



# The New SMSF Pension Suspension Rules and Documentation

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## Overview

Recent changes enabling pensions to be suspended to meet minimum drawdown payments for the 2008-09 announced on 18 February 2009 will need to be documented.

Self Managed Superannuation Fund (SMSF) Trustees need to document the commencement terms and SMSF Pension changes of a SMSF.

In respect to SMSFs suitable Documentation is required when:

- The SMSF Trustees and the Member execute "any arrangement" setting out the terms of the Pension;
- The SMSF Trustees record their decision to enter into the agreement in the form of minutes; and
- The SMSF Trustees provide the Member with a product disclosure statement (PDS).

Furthermore ASIC recently noted that by the next financial year ASIC will be targeting it's surveillance of SMSFs through shadow shopping<sup>1</sup>. Clear SMSF documentation will therefore be needed.

What follows is an overview of the:

- Operational benefits of correct documentation, and
- Compliance issues that need to be considered.

## Application of the Suspension Rules

The temporary suspension of the minimum payment requirement will apply to:

- Account-based annuities and pensions (payable since 1/7/07);
- Allocated annuities and pensions (pre-dating the Better Super changes);
- Market-linked (term allocated) annuities and pensions; and
- Transition to retirement (TTR) pensions from either of the above three pensions.

## Current and Revised Minimum Payment Requirements for Account-Based Pensions for the 2008-09 Financial Year

It is a requirement that a minimum payment be made from a superannuation account-base pension at least annually. Minimum payments are determined by age and the value of the account balance at 1 July each year. The minimum annual payment rule is designed so that retirees draw down on their superannuation savings over their retirement. This rule recognises that superannuation is a retirement saving vehicle with substantial tax concessions.

The current and revised minimum payment percentages for account-based pensions are set out below.



<b>Age of Pensioner</b>	<b>Minimum percentage factor (%)</b>	<b>Revised Minimum percentage factor for 2008-09 financial year (%)</b>
Under 65	4	2
65 to 74	5	2.5
75 to 79	6	3
80 to 84	7	3.5
85 to 89	9	4.5
90 to 94	11	5.5
95 or more	14	7

### Required Documentation

SMSF Pension documentation includes:

- **Member request:** a request from the SMSF Member to the SMSF Trustees to start, change or **stop** a Pension, which record the Member's wishes with respect to the timing of payments. Furthermore a Member request in respect to payments to Dependents after the Member's death needs to be documented,
- **PDS:** disclosure by the SMSF Trustees to the Member all of the matters the Member should be aware of before commencing the Pension in accordance with the disclosure requirements under the Corporations Act 2001,
- **Minutes:** minutes of the SMSF Trustees' decision to start, change or stop the Pension to the Member, and
- **Advice Outlining Strategy:** all of the terms of the Pension as agreed between the Member and the SMSF Trustees, including: how regular payments are to be made, how the Pension may be varied, what limitations apply to the Pension (such as in the case of a transition to retirement Pension) and what happens to

the Pension after the Member's death.

### Benefits of a properly documented SMSF Pension

Correct documentation provides for the following:

#### Correct Record of Event

The Pension documents form the basis for the SMSF Fund's auditor and the ATO that a Pension is in place and when it began, changed or stopped.

Pension documents will clearly evidence:

- The fact that the Pension commenced, changed or stopped in accordance with the Pension payment standards; and
- When the assets supporting the Pension became income tax exempt.

### Compliance - Initial and Ongoing

To qualify for concessional tax treatment, a Pension must meet the definition of Pension as outlined in the Superannuation Industry (Supervision) Regulations 1.06 (1), that is a Pension meets the definition if:

- The Pension documents have been drafted in contemplation of the Pension payment



standards set in the Relevant Law / Legislation; and

- The Trustees comply with the terms in the Pension documents.

To comply with Relevant Law, the SMSF Trustees must provide information which can be found in a PDS and available to the Member. Accordingly, Pension documents that include a PDS help the Trustees to comply with this obligation.

### **Administration**

Pension Documents that have been prepared in contemplation of the Pension Payment Standards and which are outlined clearly, simply and concisely act as a set of guidelines for the Trustees to follow when administering the Pension.

### **Clear and Concise**

Pension Documents that are outlined clearly and concisely include a PDS to enable the Member to understand the terms and nature of the Pension arrangement. This should enable the Member to gain an understanding of the pension arrangements and enable the Member to seek further advice based on their particular circumstances.

### **Preventing Disputes**

SMSF Trusts need to have a clear documentation in four key instances for Members:

1. Entry;
2. Annual Statement;
3. Changes to the Member's Account (including Pensions); and
4. Exit.

In the event of death the administrator also needs to have a record of the Member's

intentions which should be inline with the particular specifications of the SMSF.

### **Cost Efficiency**

Future costs could be minimised by:

- Members seeking advice about their rights and obligations under, or in relation to, the Pension;
- Trustees seeking advice on how they should administer the Pension both during the lifetime of the Member and after the Member's death;
- Trustees responding to claims made by dependents claiming reversionary rights to the Member's Pension after the Member has died; and
- Trustees responding to queries from the fund's auditor and to audits by the ATO and rectifying any non-compliance.

### **Relevant Law**

#### **Payment standards**

The SIS Regulations stipulate that, for a benefit paid from a SMSF to qualify as a Pension and attract tax concessional treatment, it must meet the Pension standards referred to in SIS Regulation 1.06(1)(a) and (b).

#### **Disclosure obligations**

Certain prescribed information must be made available to Members of SMSFs. SIS Regulation 4.01 provides that prescribed information for the purposes of section 52(2)(h) as set out in section 1017C(2) of the Corporations Act 2001.

This requires Trustees of SMSF to provide a Member with a PDS or to make information and documents available to the Member so that the Member can



make an informed decision about participating in the Fund – including starting a Pension changing or stopping a Pension. Pension documents must include a PDS that specifically provides the Member with the sufficient information about the Pension so that he or she can understand, and make an informed judgement about whether or not to start the, Pension. If a Pension's documents do not contain a PDS, then it is very unlikely that the Member will have available to him or her all of the information and documents that the Member requires to make an informed decision about the Pension.

Trustees must comply with the requirements of the Superannuation legislation to retain minutes of the meeting at which the Trustees resolved to start paying a Member a Pension in accordance with section 103 of the SIS Act, that is to say retain all

minutes of Trustee meetings for at least ten (10) years. Furthermore it is an offence for Trustees to fail to retain any records that the superannuation legislation requires the Trustees to retain – Trustees facing penalties (in the worst case) and costs associated with rectifying non-compliances (in the best case). In particular it is an offence to keep and retain records and explain the matters, transactions or operations to which the records relate.

### **Conclusion**

To find out how you can utilise ili SMSF documentation including SMSF Pension establishing and stopping Pension Payments within the new revised guidelines and learn more about SMSF Strategies and implementation tools please visit [www.ili.com.au](http://www.ili.com.au)

1. "Helping Retail Investors" Jeremy Cooper, Deputy Chairman Australian Securities and Investment Commission.

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