



Mr Walter Lee

Date 05 December 2005

Dear Mr Lee

Thank you for your letter dated 20 November 2005. I'm glad the information previously provided has been useful. I will answer each of your questions in the order in which they appear in your letter.

1. The term spouse is defined in the Marriage Act 1961 as: "*the union of a man and a woman to the exclusion of all others*". The Trustee has no discretion in the defining of a spouse and a same sex or de facto couple would not be recognised under the Act. The supporting evidence is a duly executed marriage certificate.

2. As I'm sure you can understand, assessing whether two parties were in an interdependency relationship is a complicated process. The government has recently released the Superannuation Industry (Supervision) Amendment Regulations (No.5) which provides the Trustee with some guidance on how these matters should be assessed.

For information purposes, the following is a list of the matters the Trustee must consider when determining if an interdependency relationship existed.

- The length of time the two parties have been in the relationship
- Whether or not a sexual relationship existed;
- If they own or used property together;
- The degree of mutual commitment to a shared life including situations where the two persons are temporarily living apart eg one may be working overseas;
- If they both cared for and supported children together;
- The reputation and public aspects of the relationship;
- The degree of emotional support they provided to each other;
- If one or both of them provided the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate. This would extend to constant care (for example, overnight), attending medical appointments with the person or the provision of personal and physical assistance where required.
- If there was any evidence suggesting that the parties intended the relationship to be permanent.

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- The existence of a statutory declaration signed by either one of the persons stating that they are or were in an interdependency relationship with the other person.
- The extent to which the relationship is one of mere convenience eg flatmates.

It is important to note that it is not necessary for all of the listed circumstances to be satisfied, but, the Trustee must consider each of the above points when making its decision in relation to whom the benefit should be paid and whether or not an interdependency relationship existed. To restate this obligation, the Trustee is required to identify all potential beneficiaries and determine how a benefit can be distributed fairly amongst all persons who may be legally entitled to some or all of the benefit.

In terms of how the Trustee of the Zurich Master Superannuation Fund establishes the existence of an interdependency relationship I can offer the following. The Trustee does not use a points based system. The Trustee endeavours to obtain as much information as possible in administering claims without causing undue stress or inconvenience to potential beneficiaries during a time of distress.

The Trustee would request documentary evidence such as:

- A statutory declaration from the person claiming interdependency status outlining details of the relationship;
- Copies of bills eg rent or mortgage payments in both names;
- Copies of other documents in either name showing the same address;
- Proof of payments made by the member on behalf of the other person or vice versa;
- Declarations from friends, relatives or associates, describing the relationship and the domestic support and/or personal care they had provided.

In regard to the establishment of a sexual relationship, if friends and/or relatives attested to the fact that a couple were partners, we would assume that a sexual relationship may have existed.

At any time during the process the Trustee may request additional or clarifying information. At the same time, all potential beneficiaries have the right to provide additional documentation they feel supports their claim.

Zurich is currently in the process of revising the claims process and related documentation in light of the new regulations. Apart from details of all potential beneficiaries, we ask the legal personal representative of the member to provide us with details of any other aspects of the deceased member's circumstances which the Trustee should take into account when considering how the proceeds should be distributed. It is then up to the potential beneficiaries to provide as much information as possible to support their claim. The only changes to the current process, that I am aware of, will be to provide guidance on what type of proof will be acceptable to the Trustee as part of the communication process to potential beneficiaries. Unfortunately I am unable to provide more specific information as the information required varies from claim to claim.



3. You have requested specific information on how a certificate from the City of Sydney's Relationships Declaration program, or similar, could be used as evidence of an interdependency relationship. This type of certificate merely tells the Trustee that a relationship existed at some point but, as you rightly state, there is always the chance that it may have deteriorated over time. Zurich would consider the date the certificate was issued in conjunction with other evidence to ascertain if the relationship was still in existence at the time of the member's death. We do not require production of this type of certificate as this information can be obtained from statutory declarations.

4. I apologise if this portion of my previous letter was not clear. A binding nomination of beneficiary is a facility the Trustee provides to its members to enable them to establish how their superannuation will be distributed upon their death. By law, a binding nomination is only valid for 3 years. Zurich includes this information on our annual statements and contacts the member every 3 years, prior to the nomination lapsing, so it can be renewed or changed as appropriate. The revising and updating of nominations of beneficiaries is undertaken by the member while they are alive, not by the beneficiaries. However, should a Member not respond and the nomination subsequently expire, the Trustee is obliged to follow the process of determining how the benefit should be distributed.

As previously stated, the Trustee Office for Zurich Australian Superannuation is currently reviewing their processes in terms of what information will be requested for death claims. I have advised them that you felt a fact sheet would be beneficial and they will consider whether or not this is appropriate given the information already requested of potential beneficiaries.

I hope that I have provided sufficient information to answer your enquiry. Should you have any further questions or wish to discuss any of the above details, please feel free to contact me on 9995 3691 or by email at [michelle.taylor@zurich.com.au](mailto:michelle.taylor@zurich.com.au).

For and on behalf of the Trustee  
Zurich Australian Superannuation Pty Limited

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'Michelle Taylor', written over a light blue horizontal line.

Michelle Taylor  
Compliance Manager IM&L Operations  
Zurich Financial Services Australia Limited



ZURICH

Mr Walter Lee

Date 30 January 2006

Dear Mr Lee

Thank you for your recent letter dated 20 January 2006. I understand the points you are trying to clarify, however the answer is not a simple one as there are many variables. I will attempt to take your example and answer it in the simplest way I can.

Using the example you have provided I will respond making the following assumptions;

1. The husband did not have a binding nomination of beneficiary in place;
2. After receiving completed beneficiary identification documents his spouse was listed as the sole possible beneficiary;
3. As part of the requirements a copy of the will was requested and we were informed that there wasn't one.
4. The husband did not make a death nomination on the application form and did not write to us at any time to inform us how they wanted the benefit distributed upon death or that he was estranged from his wife.

Based upon the assumptions above, the spouse, as defined under the Marriage Act 1961, would automatically qualify as a dependant on the production of a duly certified marriage certificate, issued under section 50 of the Act. Likewise a child, natural or adopted, automatically qualifies as a dependant on the production of a birth certificate. Under law, a person is considered to be legally married until they are formally divorced. If the Trustee had any concerns in relation to the claim of any dependant upon the benefit, they may make reasonable enquiries and/or request additional supporting information.

In relation to your query about a Canadian marriage certificate, Australian law recognises foreign marriages and so a foreign marriage certificate or certified copy of the entry in the relevant country's register would be sufficient evidence to prove the couple were married. Section 88EA of the Marriage Act specifies that a union

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solemnised in a foreign country between a man and another man or a woman and another woman, must not be recognised as a marriage in Australia. Any foreign marriage certificate issued to a same sex couple overseas could only be accepted as part of the evidence required for proof of an interdependency relationship.

At all times the Trustee is attempting to act in the best interest of all potential beneficiaries. The Trustee is restricted by law in terms of what documentation is acceptable as evidence of particular relationships but may request additional information from a variety of sources in order to make a reasonable assumption of how the benefit should be distributed and will not make a determination until they believe they have all the evidence required, including information that would cause them to distribute the benefit on a needs basis. For example a handicapped child may receive more of the distribution than a spouse if they can show that their need is greater. This process is followed for all claims irrespective of the nature of the relationships involved.

I hope I have answered your questions to your satisfaction. If you require any additional information please do not hesitate to contact me.

Yours Sincerely

Michelle Taylor  
Compliance Manager IM&L Operations  
Zurich Financial Services Australia Limited



10 January 2006

Mr W Lee

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Dear Mr Lee

### Recognition of Relationships by MLC

I refer to your letter dated 6 December 2005. Please accept my apologies for the delay in replying to your inquiry.

I understand that your inquiry relates to recognition by MLC of an inter-dependent and/or close personal relationship in relation to a superannuation death benefit determination. The answers to your specific questions are:

1. Generally, evidence of the existence of a relationship only needs to be provided to MLC by potential claimants of a superannuation death benefit payment.
2. The determination of interdependency under the Superannuation Industry Supervision (SIS) legislation is mandated by section 10A of the Act and by SIS regulation 1.04AAAA. As these requirements are quite lengthy, I have enclosed copies rather than setting out the details here.
3. The question of "spousal-type" relationships is addressed under Section 10(1) of the SIS Act. The Act states that a "spouse", in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person". The courts have determined that husbands and wives must be of opposite gender for superannuation death benefit entitlement purposes.

MLC Limited (Administrator of MLC MasterKey Superannuation) ABN 90 000 000 402, AFSL 230694 and  
MLC Nominees Pty Limited (Issuer of MLC MasterKey Superannuation) ABN 93 002 614 959, AFSL 230702 have their  
registered offices at 105-153 Miller Street, North Sydney NSW 2060.

A  National Company

4. The trustee's requirements specify in the trust's deed that the claimant would need to provide evidence that they had one or more of the following relationships with the deceased:
  - a. a dependant of the deceased member because they were a:
    - spouse (not being of the same gender);
    - child (or any age);
    - financially dependent upon the deceased at date of death;
    - interdependent with the deceased at date of death and as defined by section 10A and regulation 1.04AAAA of the Superannuation Industry (Supervision) (SIS) Act; or
  - b. the deceased's legal personal representative as:
    - executor of the deceased's will, or
    - administrator of the deceased's intestate estate.
5. A heterosexual couple can be considered to be in a "spousal-type" relationship under the SIS Act definition of "spouse", regardless of whether they have signed the Tasmanian Deed of Relationships.
6. A New Zealand Civil Union certificate, of itself, would be irrelevant in the determination of the existence of a spousal relationship for Australian superannuation death benefit purposes.
7. An Australian marriage certificate is evidence of a "spousal type" relationship and would be used by the trustee, along with any other evidence available which satisfies the provisions of interdependency relationships under the SIS regulation, in order to determine eligibility for superannuation death benefit payments (providing that the couple had not subsequently divorced).

I trust that this information has addressed your inquiry. If you require any further information or explanation, please contact me on (02) 9957 8675 or by facsimile on (02) 9466 7889. Alternatively, if you are not satisfied with the manner in which your inquiry has been handled, you have available the resources of the Superannuation Complaints Tribunal.

The Superannuation Complaints Tribunal is an independent body established by the Federal Government to assist in resolving certain types of complaints with superannuation fund trustees. They can be contacted at:

Locked Bag 3060  
GPO Melbourne Vic 3001  
Tel: 1300 780 808  
Fax: (03) 8635 5588

Yours sincerely



Keith Stribling  
**MLC Complaint Resolutions**

Reviewed and determined on 9 January 2006

Encl: Superannuation Industry (Supervision) Act section 10A interdependency relationship

Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 5) regulation 1.04AAAA



**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 10A Interdependency relationship**

**10A(1) [Requirements]** Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an interdependency relationship if:

- (a) they have a close personal relationship; and
- (b) they live together; and
- (c) one or each of them provides the other with financial support; and
- (d) one or each of them provides the other with domestic support and personal care.

**10A(2) [Disability]** Subject to subsection (3), for the purposes of this Act, if:

- (a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
  - (b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
  - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;
- they have an interdependency relationship .

**10A(3) [Regulations]** The regulations may specify:

- (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an interdependency relationship ; and
- (b) circumstances in which 2 persons have, or do not have, an interdependency relationship .

**Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 5)**

**1.04AAAA Interdependency relationships (Act s 10A)**

(1) For paragraph 10A (3) (a) of the Act, the following matters are to be taken into account in determining whether 2 persons have an interdependency relationship, or had an interdependency relationship immediately before the death of 1 of the persons:

(a) all of the circumstances of the relationship between the persons, including (where relevant):

- (i) the duration of the relationship; and
- (ii) whether or not a sexual relationship exists; and
- (iii) the ownership, use and acquisition of property; and
- (iv) the degree of mutual commitment to a shared life; and
- (v) the care and support of children; and
- (vi) the reputation and public aspects of the relationship; and
- (vii) the degree of emotional support; and
- (viii) the extent to which the relationship is one of mere convenience; and
- (ix) any evidence suggesting that the parties intend the relationship to be permanent;

(b) the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.

- (2) For paragraph 10A (3) (b) of the Act, 2 persons have an interdependency relationship if:
- (a) they satisfy the requirements of paragraphs 10A (1) (a) to (c) of the Act; and
  - (b) one or each of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.

*Examples of care normally provided in a close personal relationship rather than by a friend or flatmate*

1. Significant care provided for the other person when he or she is unwell.
2. Significant care provided for the other person when he or she is suffering emotionally.

- (3) For paragraph 10A (3) (b) of the Act, 2 persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy the other requirements set out in subsection 10A (1) of the Act; and
  - (c) the reason they do not satisfy the other requirements is that they are temporarily living apart.

*Example for paragraph (3) (c)*

One of the persons is temporarily working overseas or is in gaol.

- (4) For paragraph 10A (3) (b) of the Act, 2 persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy the other requirements set out in subsection 10A (1) of the Act; and
  - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a disability.
- (5) For paragraph 10A (3) (b) of the Act, 2 persons do not have an interdependency relationship if 1 of them provides domestic support and personal care to the other:
- (a) under an employment contract or a contract for services; or
  - (b) on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.
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