

Joining a death benefit complaint

This fact sheet provides information on how you can apply to join (be made a party to) a complaint about the distribution of a death benefit.

Who can apply to be joined to a complaint?

You can apply to join (become a party to) a complaint regarding the payment of a superannuation death benefit if:

- a proposed or potential beneficiary of a superannuation death benefit has complained to AFCA about the superannuation trustee's decision about how the benefit will be paid; and
- you are also a proposed or potential beneficiary of the death benefit.

The fund's trust deed will say who the potential beneficiaries are.

What is a trust deed?

A trust deed is a legal document that sets out the rules for a superannuation fund, and what the superannuation trustee can and cannot do in relation to the fund. A superannuation trustee must always comply with the fund's trust deed.

Am I a potential beneficiary?

Generally, potential beneficiaries will be one or more of the following:

- the spouse of the member (including a de facto or same-sex spouse)
- a child of the member (including an adopted child or a step-child)
- a person with whom the member had an interdependency relationship
- a person who was wholly or partially financially dependent on the member, and/or
- the member's legal personal representative.

How will I know about the complaint?

You should receive a notice from the superannuation trustee telling you that a complaint about its death benefit decision has been received by AFCA and that you have 28 days to apply to join the complaint. You might also receive a letter from AFCA inviting you to apply to join the complaint.



How do I apply to become a party to the complaint?

You must apply to AFCA in writing, within the 28 day timeframe, to join a complaint regarding the distribution of a superannuation death benefit.

When applying, please provide the following information:

- your name, address, email address and telephone number
- the name of the member and the superannuation provider
- your relationship to the member
- any financial support the member was providing to you; and
- how you think the death benefit should be distributed.

We will then assess your eligibility to join the complaint.

Can I be represented in the complaint?

Yes. If you choose to be represented AFCA will then correspond with your representative and seek instructions from them. However, to be joined to the complaint you do not need a representative.

I have been invited to join a complaint. Can I say no?

You do not have to accept an invitation to apply to join a complaint. It is important to know that if you do not join you will have no input into, and will not be able to receive information about the complaint or its resolution. This means we may make a determination that changes the trustee decision and you could be impacted by it.

For example, we may change the proportion of benefit that was previously decided to be paid to you or other beneficiaries if we find that the trustee's decision was unfair or unreasonable in the circumstances.

I've decided to apply to join the complaint. What happens now?

If you apply to join the complaint in the required timeframe, we will consider the information you provide and decide if you are eligible to join. We will write to you to let you know the outcome.

If you are joined as a party to the complaint a case manager will contact you. They will discuss the issues with you and ask you to provide documentation to support your preference for the distribution of the death benefit. We will share the information we receive with all other parties to the complaint. This provides all parties with an opportunity to comment on any information that we intend to rely on.

It is common for us to arrange a conciliation conference to try to resolve the complaint. The aim of the conciliation is to reach a mutually agreeable resolution with all parties. If it is successful and all parties agree, the complaint will be resolved.

If the complaint is not resolved at conciliation, it will proceed to decision where the ombudsman will issue a determination about whether the trustee's decision was fair and reasonable in the circumstances. You will receive a copy of the determination.

For further information about AFCA's *Approach to superannuation death benefit complaints* refer to our website: afca.org.au/approach.

For information about conciliation conferences, refer to our fact sheet *Attending a conciliation conference*: afca.org.au/publications.