

[Careers centre](#)[About us](#)[Contact us](#)[What's new](#)[Feedback](#)[A-Z index](#)[Subscribe](#)

Search for

In: ato.gov.au legal database

[Home](#) [Individuals](#) [Businesses](#) [Non-Profit](#) [Government](#) [Tax Professionals](#) [Super Funds](#)
[> Tax Professionals > Community consultation forums: Tax Professionals: NTLG > NTLG Sub-committees > Superannuation Technical](#)
 Key tasks

- [Work online](#) ▶
- [Prepare returns & forms](#) ▶
- [Lodge & pay](#) ▶
- [Object or amend](#) ▶
- [Find a rate, calculator or code](#) ▶
- [Find a form or publication](#) ▶

 Your tax practice
 News, research & training
 Community consultation
 Tax topics A - Z
 Law, rulings & policy
 Compliance

Superannuation technical minutes, June 2011

6.3 Step children - do they remain a dependant of their step-parent in the certain circumstances?

Issue raised

Does a stepchild continue to satisfy the definition of a 'child' (and therefore remain a dependant for the purposes of the SIS Act) of their step-parent in cases where:

- the stepchild's own parent dies first, survived by the step-parent; or the stepchild's own parent and their step-parent divorce.

In other words, can a stepchild receive a death benefit from their step-parent's superannuation (directly from the superannuation fund) in the cases above? Or is the stepchild / step-parent relationship severed upon the death of the child's own parent, or upon the divorce of their own parent from their step-parent.

Background information

SISR 6.22 states that a member's benefits must not be cashed in favour of a person other than the member or the member's legal personal representative unless the member has died and 6.22(2) the benefits are cashed in favour of either or both of the following:

- a. the member's legal personal representative;
- b. one or more of the member's dependants.

Section 10 of the SISA defines a dependant to include the spouse of the person, any child of the person and any other person with whom the person has an interdependency relationship.

Section 10 of the SISA defines a child to include:

- an adopted child, a stepchild or an ex-nuptial child of the person; and a child of the person's spouse; and
- someone who is a child of the person within the meaning of the *Family Law Act 1975*.

Industry view / suggested treatment

In our view, the stepchild/step-parent relationship is severed upon the death of the child's own parent, or upon the divorce of their own parent from their step-parent.

Consequently, on the later death of the step-parent, the stepchild no longer satisfies the definition of 'child', is therefore not an automatic dependant of the step-parent and cannot receive a death benefit payment directly from the superannuation fund (unless they were financially dependent / in an interdependency relationship with the deceased step-parent, or if there are no other dependants of the step-parent and no estate is formed (per SISR 6.22(3)).

Technical reference

SISR 6.22, section 10 of the SISA

Impact on clients

Differing views exist in the industry, ie, some practitioners hold the view that the stepchild remains a dependant, whilst other's do not.

Clarity on this issue is therefore required in order to provide certainty to member's estate planning arrangements.

Priority of issue where ATO view is required

High

ATO initial response

Where a term, that is defined in the SIS Act, is used in the SIS Regulations the term must be given that meaning - paragraph 13(1)(b) *Legislative Instruments Act 2003*. Therefore, when determining whether a particular person is a dependant of a deceased member of a superannuation fund, the meanings provided by the SIS Act to 'dependant' and 'child' must be considered.

In subsection 10(1) of the SIS Act, a 'dependant' of a person is defined to include, amongst others, 'any child of the person' and 'any other person with whom the first person has an interdependency relationship'.

As this is an inclusive definition, the Commissioner considers that 'dependant' also has its ordinary meaning. That is, a 'dependant' of a deceased person also includes a person who depended on the deceased for support, including financial support. For example, the Macquarie Dictionary gives the following meaning to 'dependant':

- one who depends on or looks to another for support, favour, etc.
- a person to whom one contributes all or a major amount of necessary financial support.

In subsection 10(1) of the SIS Act, a 'child' of a person includes:

- an adopted child, a stepchild or an ex-nuptial child of the person; and
- a child of that person's spouse; and
- someone who is a child of the person within the meaning of the *Family Law Act 1975*.



Table of contents

- Meeting details
- Agenda items
 - 1. Open and introductions
 - 2. Previous minutes
 - 3. Status of action items
 - 4. Update on recently published and withdrawn rulings, practice statements and ATO IDs
 - 5. Litigation update
 - 6. Technical questions raised by members
 - 7. Successor funds
 - 8. Other business
- Next meeting

The term 'stepchild' is not defined in either the SIS Act or Regulations. The Macquarie dictionary defines a stepchild as a 'child of a husband or wife by a former union'.

The Superannuation Complaints Tribunal (SCT) has stated that it is bound by the common law view that a stepchild relationship ends on the death of a natural parent (SCT Determination D04-05/186). The common law position is that a stepchild of a marriage ceases to be a stepchild of the step-parent at the time the step-parent dies. This common law position is derived from the case re Burt [1988] 1 Qd 23. In this case the Queensland Court of Appeal held that the relationship of stepchild and step-parent ceased to subsist after the termination of the marriage which created it, by divorce or death.

In this case, the Court was required to consider specific definitions used in Queensland's succession legislation. McPherson J referred to the definition section which defined a stepchild as a child by a former marriage of the deceased person's husband or wife and not, as he pointed out, by reference to a child by a former marriage of that person's former husband or former wife. His Honour said (at p 29) that, consistent with other provisions in the Act, the definition was intended to include only those children whose natural parent was still married to the deceased at the time of the deceased's death.

In this same case Thomas J said (at p 32) 'The status of stepchild, as ordinarily understood, does not apply to a case in which the natural parent has been divorced from the step-parent and probably does not survive the death of the natural parent'.

In short, the Court considered a stepchild/step-parent relationship to be one which subsists only while a child's natural parent is married to the step-parent.

The ATO view is consistent with the position of the SCT - the stepchild/step-parent relationship is severed when the marriage of the parent ceases, that is, upon the death of the natural parent or upon the divorce of the natural parent from the step-parent.

Further, having considered the construction of the definition of 'child' the Commissioner's view is that stepchild is used in relation to individuals who are legally married. Where a child's parent is in a de facto relationship, paragraph (b) of the definition of 'child' would apply.

As paragraph (b) does not extend to a child of a former spouse, a child would cease to be a child of a person (not their natural parent) when a de facto relationship between the natural parent and the other person ceased.

However, this may simply mean that it is necessary for the trustee of a fund to determine whether a particular individual was either a dependant within the ordinary meaning of that word or was in an interdependency relationship with a deceased person.

Meeting discussion

Members indicated that the view was accepted. It was suggested that this was an area where questions do arise quite often, so it is useful to have a statement from the ATO as regulator of self managed superannuation funds as to the position.

The ATO said it considers whether the answers to NTLG questions ought to be converted to other ATO products, including ATO Interpretive Decisions. Members suggested that an ATO ID confirming this view would be of benefit because questions and answers in that form are easier to find than answers in NTLG minutes.

Action item	ATO to consider whether an ATO ID will be published confirming the ATO view.
--------------------	--

Sections within 6. Technical questions raised by members

- [6.1 Property owned by SMSF and another party as tenants in common: using a share of the property as security for debt](#)
- [6.2 Excess contributions tax: payments from superannuation funds](#)
- 6.3 Step children - do they remain a dependant of their step-parent in the certain circumstances?
- [6.4 TR 93/17 - clarification of which expenses must be apportioned](#)

Last Modified: Thursday, 4 August 2011

[Your rights](#) ▲ [Your privacy](#) ▲ [Sitemap](#) ▲ [Definitions](#) [Links](#) [Online security](#)

© Commonwealth of Australia