



AUSTRALIAN COMPANY INCORPORATION SERVICES

## EXPLANATORY MEMORANDUM BINDING DEATH NOMINATIONS

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**IMPORTANT NOTE:**

The contents of this information memorandum are not and should not be construed as advice of any kind. ACIS does not provide advice in relation to any of the matters mentioned in this material or generally in relation to superannuation, taxation, stamp duties or other state or territory taxes nor in respect of any other matter.

The notes in this material are intended as a general guide only and not as a substitute for professional advice.

Laws relating to superannuation, taxation, trusts and stamp duty are continually changing and professional advice should be obtained before signing any binding death nomination or non-lapsing binding nomination. Each superannuation trust deed is a distinct and separate document and must be interpreted and construed in accordance with its terms and the current law. As such these notes must be read in conjunction with the relevant trust deed and any proposed binding death nomination or non-lapsing binding nomination must be prepared in accordance with the applicable trust deed and with the benefit of professional legal and financial advice.

# BINDING DEATH BENEFIT PROCEDURES

## GENERAL REQUIREMENTS

**It is essential that these procedures be followed in order for a proper Binding Death Nomination to be made.**

- Ensure that advice is taken that the trust deed under which the fund operates contains provisions allowing members to make Binding Death Nominations or Non-lapsing Binding Nominations.
- Ensure that the nominations, as drafted, properly and fully reflect your wishes. In this regard, you should seek professional advice prior to making a Binding Death Nomination or Non-lapsing Binding Nomination.
- A Binding Death Nomination or Non-lapsing Binding Nomination is similar in legal effect to your will and must be considered carefully in the same way. As with a binding will, you must ensure that a Binding Death Nomination or Non-lapsing Binding Nomination is made **in the presence of two independent witnesses. Both witnesses must be watching you as you sign and must also watch each other sign**, however you are not required to show them the rest of the Nomination (although you may do so, if you wish). Witnesses:
  - Must be over the age of 18 years and not be under any legal disability (ie. they must be of sound mind); and
  - Must **not** be potential beneficiaries under the Nomination.
- A Binding Death Nomination will last for three (3) years, unless it is confirmed, modified or revoked within that time.
- A Non-lapsing Binding Nomination will not lapse unless it is modified or revoked.
- The trustee of the fund must inform you of the existence and terms of each Nomination each year and, ideally, you should confirm it each year.

## OTHER MATTERS

Under the ACIS standard Superannuation Fund's Governing Rules, you have the following choices in relation to the payment of death benefits:

- **Trustee's Discretion:**

The trustee decides who will receive your benefits when you die. You may have signed a non-binding nomination as part of your initial application for membership. Alternatively, you are entitled to make a non-binding nomination at any time. A non-binding nomination gives the trustee an indication of your wishes in relation to your benefits, however the trustee is not obliged to distribute in accordance with these wishes. Usually, the trustee will take all issues under consideration and will distribute in a very similar manner to that expressed in your non-binding nomination. However this may not be the case, especially if the trustee's decision is challenged by one or more potential beneficiaries.

- **Binding Death Nominations and Non-lapsing Binding Nominations:**

You may elect to determine in advance to whom and how your death benefits will be paid in the event of your death. The requirements for making a Binding Death Nomination or Non-lapsing

Binding Nomination are outlined above. In this case, the trustee of the Fund has no discretion as to the persons or manner in which your benefits will be paid, even if:

- (a) you have not fully considered the consequences (including the taxation consequences) of your nomination; or
- (b) if your circumstances have changed and you have not changed your nomination.

• **Who can be the object of a Binding Death Nomination or Non-lapsing Binding Nomination:**

You may only make a Binding Death Benefit Nomination or Non-lapsing Binding Nomination in favour of one or more of the following:

- (a) a dependent (which includes your spouse, defacto spouse, dependent child, or some other person who is financially dependent on you);
- (b) a non-dependent child, who is legally your child; or
- (c) your legal personal representative, being the person who is responsible for administering your estate according to the terms of your will.

## DEATH BENEFIT ALLOCATION

**This is an example only. You MUST obtain detailed professional advice before completing any allocation of benefits.**

1. To the extent that my benefits contain undeducted contributions or an unused undeducted purchase price, 100% of this portion as a lump sum to my legal personal representative.
2. To the extent that my benefits contain taxable amounts up to my pension reasonable benefits limit, 100% of this portion of my benefits as a lump sum to *NAME OF SPOUSE* (my "spouse") and, if my spouse is deceased, 100% of this portion of my benefits in the manner in paragraph 4 below.
3. To the extent that my benefits contain taxable amounts in excess of my pension reasonable benefits limit, 100% of this portion of my benefits as a reversionary allocated pension or as a new allocated pension (whichever my spouse elects) to my spouse which pension cannot be cancelled during *his/her* lifetime and, if my spouse is deceased, 100% of this portion of my benefits in the manner in paragraph 4 below.
4. If my spouse is not still living at the time this nomination comes into effect, the benefits referred to in paragraphs 2 and 3 above are to be dealt with as follows:-
  - (a) one half of my remaining benefits as an allocated pension to my son, JOHN SAMPLE or if he is not then living, as allocated pensions:
    - (i) to his children in equal shares; and
    - (ii) if one or more of his children are not then living, that child's share to the children then living of that child in equal shares; and
    - (iii) if one or more of his children are not then living and there are no children of that child then living, that child's share to his remaining children, distributed in accordance with sub-paragraphs 4(a)(i) and 4(a)(ii); and
  - (b) one half of my remaining benefits as an allocated pension to my daughter, JENNY SAMPLE or if she is not then living, as allocated pensions:
    - (i) to her children in equal shares; and
    - (ii) if one or more of her children are not then living, that child's share to the children then living of that child in equal shares; and

- (iii) if one or more of her children are not then living and there are no children of that child then living, that child's share to her remaining children, distributed in accordance with sub-paragraphs 4(b)(i) and 4(b)(ii); and
- (c) if there are no beneficiaries then living to which sub-paragraph (a) is capable of applying, that one half share to be distributed in accordance with sub-paragraph (b); and
- (d) if there are no beneficiaries then living to which sub-paragraph (b) is capable of applying, that one half share to be distributed in accordance with sub-paragraph (a); and
- (e) if there are no beneficiaries then living to which sub-paragraph (a) or sub-paragraph (b) is capable of applying, the whole of the amounts to which this paragraph applies to my legal personal representative.

**NOTE:** When considering the allocation of benefits, care must be exercised to properly consider the affects of the allocation and to make provision for all eventualities. For example you should consider how the allocations may differ if a beneficiary predeceases you and the benefit has not been reallocated to another person. You should also be aware that allocations may be made in relation to different components of your account balances and in favour of different persons or in the case of a change of circumstance to alternative beneficiaries

**NOTE:** Each superannuation trust deed is different and must be closely examined to determine if the options mentioned above are available to you. Some deeds may or may not contain such provisions depending on their origin and relative age since their last upgrade.



**NOTE:** The following example of a Binding Death Nomination form is a **SAMPLE ONLY** and should only be completed after obtaining professional advice in relation to the content and affect of a binding death nomination.

**BINDING DEATH NOMINATION  
NON-LAPSING BINDING NOMINATION**

**SAMPLE SUPERANNUATION FUND**

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This nomination is in respect of my entire superannuation benefit in the above superannuation fund.

**MEMBER DETAILS**

Title: \_\_\_\_\_ Surname: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

**TYPE OF APPLICATION**

New       Amending       Revoking

**BENEFICIARY DETAILS**

Please complete for all of the beneficiaries listed in your nomination. Note that "spouse" includes a defacto spouse, but does not include a former spouse or a same sex partner. Note also that "child" includes an adopted child, step-child or ex-nuptial child.

1. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

2. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

3. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

4. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

5. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

6. Surname of beneficiary: \_\_\_\_\_

Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

## DEATH BENEFIT ALLOCATION

**You MUST obtain detailed professional advice before completing any allocation of benefits. This section must be fully completed after a full consideration of the relevant circumstances.**

### DECLARATION

I am a member, or I have applied to become a member of SAMPLE SUPERANNUATION FUND. This Binding Death Nomination/ Non-lapsing Binding Nomination applies only to my interests in this superannuation fund.

I confirm that I understand that if this nomination is valid at the time of my death, the trustee must pay the benefits to the persons and in the manner in which I have directed. I further understand that if this is a Binding Death Nomination, this Nomination will last for three years only, unless confirmed, amended or repealed during that time and that if this is a Non-Lapsing Binding Nomination, this Nomination will not lapse, unless amended or repealed at any time. Should I cease to be a member of the SAMPLE SUPERANNUATION FUND, I understand that this Nomination ceases to have effect.

**DO NOT SIGN UNLESS THERE ARE TWO INDEPENDENT ADULT WITNESSES PRESENT**

X

Your Signature

Date:   /   /

I witnessed the signing of this nomination by the person whose signature appears above and declare that I am over 18 years of age.

#### Witness 1.

X

Signature Date:   /   /

Print Name

Print Address

#### Witness 2.

X

Signature Date:   /   /

Print Name

Print Address