
  
**DEALING WITH DEATH –  
 BETTER THE DEVIL YOU  
 KNOW!**  
 Leigh Mansell, Director SMSF Technical &  
 Education Services, Heffron SMSF Solutions

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**Leigh Mansell**  
 Director SMSF Technical & Education Services, Heffron SMSF Solutions



Leigh is a Director, SMSF Technical & Education Services at Heffron SMSF Solutions, and she is intimately involved in developing the firm's range of products and services for clients (including technical and educational materials) and the provision of technical support to SMSF practitioners and their clients.

She regularly delivers presentations to SMSF practitioners around Australia and one of Leigh's greatest attributes is her ability to make complex concepts appear simple through the use of real life scenarios. Participants in previous training events have valued this practical approach highly.

She is a Chartered Accountant with over 25 years of superannuation experience and has specialised in SMSF technical support, advice and administration for almost 20 years. This gives her a unique ability to advise not only on the technical issues faced by SMSF practitioners but also the practical solutions she has developed and implemented.

  
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**Agenda**

- Trustee: is any restructuring needed when a member / trustee dies?
- Death of a member in receipt of a pension: minimum pension requirements and ramifications for tax exempt investment income
- How can receipt of a death benefit affect the financial arrangements of a non-death benefits dependant beneficiary?
- Is everything going to play out as you'd planned? Some new things to consider ...

  
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**TRUSTEE : IS ANY RESTRUCTURING NEEDED WHEN A MEMBER / TRUSTEE DIES?**

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**Trustee**  
Quick recap : SISA s.19

All regulated superannuation funds (including SMSFs) must have a trustee

Trustee must be a constitutional corporation

Or... governing rules must provide that sole or primary purpose is provision of old-age pensions

Trustees in this case are individuals

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**Definition of an SMSF : Basic conditions**  
More than 1 member

All members are individual trustees  
+  
All individual trustees are members  
Trustees can't be remunerated for performing trustee duties

Fewer than 5 members (ie at most 4)

No member is employed by another member, unless the members concerned are relatives

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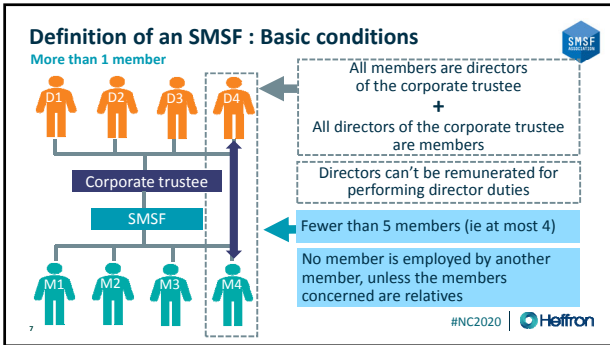
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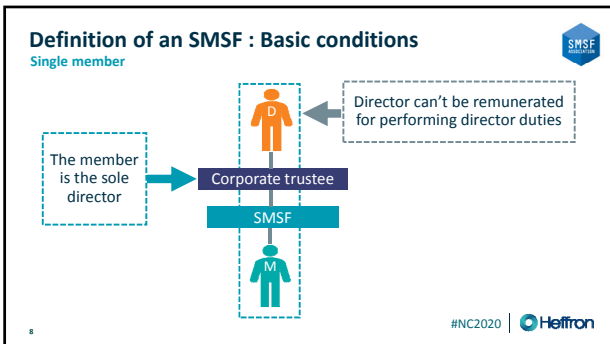
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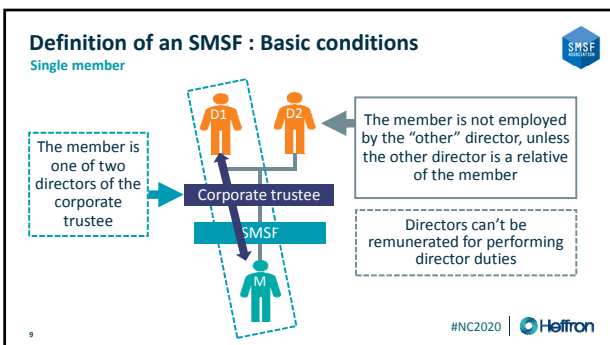
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### Definition of an SMSF : Basic conditions

Single member

The member is one of two individual trustees

Generally, cannot have one individual trustee

The member is not employed by the "other" individual trustee, unless the other individual trustee is a relative of the member

Trustees can't be remunerated for performing trustee duties

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### What if a director of the corporate trustee / individual trustee dies?

All regulated superannuation funds (including SMSFs) must have a trustee

Does the SMSF still have a trustee?

What else might we need to consider?

**SMSF definition**

Does the SMSF satisfy the SMSF definition?

A deceased member's executor / administrator acting as trustee / director in place of the member from DOD until time death benefits start to be cashed does not breach SMSF definition

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### What if a director of the corporate trustee dies?

All regulated superannuation funds (including SMSFs) must have a trustee

**Constitutional corporation continues**

**Corporations Act**

- Company must have at least 1 director
- At least 1 director must be domiciled in Australia

**Constitution**

- Sole director allowed?
- Who has power to appoint a new director? How must appointment be effected?
- Any "odd" rules?

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### What if an individual trustee dies?

**All regulated superannuation funds (including SMSFs) must have a trustee**

↓

Trustees are individuals

**Trust deed & governing rules**

- Any particular rules about trustees (eg minimum number)?
- Can a LPR (including multiple LPRs) act in place of the member?
- Who has power to appoint a new trustee? How must appointment be effected?

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**Case study 1a**  
**Member who is 1 of 2 trustees dies**

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### Individual trustees

*Camilla dies*

Trustees → 

Members →  

SMSF

**Trust deed & governing rules**

- Any particular rules about trustees (eg minimum number)?
- Who has the power to appoint a trustee? Can a deceased member's LPR be appointed?
- When does membership cease?

- Remember if trust deed & governing rules not complied with, subsequent decisions may be invalidated

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### Individual trustees

Camilla dies

Trustees → Charles

Members → Charles, Camilla

**Is the SMSF definition satisfied?**

- Single individual trustee
- Members? May be just 1 (Charles), or 2 (governing rules will prescribe when Camilla's membership ceases)
  - Eg, could cease on death, or when death benefits commence to be cashed, or when death benefits fully dealt with etc

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### Individual trustees

Camilla dies

If SMSF now a single member fund → Charles is sole trustee

If SMSF still a 2 member fund → Charles is sole trustee

Is the SMSF definition met?

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### "6 month rule" provides some breathing room

Charles & Camilla members & trustees

Charles is sole trustee

SMSF definition met

SMSF definition met due to "6 month rule"

6 months after Camilla's death

Rectify trustee structure by here, otherwise SMSF definition no longer met

Otherwise, SMSF will need to restructure to become an APRA regulated fund – does **not** become non-complying fund

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

• Critical thing to know first : when did / will Camilla's membership cease?

• Why? If it ceased

- **Within** 6 months of Camilla's death, her LPR does not **need** to become a trustee
  - But they **could** (optional) for a finite period of time
- Otherwise, her LPR **will need** to be become a trustee from
  - the 6 month anniversary date (at the latest)
  - up until the date death benefits commence to be paid

• How do you find this out?

- Check the governing rules
- Remember, membership may not cease on death!

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

What about Camilla's executor(s) / administrator(s) of her estate (ie her LPR(s))?

- Where do they fit in?

1 trustee  
2 mems

1 trustee  
1 mem

6 month anniversary

Camilla died

Death benefits commenced to be paid & membership ceased

By the 6 month anniversary

- Appoint another individual trustee
- Change to a corporate trustee
  - 1 director : Charles
  - 2 directors : Charles & another individual

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

Camilla's LPR(s) **could** be a trustee (or director of corporate trustee, if one had been appointed) during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

If LPR(s) appointed and remain in place in LPR capacity ...

2+ trustees  
1 mem

6 month anniversary

Camilla died

Death benefits commenced to be paid & membership ceased

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

Camilla's LPR(s) **could** be a trustee (or director of corporate trustee, if one had been appointed) during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

If LPR(s) appointed and remain in place in LPR capacity ...

Camilla died

2+ trustees  
1 mem

Death benefits commenced to be paid & membership ceased

Have **further 6 months** to restructure - after that, **one LPR could** remain as the "other" trustee / director of the single member SMSF - **just not** in the role as Camilla's LPR

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

SMSF definition met due to "6 month rule"

1 trustee, 2 mems

1 trustee, 1 mem

Camilla died

6 month anniversary

Death benefits commenced to be paid & membership ceased

By the 6 month anniversary

- Appoint another individual trustee (**who?**)
- Change to a corporate trustee
  - 1 director: Charles
  - 2 directors: Charles & **who?**

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

In this case, at least 1 LPR of Camilla's **needs** to be appointed as a trustee (or director of corporate trustee, if one had been appointed) during this period in order to meet the SMSF definition

After that time, one of these individuals **could** remain as the "other" trustee / director after Camilla's membership has ceased - ie **not** in the role as Camilla's LPR

Camilla died

6 month anniversary

Death benefits commenced to be paid & membership ceased

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**Case study 1b**  
Member who is 1 of 2 directors of corporate trustee dies

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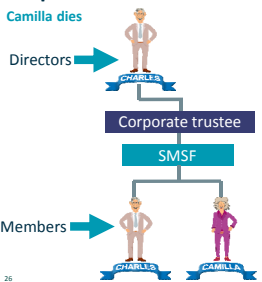
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**Corporate trustee**  
Camilla dies



Directors → Charles

Corporate trustee

SMSF

Members → Charles, Camilla

**Corporations Act**

- Is Charles (sole director) domiciled in Australia?

**Constitution**

- Can the company have a sole director?

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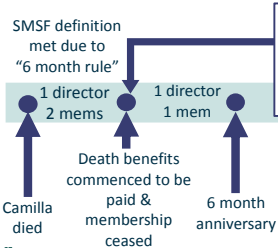
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**SMSF definition : Trustee restructure needed?**  
If so, what options does Charles have?



SMSF definition met due to "6 month rule"

- 1 director 2 mems
- 1 director 1 mem

At this point, SMSF definition met

- Single member SMSF
- Corporate trustee with member being the sole director
- **No restructure needed**

What about Camilla's executor(s) / administrator(s) of her estate (ie her LPR(s))?

- Where do they fit in?

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

Camilla's LPR(s) **could** be a director of the corporate trustee during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

Camilla's LPR(s) **could** be a director of the corporate trustee during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

If LPR(s) appointed, could remain in place until 6 month anniversary

After that, one of them **could** remain as the "other" director of the single member SMSF – just **not** in the role as Camilla's LPR

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

SMSF definition met due to "6 month rule"

1 director, 2 mems

By the 6 month anniversary

- Appoint another director
- Who?

Camilla died

6 month anniversary

Death benefits commenced to be paid & membership ceased

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

In this case, at least 1 LPR of Camilla's **needs** to be appointed as a director of corporate trustee during this period in order to meet the SMSF definition

Once Camilla's death benefits commence to be cashed, one of these individuals **could** remain as the "other" director of the single member SMSF – just **not** in the role as Camilla's LPR. But they are no longer "needed"

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**Case study 1c  
Member, whose LPR (EPoA) was acting in their  
place as trustee, dies**

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**Laura was trustee in place of Camilla**

Camilla dies

- Camilla had granted an EPoA to Laura and resigned as trustee
- Laura was appointed as trustee in Camilla's place
- Laura is **not** Camilla's executor (Camilla's siblings are). Laura ceased to be Camilla's LPR when she died

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

**SMSF**

- 2 members
- 2 trustees, 1 not a member or LPR of a member
- SMSF definition met due to "6 month rule"

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

**SMSF**

Camilla's LPR(s) **could** be a trustee during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles have?**

**SMSF**

Camilla's LPR(s) **could** be a trustee during this period without breaching SMSF definition

... but this is **optional** for SMSF definition

If LPR(s) appointed, could even remain in place until 6 month anniversary (ie SMSF definition met if Charles & Laura & LPR(s) are trustees)

After that, either Laura or one of Camilla's LPRs **could** remain as the "other" trustee (just **not** in the role as Camilla's LPR)

Camilla died

Death benefits commenced to be paid & membership ceased

6 month anniversary

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

- 2 members
- 2 trustees, 1 not a member or the LPR of a member
- SMSF definition met due to "6 month rule"

Camilla died      6 month anniversary      Death benefits commenced to be paid & membership ceased

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

Camilla died      6 month anniversary      Death benefits commenced to be paid & membership ceased

By the 6 month anniversary, appoint Camilla's LPR(s) as trustee(s) in place of Laura (who will need to resign / be removed)

- 2 members
- 2 trustees, 1 not a member but is the LPR of a member
- SMSF definition met

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**SMSF definition : Trustee restructure needed?**  
**If so, what options does Charles have?**

Camilla died      6 month anniversary      Death benefits commenced to be paid & membership ceased

1 member, 2 trustees

One of Camilla's LPR(s) could remain as the "other" trustee of the single member SMSF at this time - just not in the role as Camilla's LPR

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**Case study 1d**  
Sole director / sole shareholder of corporate trustee dies

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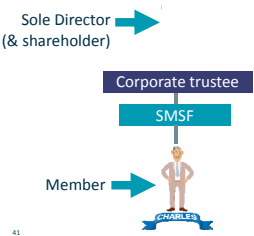
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**Corporate trustee : sole director & sole shareholder**  
Charles dies, SMSF will be wound up



**Corporations Act**

- Must have at least 1 director, and that director must be domiciled in Australia
- If deceased director was single director / single shareholder, their LPR has power to appoint new director
- This is not a replaceable rule (can't be displaced by Constitution)

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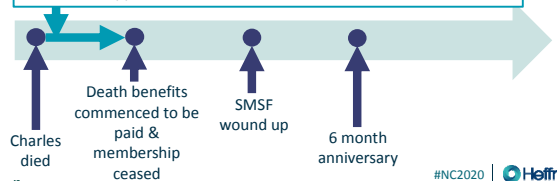
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**SMSF definition : Trustee restructure needed?**  
If so, what options does Charles' LPR have?

- Charles' LPR must appoint new director ASAP
- New director can be Charles' LPR, but **doesn't** have to be
- If LPR not appointed, SMSF definition met due to "6 month rule"



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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles' LPR have?**

- Charles' LPR must appoint new director ASAP
- New director can be Charles' LPR, but **doesn't** have to be
- If LPR not appointed, SMSF definition met due to "6 month rule"

Timeline events: Charles died, 6 month anniversary, Death benefits commenced to be paid & membership ceased, SMSF wound up.

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**SMSF definition : Trustee restructure needed?  
If so, what options does Charles' LPR have?**

If Charles' LPR had not been appointed earlier, by the 6 month anniversary, appoint LPR(s) as director(s)

Timeline events: Charles died, 6 month anniversary, Death benefits commenced to be paid & membership ceased, SMSF wound up.

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**Case study 1e  
Appointment powers (deadlock)**

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### Appointment of a new director

Harry dies

The diagram shows a hierarchy: At the top is 'Directors & shareholders' with an arrow pointing to a box containing 'WILLIAM' and 'HARRY'. Below this is 'Corporate trustee', then 'SMSF', and finally 'Members' with arrows pointing to boxes for 'WILLIAM' and 'HARRY'.

- William & Harry are the directors (and shareholders – 1 ordinary share each) of the corporate trustee of their SMSF
- William's executor is his wife Kate, while Harry's is his wife Meghan

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### Harry's death benefits

- The sole asset of the SMSF is a property (acquired under an LRBA, with an outstanding loan balance)
- Harry's death benefit will be paid in pension form to Meghan, and she will need to become a member of the SMSF
- In order to meet the SMSF definition, Meghan (or her LPR in her place) will also need to become a director of the corporate trustee
- Who has the power to appoint a director?

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### The constitution

- Constitution does **not** displace the replaceable rules in the Corporations Act
- This means that
  - Directors can appoint a director
  - Shareholders can appoint a director
- William (as sole director) refuses to appoint Meghan as a director
- What about the "shareholder" route?
  - William holds 1 share
  - Meghan (as Harry's executor) is able to exercise his shareholder voting powers (Harry held 1 share)
    - Meghan's appointment as director relies on William (as shareholder) voting in favour of her appointment
    - There's a deadlock!

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**Planning stage**

- Ideally, this issue should be identified at the planning stage – prior to Harry's death
- In some cases, special "appointment clauses" in the Constitution are used
  - Each shareholder has the power to appoint a director
  - Thereafter, all director decisions must be unanimous

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**Case study 1f**  
Shareholder powers (jointly held shares)

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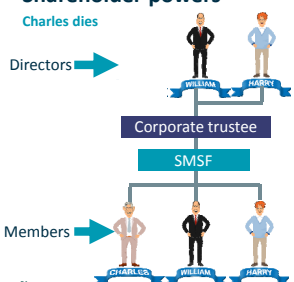
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**Shareholder powers**

Charles dies



- Charles, William & Harry are the directors of the corporate trustee of their SMSF
- Charles is the sole shareholder (2 shares)
- Shares form part of the "remainder" of Charles' estate and are passed to William & Harry
- Camilla is Charles' executor

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## The constitution



- Constitution does **not** displace the replaceable rules in the Corporations Act
- This means that
  - Directors can appoint a director
  - Shareholders can appoint a director
- If needed, William and Harry can appoint Camilla as a director
  - But they'll need to agree
- If they don't agree, what about the "shareholder" route?
  - Camilla (as Charles' executor) is able to exercise his shareholder voting powers (Charles held all shares) until such time that the shares pass to William & Harry
  - Once ownership of shares has passed
    - If the registry office records shares as being held jointly, unless Constitution states otherwise, only the first named shareholder can vote (eldest name appears first by default)

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## Planning stage



- Ideally, this issue should be identified at the planning stage – prior to Charles' death
- Charles could incorporate a specific bequest in his will in relation to his shares in the corporate trustee
  - I bequest "an equal number of shares" to William and Harry
  - Would mean that William can't solely control appointment (and removal) of directors
    - But they'd still need to agree (as they'd each have equal voting rights)

53

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## Trusteeship wrap up



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**SMSF definition : Trustee restructure needed?**

- And we thought the SMSF definition was relatively straight forward!
  - Death of a member / trustee can certainly complicate things
- Importantly, consider
  - Does trusteeship **need** to be restructured? Sometimes it doesn't
  - If so, how could it be restructured?
    - Who holds the "appointment" power?
    - When does the restructure need to be effected?
- Remember the 6 month rule provides valuable breathing room to ascertain options for survivor
  - Within this period the SMSF definition can fail to be met without consequence
  - And you can use the 6 month rule **multiple times**
- Is survivor keeping SMSF? If yes, sometimes multiple trustee restructures are needed (to meet the SMSF definition after death, and then to meet the needs of the remaining members)

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**DEATH OF A MEMBER IN RECEIPT OF A PENSION**

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**Recap : what is a reversionary pension?**

Reversionary pension (LCR 2017/3)	Not reversionary pension
<ul style="list-style-type: none"> <li>• Pension that continues, with entitlement to pension passing to another person <b>because</b></li> <li>• T&amp;C of the pension expressly say pension is to revert</li> </ul>	Trustee has power or discretion to determine <b>any</b> of <ul style="list-style-type: none"> <li>• Who to pay death benefit to</li> <li>• Form of payment (LS vs pension)</li> <li>• Amount of death benefit to be paid</li> </ul>
<ul style="list-style-type: none"> <li>• Trustee must have <b>continuing</b> liability to pay same pension (TR 2013/5)</li> </ul>	

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## Case study 2

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### Minimum pension payment requirements

Reversionary pensions

Calculate **Camilla's minimum** in "normal" manner (4% x \$1.7m = \$68k)

**Camilla's minimum** calculated on 1 July (ie \$68k) must be paid by here



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### Minimum pension payment requirements

Reversionary pensions

Pension payments paid to **Camilla** < death **\$10k** + Pension payments paid to **Charles** > Camilla's death to 30 June **\$58k** ≥ **Camilla's minimum** calculated on 1 July (ie \$68k)



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## Minimum pension payment requirements



### Reversionary pensions : Points to note

- Do **not** recalculate minimum mid-year in the year of death
  - Minimum is only ever calculated on commencement date, and thereafter each 1 July
  - **Next** 1 July, use the drawdown factor that applies to the **reversionary** pensioner
- As long as the minimum is paid by 30 June in the year of death, it **doesn't matter** that no pension payments were made to the
  - deceased pensioner prior to their death
  - reversionary pensioner prior to 30 June
- Remember, it's the **aggregate of all payments** that matters
  - **Not** how the payments are split between the deceased pensioner and the reversionary pensioner

61

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## Minimum pension payment requirements



### Non-reversionary pensions

Calculate **Camilla's minimum** in "normal" manner

**Special exception:** no requirement to meet minimum in year of death



62

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## Minimum pension payment requirements



### Non-reversionary pensions : Points to note

- This is a **special rule** that only applies to non-reversionary pensions that cease on death
- If the pension had been in retirement phase, the SMSF will be eligible for a tax exemption on the investment income generated by the assets supporting the pension even if no pension payments at all were paid in the year of death
  - But ... expect a query from your actuary
- If a **new** death benefit pension commences from the deceased's former pension balance, the minimum for this **new** pension will be
  - Calculated using the drawdown factor applicable to the **new** pensioner's age last birthday
  - Pro-rated in the same way as any new pension

63

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### Tax exempt investment income

**Reversionary pensions**

Calculation method determined by whether any member had **both** a retirement phase pension and a TSB > \$1.6m at **previous 30 June**

**30 June**

1 July in year of death

Camilla died, pension reverted to Charles

30 June in year of death

**Tax exemption**

- **Continues** if Camilla's pension had been in retirement phase
- **Commences** if Camilla's pension had been a pre-retirement pension

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### Tax exempt investment income

**Non-reversionary pensions**

If Camilla's pension had been in **retirement phase**, tax exemption continues

- From date of death, until
- death benefit cashed \*

1 July in year of death

Camilla died, pension **ceased** on her death

30 June in year of death

\* Tax law change in Dec 2018 removed "as soon as practicable" cashing requirement

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### HOW CAN RECEIPT OF A DEATH BENEFIT AFFECT THE FINANCIAL ARRANGEMENTS OF A NON-DEATH BENEFITS DEPENDANT BENEFICIARY?

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### PAYG withholding requirements

	Paid directly to non-tax dependant	Paid to Estate
Tax paperwork (eg PAYG payment summary)	Yes	Yes
Withhold PAYG	Yes	No
Withhold Medicare	Only if beneficiary is an Australian tax resident	No

- Same PAYG withholding tax rates apply to Australian tax residents and foreign tax residents
- Beneficiaries need to provide their TFN to the trustee (foreign tax residents can apply for a TFN using NAT 2628)

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### Foreign tax resident

Apply for a TFN : NAT 2628

Section C: Reason for application

Option 5 – in terms of superannuation, you:

- receive benefits from an Australian fund
- make personal contributions into an Australian fund, or
- are having contributions made on your behalf into an Australian fund.

Applicant will need to provide:

- Name of paying fund
- ABN of paying fund
- on the TFN application

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### The lowdown ...

- Adult, financially independent
- Other AI = \$0.2m
- Deductions = \$0.01m
- CC = \$25k
- Australian tax resident

- Adult, financially independent
- Other AI = \$Nil
- Deductions = \$Nil
- CC = \$Nil
- Canadian tax resident

Each will be paid a LS death benefit of \$1m (all taxable component)

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## Case study 3

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### Lump sum death benefit paid directly to non-tax dependant

Assessable income	<ul style="list-style-type: none"> <li>• <b>Taxable</b> component included in recipient's assessable income</li> </ul> <div style="border: 1px solid black; padding: 2px; margin-top: 5px; font-size: x-small;">Regardless of whether Australian tax resident or foreign tax resident</div>
Marginal tax rates	<ul style="list-style-type: none"> <li>• Taxable income (assessable income less deductions) taxed at marginal tax rates</li> </ul> <div style="border: 1px solid black; padding: 2px; margin-top: 5px; font-size: x-small;">Apply foreign resident tax rates for foreign tax resident</div>
Tax offset	<ul style="list-style-type: none"> <li>• Tax offset applies to reduce maximum tax rate to:               <ul style="list-style-type: none"> <li>○ 15% of taxed element</li> <li>○ 30% of untaxed element</li> </ul> </li> </ul>

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### Lump sum death benefit paid directly to non-tax dependant

	William	Harry
Other income assessable in Australia	\$0.20m (ie salary, investment income etc)	\$Nil
Taxable portion of LS death benefit received (gross)	\$1.00m	\$1.00m
Deductions	(\$0.01m)	\$Nil
Taxable income	\$1.190m	\$1.00m

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72

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### Calculation of tax payable by William



	Taxable income	Tax payable
Taxable income (including LS death benefit)	\$1.190m	\$508,597
Taxable income (excluding LS death benefit)	(\$0.190m)	(\$58,597)
Prima facie tax payable on the LS death benefit		\$450,000
Maximum tax payable on LS death benefit (15% x \$1m)		(\$150,000)
Tax offset		\$300,000
Tax payable (ie \$508,597 - \$300,000)		\$208,597

73

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### Calculation of tax payable by Harry



	Taxable income	Tax payable
Taxable income (including LS death benefit)	\$1m	\$431,550
Taxable income (excluding LS death benefit)	(\$0)	(\$0)
Prima facie tax payable on the LS death benefit		\$431,550
Maximum tax payable on LS death benefit (15% x \$1m)		(\$150,000)
Tax offset		\$281,550
Tax payable (ie \$431,550 - \$281,550)		\$150,000

74

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### What other "costs" / non-super "benefits" are affected by beneficiary's taxable income?



Other "costs"?	"Benefits" affected?
<ul style="list-style-type: none"> <li>Medicare levy (2% x taxable income)</li> <li>Division 293 tax on concessional contributions</li> <li>Medicare levy surcharge, reduced private health insurance rebate</li> <li>Higher "repayment rate" for study and training loans (eg HELP debt)</li> </ul>	<ul style="list-style-type: none"> <li>Family tax benefit, child care subsidy and child care benefit, paid parental leave</li> <li>Low income tax offset, Low and middle income tax offset, Seniors and pensioners tax offset</li> <li>Government co-conts, low income superannuation tax offset, spouse contributions tax offset</li> <li>Commonwealth Seniors Health Card</li> </ul>

75

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### Summary of tax and other costs imposed on taxable component of LS death benefit (or because of it)



	William	Harry
Tax payable on taxable portion of LS death benefit received	\$150,000	\$150,000
Medicare levy (2%)	\$20,000	N/a
Division 293 tax on CC	\$3,750	N/a
Total "costs" imposed on taxable portion of LS death benefit received (or because of it)	\$173,750	\$150,000
Amount of LS death benefit "in the hand" after allowing for these costs	\$826,250	\$850,000

76

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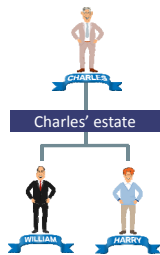
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### The lowdown ...



\$2m LS death benefit (all taxable component) will be paid to Charles' estate

Beneficiaries of estate are William & Harry (50% each)



- Other assessable income of Charles' estate = \$0.1m
- Deductions = \$5k

77

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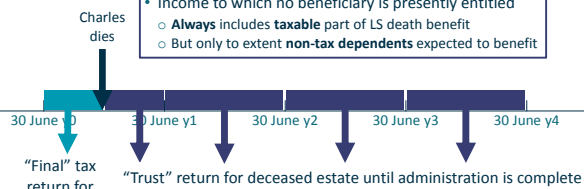
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### Lump sum death benefit paid to Charles' estate



- Assessable income of deceased estate?
- Income to which no beneficiary is presently entitled
    - Always includes **taxable** part of LS death benefit
    - But only to extent **non-tax dependents** expected to benefit



78

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### Lump sum death benefit paid to Charles' estate

Charles dies

- Taxable income of deceased estate taxed at **normal marginal rates** (no tax free threshold after 3<sup>rd</sup> year)
- Tax offset applies to reduce maximum tax rate to:
  - 15% of taxed element
  - 30% of untaxed element

30 June 0    30 June y1    30 June y2    30 June y3    30 June y4

"Final" tax return for Charles

"Trust" return for deceased estate until administration is complete

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### Calculation of tax payable by Charles' estate

	Taxable income	Tax payable
Taxable income (including LS death benefit)	\$2.095m	\$915,847
Taxable income (excluding LS death benefit)	(\$0.95m)	(\$22,647)
Prima facie tax payable on the LS death benefit		\$893,200
Maximum tax payable on LS death benefit (15% x \$2m)		(\$300,000)
Tax offset		\$593,200
Tax payable (ie \$915,847 - \$593,200)		\$322,647

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### Lump sum death benefit paid to estate

- Essentially, follow the same process to calculate the tax payable
- The "net" LS death benefit (within the estate) will \$1.7m
  - William & Harry will each receive a distribution that includes \$850,000 sourced from Charles' super
    - William will be better off, Harry will be in the same position
- Importantly note that
  - Medicare does not apply to deceased estates
  - Tax residency status of beneficiary is **not** relevant
  - Lump sum death benefits paid to an estate from superannuation will only ever be included in the estate's income, **never** the beneficiary's own "income"
    - Other "costs" will not be imposed on beneficiary
    - Other non-superannuation "benefits" of the beneficiary will not be affected

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### Lump sum death benefit paid to estate



- Each State & Territory has succession legislation that allows an “eligible person” to apply to the Supreme Court for
  - Provision, or
  - *Further* provision from a deceased’s estate
- Ideally, consideration of the risk of a family provision claim should be undertaken before
  - \$ are paid to the deceased’s estate
  - A BDBN in favour of the estate is made
- Are there any beneficiaries ...
  - Not provided for / inadequately provided for?
  - That are disgruntled?



82

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### IS EVERYTHING GOING TO PLAY OUT AS YOU’D PLANNED?



### SOME NEW THINGS TO CONSIDER ...

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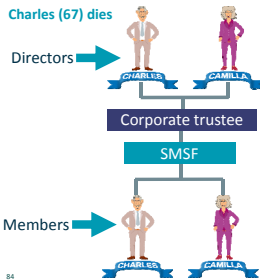
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### Plan was to recycle taxable component after death



- Charles’ ABP (\$2.5m, all taxable) is reversionary to Camilla
- Ideally, he would have started “recycling” when he reached 60, but the SMSF had no cashflow to do so
- Camilla’s own ABP had \$1m balance last 30 June
- If Charles dies unexpectedly in June 2020, does this affect Camilla’s ability to recycle?

84

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SMSF



**Case study 4**

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SMSF

**Total superannuation balance too high for NCC?**

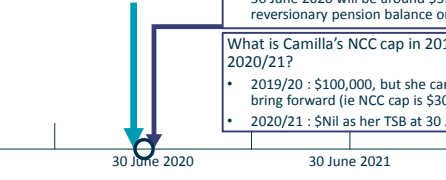
Charles unexpectedly dies. His ABP (DOD value \$2.5m) reverts to Camilla

Camilla's TSB at

- 30 June 2019 was \$1m
- 30 June 2020 will be around \$3.5m (she owns the reversionary pension balance once Charles died)

What is Camilla's NCC cap in 2019/20 and 2020/21?

- 2019/20 : \$100,000, but she can trigger a 3-year bring forward (ie NCC cap is \$300,000)
- 2020/21 : \$Nil as her TSB at 30 June 2020 > \$1.6m



30 June 2020                      30 June 2021

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86

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SMSF

**Recycling for Camilla**

- She'd need to move quickly and recycle before 30 June 2020
  - The SMSF would need cash to do so
  - Don't forget that Camilla could make the NCC first (from non-super money) and then withdraw
- If instead Charles' pension **wasn't** reversionary
  - Camilla won't **own** the pension balance at 30 June 2020, unless a death benefit pension commences for her
  - Her TSB at 30 June 2020 is then likely to be well under \$1.6m
    - She could recycle in 2020/21
    - And is likely to be able to utilise the 3 year bring forward then
- If Charles' removes his reversionary pensioner nomination, it would provide **more time** for Camilla to make NCC

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87

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### Tax exempt investment income



- The SMSF is sitting on a large unrealised capital gain
  - Commercial property
  - Contract for sale is likely to be exchanged in July 2020 (settlement would be September 2020)
- The plan had always been to sell the property while the SMSF was solely in pension phase
  - So the capital gain would be completely exempt from tax
- If Charles' pension was reversionary to Camilla, what **method** would be used to calculate the SMSF's tax exempt investment income in 2020/21?
  - Assume no changes were made to any account balances in 2019/20
  - Assume no changes to the current law regarding the methods to be used to calculate tax exempt investment income

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### Tax exempt investment income



How to calculate? Segregated method or actuarial certificate method?

At previous 30 June, did any member of the SMSF have **both**

- A retirement phase pension, and
- TSB > \$1.6m

Yes No

**SMSF prohibited from using segregated method** in current year (assets are "disregarded small fund assets")

- SMSF **must** use actuarial certificate method to claim tax exemption on investment income

SMSF **not** prohibited from using segregated method in current year

- Must** use segregated method whenever SMSF assets are solely supporting retirement phase pensions

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### Tax exempt investment income



How to calculate? Segregated method or actuarial certificate method?

Camilla's TSB ~ \$3.5m

If Charles' pension reverted to Camilla ...

In 2020/21 (under current law)

- SMSF prohibited from using segregated method
- Must use actuarial certificate method

CGT event

30 June 2020      30 June 2021

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**Tax exempt investment income**  
 How to calculate? Segregated method or actuarial certificate method?

Camilla's TSB ~ \$1m

If Charles' pension **not** reversionary to Camilla ...

In 2020/21 (under current law)

- SMSF **not** prohibited from using segregated method
- Must** use segregated method whenever assets are solely supporting retirement phase pensions

30 June 2020      30 June 2021

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**Tax exempt investment income**  
 How to calculate? Segregated method or actuarial certificate method?

Camilla's TSB ~ \$1m

If Charles' pension **not** reversionary to Camilla ...

- Camilla rolls own ABP back to accumulation phase
- \$1.6m death benefit pension commences from Charles' (former) ABP
- \$0.9m lump sum death benefit paid of anything > Camilla's "cap space"

Capital gain on property completely exempt from tax (segregated method)

30 Jun      30 Jun

Segregated method      Actuarial certificate method

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**Tax exempt investment income**  
 How to calculate? Segregated method or actuarial certificate method?

Camilla's TSB ~ \$3.5m

If Charles' pension reverted to Camilla ...

- Camilla rolls own ABP back to accumulation phase
- \$1.6m death benefit pension commences from Charles' (former) ABP
- \$0.9m lump sum death benefit paid of anything > Camilla's "cap space"

Is this a problem?

- Tax exempt % may be very high (eg 98%)

30 Jun      30 Jun

Actuarial certificate

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## Non-reversionary pension



- May not be too painful if Charles' pension **wasn't** reversionary!
- Would not be included in Camilla's TSB on 30 June after Charles' death
  - Opportunity created for her to recycle in the following year?
  - Opportunity for the SMSF to calculate the tax exemption on its investment income using "the other" method?

94

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