



Monthly Information Newsletter – Tax & Super

November 2023

Who can I nominate as my super beneficiary?

Your superannuation death benefits must be paid to someone when you die. That somebody will usually be your estate or your nominated beneficiary (also known as your dependants).

Paying death benefits to your estate

Unlike other assets such as shares and property, your superannuation and any insurance benefits you have in superannuation do not form part of your estate. That's because your superannuation is not held by you personally, rather it is held in trust for you by the trustee of your superannuation fund.

However, you can direct your superannuation death benefit to your estate by nominating your "legal personal representative" (LPR), who will usually be the executor of your estate.

If you nominate your estate or LPR, you must also specify in your Will who you want to distribute your superannuation money to. This can include eligible beneficiaries (see below) as well as anyone else you wish to leave your death benefits to.

As such, it's important that the directions stated in your Will are up to date so your LPR pays out your death benefits (as well as your other estate assets) as per your wishes.

Paying death benefits to a beneficiary/dependant

If you want your superannuation death benefits to be paid to a person, that person must be a "dependant" for superannuation purposes.

The meaning of dependant is important as it determines who can receive a death benefit, whether the death benefit will be taxed and what form your death benefit can be paid out (i.e., lump sum, income stream, etc.). In particular, superannuation law determines who can receive your superannuation directly from your superannuation fund without having to go through your estate. These people are your superannuation dependants. Tax law on the other hand determines who pays tax on your superannuation death benefit. These people are considered tax dependants.

The following table summarises the difference between:

- A superannuation dependant and tax law dependant, and
- The types of death benefit that can be paid to each category of dependants.

	Super dependant?	Tax dependant?	Can death benefits be received directly as a lump sum?	Can death benefits be received as an income stream?
Spouse (includes de facto and same sex)	Yes	Yes	Yes	Yes
Former spouse	No	Yes	No	No
Child under age 18	Yes	Yes	Yes	Yes ¹
Child aged 18 or over	Yes	No	Yes	No
Interdependent relationship	Yes	Yes	Yes	Yes
Financial dependant	Yes	Yes	Yes	Yes
Individual who receives a super lump sum because the deceased died in the line of duty ²	No	Yes	Yes	No

1. Income stream must be commuted by the time the child turns 25, unless the child has a prescribed disability
2. Deceased died in the line of duty as a member of the Defence Force, Australian Federal Police, the police force of a state or territory, or as a protective service officer.

As can be seen, the key differences between the superannuation and tax dependant definitions are:

- a tax dependant does not include an adult child (whereas a superannuation dependant does), and
- a tax dependant includes a former spouse (whereas a superannuation dependant does not).

Although your financially-independent adult children are your superannuation dependants and can receive a death benefit directly from your superannuation fund, they are not tax dependants. This means they will not receive more favourable tax treatment than a tax dependant would receive unless they qualify under an 'interdependency relationship' or are financially dependent on you.

A tax dependant will generally not pay any tax on superannuation death benefits. In contrast, a non-tax dependant is taxed on any taxable components of a superannuation death benefit. This could be up to 15% tax plus Medicare levy on any taxable component and potentially up to 30% plus Medicare levy for any taxable untaxed elements within your fund.

Tip – if you would like to leave your superannuation to someone who is not a dependant under superannuation law, you could consider nominating your LPR and then use your Will to determine how you would like superannuation death benefits to be paid. For example, if you wish to nominate your parent or financially-independent sibling, or a cousin or friend, you could make a binding nomination to your LPR and then instruct them on how to divide your superannuation through your Will.

Need help?

Please contact us if you would like further information about who you can nominate to receive your superannuation death benefits.

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