

# BENEFICIARIES AND YOUR SUPER ENTITLEMENT



**SUPER SA**  
contributing to your future

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For advice in relation to Wills, Estates and Family Law issues, members should seek the advice of a legal practitioner.

The Act governing Triple S contains specific provisions regarding who will be paid an entitlement in the event of your death.

Triple S is governed by the *Southern State Superannuation Act 2009* (The Act) and *Southern State Superannuation Regulations 2009*. You will find further information in this fact sheet about what happens to your super entitlement should you die.

### Your beneficiaries

You have the option to nominate a legal personal representative (estate) with Super SA. This means that should you die, your death benefit, including insurance entitlements (if any) will be paid to your estate and distributed according to your Will or the Statutes. Your legal personal representative is the person appointed as the executor or administrator of your estate. It is therefore important that your Will is up-to-date and reflects your wishes.

If you have not nominated a legal personal representative (estate) with Super SA, your death benefit entitlements, including insurance entitlements (if any), will be paid to your legal and/or putative spouse. If you don't have a legal or putative spouse, your entitlement will be paid to your estate and distributed according to your Will or the Statutes.

For a partner to be recognised as a putative spouse of a member, they need to satisfy the requirements under the *Southern State Superannuation Act 2009* (conditions apply).

In general terms, the person must have been living with their partner as husband and wife de facto (or with the distinguishing characteristics of a married couple in the case of same sex couples) at the date of death of the member and have either:

- lived continuously with them for a period of three years immediately before the date of death, or
- lived with them for an aggregate period of three out of four years immediately before the date of death, or
- a child born of the relationship of whom both partners are the natural parents.

A person will also be recognised as a putative spouse of the member if in a Registered relationship with the member as at the date of death (within the meaning of the *Relationships Register Act 2016*).

### The role of the Family Law Act

The ability to have flagging orders, superannuation agreements and court orders under the Family Law Act gives you or the court the ability to split your super interest in the event of a breakdown in your relationship, and accordingly in the event of your subsequent death. Subject to a satisfactory property settlement which must take into account super, you may exclude a former partner from being entitled to any part of your super, even though you may be permanently separated but not divorced.

If your relationship breaks down and you have permanently separated or divorced, Part VIII B of the *Family Law Act 1975* enables you to split and share the accrued interest in your super with your former partner in the same way as other property in a relationship.

It is up to the parties who are permanently separating, or the Family Court, to agree how they will share the property in the relationship, including superannuation assets. You do not have to split a superannuation entitlement. By sharing other assets, you may avoid splitting a superannuation interest.

A property settlement or superannuation agreement that takes into consideration super as described above, effectively terminates any right of your former partner to an entitlement from your super on your death, even though you may still be legally married but permanently separated. Therefore, if you die after you have undergone a property settlement or superannuation agreement, your entitlement will not be paid to your former spouse or putative spouse.

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### Contact us

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### Example: Mary's superannuation

John and Mary had been married for ten years when they decided to separate. They did not divorce and did not enter into a property settlement in terms of the Family Law Act. Mary, who is a member of Triple S, began a new relationship with Ian and they had been living together for 12 years when Mary died. Mary's Triple S super entitlement is worth \$100,000. While Mary has a current Will, she has not nominated a legal personal representative in regards to her superannuation with Super SA.

### Who receives Mary's entitlement?

John is still Mary's legal spouse and Ian is her putative spouse. Even though she had named Ian as her beneficiary in her Will, because she had not nominated a legal personal representative, Mary's entitlement will, in terms of the Southern State Superannuation Regulations 2009, be split between the two partners in the ratio of how long each of the partners lived with Mary. Therefore, Ian receives \$54,500 and John receives \$45,500.

If Mary had wished to exclude John from receiving any of her superannuation entitlement upon her death, she could have either:

- divorced him
- entered into a superannuation agreement Family Court order which dealt within her superannuation entitlements
- nominated a legal personal representative with Triple S to ensure that her benefit would be paid to her Estate and distributed according to her Will.

If Mary had no legal spouse or putative spouse, then her entitlement would have been paid to her Estate, to be distributed in accordance with her Will.

### Further information

The following fact sheets may be helpful if read in conjunction with the information presented above:

- Death and Total and Permanent Disablement Insurance
- Member Entitlements
- Superannuation and the Breakdown of Relationships

For advice in relation to Wills, Estates, and Family Law issues, members should seek the advice of a legal practitioner.

Fact sheets on a range of topics relating to your super are available on the Super SA website and from Super SA. Alternatively, if you have any enquiries regarding beneficiaries and your super entitlement or any other matters raised in this fact sheet, please contact Super SA.

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### Disclaimer

The information in this document is intended to help you understand your entitlements in Triple S. Super SA does its best to make sure the information is accurate and up to date. However, you need to be aware that it may not include all the technical details relevant to the topic. For the complete rules of Triple S, please refer to the *Southern State Superannuation Act 2009* and *Southern State Superannuation Regulations 2009*. The Act and accompanying Regulations set out the rules under which Triple S is administered and entitlements are paid. You can access a copy from the Super SA website.

Triple S is an exempt public sector superannuation scheme and is not regulated by the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA). Super SA is not required to hold an Australian Financial Services Licence to provide general advice about Triple S.

The information in this document is of a general nature only and has been prepared without taking into account your objectives, financial situation or needs. Super SA recommends that before making any decisions about Triple S you consider the appropriateness of this information in the context of your own objectives, financial situation and needs, read the Product Disclosure Statement (PDS) and seek financial advice from a licensed financial adviser in relation to your financial position and requirements.

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