

Everything you need to know about your Death Benefit Nomination

Did you know that your superannuation is not part of your estate or controlled by your will, unless you direct it to your estate?

This is why this is an important document; you should read it carefully and take steps that are important to you. You can also use this document to ensure that others who are important to you (i.e your spouse) also consider their superannuation wishes, which can be critical to your future financial security.

You must read this document along with the death benefit nomination form (DBN Form) and your SMSF trust deed. If you are reading this with another person such as your spouse, read it with their DBN Form for their superannuation.

The DBN Form is your instruction as to what will happen with your superannuation when you die. You use this to tell the controller of your superannuation who to give your superannuation to, in what shares or proportions. Without it, that controller will make their own decision, which may or may not be what you wanted to happen.

For this reason, this document can be extremely important.

Below are a series of questions and answers that are designed to help you understand your DBN Form options.



Why doesn't my will automatically apply to my superannuation?

It is just because of the way in which superannuation and superannuation law has been designed by the Government in Australia. This is why we are bringing it to your attention, because it is not obvious.

Do I have to do it?

No, completing the DBN Form is not compulsory. But if you do not have a DBN Form, the person or persons who will receive your superannuation will be determined by whoever is the controller of your superannuation after your death. Commonly this is the trustee. If you know who will be the controller of your superannuation and you want them to have decisive control of it, you can avoid the DBN Form. But do you really want someone else to make the financial decision because you chose not to?

How do I know if the DBN Form is right for me?

There is only one way to do this and that requires you to read and consider the terms of your superannuation which are found in your trust deed. SuperGuardian is not licensed to advise on these matters. This can be and often is a complex area, and we urge you to seek professional DBN Form and estate planning advice to assist you with your decision, from a suitably qualified legal advisor. Nevertheless, SuperGuardian is providing you with a pro forma DBN Form as a guide to what this is. It has been written by a lawyer who specialises in superannuation, but they have written a generic approach, not one specifically for you.

Is it enough if I use the SuperGuardian DBN Form?

The SuperGuardian DBN Form has been designed by a lawyer to satisfy and comply with many common approaches. It has been legally reviewed and signed off. You can use the SuperGuardian DBN Form to put in place your wishes (or those of another person with respect to their superannuation) but after doing this, take the extra time to ensure that it complies with your superannuation terms in the SMSF trust deed. In the remainder of these questions and answers we refer to the SuperGuardian DBN Form which you are urged to check against the terms under which your superannuation is held.

Is it binding?

That is up to you. If you use the SuperGuardian DBN Form you can make this only an expression of your wishes or you can make it compulsory and binding. If it merely expresses your wishes, the controller of your superannuation must consider it, but they can make their own decision as to what to do with your superannuation. Trustees cannot be legally bound to the instruction contained in a non-binding death benefit nomination.

If your DBN Form specifies that it is compulsory and binding and complies with your superannuation terms, the controller or trustees of your superannuation must do as you say in the form.

How long does it last?

Again, that is up to you. The SuperGuardian DBN Form is designed to last until you decide to cancel or update or replace it. Some superannuation terms specify that a DBN Form only lasts for a limited time, commonly 3 years. Others have built in disqualifications such as a divorce cancelling any nomination to a spouse. You should check if some of these additional rules apply to your superannuation interest, if they do, it will impact your DBN Form.

Who can I nominate?

And once again, that is up to you, but there are certain rules you need to be aware of;

- If you want your superannuation to go into your estate, you should nominate the Legal Personal Representative of my estate or 'LPR Estate'.
- Naming a person is fine as long as they come within the meaning of dependant at the time of death. For superannuation law purposes this is;
 - A spouse, whether legal marriage, de facto type relationship (with no 2-year time required) or if a registered relationship.
 - A child of any age and including ex nuptial.
 - A step-child, provided the relationship with the spouse that is necessary to create the step-relationship is current at the time of death.
 - Any person who can prove that they were financially dependent upon you.
 - Any person who can prove that they were in an interdependency relationship with you.

You can name more than one and in whatever proportion you wish.

Note that if any person named by you no longer comes within the relevant description (eg they are no longer dependent or the step-relationship no longer exists), your nomination of them will fail. This is why the DBN Form asks you to identify a "back-up" nomination.

For more information on who is a death benefit dependant i.e. who you can nominate to receive a death benefit, please read our **Death Dependant Fact Sheet – Who can benefit under superannuation law?** (Pages 6 - 11).

Why can't I name a parent, sibling, grandchild or close friend?

The answer is you can if they come within the superannuation legal meaning of dependant. Siblings, parents, other relatives and friends are not normally superannuation law dependants. For such a nomination to be effective, they must satisfy the requirements of an interdependency relationship or be considered financially dependent at the time of death. If you want a relative or friend to receive your superannuation and they do not come within the meaning of dependant of you, you need a two-step process; you need to nominate your LPR Estate **and** also make sure that you have a valid will that directs your superannuation in this way. You should obtain professional legal advice to achieve this.

How much and in what form can I nominate?

This is your decision. The DBN Form allows you to express this. Some superannuation deeds specify that a DBN Form can go further and express any range of conditions precedent to a person benefitting from your superannuation. You can check your own superannuation deed to identify if this is an option for you.

Is there taxation to pay?

This depends on who you nominate and what is their tax-dependency relationship to you for superannuation taxation purposes. A spouse will receive your superannuation free of taxation, as will a child under the age of 18 and a person who can prove that they were financially dependent upon you, or were in an interdependency relationship with you at the time of death. Note: a former spouse is not a superannuation law dependant, but they are a superannuation tax law dependant who, if they receive the superannuation via the deceased estate, receive it free of taxation.

How does my receiving a superannuation pension impact this?

If there is no identified reversionary pensioner who will automatically be entitled to the superannuation following death, there is no impact and the DBN Form should be considered. Where your pension terms include a reversionary pension to another person, often such as a spouse, it is most common to expect that the DBN Form will be superseded by and subject to the reversionary pension terms. But if the reversionary pensioner dies before you, this situation will no longer dominate. This is why the DBN Form can still be useful so as to identify a "back-up" nomination.

Are there other ways to direct the death benefit superannuation?

There might be. Some superannuation fund trust deeds allow for special ways to do this. To answer this you need to carefully read and consider your superannuation rules and terms (in your trust deed) and very probably obtain expert professional advice.

Is the process important?

Yes, the process is very important. The SuperGuardian DBN Form has been designed to satisfy and comply with many common approaches, including if it is to be binding that it be signed and dated by you, and signed and dated by two independent persons who witness your signature. After doing this, there needs to be a formal handing over and receipt of the DBN Form with the trustee of your superannuation. Failure in carrying out any part of the process can make the whole process fail.

What happens if I get it wrong?

We have already said that the DBN Form and process is important. This is because if it is wrong in any way, even in a small way, your nomination will not be valid and it can be ignored. If you intended it be compulsory or binding and there is an error, it will not be compulsory or binding and worse, your wishes may fail.

The SuperGuardian DBN Form can be used by you to put in place your wishes (or those of another person) but after doing this, take the extra time to ensure that it complies with your particular superannuation terms. You do this by reading your particular terms or getting professional advice.

I already have a Binding DBN Form in place, do I need to do it again?

The short answer is no, as long as you are confident (or have been professionally advised) that the format of your DBN Form is correct in terms of your superannuation rules or trust deed and it is correctly completed and that it remains current.

How often do I consider a DBN Form process?

We do recommend that a person's nominations and estate plans be reviewed regularly, say every two or three years, even if non-lapsing nominations are allowed. Reviewing can be as simple as checking that it still says what you want it to say and that it is still operative under the superannuation rules that apply to your superannuation at that time.

What do I do with the completed DBN Form?

As your Fund administrator, we would like to hold the original nomination to ensure it is safely maintained and to assist us with any future nomination reviews.

Please send us the signed nomination for our records. We recommend that you also keep a copy with your important papers and also with your superannuation information.

Is that it? Is the DBN Form all I need?

Having the SuperGuardian DBN Form duly completed, formally received by your trustee and provided to us, with copies held by you, is a great start.

The form has been legally reviewed and signed off as potentially applying to most self-managed superannuation fund situations. To be 100% certain, you should consider the DBN Form within the context of the rules of your superannuation. The rules can be found in your superannuation trust deed. SuperGuardian is not licensed to advise on these matters.

Other steps to take commonly include;

- Ensuring that the future continuing controller of your superannuation fund is someone you trust and who can be relied upon to carry out your wishes.
- Reviewing your will and broader estate plan to ensure that these conform with your DBN Form.
- Undertaking a taxation expectation analysis so that the taxation consequences of any planned superannuation death benefit payment is understood.
- Informing others of the DBN Form existence and plan, such as family members, accountant or lawyer or other advisor.
- Checking the DBN Form of another where you are the survivor of them. Ensuring that their DBN Form is in place and valid is often critical to your financial security.

This DBN Form Explanatory Document has been prepared and provided by SuperGuardian as a guide to the SuperGuardian DBN Form. As a client of SuperGuardian you are invited to consider and use the DBN Form in your approach to your superannuation death benefit beneficiary nomination.

The information contained in this Explanatory Document was prepared and based on superannuation legal principles as at December 2024.

Who can benefit under superannuation law?

Knowing who is a dependant of you and who is not, is the first critical step to taking control of and managing your superannuation death benefit strategy¹.

Dependants (see more on this below) can receive a share of your superannuation following your death directly from your superannuation fund. This can bypass the time and cost of obtaining probate and administering a deceased estate.



Did you know?

Your superannuation is not part of your estate or controlled by your will. Moreover, the most common rule in Australia is that unless you have directed who is to receive your superannuation, the controller of your superannuation (known as a trustee) will decide who among your dependants will receive your superannuation.

If it is your intent that certain persons are to benefit from your superannuation, but they are not classified as superannuation law dependants of you, they **cannot** receive a share of your superannuation directly from your superannuation fund. Any such death benefit nomination by you (or another person) will be of no effect.

A two-step process is needed to direct super to someone who is not an eligible dependant.

Step 1

The only way to achieve payment of your superannuation to persons who are not superannuation law dependants of you (again, see below) is to direct the relevant amount of your superannuation to your deceased estate.

Step 2

Ensure that your own will directs any superannuation it receives to whoever you choose. This two-step process will achieve what you want.

You can direct the payment of your superannuation death benefit through a death benefit nomination (DBN) process using a DBN form.

¹ The second step is to decide whether or not to have a valid DBN Form and whether this is to be binding or merely advisory.

This can be a non-compulsory guiding document, or it can be compulsory and binding upon your superannuation trustee².

You can select the dependant persons (assuming they are eligible superannuation dependents) or nominate your estate. Nominating your estate is important if the persons you want to benefit do not come within the meaning of dependant.

It follows that it is important that you know who a dependant of you is and who is not.

The Starting Point of Who is a Dependant – Your Trust Deed

The true starting point for who is a superannuation dependant of you is your superannuation terms or rules. This is commonly found in your superannuation trust deed³.

It is very common for superannuation trust deeds to express or adopt the meaning of dependant that is found in the **Superannuation Industry (Supervision) Act 1993 (SIS Act)**. This is the most common approach seen by SuperGuardian in various trust deeds. For this reason, this fact sheet expresses the SIS Act meaning of dependant⁴.

SIS Act Dependants

There are four categories of people who can be SIS dependants. This is to be worked out twice; at the time of any DBN writing process by you and more critically at the time of death. Note that a person can satisfy multiple parts of the meaning of dependant for SIS purposes.

The four categories, all in connection with you, are your;

- spouse (legally married, de facto⁵ or registered relationship)
- child (of any age)
- person in an interdependent relationship with you; and/or
- person who is dependent under the ordinary meaning, i.e. someone who is financially dependent on you, the superannuation member

Again, there are two critical times for understanding this, when completing a DBN Form and more importantly at the time of death.

A person who was a dependant at the time of the writing of the DBN Form, but not at the later time of death, will no longer be entitled to your designated share of your superannuation, and any nomination of them will fail. **They will potentially miss out entirely!**

This is why it is important to regularly review your superannuation death benefit process and thinking.

Understanding the Four Categories of SIS Dependants

Spouse

Includes legally married and those who have registered their relationship. It also includes a person who lives with another on a genuine domestic basis in a relationship as a couple⁶. The meaning of spouse applies whether of the same sex or a different sex.

Based on the foregoing it is possible for a person to have more than one spouse at the same time e.g., they remain legally married to one but are living with another.

² More on the DBN process and can be found in the Death Benefit Nomination Form Explanatory Document.

³ This is a very important point. Very advanced superannuation death benefit planning can involve a self-managed superannuation fund trust deed adopting very specific definitions of who is, and who is not a superannuation death benefit dependant. Very specialist legal advice is needed to achieve this.

⁴ You can and should check what your super fund trust deed may say.

⁵ See later in the fact sheet for a critical qualification of this – time is not a requirement.

⁶ Whilst this may 'sound' like a de facto relationship, the Australian laws of de facto relationships commonly require at least two years of cohabitation. Under the SIS Act, there is no reference to a minimum time, superannuation spouse based on a couple living together starts immediately!

Child

Starts with your children and extends to include your adopted children, your stepchildren and your ex-nuptial children. It also includes the children of your spouse and any child of you within the meaning of the **Family Law ACT 1975**.

Remember, it is critical to 'identify' the characterisation of child at DBN process time and at the date of death.

The parent/child relationship for stepchildren is **severed** when the relationship between the parent and the step-parent is dissolved i.e. on death or divorce⁷. A person may have been a stepchild (any age) at the time of the DBN process but if not at the later time of death, any DBN Form that names them will be invalid to the extent that it refers to them.

In these cases, the former step-parent is unable to leave their superannuation benefits directly to those who they regard as their stepchildren, as they will no longer be stepchildren and will not meet the definition of child and therefore cannot be a SIS Dependant at the time of death.

In these circumstances of a former SIS dependant no longer coming within the meaning of this, passing your superannuation to them can only be achieved via your will and directing your superannuation to your estate, to be dealt with under your will.

Interdependent Relationship

According to section 10A of the SIS Act, persons will be in an interdependent relationship if the following is found to exist at the time of the death;

- 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.

Where persons have a close personal relationship but are unable to live together due to a disability they can still be classified as being in an interdependent relationship.

There is no simple rule for determining where an interdependent relationship exists. The facts will need to be considered on their merits on a case-by-case basis.

The SIS Regulations provides the following list of considerations in determining whether two (2) persons have an interdependency relationship, or had an interdependency relationship before one of them died:

- i the duration of the relationship; and
- ii whether or not a sexual relationship exists; and
- iii the ownership, use and acquisition of property; and
- iv the degree of mutual commitment to a shared life; and
- v the care and support of children; and
- vi the reputation and public aspects of the relationship; and
- vii the degree of emotional support; and
- viii the extent to which the relationship is one of mere convenience; and
- ix any evidence suggesting that the parties intend the relationship to be permanent.

Financial Dependant

Financial Dependant is not defined and as such, ultimately it comes down to your facts. The interpretative case law suggests that partial (not just whole) financial dependency is enough. But it requires actual dependence; the other person must be relying (at least partially) on you for their financial sustenance.

⁷ This is the view of the Australian Taxation Office taken from Australian Taxation Office Interpretative Decision 2011/77.

More Than One Classification

It is common for a person to satisfy multiple characterisations of dependant. One is enough, but multiple can be more effective where, due to a change in circumstances (for example the step-parent has already died), a person who at one time satisfied a characterisation later fails it. They will still be a SIS dependant if at the later death time they nevertheless satisfy a different characterisation, such as being in an interdependent relationship at that time.

Being a Tax-Free Dependant is Different

Being a SIS Dependant is critical to the question as to whether your nominated person can receive your superannuation directly from your superannuation fund. Whether it will give rise to a taxation liability at the payment time depends on two things;

- the proportion of your superannuation that contains a taxable component⁸; and
- are they a tax-free dependant of you?

The definition of tax-free dependant is found in the Income Tax Assessment Act 1997, and it is very similar to the definition of a SIS Dependant, with two notable exceptions, which are:

- A) Former Spouse** – a former spouse is not a SIS Dependant so that they cannot receive a share of a superannuation benefit directly from your superannuation fund. But if they received a share via a superannuation fund payment to a deceased estate that on-pays this to the former spouse, it is received by them free of taxation.

To be clear a SIS Act Dependant defined spouse also comes within the meaning of a tax-free defined spouse under Taxation Law, any superannuation lump sum payment to them is also tax-free.

- B) Child Must be Under 18 Years** – to be a SIS Dependant the person who comes within the meaning of child can be any age. But to be tax-free, they must also be less than 18 years of age.

Interdependent Relationship

The meaning of this for SIS Act dependant purposes is the same for tax-free dependant purposes.

Financial Dependant

The meaning of this for SIS Act dependant purposes is the same for tax-free dependant purposes. However, it is common to find that the Australian Taxation Office will place greater scrutiny on the fact of actual financial dependency before accepting tax-free status.

More Than One Classification

Once again it is common for a person to satisfy multiple characterisations of dependant for tax-free purposes. One is enough, but multiple can be useful where, due to a change in circumstances (for example the child is now over 18 years of age), a person who at one time satisfied a characterisation but later fails it. They will still be a tax-free dependant if at the later death time they nevertheless satisfy a different characterisation, such as being able to prove financial dependence, such as being a full-time student.

⁸ Look to your membership statement for this or contact your superannuation fund trustee and ask them.

Other Nominees Who Are Not a SIS Act Dependant

If you wish to have any part of your superannuation benefits paid to anyone who does not meet the SIS Act dependant criteria, it may still be possible. This is where the two-step process is necessary. A binding and valid DBN Form that names your legal personal representative⁹ will direct the nominated share of your superannuation into your deceased estate. From your estate, the terms of your will¹⁰ can direct your superannuation to persons who do not come within the SIS Act meaning of dependant.

Time is Critical

It has already been stated that checking SIS Act dependency is a two-step assessment; at the time of any nomination but more critical is the assessment at the time of death. Satisfying the first time but failing at the second time, means the whole decision process will have failed.

Circumstances regarding relationships with another person may and often do change over time. It is important to re-review and re-assess SIS Act dependency and tax-free dependency and to update any nominations. This should be done at the occurrence of different life-stages, such as a divorce or separation or when a child is no longer tax-free due to them being over age 18, and otherwise it can be wise to re-review on a semi-regular basis to ensure on-going validity according to what you want to achieve.

Your Trust Deed

It is important to remember, the terms of your superannuation trust deed can and often does impact the meaning of dependant. You need to read this fact sheet in the context of your trust deed. You should also consider who will be in existence at the relevant time and will carry out your directions and wishes.

⁹ This is the executor named in the will or the appointed administrator of the deceased estate.

¹⁰ If there is no will, the State and Territory legal principles of the laws of intestacy will apply to determine who is to share in the superannuation.

It is important to get this right

What you do now impacts in the future. It is important to invest your time now in getting this right; later at the time of death it is too late for corrections.

For further information on this topic, consider:

- Superannuation Death Benefits on the ATO website; or
- Please contact us on **1300 787 575** or info@superguardian.com.au or call your Client Manager.

Your Next Step

Now that you have determined who is and who is not a superannuation death benefit beneficiary, you can decide if you want to nominate them to receive your superannuation. This is your next step!



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The information in this fact sheet is provided by SuperGuardian Pty Ltd AFSL No 485643 (SuperGuardian) and is current as at March 2025. SuperGuardian has employed and paid for this statement to be written by a lawyer who specialises in superannuation. As this is not written by SuperGuardian, we cannot warrant that the information is accurate, complete or suitable for your needs and for this reason you should not rely on it. This fact sheet is nothing more than a guide to what you can and should be considering. It may contain general advice, which has been prepared without taking your personal circumstances and objectives, financial situation or needs into account. Before acting on this fact sheet, you should consider the appropriateness of it having regard to your personal circumstances and objectives, financial situation or needs.

