



# Superannuation Death Benefits

## Introduction

In this brochure we outline how we (as Trustee) pay death benefits from the TAL Superannuation and Insurance Fund. A common misconception is that death benefits automatically form part of a deceased member's estate. This is not true because death benefit payments depend upon a number of circumstances which we discuss below.

## Who can receive a death benefit?

If, at the time of their death, the deceased member had made a binding death benefit nomination, we must pay the death benefit in accordance with the nomination. However, if there was no binding death benefit nomination at the time of death, the law and governing rules of the Fund require us to decide how to distribute the death benefit among the deceased member's dependants at the time of death and/or their legal personal representative.

## Definition of a dependant and a legal personal representative

### Who can be a dependant?

A deceased member's spouse (including a de facto partner of the opposite or same sex).

Any child<sup>1</sup> of the deceased member or their spouse, regardless of age or financial dependency.

<sup>1</sup> A child includes a deceased member's adopted, step and ex-nuptial children, and children of the deceased member's spouse.

Any other person who was financially dependent on the deceased member at the time of death.

A person who was in an interdependency relationship with the deceased member at the time of death.

### Who do we recognise as a legal representative?

#### For death benefits up to \$50,000

The executor of the will of a deceased member.

#### For death benefits over \$50,000

The executor of the will or administrator of the estate of a deceased member who holds probate or letters of administration (respectively).

## What is an interdependency relationship?

Two people are in an interdependency relationship and dependent on one another if they:

- have a close personal relationship
- live together
- 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.

A close personal relationship involves a demonstrated and ongoing commitment to the emotional support and wellbeing of the parties. Indicators of a close personal relationship may include the:

- duration of the relationship
- degree of mutual commitment to a shared life; and
- reputation and public aspects of the relationship (such as whether the relationship is publicly acknowledged).

People who share accommodation for convenience (e.g. flatmates) or provide care as part of an employment relationship or on behalf of a charity are not in a close personal relationship. If a close personal relationship exists but the other requirements of an interdependency relationship are not satisfied because of a physical, intellectual or psychiatric disability, then an interdependency relationship still exists.

Domestic support and personal care will commonly be of a frequent and ongoing nature. For example, domestic support services may consist of attending to the household shopping, cleaning, laundry, and similar activities. Personal care services may commonly consist of assistance with mobility, personal hygiene and generally ensuring the physical and emotional comfort of a person. The extent to which a person requires assistance with the activities of daily living would be an indication of the level of a person's disability.

## Binding death benefit nominations

### Personal nominations

Some TAL superannuation products allow members to nominate one or more individuals as the beneficiaries of their death benefit and where the nomination is valid; we must pay the death benefit to the nominated beneficiaries.

Personal nominations are valid if:

- each nominated beneficiary was a dependant of the deceased member at the time of death or is the deceased member's legal personal representative
- the allocation of the death benefit among the nominated beneficiaries is clear
- the deceased member signed and dated the nomination in the presence of two witnesses over age 18
- the witnesses are not nominated beneficiaries or, if the legal personal representative has been nominated, are not beneficiaries of the deceased member's estate
- the nomination includes a declaration signed and dated by the witnesses stating that the deceased member signed it in their presence
- the deceased member died within three years after the nomination was made, or was last confirmed or amended; and
- at the time the nomination was made, the deceased member was not under a legal disability.\*

### Category nominations

Other TAL superannuation products allow members to nominate a category of dependants as the beneficiaries of their death benefit and where the nomination is valid we must pay the death benefit to all persons in that category at the time of death. For example, if the 'children' category was selected, then the death benefit would be paid to all children who survived the deceased member rather than those children who were nominated. Similarly, if the 'spouse' category was selected, the death benefit would be paid to the surviving spouse.

Category nominations are valid if:

- the deceased member signed and dated the nomination; and
- at the time the nomination was made, the deceased member was not under a legal disability\*.

\* For more information refer to the section 'Certain people cannot directly receive a death benefit'.

## What happens if TAL has to decide how to distribute a death benefit?

When a claim is made for a death benefit, we will ask for a copy of the deceased member's Death Certificate and will (if they made one) and any other document we may deem relevant to our deliberations. Using the information in these documents, we will identify the deceased member's dependants. How we normally distribute a death benefit among a deceased member's dependants and legal personal representative is summarised in the following sections.

### Where the deceased member is survived by a spouse

We will try to pay the death benefit to the spouse, unless the deceased member had financial dependants at the time of death who were not living with the spouse. In these cases, the death benefit may be shared between the spouse and financial dependants on the basis of their relative financial needs. However, where the deceased member is survived by a spouse and non-financially dependent children from a previous relationship, it is likely that the entire benefit would be paid to the spouse because the spouse has a financial need which is not shared by the children.

### Where the deceased member is survived by their children

Unless there are financial dependants other than the children or the member was in an interdependency relationship at the time of death, we will distribute the death benefit among the children on the basis of their relative financial needs. This may mean that some children will not receive a share of the death benefit, or a smaller share, if other children have pressing financial needs.

### Where the deceased member was in an interdependency relationship at the time of death

Where a deceased member was in an interdependency relationship at the time of death, we consider the other party to the relationship in a similar way to the deceased member's spouse and will try to pay the interdependant unless the member had financial dependants at the time of death who were not living with the interdependant. In these cases, the death benefit may be shared between the interdependant and financial dependants on the basis of their relative financial needs.

### Where the deceased member has no dependants at the time of death

Where the deceased member did not have any dependants at the time of death, we will try to pay the death benefit to their legal personal representative. We will only pay the legal personal representative where the deceased member's death benefit exceeds \$50,000 if the executor of their will or administrator of their estate has obtained probate or letters of administration (respectively). Also we may decide not to pay a deceased member's legal personal representative where the estate has debts which would significantly erode the death benefit.

Where we are unable to pay (or we decide not to pay) the deceased member's legal personal representative, we will try to distribute the member's death benefit among their non-dependent relatives in the following order of priority which is based on the law of intestacy:

1. to the surviving parent(s) in equal shares
2. to the brothers and sisters in equal shares (this includes the children of a sibling who predeceased the member, who will receive their parent's portion of the death benefit in equal shares)
3. to the surviving grandparent(s) in equal shares; or
4. to the aunts and uncles in equal shares (this includes the children of an aunt or uncle who predeceased the member, who will receive their parent's portion of the death benefit in equal shares).

As these relatives were not financially dependent on the deceased member at the time of death, the death benefit would be shared equally between them rather than on the basis of their relative financial needs.

## How we deal with competing claims

Where it would be appropriate to distribute the death benefit to more than one beneficiary or multiple claims are received, we will:

- consider each claim on its merits and then make an interim decision about how best to distribute the death benefit
- notify all parties with an interest in the death benefit of this decision and provide them with a 28-day period in which they can object to the interim decision if they are dissatisfied
- if no objections are received in this period, the death benefit will be paid in accordance with our interim decision
- if objections are received, we will consider each objection and make a final decision about how best to distribute the death benefit
- notify all parties of this decision and provide a 28-day period in which they can make a complaint with the Superannuation Complaints Tribunal (Tribunal) if they remain dissatisfied; and
- if no complaint has been made to the Tribunal in this period, the death benefit will be paid in accordance with our final decision.

## What happens when a complaint is made to the Tribunal?

If a complaint is submitted to the Tribunal, the deceased member's death benefit will not be paid until the Tribunal has resolved the complaint through conciliation or, if the complaint cannot be resolved through conciliation, the Tribunal will review our final decision on how best to distribute the death benefit.

For general information about the Tribunal and the process the Tribunal uses to deal with a complaint, go to [www.sct.gov.au](http://www.sct.gov.au)

## Certain people cannot directly receive a death benefit

The law protects vulnerable members of the community who, through age or mental incapacity, may not be able to properly manage their financial affairs and cause harm to themselves or others, or lose or waste assets. This is why we are unable to pay superannuation benefits directly to minors (children and adolescents under age 18) or to people suffering from some types of mental illness. In these cases, we will try to pay the benefit to the beneficiary's next of kin to hold on trust for the beneficiary's maintenance, education and advancement in life. However, if next of kin is unable to care for the beneficiary's physical, mental and emotional wellbeing, or the beneficiary's financial wellbeing, we will pay the benefit to one of the following persons to hold on trust for the beneficiary's education, care and maintenance in life:

- an adult dependant of the beneficiary, eg. an adult child of a beneficiary suffering from a mental incapacity;
- another person having the care or custody of the beneficiary; or
- the NSW Trustee and Guardian or equivalent interstate body.

## The costs of distributing death benefits

Where we incur legal or other costs in relation to the distribution of a death benefit to a specific beneficiary, we may recover those costs from the death benefit payable to that beneficiary.

## Important information

This document is a guide only and is not intended to limit our discretion in relation to the payment of death benefits in future. We are required to apply our free and independent judgement to all claims we receive. Where we believe that it would not be appropriate to apply the general principles set out in this document because such a decision would lead to a breach of our trustee duties, we will apply our free and independent judgement to the claim to arrive at the most appropriate outcome in all of the circumstances.