

WHO IS A DEPENDANT UNDER SUPERANNUATION LAW?

It's important to understand the range of individuals you may be entitled to receive a superannuation death benefit. This paper considers those who would be classified as dependents under superannuation law.

When attending to the estate planning requirements of members of a SMSF, or paying superannuation death benefits following the passing of a member, it is important for trustees of SMSFs, and their advisers, to understand the range of individuals who may be entitled to receive superannuation death benefits.

Definition of 'dependant'

The Superannuation Industry (Supervision) Act 1993 ('SIS Act') lists three main categories of persons who may be classified as a dependant of a deceased member ('SIS dependant') as:

- Spouse¹
- Child
- any person with whom the deceased member had an interdependency relationship.

¹ Spouse includes *de facto* and *same sex spouses*.

Because the definition of dependant in the SIS Act is an 'inclusive' definition, other kinds of dependency, such as financial dependency, are also able to be considered.

Restrictions on the payment of death benefits in the form of income streams

Superannuation death benefits can be paid to one or more SIS dependants in the form of an income stream (pension), including an automatic pension reversion, subject to the following restrictions applying to children of the deceased.

A death benefit may only be paid as an income stream to a child of the deceased member if the child, at the time of the death of the member:

- is under the age of 18; or
- is under the age of 25 and financially dependent on the member; or
- has a disability.

In addition, such an income stream must be commuted in full at or before the child's 25th birthday, unless the child suffers a specified level of disability (tested at death of the member and again at the time they turn 25 years of age).

A child, over the age of 25 at the death of the parent, who was either financially dependent on the deceased, or in an

interdependency relationship with the deceased, is not entitled to receive their superannuation death benefit entitlement in the form of an income stream, unless they meet the test to show they were also suffering a disability.

This means that the only beneficiaries who can receive a death benefit in the form of either an income stream or a lump sum are:

- a spouse of the deceased;
- a child who meets the restrictions outlined above; or
- any other person (not being a child of the deceased) who was financially dependent on the deceased or with whom the deceased had an interdependency relationship at the time of their death.

This restriction effectively prohibits the payment of a death benefit in the form of an income stream to children of the deceased over age 25 in all cases, unless they are disabled. Those children who are not entitled to receive their death benefit entitlement in the form of an income stream have only one

Current as at 18 September 2013.

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option available - to take their benefit as a lump sum payment.

Test as to actual relationship occurs at date of death of deceased member

Although a person may meet the definition of dependant at the time the estate planning is undertaken, such as when an automatic pension reversion nomination is made, the nomination will only be valid if the relationship remains the same at the death of the member or, if the relationship has changed, it fits one of the other criteria to enable a pension to be paid to the particular individual.

For example:

- a child under age 18 at the time of the nomination is 26 years of age at the death of their parent (invalid nomination); or
- a spouse at the time of the nomination is no longer a spouse at the death of the member, but is financially dependent on the member (valid nomination).

What if no SIS dependants survive the deceased?

In circumstances where no SIS dependents survive the deceased member of a SMSF, the benefits may be paid to a broader group, usually under the discretion of the trustee of the SMSF in accordance with the provisions of

the trust deed and/or the SIS Act. Such payments could only be in the form of one or more lump sum payments.

There is also another test to meet

Having determined who may or may not be classified as a SIS dependant, a separate test deals with the taxation of benefits paid to recipients of the deceased's superannuation death benefits. A person who meets that test is known as a 'tax dependant'.

A separate paper deals with individuals who may be classified as tax dependents. [It can be reference here.](#)

More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

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