

## Non-binding death benefit nominations - confidential

To the Trustee of Bache Super Fund:

### *Nominated beneficiaries*

I nominate the following people as my Nominated Beneficiaries and confirm my understanding that this nomination is not binding on the Trustee of Bache Super Fund:

<b>Name</b>	<b>Relationship to member (delete all but the one that is applicable)</b>	<b>Total benefit (%) – must total 100%</b>
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
		<b>100%</b>

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of \_\_\_\_\_

## Binding death benefit nomination

Bache **Super Fund**

To the Trustee of Bache Super Fund (**Fund**) ***Binding***

### ***nomination***

I, Rachel Caplan, being a member of the Fund, direct that the trustee of the Fund is to pay any benefits in respect of my membership of the Fund on or after my death as follows:

***User note: include applicable nomination and delete options that are not applicable***

100% of my benefit to my legal personal representative for distribution under the terms of my will.

OR

100% of my benefit as set out in the table below:

<b><i>Full name of nominated beneficiary</i></b>	<b><i>Relationship to member (delete all but the one that is applicable)</i></b>	<b><i>Percentage (must total 100%)</i></b>
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
	spouse/child/a person who is financially dependent on me/legal personal representative	%
		<b>100%</b>

For clarity, I confirm the direction above does not apply to any of my benefits which are already subject to a valid reversionary pension nomination.

### **Confirmation**

I confirm:

- 1 if any person named in the table immediately above does not survive me, or dies before the whole of the relevant benefit is paid to them, then the share of the benefit to which they would otherwise have been entitled (or any part of the benefit that remains unpaid) must be paid to my legal personal representative for distribution under the terms of my will;
- 2 my understanding that the payment of benefits in this nomination is permitted under the trust deed and the *Superannuation Industry (Supervision) Act 1993* (Cth) (**Act**);
- 3 this nomination revokes any previous nomination (of any kind) I may have made in relation to my benefits in the Fund and is binding on the trustee of the Fund pursuant to the trust deed;
- 4 this nomination will only terminate if expressly revoked by me in writing; and
- 5 each witness is at least 18 years or older and is not a nominated beneficiary or one of my legal personal representatives.

### **Signing**

On the date of \_\_\_\_\_

and in the presence of the First Witness and the Second Witness, I sign this binding death benefit nomination in relation to my benefits in the Fund

\_\_\_\_\_  
Full signature of member

The member signed this binding death benefit nomination in our presence and we have also signed in the presence of the member, and each other, with all of us present at the same time:

\_\_\_\_\_  
Full signature of First Witness

\_\_\_\_\_  
Full signature of Second Witness

\_\_\_\_\_  
Full name (capitals)

\_\_\_\_\_  
Full name (capitals)

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Suburb/State

\_\_\_\_\_  
Suburb/State

### **Important notes**

- 1 As a member of the Fund it is your own responsibility to ensure that the proposed payment of benefits in this nomination complies with the Act.
- 2 You should obtain specialist advice before signing the nomination in relation to:
  - a whether a nominated beneficiary is permitted to receive your benefits under the Act; and
  - b the taxation consequences of the payment of your benefits to your nominated beneficiaries.
- 3 There is other important information provided to members about this nomination in an information sheet that the trustee of the Fund can provide to you.

## Information sheet - Binding death benefit nominations (BDBN)

### **Overview**

- 1 Under the *Superannuation Industry (Supervision) Act 1993* (Cth) (**Act**), the trustee is required to give you the information that it believes you need to understand your rights to require the trustee to pay your member benefits under the Fund.
- 2 The required information is set out below.

### **Nomination alternatives**

- 3 Under the Act, a member can require the trustee of the Fund to pay benefits in a certain way on their death.
- 4 There are essentially six possible scenarios in relation to any death benefit payment and these are summarised below. A reference to BDBN means **Binding Death Benefit Nomination**.
  - a no nomination - the member may have made no direction or nomination to the trustee. In this situation, the trustee has complete discretion as to how to distribute the death benefit payment;
  - b non-BDBN – if the member has made a nomination which does not satisfy the requirements of a BDBN, the trustee retains complete discretion as to how to distribute the death benefit, although it should still take into account what is set out in the non BDBN;
  - c lapsing BDBN – where there is a valid BDBN, the trustee must pay the death benefit in accordance with it. The only situation where the trustee need not follow the lapsing BDBN is where, even though it is otherwise validly prepared, it is stated to be enforceable for a defined period (often three years). If the member dies outside the relevant period, then the trustee is not bound to follow the BDBN;
  - d non lapsing BDBN – it is possible for members to create BDBNs that are non-lapsing. If they are validly prepared, they are binding on the trustee;
  - e superannuation will – a BDBN can be embedded into the trust deed for the Fund. Specialist advice should be obtained in relation to this approach, which is generally adopted where there are concerns that a nomination may not be followed; and
  - f reversionary beneficiary – where a member has been receiving an income stream, it is possible to establish that income stream in a way that it automatically reverts or passes to another person, regardless of any nomination that may have been made. This means that if a reversionary pension has been commenced, the terms of that reversionary pension will usually prevail to the extent of any inconsistency with a subsequent BDBN.
- 5 The interplay between death benefit payments and a member's estate plan can be complex and best practice dictates that members should implement a comprehensive estate plan and complementary strategy in relation to their superannuation entitlements.
- 6 The impact of incapacity should also be considered. For example, if a lapsing BDBN is to be implemented, thought should be given to allowing your legal personal representative to have the power to sign an updated BDBN on your behalf.

### ***Requirements for BDBNs***

- 7 Any BDBN must comply with the requirements set out in the template nomination provided by the Fund.
- 8 These requirements include:
  - a the form of the nomination;
  - b clear direction as to who is to receive what benefit; and
  - c that the intended recipient is a 'dependant' as defined under the Act (a dependant includes - spouse, any child of the member (regardless of age), and any person who is financially dependent on the member) or your legal personal representative (as defined under the Act).

### ***Trust Deed***

- 9 The trust deed for the Fund must allow for BDBNs to be given to the trustee. The trust deed for the Fund does currently have the required provisions.

### ***Advantages of BDBNs***

- 10 Three of the main advantages of BDBNs are:
  - a reduced risk of successful disputes over death benefit payments;
  - b tax planning opportunities for members with infant children; and
  - c asset protection planning.

### ***Disadvantages of BDBNs***

- 11 Three of the main disadvantages of BDBNs are:
  - a the tax and estate planning issues in relation to the payment of superannuation death benefits are complex and difficulties can often arise with BDBNs that prove to be inappropriate;
  - b if a member's circumstances change and they have failed to update their BDBN, the original BDBN will remain binding on the trustee; and
  - c a number of court decisions since 2012 have resulted in significant confusion about the exact requirements to ensure a BDBN is valid.

### ***Process from here***

- 12 If you have doubts about any aspect of an intended BDBN, you must obtain specialist advice before signing the nomination.
- 13 In this regard, specific advice should be obtained in relation to the interaction between a BDBN and any reversionary pension nominations.
- 14 Commercially, you should also be aware that on the death of:
  - a each member of the Fund, there will need to be sufficient liquid assets to pay a death benefit or fund any continuing pension payments; and
  - b the last member of the Fund, it is highly likely that all assets of the Fund will need to be liquidated or distributed in specie due to the rules under the Act relating to death benefit payments.