

APPENDIX C Legislative framework

General obligations

While a variety of general obligations relating to death benefit claims handling apply to trustees, there are very few specific obligations, and none of these include timeframes for processing death benefit claims.

The general obligations to act honestly, exercise the same degree of care, skill and diligence as a prudent trustee and perform duties and exercise powers in the best financial interests of beneficiaries apply to all trustees: see s52(2) of the SIS Act. Similarly, trustees are required to act efficiently, honestly and fairly when providing a superannuation trustee service: see s912A of the *Corporations Act 2001* (Corporations Act).

From 15 March 2025, trustees that are bodies corporate and their accountable persons must comply with the obligations under FAR relevant to their respective responsibilities. There are several prescribed responsibilities that may be relevant to death benefit claims handling – namely, member administration operations, insurance offerings, risk controls or overall risk management arrangements, information management, member remediation programs (including hardship arrangements) and dispute resolution function: see s5 of the *Financial Accountability Regime (Minister) Rules 2024*.

The key obligations of accountable persons are to:

- › act with honesty, integrity and due care, skill and diligence
- › deal with ASIC and APRA in an open, constructive and cooperative way
- › take reasonable steps to prevent matters from arising that would (or would be likely to) affect the prudential standing or reputation of the trustee, and

- › take reasonable steps to prevent matters from arising that would (or would be likely to) result in a material contravention by the trustees of their obligations under relevant legislation, including the SIS Act and the Corporations Act: see s21 of the *Financial Accountability Regime Act 2023*.

Nominations

Trustees may permit members to make death benefit nominations, and a member may only nominate a dependant or their legal personal representative as a beneficiary. A dependant is a spouse or child of the member or a person with whom the member has an 'interdependency relationship': see s10A of the SIS Act.

There are four types of nominations currently offered by trustees:

- › lapsing nominations
- › non-lapsing nominations
- › non-binding nominations, and
- › reversionary nominations.

A fund's trust deed and governing rules set out how the trustee will deal with nominations. However, trustees are not required by law to offer any nomination, and if they do, the trustee can decide what types of nominations to accept. As a result, the types of nominations that are available to members vary across superannuation funds.

If a trustee offers members the option to make a **lapsing nomination**, the trustee is required to first provide information the trustee reasonably believes members reasonably need to understand their right to make a nomination: see reg 6.17A(3) of the SIS Regulations. Trustees also have an

obligation to seek further information from a member if the details of the nomination are not clear: see reg 6.17B of the SIS Regulations.

Lapsing nominations must meet certain requirements in the SIS Regulations to be valid and binding on the trustee:

- › The persons nominated must be dependants or the legal personal representative of the member.
- › The proportion of the benefit payable to each person must be clear.
- › The nomination must be in writing, signed and dated by the member, in the presence of two adult witnesses (neither of whom is named in the nomination).
- › The nomination must not be more than 3 years old (or a shorter period if provided under the governing rules): see reg 6.17A(7) of the SIS Regulations.

Once made, a lapsing nomination can be amended or revoked in the same manner it was made. However, it can be renewed by written notice, signed and dated by the member – the renewal does not need to be witnessed: see reg 6.17A(5) of the SIS Regulations.

A trustee is not required to pay the death benefit in accordance with a lapsing nomination if that would be inconsistent with certain court orders: see reg 6.17A(4A) of the SIS Regulations.

Many trustees offer **non-binding nominations**. A non-binding nomination is a nomination that is not binding on the trustee, but gives the trustee guidance about the member's wishes. They never lapse, but trustees may decide to pay the death benefit to someone other than the person nominated based on the circumstances at the time of the member's death. Non-binding nominations are evidence of the member's intentions, which can guide the trustee when exercising discretion about who to pay the member's death benefit to. Many trustees treat lapsed

binding nominations as non-binding nominations.

Some trustees also offer **non-lapsing nominations** with the consent of the trustee under the terms of the trust deed: see s59(1)(a) of the SIS Act. A non-lapsing nomination is only binding if the trustee has consented to it. The trust deed may set out rules for the trustee's consent. The deed may also specify certain events that will cause a non-lapsing nomination to become invalid, such as the birth of a child.

A **reversionary nomination** is a type of binding nomination that can be made in relation to a reversionary pension, annuity or other income stream product that pays a regular benefit to a member in retirement. Payments from these types of products continue to be made to the member's beneficiary after the member's death under the terms and conditions of the product.

The reversionary beneficiary is automatically entitled to the income stream on the death of the member. There are greater limitations on who can be a reversionary beneficiary compared with other types of superannuation products. Some nominations cannot be changed after they have been made.

Insurance

Trustees must determine whether a member died with insurance cover. If the member had insurance, the trustee must do everything that is reasonable to pursue the insurance claim if there is a reasonable prospect of success: see s52(7)(d) of the SIS Act. In most cases where there is an insured benefit, the claim will have a reasonable prospect of success. There are some limited exclusions in some policies relating to the cause of death.

Payment of death benefits

Trustees must ensure a member's death benefits are cashed or rolled over as soon as practicable after the member dies: see reg 6.21 of the SIS Regulations. However, there is no specific timeframe that trustees must comply with under the law.

Death benefits can only be paid to the member's legal personal representative or one or more of the member's dependants. This is true even if the member has made a binding nomination in favour of someone who is not one of these people. The trustee may only pay another individual if the trustee has not found either a legal personal representative or a dependant after making reasonable inquiries: see reg 6.22 of the SIS Regulations.

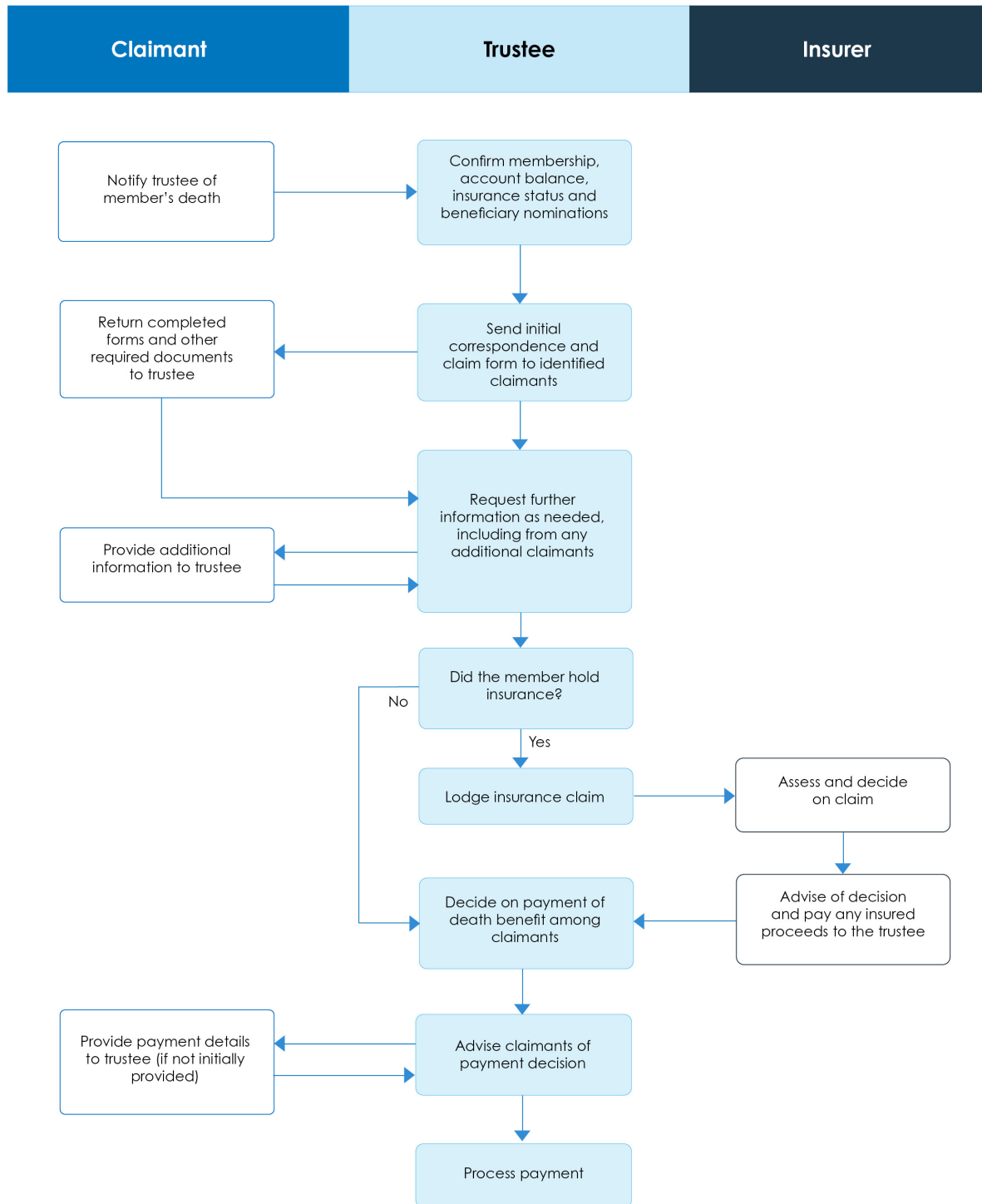
Trustees should ensure compliance with these obligations, but also take into account practical concerns, the sensitive nature of payments and processes that ensure decisions are fair and reasonable (e.g. in the context of financial hardship): see APRA's [Prudential Practice Guidance SPG 280 Payment Standards](#).

Trustees must make reasonable efforts to pay death benefits to the persons entitled to receive them. It is an offence if the trustee fails to comply with this requirement: see s15 of the Unclaimed Superannuation Act. A death benefit may only be paid to the ATO as unclaimed money if all of the following apply:

- › The member has died and death benefits are immediately payable.
- › The fund has not received an amount (or no benefit has accrued) in the member's account within the last 2 years.
- › The trustee has made reasonable efforts to pay the benefit to the person who is entitled to receive it.
- › A reasonable period of time has passed: see s14 of the Unclaimed Superannuation Act.

While each trustee's process is likely to differ slightly, most claims will involve the steps in Figure 21, which illustrates the key steps in a typical death benefit claim.

Figure 21: Typical death benefit claims handling process without claim staking



Claim staking

Claim staking is a form of procedural fairness a trustee can offer to claimants before paying a death benefit. Claim staking is discretionary and protects the trustee from having to pay the benefit twice – having been given the opportunity to object to a decision, a claimant cannot later complain to AFCA after the trustee has paid the benefit.

Any objection to a death benefit payment decision is treated as a complaint and triggers the trustee's IDR process: see [RG 271](#) at RG 271.32. Trustees must:

- › provide an IDR response to the complainant, which is a written communication detailing the outcome of the complaint, and
- › notify the complainant about the 28-day timeframe for lodging complaints with AFCA: see RG 271.53.

AFCA cannot consider a complaint about a death benefit payment unless the IDR process has commenced and the complainant has received a response: see RG 271.66.

A person cannot complain to AFCA about a death benefit payment decision if the trustee has given the person written notice of:

- › the proposed decision and their right to object to the proposed decision, and the person did not object within 28 days, and

- › the final decision and their right to complain to AFCA about the decision, and the person did not lodge a complaint within 28 days.

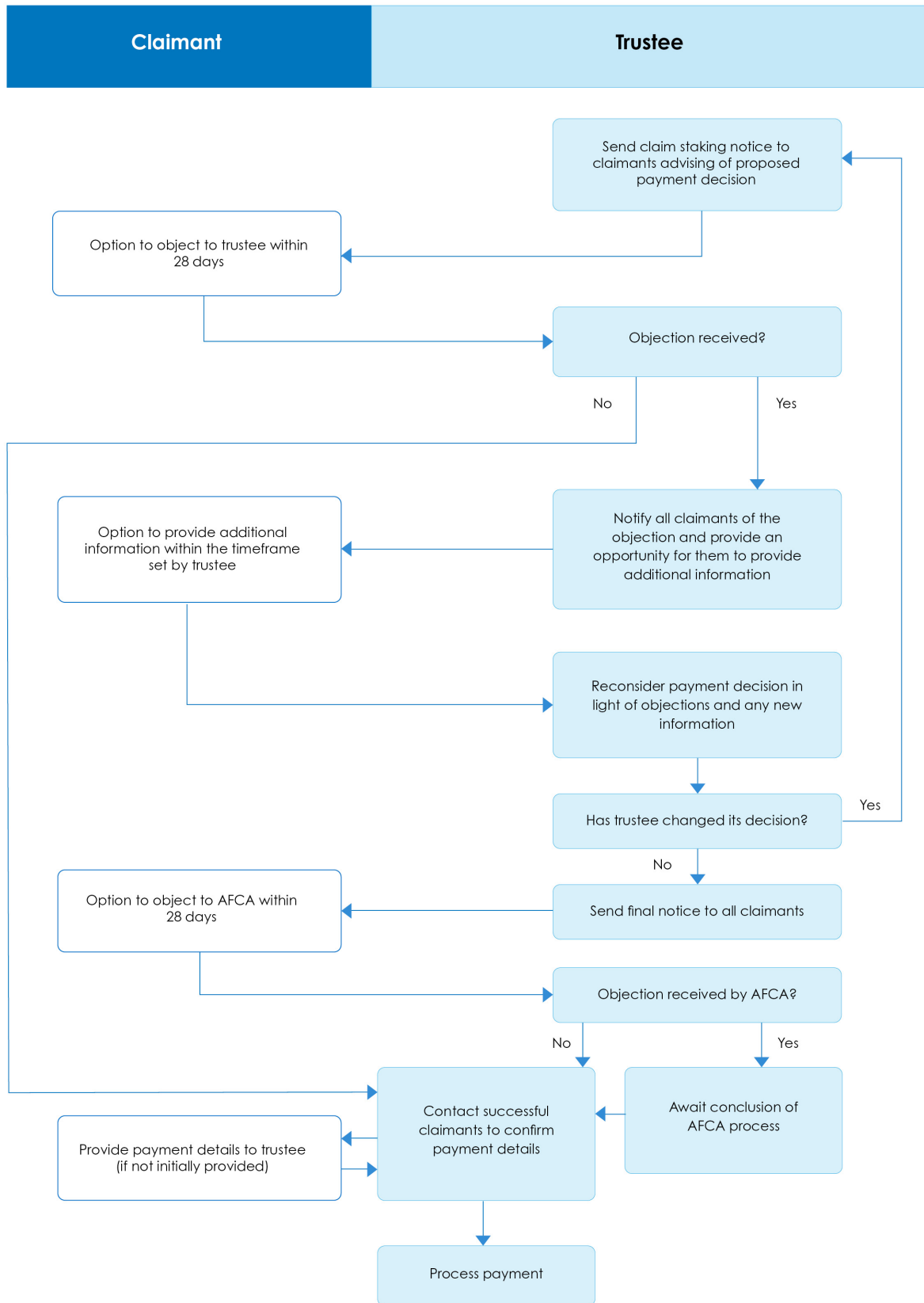
If the trustee does not claim stake (i.e. give a person either of the above notices), the person can complain to AFCA about the decision if:

- › they have an interest in the death benefit, and
- › it was unreasonable for the person not to have been given the notices: see s1056 of the Corporations Act.

Where claim staking is undertaken and a complaint is made to AFCA, AFCA may disagree with the trustee's payment decision and order the trustee to pay the complainant, even if the trustee has already paid the member's benefit to another person: see s1055 of the Corporations Act. AFCA can also award interest: see section D.6 of the [AFCA complaint resolution scheme rules](#) (1 July 2024).

Figure 22 illustrates the additional key steps compared with Figure 21 in a typical death benefit claim where the trustee claim stakes. While each trustee's process is likely to differ, most claims that trustees claim stake will include the steps in Figure 22. Claim staking significantly increases the time and resources required to process a claim.

Figure 22: Typical steps for claim staking within the death benefit claims handling process



Industry codes and guidance

Several industry codes, standards and guidance documents about claims handling and death benefit payments have been developed for superannuation funds. These vary in detail and topics covered. None of them is binding on all trustees. The Financial Services Council (FSC) Standards are binding on trustees who choose to become a member of the FSC: see [FSC Standard No 28](#).

The Insurance in Superannuation Voluntary Code of Practice has largely been replaced by legislative reform and was abandoned in 2021 by its owners – the Australian Institute of Superannuation Trustees (now Super Members Council), the Association of Superannuation Funds of Australia and the FSC, each of which developed its own standards or guidance.

The [Life Insurance Code of Practice](#) is owned and published by the Council of Australian Life Insurers (CALI). Life insurance companies that are CALI members are required to comply with the Code of Practice. The Life Insurance Code Compliance Committee monitors adherence to the Code of Practice.

Of those industry codes, standards and guidance documents, only the Life Insurance Code of Practice prescribes a target timeframe for insurers to handle claims – that is, 6 months from receipt of the claim from the trustee to the date of the decision by the insurer: see clause 5.49 of the Life Insurance Code of Practice. However, this timeframe should not be seen as a benchmark for processing death benefit claims given the limited assessment insurers generally undertake. In 2023, the processing time for death benefit insurance claims was 24 days (based on unpublished APRA data, current as of March 2025).