

## Nomination of Beneficiary Explanatory Document



The nomination of beneficiary form is your instruction as to what is to happen with the balance of your account when you die. Superannuation monies after you die do not automatically go to your Estate and are not ordinarily covered in standard Wills. The Trustees of your SMSF may have the discretion to distribute it to any 'dependant' unless you provide a Binding Nomination.

For this reason, this document can be extremely important and should be considered as part of your estate planning. This document is not compulsory – if you do not nominate a beneficiary it will be at the Trustees discretion as to how your superannuation monies are dealt with after you die. If you do complete this document, you may update and replace it at any time.

### Binding and Non-Binding Death Benefit Nominations

The attached nomination form should not be completed without consideration of a variety of factors, including who to nominate as beneficiary(s), who will act as Trustee on your death, the terms of the fund trust deed, your current Will and the tax consequences when payments are made.

Xpress Super is not licensed to advise on these matters. This is a complex area, and we urge you to seek professional estate planning advice to assist you with your decision.

### Some of the factors you should consider include:

- The Nomination can be to either:
  1. 'Dependants' which includes: spouse (including defacto); children (including those over 18 years but with possible tax consequences); financial dependants not tax dependent or any person with an interdependency relationship.
  2. 'Legal Personal Representative' which includes: the executor of the Will or the administrator of the estate.
- Siblings, parents, other relatives and friends are not normally dependants so must satisfy the requirements of an interdependency relationship or be considered financially dependent at the time of death to be nominated.
- A death benefit paid to an adult child may be taxable to the beneficiary. We urge clients to seek professional advice when nominating adult children.
- You may wish to make a non-binding death benefit nomination. If this is the case, the document will guide the Trustees in terms of your wishes, however they still have the ability to exercise discretion as to who and how the death benefits are paid. Trustees cannot be legally bound to the instruction contained in a non-binding death benefit nomination.

- If the nomination is to be binding, two independent persons may need to witness and sign the forms where indicated, subject to the terms of the nomination as provided for in the Governing Rules of the Fund. A binding nomination legally binds the Trustees to act exactly in accordance with your wishes.

- The Governing Rules (Trust Deed) of an SMSF determine whether the Trustees can receive a binding death benefit nomination on behalf of a member, and the terms of the nomination i.e. whether it lapses or not and any witnessing requirements. As such, where the governing rules of the SMSF incorporate the requirements of the *Superannuation Industry (Super vision) Regulations 1994* the nomination is required to be witnessed by two independent persons and will expire at the end of 3 years and a new form will need to be completed, even if your nominated beneficiary has not changed. Many recently prepared deeds exclude the SIS requirements making it possible to have indefinite/non-lapsing nominations, so it is important to review your deed prior to completing your nominations. We do recommend however that a person's nominations and estate plans still be reviewed regularly even if non-lapsing nominations are allowed.

**Please also note** that if you nominate a person who cannot receive a benefit as they are not either your dependent according to legislation, or your legal personal representative (i.e. executor of your Will) then the nomination, to the extent that it nominates that person/s, will be invalid and it does not bind the Trustee. The Trustee then has discretion when distributing your superannuation monies that are linked to the invalid portion of the nomination.

### Death Benefit Dependants

For more information on who is a death benefit dependant i.e. who you can nominate to receive a death benefit, please read our Fact Sheet 'Death Benefits - who can be a beneficiary under superannuation law', available from [www.xpresssuper.com.au](http://www.xpresssuper.com.au)

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 a copy of the signed nomination for our records.