



# Client Fact Sheet

July 2009



## Understanding Estate Planning

### Superannuation retirement income streams

Superannuation is an investment vehicle designed to assist Australians in saving for their own retirement. The Government encourages saving through superannuation by providing generous tax incentives for contributions, during investment, and in retirement.

There are two phases of superannuation; these are commonly termed the accumulation phase and the draw down (income) phase. It is possible to transfer funds between products and phases without changing their status as superannuation monies.

When considering estate planning options it is therefore important to understand how different products and different phases of superannuation affect the manner in which death benefits can be received.

There are six possible ways in which these monies can be dealt with upon the death of the owner.

The type of product utilised (or its phase) will determine which of the options are available.

Death benefits can be paid as:

- As a lump sum to the member's spouse;
- As a lump sum to the member's children (both adult and minor children)
- As a lump sum to any person who is financially dependant on the member at the date of his/her death;
- As a lump sum to a person with whom the member has an interdependency relationship at the date of his/her death;
- As a lump sum to the deceased person's estate;
- As a pension to a dependant where if a child they must be under 18, aged 18 - 25 and financially dependant, or disabled.

The most important thing to note is that while superannuation law allows for all of these options, some superannuation funds only allow for a lump sum (to dependants and/or the estate) to be paid under their trust deed.

In the unlikely event that the owner was to die intestate, without a legal representative and without any dependants, it is possible for the trustee to make a death benefit payment directly to a non-dependant.

## Who is a dependant?

Under superannuation legislation 'dependant' includes the following:

Dependants	Definition
Spouse	Husband or wife or defacto spouse (includes same-sex).
Child	<p>A child includes a stepchild, an adopted child or child born outside of marriage. For the purposes of cashing benefits upon the death of a member, in the form of a pension, a child will qualify as a dependant if at the date of death of the member they are:</p> <ul style="list-style-type: none"><li>• under age 18; or</li><li>• 18 years or over, and</li><li>• are financially dependent on the member and less than 25 years of age, or</li><li>• have a disability that:<ul style="list-style-type: none"><li>a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; and</li><li>(b) is permanent or likely to be permanent; and</li><li>(c) results in:<ul style="list-style-type: none"><li>(i) a substantially reduced capacity of the person for communication, learning or mobility; and</li><li>(ii) the need for ongoing support services.</li></ul></li></ul></li></ul> <p>Unless the child continues to qualify as a dependant due to a disability, as described above, the benefit must be taken as a lump sum once the child reaches age 25.</p>
A person with whom you have an Interdependency Relationship	<p>Two persons will have an interdependency relationship if:</p> <ol style="list-style-type: none"><li>a) they have a close personal relationship; and</li><li>b) they live together; and</li><li>c) one or each of them provides the other with financial support; and</li><li>d) one or each of them provides the other with domestic support and personal care.</li></ol> <p>Two persons will have an interdependency relationship if they satisfy a) to c) above and one or each of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.</p> <p>Where a close personal relationship exists, but the other requirements of an interdependency relationship are not satisfied because either person suffers from a disability (whether physical, intellectual, or psychiatric) or the two persons are temporarily living apart then an interdependency relationship is held to exist.</p>
Other dependants	A person who is wholly or partly financially dependent on the member.

### Notes:

- 1) The Trustee will consider a range of factors when determining whether an interdependency relationship exists.
- 2) Two persons will not have an interdependency relationship if one of them provided domestic support and personal care to the other:
  - a. under an employment contract or contract for services; or
  - b. on behalf of another person or organisation such as a government agency, a body corporate or charitable organisation.
- 3) Please note that the legislative definition is not exhaustive and the Trustee may choose to take into account other circumstances (for example, emotional or financial dependency) when determining your dependants for the purpose of paying a death benefit.

## Products available

The principal types of products available and their respective phases are listed below. Even though superannuation is the term utilised for the accumulation phase, all of these products can operate within the superannuation system. (Immediate annuities can also be purchased outside the superannuation system whereupon different rules apply).

Product	Phase
Superannuation	Accumulation phase
Account based pension	Draw down phase
Term allocated pension	Draw down phase
Immediate annuity	Draw down phase

## Nomination of beneficiaries (accumulation and draw down phases)

Each of these products generally allows members to nominate a beneficiary or beneficiaries to receive their benefit in the event of their death. However, while the trustee may take note of such nominations, they are generally not bound to pay the superannuation proceeds to the nominated person in the event of death, unless a binding death benefit nomination has been completed by the member.

In the absence of a binding death benefit nomination, generally, the trustee of the fund will seek to pay the deceased member's superannuation proceeds to those who are dependants, or the legal personal representative of the deceased member, before looking to any non-dependants. This is particularly important given superannuation's role as a retirement savings vehicle – death benefits paid from superannuation are generally considered to be providing future retirement benefits for persons who would otherwise have been dependent on the member's income in retirement. Dependants who are financially independent of the member may have a lesser claim on benefits than those who are financially dependent at the time of death.

## What is a reversionary beneficiary?

It is possible to avoid trustee discretion in the distribution of your income stream benefits through the nomination of a reversionary beneficiary. Account based pensions, term allocated pensions and annuities generally allow for the nomination of a member's spouse to continue receiving pension or annuity payments in the event of their death. The nomination of a reversionary beneficiary may impact upon the term of a term allocated pension or annuity, and affect the Centrelink deductible amounts for all income streams.

## What can be paid upon death?

The following table outlines how funds can be dealt with, dependent upon the type of product owned by the deceased.

Product	Pay as				
	Lump Sum to		Income Stream to		
	Dependant	Estate	Dependant	Estate	Reversionary
Superannuation	✓	✓	✓*	X	X
Account based pension	✓	✓	✓*	X	✓*
Term allocated pension#	✓	✓	X	X	✓*
Immediate annuity	✓	✓	✓	X	✓

\* An income stream can only be paid to a spouse, child under age 18, child under 25 and financially dependant on the deceased at date of death, a disabled child, person in an interdependency relationship or person who was financially dependant upon the deceased member.

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