
  
**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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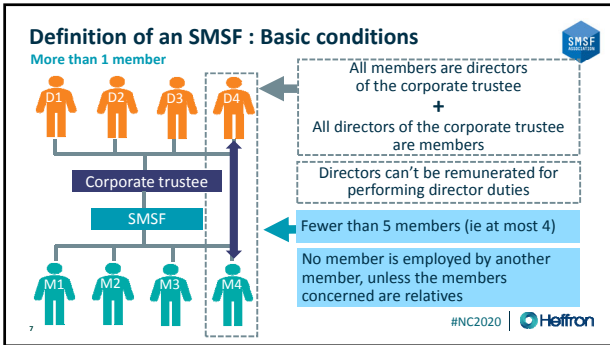
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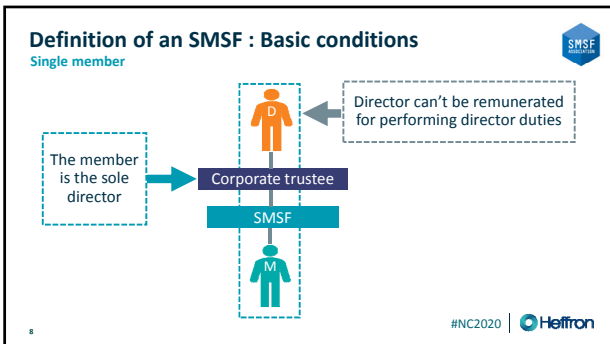
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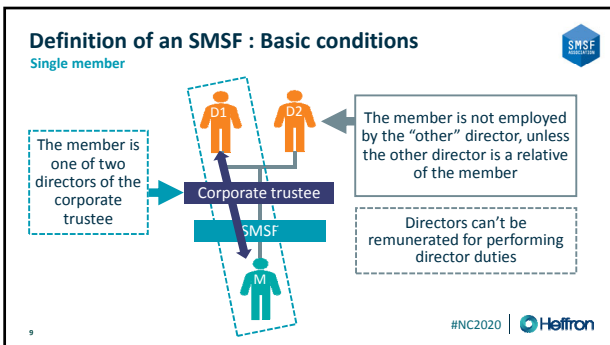
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### Definition of an SMSF : Basic conditions

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**

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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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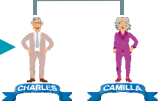
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**Individual trustees**

Camilla dies

Trustees → 

Members → 

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

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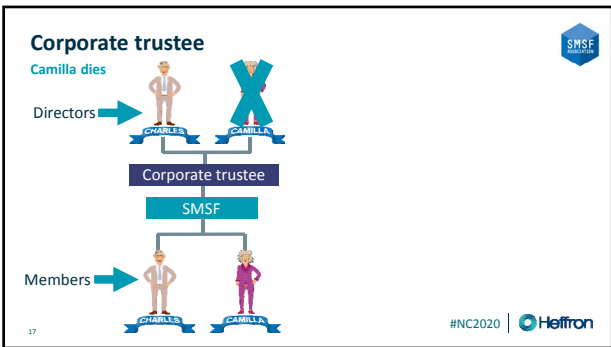
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**Case study 1c**  
Member, whose LPR (EPoA) was acting in their place as trustee, dies

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### Laura was trustee in place of Camilla

Camilla dies

Trustees → CHARLES, LAURA

Members → CHARLES, CAMILLA

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- 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)

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### Case study 1d

#### Sole director / sole shareholder of corporate trustee dies

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### Corporate trustee : sole director & sole shareholer

Charles dies, SMSF will be wound up

Sole Director (& shareholder) → CHARLES

Corporate trustee

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Member → CHARLES

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## Case study 1e Appointment powers (deadlock)

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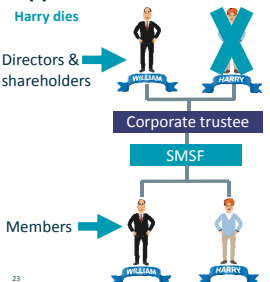
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### Appointment of a new director

Harry dies



- 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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23

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

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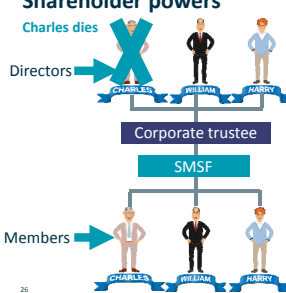
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**Shareholder powers**



Charles dies

Directors → Charles, William, Harry

Corporate trustee

SMSF

Members → Charles, William, Harry

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

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

**Reversionary pension (LCR 2017/3)**

- Pension that continues, with entitlement to pension passing to another person **because**
- T&C of the pension expressly say pension is to revert

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- Trustee must have **continuing** liability to pay same pension (TR 2013/5)

**Not reversionary pension**

Trustee has power or discretion to determine **any** of

- Who to pay death benefit to
- Form of payment (LS vs pension)
- Amount of death benefit to be paid

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**Case study 2**

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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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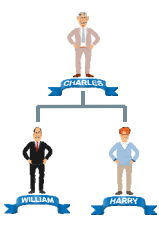
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### The lowdown ...

- 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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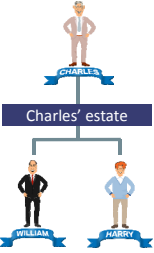
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**The lowdown ...**

\$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

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**IS EVERYTHING GOING TO PLAY OUT AS YOU'D PLANNED?**



**SOME NEW THINGS TO CONSIDER ...**

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**Plan was to recycle taxable component after death**

Charles (67) dies

Directors → Charles, Camilla

Corporate trustee

SMSF

Members → Charles, Camilla

- 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

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**Case study 4**

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