

# Death Benefit Nominations A Guide for Fund Members

## Index

<b>WHAT TYPE OF NOMINATION SHOULD I MAKE?</b> .....	<b>2</b>
HOW DO I DECIDE? .....	2
HOW DOES MY WILL AFFECT MY SUPERANNUATION? .....	2
THINGS TO THINK ABOUT WHEN CHOOSING BINDING VERSUS STATEMENT OF WISHES NOMINATIONS .....	3
<i>Binding nominations</i> .....	3
<i>Statements of Wishes</i> .....	3
<b>BENEFICIARIES</b> .....	<b>3</b>
WHO CAN I NOMINATE AS A BENEFICIARY? .....	3
WHO CAN'T I NOMINATE AS A BENEFICIARY? .....	3
<b>OTHER IMPORTANT INFORMATION REGARDING NOMINATIONS</b> .....	<b>4</b>
WHO CAN WITNESS MY NOMINATIONS? .....	4
HOW LONG DOES MY NOMINATION REMAIN IN EFFECT? .....	4
HOW DO I RE-CONFIRM MY NOMINATIONS? .....	4
HOW DO I AMEND OR REVOKE MY NOMINATIONS? .....	4
HOW DO I ENSURE MY NOMINATIONS ARE VALID?.....	4

## Disclaimer

The information contained in this document is of a general nature only and is not intended to be personal or legal advice. The particular conditions of your trust deed may prevent the operation of one or more of the options described in this summary.

No person should act solely on the basis of the information contained herein but only after discussing their individual circumstances with their financial and/or legal advisers.

Before you make any nominations we recommend that you seek professional advice to ensure that any nomination you make will meet your overall estate planning objectives.

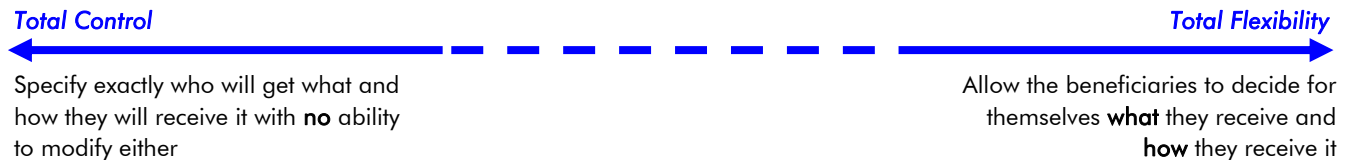
The definition of dependant under the superannuation legislation is different to the definition of dependant for tax purposes and making a binding death nomination may have significant tax consequences. We recommend you seek professional advice regarding the tax consequences of making a binding death benefit nomination.

## WHAT TYPE OF NOMINATION SHOULD I MAKE?

The decision as to what type of nomination should be made when determining how to deal with the payment of benefits to your beneficiaries in the event of your death comes down to you deciding the appropriate mix of:

1. How much flexibility you want your beneficiaries to have over the decision; and
2. How much control you want to have over the payment of funds to specific beneficiaries and in what form

Each are at opposite ends of the spectrum.



### How do I decide?

Pick the question below that best describes what you are trying to achieve and take the appropriate actions:

	Question	Example	Requirements
<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">↑ Total Control</div> <div style="margin-top: 10px;">↓ Total Flexibility</div> </div>	Do you want a specific sum or percentage of the fund to go to a specific beneficiary and have it paid in a specific non-changeable form?	I want this person to only get a pension of \$40,000pa without the ability to convert all or part of it to a lump sum	<ul style="list-style-type: none"> <li>■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies)</li> <li>■ Amend the Deed to bind the form of payment</li> </ul>
	Do you want a specific sum or percentage of the fund to go to a specific beneficiary, paid in a specific manner but not make the payment compulsory?	I would prefer this specific person to only get a pension of \$40,000pa but want them to have the flexibility to change the method at the time (to say take a lump sum or partial lump sum)	<ul style="list-style-type: none"> <li>■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies)</li> <li>■ Complete a Statement of Wishes to state your preference as to the method of payment (ie lump sum, income stream or mixture of both)</li> </ul>
	Do you want a specific sum or percentage of the fund to go to a specific beneficiary, paid in a form of the beneficiaries choosing?	I only want the children of my first marriage to be beneficiaries	<ul style="list-style-type: none"> <li>■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies)</li> </ul>
	Do you want to suggest what you would like to happen but allow the beneficiary or legal personal representative to change this at the time?	I would generally like my children to share my benefit equally but want to give flexibility in case one has more needs than the other at the time I die	<ul style="list-style-type: none"> <li>■ Complete a Statement of Wishes only</li> </ul>
	Do you want to leave the decisions to your beneficiaries or legal personal representative to deal with at the time?		<ul style="list-style-type: none"> <li>■ Make no Nominations or Statement of Wishes</li> </ul>

Total Control = Beneficiaries **CANNOT** change the direction  
 Total Flexibility = Beneficiaries determine the outcome

### How does my Will affect my superannuation?

The conditions of your Will have no influence over how your superannuation will be dealt with. Your benefit **can** be paid to your estate in which case it will be then covered by your Will, however this may not be the most beneficial method from a taxation and needs basis. You should be particular careful about making payment to your estate binding. As a default final option, benefits will be paid to your estate anyway so there is no real need to nominate it.

## Things to think about when choosing Binding versus Statement of Wishes nominations

### Binding nominations

- You need to constantly monitor your nominations to ensure that your wishes are still adequately met otherwise the benefit will be paid as per your latest nomination. (eg a former spouse nominated on your statement **will** be paid even if you now hate them). This is particularly important if you have an SMSF as nominations can last forever.
- Nominations expire after 3 years for Small APRA Funds (SAFs) and must be renewed. If the 3 years have passed and the nomination has not been renewed, it does not apply and the surviving trustee(s) will determine how your benefit will be paid. If you die and the Nomination has not been renewed then your benefit may be paid out in a way that is totally different to what you intended.
- Your dependants circumstances may change between the time you make the nomination and when the payment is made – eg one dependant may have a serious accident or illness that requires more resources.
- Specifying that a beneficiary can only get a pension may leave them in a bad situation if they have a serious accident or illness that requires more resources.
- A binding nomination is only valid if the following conditions are met:
  - ✓ Each nominated beneficiary is a dependant and/or legal personal representative;
  - ✓ You clearly state the allocation of your benefit between beneficiaries (ie the % allocation adds up to 100% );
  - ✓ The notice has been signed and dated by yourself and two witnesses NOT NAMED AS BENEFICIARIES;
  - ✓ The nomination is not older than three years from the date of signature (in the case of SAFs); and
  - ✓ The nominated beneficiaries are still dependants as at the date of death.

If your nomination is invalid the benefit (or the relevant part of it) will be paid to your legal personal representative when you may have preferred to have it split among the remaining nominated beneficiaries.

### Statements of Wishes

- The trustee(s) remaining after your death have ultimate say as to how your benefit will be paid and to whom irrespective of who you have nominated. This can be good or bad as it provides the flexibility to make a more appropriate allocation but could also create problems. For example – if mum and dad plus one of the children are the only members of the fund but there are 2 other children, the member/trustee child could pay all the benefits to themselves if mum and dad both died in a car accident as they would be the only trustee.
- Decisions made by the trustee(s) can be contested - eg if the trustee(s) paid the benefit entitlement to children from a former marriage (even if done in accordance with the deceased's wishes), the children of the current marriage could contest it.

The ultimate choice will depend on your needs and how well your family relationships operate.

## BENEFICIARIES

Please also refer to our FAQ sheet "Who can be a beneficiary of a super fund" for further technical information.

### Who can I nominate as a beneficiary?

A Binding Death Benefit Nomination or Statement of Wishes may be used to make an allocation of a member's death benefit to the following:

- A spouse including a de facto spouse but not a same sex partner;
- A child (including an adult child);
- A financial dependant (ie someone financially dependent on you at the date of your death); and/or
- Your legal personal representative.

### Who can't I nominate as a beneficiary?

Examples of people who are **NOT** classified as dependants include:

- Siblings – brothers or sisters;
- Parents
- Grandchildren;
- Business Partners;
- Friends;
- Charities; and
- Partners of dependants (ie spouse of a dependant)

These people are not necessarily excluded from receiving proceeds from your superannuation fund, however the monies must flow first to your estate (and hence be dealt with according to your Will) rather than being able to be paid direct from your fund.

## OTHER IMPORTANT INFORMATION REGARDING NOMINATIONS

### ***Who can witness my nominations?***

A Statement of Wishes does not need to be witnessed.

A Binding Nomination must be signed and dated by you in the presence of two witnesses.

**THESE WITNESSES MUST BE 18 YEARS OR OLDER AND MUST NOT BE ONE OF THE NOMINATED BENEFICIARIES.**

### ***How long does my nomination remain in effect?***

A Statement of Wishes remains in effect until rescinded or changed.

A Binding Nomination for a SMSF can remain in effect until rescinded or changed. ( If the trust deed specifies a lesser time then the notice is only valid for that period ).

A Binding Nomination for a SAF is "in effect" for 3 years from the date the notice was first signed, last confirmed or amended. ( If the trust deed specifies a lesser time then the notice is only valid for that period ).

### ***How do I re-confirm my nominations?***

You do not need to re-confirm any nominations made via a Statement of Wishes (made for an SMSF or a SAF) or a Lifetime Binding Nomination (made for an SMSF only).

For a Binding Nomination made in the case of a SAF you may confirm that your nominations are still in effect by giving the trustee(s) a written notice, which is signed and dated by yourself and witnessed by two witnesses.

### ***How do I amend or revoke my nominations?***

You may amend or revoke any notice by giving the trustee a written notice signed and dated by yourself (and witnessed by two witnesses in the case of a binding nomination).

It is important that you keep your notice up to date. If your notice does not reflect any changes that may have occurred to your circumstances at your time of death, the Trustee will be bound by any Binding Nominations to pay your benefit as per the latest instruction.

### ***How do I ensure my nominations are valid?***

Make sure that all nominated beneficiaries qualify as dependants under the superannuation legislation (see "Who can I nominate as a beneficiary" section).

Review your nominations to ensure the beneficiaries still qualify as dependants and are still alive.