

RECENT SCT DECISIONS

Where there's a Will there's not always a way

[Link to determination](#)**Facts**

The Deceased Member died and was survived by her long-term de facto partner (the Spouse) and three biological children from previous relationships (the Adult Children). When the Deceased Member commenced her membership with the Fund in 2004, nine years before her death, she nominated her elder son as her preferred beneficiary (the Elder Son). She did not, however, make a Binding Nomination. In her will, which she prepared six weeks before her death, the Deceased Member bequeathed the residuary of her estate to her three adult children in equal shares. The Spouse was not named as a beneficiary under the Deceased Member's will.

The decision under review was that of the Trustee to pay the entire benefit arising on the death of the Deceased Member to the Spouse as a dependent.

The Trustee's position was that the Deceased Member's nomination may not have been reflective of her life circumstances as at the date of her death. It noted further that in the Deceased Member's will, she had not elected to formalise to the Fund her wishes regarding disbursement of her superannuation death benefit by way of Binding Nomination, and in fact there was no mention of any wishes regarding her superannuation death benefit.

Absent any binding instruction to the Fund, the Trustee exercised its discretion under the Trust Deed to determine the most appropriate distribution of the benefit. It recognised the priority that a financially dependent and interdependent current Spouse holds over all other dependents. The evidence supported that the Deceased Member and the Spouse had been in a de facto relationship from 1987 until the date of the

Deceased Member's death. It also supported that the Deceased Member's financial support was directed solely to supporting herself and the Spouse on an ongoing basis, and also that she was living in a mutually-committed and financially co-dependent and interdependent marriage-like relationship with the Spouse on a genuine and ongoing basis.

The Trustee determined that it would be appropriate and equitable for the benefit to be paid to the Spouse. The Spouse agreed with the Trustee's decision noting further that the Adult Children were all financially independent adults.

The Elder Son, however, argued that the Deceased Member's intentions were for her children to be her beneficiaries which was reflective in her will and her decision to nominate the Elder Son as her preferred beneficiary. His position was that had the Deceased Member been aware of the Binding Death Nomination she would have elected him as the beneficiary but had not been advised on this issue by her lawyer.

Held

The Tribunal held that the Trustee's decision to pay the entire benefit arising on the death of the Deceased Member to the Spouse as a dependent was a fair and reasonable decision.

The Tribunal stated that the purpose of superannuation is to provide income in retirement to a member and his or her dependents. In the event of death before retirement, the Tribunal outlined that its approach is to consider what might have occurred had the Deceased Member not died.

The Tribunal determined that it was clear from the evidence provided that the Spouse was the sole financial dependent and interdependent of the Deceased Member immediately prior to the Deceased Member's death and had an expectation of ongoing financial support, or a right to look to the Deceased Member for ongoing financial support had the Deceased Member not died.

The Tribunal noted further that although the Trustee may have regard to a deceased member's wishes as expressed in their will for the purposes of distributing a death benefit, it is not bound by the terms of a will and under Australian law, superannuation does not form part of a deceased member's estate.