

death benefit payment checklist



STEP

1

establish the rules for the fund

Review Trust Deed and Variations	Completed or N/A	Issue Identified
Confirm the existence of all relevant deeds governing the Fund	<input type="checkbox"/>	<input type="checkbox"/> <i>check here!</i>
Verify if there have been any changes or variations to the trust deed	<input type="checkbox"/>	<input type="checkbox"/>
Confirm that any changes or variations to the trust deed are effective and compliant	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Changes	Completed or N/A	Issue Identified
Assess if there have been any changes in the trusteeship of the Fund	<input type="checkbox"/>	<input type="checkbox"/>
Confirm the details of the trustee and ensure they are accurately reflected in the governing documents	<input type="checkbox"/>	<input type="checkbox"/>
Binding Death Benefit Nominations [BDBN]	Completed or N/A	Issue Identified
Determine whether the Fund allows for the creation of BDBN	<input type="checkbox"/>	<input type="checkbox"/>
Clarify any specific rules or conditions surrounding the establishment and modification of BDBNs, including whether they are lapsing or non-lapsing	<input type="checkbox"/>	<input type="checkbox"/>
Existence of Reversionary Pension Documents	Completed or N/A	Issue Identified
Ensure that reversionary pension documents are in place and readily accessible	<input type="checkbox"/>	<input type="checkbox"/>
Reversionary Pension and BDBN Interactions	Completed or N/A	Issue Identified
Examine the relationship between reversionary pensions and BDBNs	<input type="checkbox"/>	<input type="checkbox"/>
Check whether reversionary pension provisions override BDBN or if there are specific conditions governing their interaction	<input type="checkbox"/>	<input type="checkbox"/>
Hardwired provisions	Completed or N/A	Issue Identified
Investigate the existence of any hardwire provisions within the deed dealing with the payment of the death benefit, including death benefit agreement, SMSF will, death benefit guardian	<input type="checkbox"/>	<input type="checkbox"/>
Identify and understand the implications of these provisions on the operation and management of the Fund	<input type="checkbox"/>	<input type="checkbox"/>

STEP

2

appoint the 'right' new/additional trustee [if appropriate]

Identify Potential Trustees	Completed or N/A	Issue Identified
Review suitability of existing trustee appointment	<input type="checkbox"/>	<input type="checkbox"/>
Consider SIS Act requirements [section 17A]	<input type="checkbox"/>	<input type="checkbox"/>
Identify the legal personal representative [LPR], executor appointed by will [probate granted?] or administrator appointed under letters of administration	<input type="checkbox"/>	<input type="checkbox"/>
Executor Considerations	Completed or N/A	Issue Identified
Assess whether the executor[s] of the deceased's estate are suitable candidates for trustee roles	<input type="checkbox"/>	<input type="checkbox"/>
Consider potential conflicts of interest	<input type="checkbox"/>	<input type="checkbox"/>
Review provisions in the deceased's will that address conflicts and evaluate their relevance to executor appointment as trustee	<input type="checkbox"/>	<input type="checkbox"/>
Review trust deed to determine whether the appointment of a person as trustee or director will give rise to any conflict if they are a potential beneficiary, and whether the person is able to act despite a conflict	<input type="checkbox"/>	<input type="checkbox"/>
Appoint Trustee [if required]	Completed or N/A	Issue Identified
Confirm that the appointment of trustees aligns with the requirements stipulated in Section 17A of the Superannuation Industry [Supervision] Act 1993 [Cth] [SISA]	<input type="checkbox"/>	<input type="checkbox"/>
Document correctly	<input type="checkbox"/>	<input type="checkbox"/>
Review trusteeship once death benefit commences to be payable	<input type="checkbox"/>	<input type="checkbox"/>
Timely Changes	Completed or N/A	Issue Identified
Highlight the importance of making trustee appointments within six months of the date of death	<input type="checkbox"/>	<input type="checkbox"/>
Establish a clear timeline for completing the trustee appointment process to meet the stipulated timeframe	<input type="checkbox"/>	<input type="checkbox"/>

STEP

3

determine if reversionary pension or hard wired deed provisions cover the entire death benefit, and are legally binding

BDBN Accords with Trust Deed	Completed or N/A	Issue Identified
Confirm that the BDBN aligns with the provisions in the superannuation fund's trust deed	<input type="checkbox"/>	<input type="checkbox"/>
Verify that the terms and conditions specified in the BDBN are permitted by the trust deed	<input type="checkbox"/>	<input type="checkbox"/>

Compliance of Reversionary Pension Documents	Completed or N/A	Issue Identified
Verify that these documents comply with legal and regulatory requirements, as well as the specific provisions within the fund's trust deed	<input type="checkbox"/>	<input type="checkbox"/>

Binding Nature of Hard Wired Deed Provisions	Completed or N/A	Issue Identified
Confirm that the provisions within the superannuation fund's governing deed related to death benefit distribution are binding and enforceable	<input type="checkbox"/>	<input type="checkbox"/>

Death Benefit Coverage	Completed or N/A	Issue Identified
Evaluate whether all death benefits are covered by the BDBN, reversionary pension documents, or the deed provisions [or the combination of them]	<input type="checkbox"/>	<input type="checkbox"/>
Consider any conflict between BDBN, reversionary pension documents, or the deed provisions and which one overrides	<input type="checkbox"/>	<input type="checkbox"/>
<i>If there is any portion of the death benefit that is not dealt with by the BDBN, Reversionary Pension or Hard Wired Provision, proceed to Step 4.</i>		

STEP

4 identify beneficiaries who can receive a benefit

List of SIS Act Dependants	Completed or N/A	Issue Identified
<p>Compile a list of dependants as defined under the Superannuation Industry [Supervision] Act [SIS Act], including</p> <ul style="list-style-type: none"> • Spouse of the member; • Child of the member; • Any person who was financially dependent on the member at the time of their death; • Any person who is in an interdependency relationship with the member at the time of their death; • LPR of the member's estate. 	<input type="checkbox"/>	<input type="checkbox"/>

Spouse of the Member	Completed or N/A	Issue Identified
Identify the spouse[s] of the deceased member	<input type="checkbox"/>	<input type="checkbox"/>
Include considerations of other legal spouses such as second spouses or de facto partners	<input type="checkbox"/>	<input type="checkbox"/>

Children of the Member	Completed or N/A	Issue Identified
List all children of the deceased member, including biological, adopted, and stepchildren	<input type="checkbox"/>	<input type="checkbox"/>
Consider where there may be other children [estranged; from other relationships, etc]	<input type="checkbox"/>	<input type="checkbox"/>
Consider whether person remains a stepchild	<input type="checkbox"/>	<input type="checkbox"/>

Financially Dependency and Interdependency Relationships	Completed or N/A	Issue Identified
Identify individuals who were in an interdependency relationship with or otherwise dependent upon the deceased member	<input type="checkbox"/>	<input type="checkbox"/>
This may include individuals who shared a close personal relationship and were financially dependent or mutually supportive	<input type="checkbox"/>	<input type="checkbox"/>

Documentation	Completed or N/A	Issue Identified
Maintain accurate and updated documentation for each identified beneficiary, including relevant proof of relationships, financial dependencies, proof of requirements for interdependency relationship	<input type="checkbox"/>	<input type="checkbox"/>

STEP

5 conduct inquiries regarding beneficiary circumstances

Contact Dependants	Completed or N/A	Issue Identified
Write to each identified dependant to inquire about their intentions regarding the deceased member's death benefit	<input type="checkbox"/>	<input type="checkbox"/>
Request information about their relationship with the deceased and details regarding their personal financial situation	<input type="checkbox"/>	<input type="checkbox"/>

Engage with LPR	Completed or N/A	Issue Identified
Reach out to the LPR to understand how the death benefit would be distributed if directed to the estate	<input type="checkbox"/>	<input type="checkbox"/>
Gather information about the circumstances of the beneficiaries who would receive the death benefit in the case of estate distribution	<input type="checkbox"/>	<input type="checkbox"/>

Consider Non-Binding Death Benefit Nominations	Completed or N/A	Issue Identified
Review any existing non-binding death benefit nominations made by the deceased member	<input type="checkbox"/>	<input type="checkbox"/>
Take into account the preferences expressed in these nominations when assessing potential beneficiaries	<input type="checkbox"/>	<input type="checkbox"/>

Examine the Deceased Member's Will	Completed or N/A	Issue Identified
Scrutinise the contents of the deceased member's will for indications of the deceased's wishes regarding the distribution of the death benefit	<input type="checkbox"/>	<input type="checkbox"/>

Document Findings	Completed or N/A	Issue Identified
Keep detailed records of the enquiries made, responses received, and any additional information gathered during the process	<input type="checkbox"/>	<input type="checkbox"/>

exercise trustee discretion

Completion of Reasonable Enquiries	Completed or N/A	Issue Identified
Confirm that the trustee has conducted reasonable enquiries regarding the circumstances of each potential beneficiary, including dependants and the LPR	<input type="checkbox"/>	<input type="checkbox"/>
Timely Distribution	Completed or N/A	Issue Identified
Ensure that the trustee is fulfilling its responsibility to distribute the deceased member's death benefit as soon as practicable following the member's death	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to Fund Rules	Completed or N/A	Issue Identified
Consider the process for trustees exercising discretion in the Fund rules	<input type="checkbox"/>	<input type="checkbox"/>
If the payment is subject to any further limitation [e.g. the consent of a Death Benefit Guardian], then ensure that limitation is addressed	<input type="checkbox"/>	<input type="checkbox"/>
Ensure that in exercising the discretion, the trustee has	Completed or N/A	Issue Identified
Acted in good faith;	<input type="checkbox"/>	<input type="checkbox"/>
Given real and genuine consideration;	<input type="checkbox"/>	<input type="checkbox"/>
Exercised the discretion personally [and not delegate it to a third party – e.g. an adviser]; and	<input type="checkbox"/>	<input type="checkbox"/>
Exercised the discretion for a proper purpose, and for no other purpose	<input type="checkbox"/>	<input type="checkbox"/>
Record Decision in Resolution	Completed or N/A	Issue Identified
Confirm that the trustee records its decision through a resolution, detailing the following <ul style="list-style-type: none"> The person[s] eligible to receive the deceased member's death benefit; Enquiries made of the deceased member's dependants and estate, including the nature of these enquiries; The trustee's decision on how the death benefit will be distributed, specifying the percentage each beneficiary will receive and the form of distribution [e.g., lump sum, pension] 	<input type="checkbox"/>	<input type="checkbox"/>
Absence of Requirement for Detailed Reasons	Completed or N/A	Issue Identified
Note that the trustee is not obligated to provide detailed reasons for its decision, as long as the resolution includes the essential information outlined above	<input type="checkbox"/>	<input type="checkbox"/>

Communication of Decision	Completed or N/A	Issue Identified
Communicate the trustee's decision regarding the distribution of the death benefit to relevant parties in a clear and timely manner	<input type="checkbox"/>	<input type="checkbox"/>
Only communicate the decision to the extent it affects that person – i.e. "the trustee has made a determination with respect to the deceased member's benefit, and has determined to pay \$X to you"	<input type="checkbox"/>	<input type="checkbox"/>

Documentation Retention	Completed or N/A	Issue Identified
Encourage the trustee to retain a copy of the resolution and associated documentation for record-keeping purposes	<input type="checkbox"/>	<input type="checkbox"/>

To help you navigate this process effectively, use a lawyer who can provide valuable support by:

- Reviewing the trust deed for fund, including any deeds of variation and changes of trustee.
- Ensuring trustee appointments align with legal requirements and identifying potential conflicts.
- Verifying the accuracy, completeness, and legal soundness of all documentation related to trustee appointments.
- Conducting a comprehensive review and validation of BDBN, reversionary pension documents, and hard wired deed provisions.
- Ensuring all requirements are met regarding the distribution of benefits.
- Ensuring the identification of beneficiaries aligns with SIS Act definitions and requirements.
- Managing the inquiries process with the beneficiaries.
- Verifying that the resolution and decision-making process complies with the above Checklist.

**our legal crew
are here to help**



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