

## CLAIMING A DEATH BENEFIT

### WHAT IS A DEATH BENEFIT?

Following the death of an Active Super member, the death benefit is the sum of money we pay to any beneficiaries. The death benefit includes:

- the balance of the deceased member's super account, which would reflect contributions made by their employer, any personal contributions from the member, any amounts which have been rolled over from other super funds as well as investment gains and losses; and
- any life insurance benefit which may be payable depending on the member's eligibility and the level of cover with Active Super at the time of their death. Insurance cover is provided to eligible Active Super members under a group insurance policy issued to the Trustee by our **insurer**, TAL Life Limited (ABN 70 050 109 450, AFSL 237 848).

If the deceased member didn't have any insurance cover at the time of their death, the death benefit will only reflect the balance of their super account with Active Super.

Defined benefit funds may have different or additional requirements. For more information regarding defined benefits, please contact Member Care on 1300 547 873.

### Who can receive a death benefit?

The Trustee must pay a death benefit according to the rules set down in the Superannuation Industry (Supervision) Act 1993 (Cth) (**SIS Act**) and the Active Super Trust Deed. These rules generally restrict the payment of death benefits to a 'dependant' of the deceased member, or to the deceased member's legal personal representative.

### Who is a dependant?

A 'dependant' is a person who is one or more of the following at the time of the member's death:

- a spouse of the member
- a child of the member
- a person with who had an 'interdependency relationship' with the member at the time of their death
- any other person who was financially dependant on the deceased member.

## Spouse

A member's spouse is someone who is legally married to or in a de facto relationship with the member, or a person with whom the deceased was in a relationship that is registered on a relationship register of a State or Territory.

## Child

A child of a member includes an adopted child, a step-child, an ex-nuptial children, a child of the deceased member's spouse, and any other child as defined under the Family Law Act 1975 (Cth).

## Interdependency

Two persons 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.

Additionally, two people have an interdependency relationship if they have a close personal relationship but do not satisfy the other requirements of an interdependency relationship because either or both of them suffer from a disability.

## Who is a legal personal representative?

A legal personal representative is usually the executor of the deceased member's Will or, if the deceased didn't have a Will, the administrator of their estate. This will generally be the person who has been granted probate or letters of administration over the estate.

## Paying a benefit according to a binding nomination

If the deceased member has a valid binding death benefit nomination (**BDBN**) when they died and at the time of payment, the Trustee must pay the benefit in accordance with the BDBN.

A BDBN expires three years from when it was made or last [confirmed](#). A BDBN will also be invalid if it nominates a person who is not a dependant or legal personal representative, if it is incorrectly signed or witnessed, or if it was altered in any way. The Trustee can only accept a BDBN or confirmation while a member is alive and has no reason to believe that the member does not have capacity to make an informed decision.

For more information about BDBNs, please see the *Nominating beneficiaries* fact sheet for your Active Super scheme on our website:

- *Nominating Beneficiaries: [Accumulation Scheme and Account-Based Pension Plan](#)*;

- *Nominating Beneficiaries: [Retirement Scheme](#)*; and
- *Nominating Beneficiaries: [Defined Benefit Scheme](#)*.

### What happens if the deceased member had not made a nomination or the nomination has expired or is invalid?

Where Active Super does not hold a valid BDBN for a deceased member when they died, the Trustee will, in its absolute discretion, pay the death benefit to one or more of the deceased member's dependants or legal personal representative(s) in the proportions that the Trustee considers fair and reasonable.

### PROCESS OF ASSESSING A DEATH BENEFIT CLAIM WHEN THERE'S NO BINDING BENEFICIARY

In the absence of a valid binding death benefit nomination, there are five key steps we take on behalf of the Trustee whenever they assess a death benefit claim:

1. Initial request for information
2. Identify and obtain required information from all eligible claimants
3. Determine how the death benefit is to be distributed
4. Advise all eligible beneficiaries of the decision
5. Manage any objections
6. Pay the benefit.

#### 1. Initial request for information

When we are notified of the death of a member, we will write to the person who notified us, explaining what the Trustee needs in order to pay the benefit.

Our communication will outline the approximate balance of the deceased member's super account and advise that we have switched the account balance to the Managed Cash investment option to minimise any fluctuations in the balance while we process the claim.

In our initial communication we will ask for information about any potential claimants so that we can contact them and give them the opportunity to make a claim. In our written correspondence to each potential claimant we will enclose two forms for them to complete if they wish to make a claim:

- *Application for payment: Death*
- *Notification of tax file number (TFN) for the deceased member (only if we do not have these details on file).*

We will ask each claimant to provide documents which prove their status as a dependant. These include, but may not be limited to:

- A marriage certificate;

- A birth certificate;
- Statutory declaration from the claimant;
- Statutory declarations from other people with knowledge of the relationship between the claimant and the member.

Also included in our correspondence will be a Statutory Declaration for the recipient to complete if they do not want to make a claim for the deceased member's super benefit.

Anyone who wishes to make a claim or provide a Statutory Declaration will also need to provide proof of their identity.

If the claimant is the member's legal personal representative, we will normally require a certified copy of the Grant of Probate (for an executor) or Letters of Administration (for an administrator). A copy of the Affidavit of Assets will also usually be required.

If the deceased member had insurance cover with Active Super, the Trustee will lodge a claim with our insurance provider as soon as we have received the necessary information (including a certified copy of the Death Certificate).

## **2. Identify and obtain required information from all eligible claimants**

The Trustee has a legal responsibility to:

- identify all the potential claimants, that is, the legal personal representative(s) of the deceased member and any people who may have been dependants of the deceased member;
- provide all potential claimants with an opportunity to either make a claim for the death benefit or confirm that they do not intend to make such a claim; and
- obtain and consider the information necessary to assess each of their claims to the deceased member's benefit.

## **3. Determine how the death benefit is to be distributed**

After we receive all the documents required from each claimant, the Trustee will then identify who is eligible to receive the member's benefit and, where more than one person is eligible, consider the proportions in which the benefit should be paid.

In the absence of a valid BDBN, the Trustee will exercise its discretion in accordance with the Trust Deed and the principles set out in the superannuation law, and using all information obtained by the Trustee that the Trustee considers to be relevant.

Where only one eligible claimant has been identified, the Trustee can normally proceed to the payment stage. However, where more than one eligible beneficiary has made a claim on the death benefit, the Trustee will normally be required to follow steps (4) and (5) described below before any payments can occur.

To make sure that the benefit is paid appropriately, the Trustee must also take into account the circumstances of each of the potential beneficiaries at the date of the member's death.

#### **4. Advise all eligible claimants of the decision**

After the Trustee has decided how the benefit should be distributed among multiple eligible claimants, we will write to all claimants and advise them of the Trustee's decision.

Claimants then have 28 days from the date they receive the letter to respond to the Trustee. They may confirm their acceptance of the Trustee's decision, or they may object in writing to the Trustee's decision and provide reasons for their objection.

If no response is received from a claimant, the Trustee will assume they do not object to the Trustee's decision.

#### **5. Manage any objections**

If any claimants have submitted objections within the allowed timeframe, the Trustee will review its decision. Claimants may be asked for further information to help with the review.

All claimants will be notified of the outcome of the review.

If the outcome is to alter the Trustee's previous decision, then all claimants will have an opportunity to confirm or object to the new decision in writing within 28 days.

If the outcome is to uphold the Trustee's previous decision, then the Trustee's decision is treated as final.

If any of the claimants are not satisfied with the Trustee's final decision, they may make a formal written complaint to the Australian Financial Complaints Authority within 28 days being notified of the final decision

#### **6. Pay the benefit**

Generally, no portion of the super benefit can be paid to beneficiaries until the Trustee is satisfied that they have dealt with any disputes and resolved any outstanding issues.

Once the Trustee has confirmed its final decision, we will pay the benefit to the beneficiaries.

The Trustee will advise each recipient of their payment in writing and explain the final calculation of the benefit, including any tax which has been deducted from the payment amount.

### **DOCUMENTS REQUIRED FOR PAYMENT IN ALL CASES**

There are certain documents required in order to proceed with a death benefit claim. The following documents are required for all claims:

- Completed *Application for payment: Death* form from each claimant.
- Proof of identity of each claimant. Please refer to the *Proof of Identity* fact sheet.
- Certified copy of the member's death certificate which specifies the cause of death.
- Proof of identity of the deceased member (i.e. certified copy of the member's birth certificate, passport or driver's licence). Please refer to the *Proof of identity* fact sheet.
- If the deceased member was divorced at the time of death, a certified copy of the Decree Absolute of Dissolution of Marriage.

### When there is no valid binding nomination

Where the deceased member did not have a valid BDBN, we would also seek a certified copy of the deceased member's Will (if one exists).

### ADDITIONAL DOCUMENTS: SPECIFIC APPLICANTS

In addition to the documents specified above, other documents will be required. The type of documents required will generally depend on who is making the claim, for example:

#### Legally married spouse

- Certified copy of the marriage certificate.

#### De facto spouse

- Statutory Declaration from the de facto spouse confirming:
  - whether or not they were living in a bona fide domestic relationship with the deceased member at the time of their death;
  - the duration of the relationship;
  - whether or not the relationship was continuous during the period.
- Statutory Declaration from a person having knowledge of the facts of the relationship (for example, a member of the deceased's immediate family) confirming:
  - whether or not the applicant was living in a bona fide domestic relationship at the time of the member's death;
  - whether or not the deceased was ever legally married and if so, when and to whom;
  - whether or not that marriage (if there was one) was subsisting at the time of death and if not, when and how the marriage was terminated.
- Statutory Declarations from two independent persons, outside of any immediate family, confirming their knowledge of the relationship between the deceased and the claimant, including:

- how long they knew the deceased and the applicant;
- the basis of their knowledge of the relationship;
- whether they knew the residential address of the deceased and the applicant;
- whether there was any public recognition of the relationship; and
- any other details the person considers relevant.
- Documentary evidence of any joint financial arrangements (shared bank accounts, joint utility accounts, joint mortgages, etc)
- Any other objective evidence of the nature of the relationship with the deceased that the applicant wishes the Trustee to consider.

### **Minor child of the deceased**

- *Application for payment:* Death form provided on behalf of each minor child (includes an adopted child, a step-child, an ex-nuptial child or a child of the member's spouse) and signed by their legal guardian
- Proof of identity of the legal guardian (i.e. certified copy of their passport or driver's licence)
- Certified copy of a document detailing the full name and date of birth of the child (e.g. birth certificate or adoption papers).

Payment to a minor will be made to a trust account, usually with their legal guardian to act as a trustee with access to the funds to meet the needs of the minor in relation to their education, health and reasonable living expenses.

### **Adult child of the deceased**

- Certified copy of the claimant's birth certificate
- Statutory declaration detailing how and to what extent the claimant was financially dependent on the deceased member at the time of their death (if the applicant is claiming financial dependency on their deceased parent)
- Relevant documentation to support the statement/s made in the statutory declaration
- Written confirmation of the claimant's tax file number (if it is determined that they were not financially dependent on the deceased member).

### **Person in an interdependency relationship with the deceased member**

- Statutory Declaration from the claimant addressing the requirements for an interdependency relationship under the SIS Act (see page 2)
- Relevant documentation to support the existence of an interdependency relationship – for example, this may include evidence of joint financial arrangements and statutory declarations from people who have knowledge of the relationship

- Any other objective evidence of the nature of the relationship with the deceased the applicant wishes the Trustee to consider. This might one or more statutory declaration from a person having knowledge of the facts of the relationship.

### Legal Personal Representatives

- Certified copy of the deceased member's Will (if one exists)
- Certified copy of the probate (if there was a Will) or letters of administration (if there was no Will)
- Copy of the Affidavit of Assets, indicating the superannuation benefit payable.

### TAX ON DEATH BENEFITS

The tax payable on a superannuation death benefit depends on whether the recipient is a 'dependant' as defined under tax law.

Generally, an individual receiving a superannuation death benefit is only considered to be a dependant for tax purposes if they are:

- the deceased member's spouse or de-facto spouse;
- a child of the deceased member who is under the age of 18;
- a person who was involved in an interdependent relationship with the deceased member at the time of their death; or
- any other person who was financially dependent on the deceased member at the time of their death.

It is important to note that this is not the same as the SIS Act definition, and a person may be eligible to be paid a death benefit under superannuation law may not be considered to be a dependant under tax law. A common example would be an adult child of the deceased member who was not financially dependent on them.

For more information on the rates of tax applied to superannuation death benefits refer to the ATO website at [ato.gov.au](https://ato.gov.au)

### NEED MORE DETAILS?

If you have any questions or if you would like more information about claiming a death benefit, please contact Member Care on 1300 547 873 between 8.30am and 6.00pm on any business day.

Any advice in this document is general only and has been issued by LGSS Pty Limited (ABN 68 078 003 497) (AFSL 383558), as Trustee for Local Government Super (ABN 28 901 371 321) ('Active Super'). The advice does not take into account your personal objectives, financial situation or needs. Before making a decision about the product, you should consider the appropriateness of the product having regard to these matters and the relevant PDS and TMD or by calling us on 1300 547 873. If you would like advice that takes into account your personal circumstances, please contact a financial adviser.

Date issued: 1 July 2024