


***SMSFD 2013/1 - Self Managed Superannuation Funds: where a deceased member's benefits in a self managed superannuation fund are cashed in the form of a pension or an annuity to a child of the deceased member in accordance with sub-subparagraph 6.21(2A)(b)(ii)(B) of the Superannuation Industry (Supervision) Regulations 1994, does subregulation 6.21(2B) of those regulations require the trustee to determine whether the child has a disability of the kind described in that subregulation on the day the child turns 25 (or an earlier date, if applicable under paragraph 6.21(2B)(a) of those Regulations), in order to determine whether the pension or annuity being paid to the child is exempt from the requirement to be commuted and cashed as a lump sum on that day?***

 This cover sheet is provided for information only. It does not form part of *SMSFD 2013/1 - Self Managed Superannuation Funds: where a deceased member's benefits in a self managed superannuation fund are cashed in the form of a pension or an annuity to a child of the deceased member in accordance with sub-subparagraph 6.21(2A)(b)(ii)(B) of the Superannuation Industry (Supervision) Regulations 1994, does subregulation 6.21(2B) of those regulations require the trustee to determine whether the child has a disability of the kind described in that subregulation on the day the child turns 25 (or an earlier date, if applicable under paragraph 6.21(2B)(a) of those Regulations), in order to determine whether the pension or annuity being paid to the child is exempt from the requirement to be commuted and cashed as a lump sum on that day?*



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## Self Managed Superannuation Funds Determination

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Self Managed Superannuation Funds: where a deceased member's benefits in a self managed superannuation fund are cashed in the form of a pension or an annuity to a child of the deceased member in accordance with sub-subparagraph 6.21(2A)(b)(ii)(B) of the *Superannuation Industry (Supervision) Regulations 1994*, does subregulation 6.21(2B) of those regulations require the trustee to determine whether the child has a disability of the kind described in that subregulation on the day the child turns 25 (or an earlier date, if applicable under paragraph 6.21(2B)(a) of those Regulations), in order to determine whether the pension or annuity being paid to the child is exempt from the requirement to be commuted and cashed as a lump sum on that day?

### Preamble

This publication represents the Commissioner's view about the way in which provisions of the *Superannuation Industry (Supervision) Act 1993*, or regulations under that Act, apply to superannuation funds that the Commissioner regulates: principally self managed superannuation funds.

Self Managed Superannuation Funds Determinations (whether draft or final) are not legally binding on the Commissioner. However, if the Commissioner later takes the view that the law applies less favourably to you than this determination indicates, the fact that you acted in accordance with this determination would be a relevant factor in your favour in the Commissioner's exercise of any discretion as to what action to take in response to a breach of that law. The Commissioner may, having regard to all the circumstances, decide that it is appropriate to take no action in response to the breach.

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## Ruling

1. Yes. In those circumstances, subregulation 6.21(2B) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) requires the self managed superannuation fund (SMSF) trustee to determine whether the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986 (Cth)* on the day the child turns 25 (or an earlier date, if applicable under paragraph 6.21(2B)(a) of the SIS Regulations).

## Funds to which this Determination applies

2. This Determination applies to Self Managed Superannuation Funds<sup>1</sup> (SMSFs) and former SMSFs.<sup>2</sup> References in the Determination to SMSFs include former SMSFs unless otherwise indicated.

## Date of effect

3. This Determination applies from 1 July 2007. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination.

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**Commissioner of Taxation**

26 June 2013

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<sup>1</sup> As defined in section 17A of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993).

<sup>2</sup> A former SMSF is a fund that has ceased being an SMSF and has not appointed a registrable superannuation entity (RSE) licensee as trustee: see subsection 10(4) of the SISA 1993.

## Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner’s view has been reached.***

### Explanation

4. Paragraph 6.21(2A)(a) of the SIS Regulations provides that, if a member dies on or after 1 July 2007, the deceased member’s benefits can be cashed in the form of one or more pensions or annuities only if the entitled recipient is a dependant of the member at the time of the member’s death. The term ‘dependant’, which is not defined in the SIS Regulations, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.<sup>3</sup> Subsection 10(1) of that Act states that a dependant of a person includes any child of the person. ‘Child’ is also defined in that subsection.

5. If a pension or annuity is to be paid to a child of the deceased member, there is an additional condition in paragraph 6.21(2A)(b) of the SIS Regulations that he or she must, at the time the deceased died, be:

- less than 18 years of age;<sup>4</sup> or
- at least 18 years of age but less than 25 years of age and financially dependent on the member;<sup>5</sup> or
- at least 18 years of age and have a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*.<sup>6</sup>

6. Subregulation 6.21(2B) of the SIS Regulations provides:

If benefits in relation to a deceased member are being paid to a child of the deceased member in the form of a pension or annuity in accordance with subregulation (2A), the benefits must be cashed as a lump sum on the earlier of:

- (a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and
- (b) the day on which the child attains age 25;

unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraph (2B)(a) or (b).

7. Subsection 8(1) of the *Disability Services Act 1986* provides:

The target group for the purposes of this Part consists of persons with a disability that:

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;
- (b) is permanent or likely to be permanent; and

<sup>3</sup> See paragraph 13(1)(b) of the *Legislative Instruments Act 2003*.

<sup>4</sup> See subparagraph 6.21(2A)(b)(i) of the SIS Regulations.

<sup>5</sup> See sub-subparagraph 6.21(2A)(b)(ii)(A) of the SIS Regulations.

<sup>6</sup> See sub-subparagraph 6.21(2A)(b)(ii)(B) of the SIS Regulations.

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- (c) results in:
  - (i) a substantially reduced capacity of the person for communication, learning or mobility; and
  - (ii) the need for ongoing support services.

8. That description is a broad description of serious, but not necessarily permanent, disability (given the reference to 'or likely to be permanent') that results in a substantially reduced capacity of the person for communication, learning or mobility and the need for ongoing support services. Although some persons having a disability of such a kind may suffer the disability permanently, given the various elements of that description, the circumstances of others may change such that they satisfy that description at one time but not at another.

9. Thus, notwithstanding it was determined that a child of the deceased member aged at least 18 years but less than 25 years had at the time of the member's death a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*, it does not necessarily follow that the child will have a disability that satisfies that description at either of the times referred to in subregulation 6.21(2B) of the SIS Regulations.

10. Consequently, the trustee must determine whether the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day the child turns 25 (or an earlier date, if applicable under paragraph 6.21(2B)(a) of the SIS Regulations).

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## References

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*Previous draft:*

Not previously issued as a draft

*Subject references:*

- Death benefits – superannuation benefits
- Death benefits dependant
- Self managed superannuation funds
- SIS payment standards – trustee obligations

- SIS Act 10(4)
- SIS Act 17A
- SIS Regulations
- SIS Regulations 6.21(2A)(a)
- SIS Regulations 6.21(2A)(b)
- SIS Regulations 6.21(2A)(b)(i)
- SIS Regulations 6.21(2A)(b)(ii)(A)
- SIS Regulations 6.21(2A)(b)(ii)(B)
- SIS Regulations 6.21(2B)
- SIS Regulations 6.21(2B)(a)
- Disability Services Act 1986 8(1)
- Legislative Instruments Act 2003 13(1)(b)

*Legislative references:*

- SIS Act
  - SIS Act 10(1)
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## ATO references

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