death benefit complaint may be considered by AFCA?


AFCA provides its approach to how it will consider superannuation death complaints on its website [afca.org.au](http://afca.org.au). The AFCA Approach to superannuation death benefit complaints can be a valuable resource in understanding how this organisation will consider death benefit complaints that are lodged with them where a claimant is dissatisfied with the Trustee's decision. Claimants may wish to review this resource if they are considering lodging an objection to the Trustee's decision.

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# We're here to help

If you have any questions, please don't hesitate to call us on **1800 060 312** between 8am and 8pm AEST/AEDT Monday to Friday or email us at [claims@legalsuper.com.au](mailto:claims@legalsuper.com.au)

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