

# CHAPTER 4

## INTERDEPENDENT RELATIONSHIPS

4.1 This chapter explores the issues concerning interdependent relationships, including:

- legal recognition of interdependent relationships in Commonwealth superannuation laws;
- coverage of interdependent relationships; and
- terms of reference for the inquiry.

### **Legal recognition of interdependent relationships in Commonwealth superannuation laws**

4.2 Prior to 1 July 2004, the *Superannuation Industry (Supervision) Act 1993* (SIS Act) defined 'dependant', in relation to a person, as the 'spouse and any child of the person'. 'Spouse' included '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'. 'Child' included 'an adopted child, a step-child or an ex-nuptial child of the person'.<sup>1</sup>

4.3 Accordingly, same-sex partners could not receive death benefits or related tax benefits direct from superannuation funds. Instead, a surviving same-sex partner had to establish a claim as a financial dependant, and entitlements paid to financial dependants were received not from the fund but the estate of the former scheme members.

4.4 The disadvantages of receiving payments from a deceased estate rather than a superannuation fund were highlighted by Mr Andrew Charaneka from the Law Council of Australia:

That then raises issues in terms of timing, contest and whether the entire benefit would be made available to the survivor if, for example, the deceased person had certain debts owing at the time of death that would be accounted for from that superannuation death benefit distribution.<sup>2</sup>

4.5 The enactment of the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* extended the definition of 'dependant' to include, in

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1 Section 10 of the *Superannuation Industry (Supervision) Act 1993*

2 Mr Andrew Charaneka, Law Council of Australia, *Committee Hansard*, Sydney, 5 August 2008, pp 33-34. Also, see Ms Kate Temby, HREOC, *Committee Hansard*, Melbourne, 6 August 2008, pp 28-29.

relation to a person, 'any person with whom the person has an interdependency relationship'.<sup>3</sup> The circumstances in which two persons will be deemed to have an 'interdependency relationship' were also described in the legislation, that is, if:

- they have a close personal relationship;
- they live together;
- one or each of them provides the other with financial support; and
- one or each of them provides the other with domestic support and personal care.<sup>4</sup>

4.6 The introduction of the interdependency provisions enabled surviving same-sex partners to access death benefit distributions (and related tax benefits) direct from superannuation funds.

4.7 However, as pointed out by Associate Professor Miranda Stewart and others, the SIS Act provisions are not mandatory for private sector superannuation funds:

...the SIS Act regulates private superannuation funds that are administered under superannuation trust deeds, as well as providing definitions to which the various Commonwealth superannuation funds refer. The SIS regulatory regime is generally permissive (except for its prudential requirements on funds). Thus, this amendment, while enabling recognition of the partner of a private superannuation fund member, does not mandate such recognition.<sup>5</sup>

4.8 While many private superannuation fund trust deeds incorporate the definitions contained in the SIS Act, an uncertain number of private superannuation fund trust deeds do not. Mr Ross Clare from the Association of Superannuation Funds of Australia told the committee:

Certainly the bulk of funds would not pick up the definitions automatically. A significant minority would require amendment of trust deeds to pick it up. We have certainly seen indications of a willingness to do that.<sup>6</sup>

4.9 The committee notes therefore that same-sex partners are currently categorised as dependants under the interdependency provisions, a position different to that of opposite-sex de facto partners, and that classification as an 'interdependent'

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3 Schedule 2 Item 3 of the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*

4 Section 10A of the Superannuation Industry (Supervision) Act 1993

5 Associate Professor Miranda Stewart, *Submission 37*, pp 3-4. Also, see Association of Superannuation Funds of Australia, *Submission 28*, p. 1.

6 Mr Ross Clare, Association of Superannuation Funds of Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 25. The Government hopes that the passage of the Bill will encourage private superannuation funds to incorporate the definitions contained in the SIS Act: see Senator the Hon. John Faulkner, Special Minister for State, *Senate Hansard*, 16 June 2008, p. 2225.

requires a person to first fulfil certain criteria. However, as discussed later in this chapter, fulfilling these criteria imposes a more difficult requirement on same-sex couples than for opposite-sex couples, and is thus discriminatory.

### **Coverage of interdependent relationships**

4.10 The issue of discrimination was also raised in the House of Representatives during the second reading debates by the Hon. Dr Brendan Nelson MP, the then Leader of the Opposition. However, Dr Nelson was concerned with discrimination between same-sex couples and other 'permanent domestic non-married relationships'.

In pursuing law reform in this area we must be very careful to avoid the trap of creating new inequalities by according economic recognition to the status of some types of relationships but leaving others unrecognised. This bill opens the door on the whole question of the proper treatment of all kinds of interdependent relationships outside marriage.

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There is, in the opposition's view, a strong argument for giving those relationships as much recognition and respect as we give to same-sex relationships. In our view, just as same-sex couples should not be discriminated against, so too they should not be accorded a recognition and status denied to other permanent, domestic, non-marital relationships.<sup>7</sup>

4.11 The committee notes that intent of the Bill is to remove discrimination against same-sex couples and their children in Acts governing Commonwealth (defined benefit) superannuation schemes (and related Acts). The Bill does not provide for other dependants classified as 'interdependents'.

### **Terms of reference for the inquiry**

4.12 When the Senate referred the Bill, it set a number of terms of reference that it asked the committee to address, including matters related to 'interdependents'. The terms of reference are detailed in chapter 1, and are separately discussed below.

#### ***Existence, recognition and relative numbers of certain interdependents***

4.13 Term of reference (ii) requested the committee to inquire into empirical evidence from the states concerning the existence, recognition, and relative numbers of interdependent relationships, other than de facto (whether opposite-sex or same-sex) and marital relationships.<sup>8</sup>

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7 The Hon. Dr Brendan Nelson MP, Leader of the Opposition, *House Hansard*, 4 June 2008, p. 4480.

8 Parliament of the Commonwealth of Australia, *Journals of the Senate*, No. 16, 18 June 2008, pp 509-510.

4.14 Neither submissions nor evidence provided the committee with any empirical evidence concerning the existence, recognition and relative numbers of such interdependency relationships.

4.15 State and territory relationship registers appear to be one of the few, if not the only, means by which empirical evidence could be gleaned. However, as indicated, no submissions were received from state and territory governments, and the existing registers are not useful indicators of the numbers of interdependency relationships.

The Victorian register of relationships became operational very recently, the ACT register does not permit the registration of non-conjugal relationships (amongst other things specifically prohibiting registration of relationships between relatives), and the Tasmanian figures that have been published [100 only in the past five years] do not split between same sex couples and other registrable relationships.<sup>9</sup>

4.16 The Tasmanian Gay & Lesbian Rights Group pointed out that, to date, existing registration schemes might have been under utilised.

It is true that only a handful of caring relationships have been registered in Tasmania. In this regard we note that the Tasmanian Government has done nothing whatsoever to explain or promote the benefits of registration to caring partners.<sup>10</sup>

4.17 The committee notes that state and territory relationship registers provide an option for formal, legal recognition of relationships, but that there is not necessarily any consistency in terms of either availability or the types of relationships which can be registered.

### ***Interdependents' incorporation within 'couple relationship'***

4.18 Term of reference (iii) requested the committee to inquire into whether the definition of 'couple relationship' should be amended to incorporate other interdependent relationships and, if so, whether the definitions should be broadened to include those relationships or whether a separate definition is required.<sup>11</sup>

4.19 The Association of Superannuation Funds of Australia argued that the characteristics of interdependent relationships do not 'fit at all well' within the definition of 'couple relationship'.

A parent would find it unhelpful and perhaps even disturbing to have to establish that they are in a 'couple relationship' with an adult child still

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9 Association of Superannuation Funds of Australia Limited, *Submission 28*, p. 3.

10 Tasmanian Gay & Lesbian Rights Group, *Submission 32*, p. 4.

11 Parliament of the Commonwealth of Australia, Journals of the Senate, No. 16, 18 June 2008, pp 509-510.

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living at home even if the definition of couple relationship were expanded to cover such circumstances.<sup>12</sup>

4.20 HREOC similarly argued that the definition of 'couple relationship' is clear and intended to apply to couples only (opposite-sex or same-sex).

This definition should not be confused by broadening to include those who are in 'interdependent relationships'.<sup>13</sup>

4.21 The committee notes that these submissions address the term of reference, but that there were a considerable number of submitters and witnesses who rephrased the term of reference as 'should same-sex couples be included within the interdependency category' to which the overwhelming response was in the negative.

4.22 Foremost among these was HREOC which argued that, in three different areas of Commonwealth law, same-sex couples treated as interdependents have not been afforded treatment equal to that of either married or opposite-sex de facto couples.

4.23 HREOC stated that the three ways in which that categorisation continues to perpetuate discrimination are:

- the criteria for establishing an 'interdependency relationship' may be more difficult to establish than those for an opposite-sex married or de facto couple;
- the characterisation of same-sex relationships as 'interdependent relationships' suggests that there is something different about the quality of a same-sex relationship to that of an opposite-sex relationship; and
- the interdependency category may confer financial entitlements on people who are not in a couple.<sup>14</sup>

4.24 The first and second points were raised at the hearings and are discussed below.

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12 Association of Superannuation Funds of Australia, *Submission 28*, p. 4.

13 HREOC, *Submission 34*, p. 12.

14 HREOC, *Submission 34*, pp 10-11. HREOC suggested that its third point could be remedied by allowing only couples' registered relationships to evidence a 'couple relationship'. Also, see HREOC, 'Same-Sex: Same Entitlements: National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits', May 2007, pp 295-297; Kevin Boreham, *Submission 33*, p. 1; Gay and Lesbian Rights Lobby, *Submission 19*, pp 7-8; Victorian Gay & Lesbian Rights Lobby, *Submission 42*, p. 3; Dr John Challis, Superannuated Commonwealth Officers' Association, *Committee Hansard*, Canberra, 7 August 2008, p. 2; Mr Ross Clare, Association of Superannuation Funds of Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 23;

*The criteria*

4.25 In relation to establishing an 'interdependent relationship', witnesses told the committee that the criteria of 'financial support' and 'domestic and personal care' are difficult for same-sex couples to satisfy.

4.26 Mr Robert Hodge from the Association of Superannuation Funds of Australia submitted that same-sex couples have more of an emotional relationship than a financial relationship.

You can have two people who are financially independent—that is, they both have jobs and they are both able to look after themselves. So they are not actually directly providing financial support...which does not apply in other de facto relationships or marital relationships.<sup>15</sup>

4.27 Furthermore, 'most people do not record instances of providing domestic support and personal care',<sup>16</sup> and that criterion has been difficult for same-sex couples, and others, to evidence.

4.28 Associate Professor Stewart was also critical of the 'complex' set of interdependency requirements that currently apply to same-sex de facto couples. She stated that these requirements are onerous compared to the standard list of factors, which courts use to define opposite-sex de facto couples, and they are not appropriate.

In particular, the concept of domestic support and personal care is not a factor that exists in the general list of factors that courts use to consider couple relationships...The only legal interpretation of a phrase like that which has been done to date is actually in New South Wales law...The interpretation essentially required that it be care in the way that you would think of as a carer relationship—that is, someone who is seriously ill, requires physical assistance in dressing or whatever, or requires ongoing assistance with mental or physical health.<sup>17</sup>

4.29 Associate Professor Stewart added:

As a matter of policy and of legal clarity and certainty of administration, it is inappropriate to include same-sex couple relationships in the category of interdependency relationships...The two kinds of relationships are different; the latter concept is clearly targeted to a carer relationship and is well suited to that category only. Same-sex couple relationships are much more similar to opposite-sex couple relationships than they are to any form

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15 Mr Robert Hodge, Association of Superannuation Funds of Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 23.

16 Mr Robert Hodge, Association of Superannuation Funds of Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 23

17 Associate Professor Miranda Stewart, *Committee Hansard*, Melbourne, 6 August 2008, p. 4. Also, see Mr Rodney Croome, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, p. 37.

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of carer/companion, sibling or parent/child relationship, the categories intended to be covered by the interdependency category.<sup>18</sup>

4.30 The discriminatory nature of the interdependency relationship criteria was alluded to by the Australian Federation of AIDS Organisations when it described the criteria as intrusive and overly complicated.

Unlike heterosexual de-facto couples who must meet the criteria of a 'spouse', a same-sex partner can only be conferred a death benefit after superannuation trustees have considered numerous highly intrusive factors relating to their relationship.<sup>19</sup>

### *Characterisation*

4.31 HREOC's second criticism that categorisation of same-sex couples as 'interdependents' suggests there is a qualitative difference between opposite-sex and same-sex relationships was supported in several submissions and evidence.

4.32 The Australian Federation of AIDS Organisations submitted:

The relegation of same-sex couples to a separate category that includes other interdependent people who are not members of a 'couple' (eg. two elderly friends or siblings living with, and caring for, each other) is of itself highly problematic. Not only does it fail to represent the reality of same-sex couples, it is marginalising and stigmatising. It fails to acknowledge the depth and sincerity of same-sex relationships, and suggests there is something intrinsically different (or lesser) between opposite-sex and same-sex couple relationships.<sup>20</sup>

4.33 Dr John Challis from the Superannuated Commonwealth Officers' Association suggested that there is an ulterior motive for including same-sex relationships within the interdependency category.

It transforms them into some kind of sanitised asexual relationship. They are sort of whitewashed in a sense and made more respectable by calling them interdependent relationships instead of same-sex relationships.<sup>21</sup>

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18 Associate Professor Miranda Stewart, *Submission 37*, p. 3. Also, see Superannuated Commonwealth Officers' Association, *Submission 27*, pp 5-6; and Mr Graeme Innes AM, HREOC, *Committee Hansard*, Melbourne, 6 August 2008, p. 26.

19 Australian Federation of AIDS Organisations, *Submission 7*, p. 3.

20 Australian Federation of AIDS Organisations, *Submission 7*, pp 3-4. Also, see Hawkesbury Nepean Legal Centre, *Submission 2*, p. 3. Also, see Victorian Gay & Lesbian Rights Lobby, *Submission 42*, p. 2.

21 Dr John Challis, Superannuated Commonwealth Officers' Association, *Committee Hansard*, Canberra, 7 August 2008, p. 2. Also, see Tasmanian Gay & Lesbian Rights Group, *Submission 32*, p. 5; and Mr Kevin Boreham, *Submission 33*, p. 2.

4.34 Witnesses strongly rejected the notion that their support for the inclusion of same-sex couples in the category of de facto relationships, rather than that of interdependency, demeans, or considers inferior, other permanent, loving, domestic relationships.

4.35 HREOC asserted that same-sex relationships are not superior to other kinds of 'interdependency relationships': they are simply different and more akin to de facto relationships.

A marital couple relationship that is well recognised in the law, where de facto couples are recognised according to a set of well-established criteria, both in legislation and in the common law, is fundamentally different to the interdependent relationships that you are talking about, which would not meet all of those criteria that are well established to determine a de facto or marital couple relationship. Our view is that same-sex couples who would meet those criteria except for the fact that they are of the same sex should be recognised in the same way as other couple relationships.<sup>22</sup>

4.36 The NSW Gay and Lesbian Rights Lobby agreed, having no objection to recognising other 'interdependents', but disputing that same-sex couples were properly classified in a carer category.

What we do have an objection to is saying de facto heterosexual couples are different to same-sex de facto couples and putting the latter in a carer category as opposed to where they properly belong, which is akin to heterosexual de facto couples.<sup>23</sup>

4.37 Similarly, the Australian Coalition for Equality noted:

It has not been suggested that opposite sex de facto relationships be placed on the same legal footing with "two aunts living together".<sup>24</sup>

4.38 Mr Kevin Boreham, a legal academic based at the ANU College of Law, submitted that including same-sex relationships in a non-de facto category lacked the element of fairness.

It would be unfair for the Parliament, having denied same sex couples the status of married couples in the 2004 amendments to the Marriage Act, now to deny us even the recognition that a committed same sex relationship has a definable difference from other relationships of people living together.<sup>25</sup>

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22 Ms Kate Temby, HREOC, *Committee Hansard*, Melbourne, 6 August 2008, p. 27.

23 Mr Ghassan Kassisieh, NSW Gay and Lesbian Rights Lobby, *Committee Hansard*, Sydney, 5 August 2008, p. 5.

24 Australian Coalition for Equality, *Submission 30*, p. 6.

25 Mr Kevin Boreham, *Submission 33*, p. 1.



4.39 Reverend Elenie Poulos from Uniting Justice Australia discounted the issue of 'interdependency relationships', arguing that it is not at all relevant to the intent of the Bill.

The amendments are about couples who live in a specific kind of relationship. What we are concerned about is that people who live in exactly the same kind of relationship have, up to this point, been excluded from the same privileges by virtue of their gender alone.<sup>26</sup>

*Intependency relationship - a separate issue*

4.40 As indicated in preceding paragraphs, there was some discussion during the inquiry about interdependent relationships and whether discrimination against people in such relationships also needs to be addressed along with discrimination against same-sex couples. At the hearings for this inquiry, some witnesses remarked upon the need for a thorough examination of the position of interdependents.

4.41 Ms Emily Gray from the NSW Gay and Lesbian Rights Lobby told the committee:

There are many instances in this country where the living situation of sister or carer relationships do need to be recognised and protected, but we think that is a whole other area of law that would need a whole separate inquiry.<sup>27</sup>

4.42 Several submissions agreed with the Australian Christian Lobby and the Lutheran Church of Australia-Commission on Social and Bioethical Questions, respectively, that the issue was one of principle:

If the goal is to remove unfair discrimination, that should also be removed against those in other types of interdependent relationships.<sup>28</sup>

We believe strongly that any changes in our laws in this area should focus on the long-term domestic co-dependent relationship...All of the media attention appears to be focused on same-sex couples, and we are concerned that other domestic co-dependents should benefit equally from your legal reform. Surely it would be inappropriate for our government to be seen to discriminate against people because of a perceived lack of sexual activity.<sup>29</sup>

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26 Reverend Elenie Poulos, Uniting Justice Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 18. Also, see Mr Kevin Boreham, *Submission 33*, p. 1.

27 Ms Emily Gray, NSW Gay and Lesbian Rights Lobby, *Committee Hansard*, Sydney, 5 August 2008, p. 3. Also, see Mr Corey Irlam, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, pp 36 & 39.

28 Mr Lyle Shelton, Australian Christian Lobby, *Committee Hansard*, Canberra, 7 August 2008, pp 7 & 10. Also, see Mr Corey Irlam, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, p. 39; Australian Federation of AIDS Organisations, *Submission 7*, p. 4; and Presbyterian Church of Australia Church and Nation Committee, *Submission 10*, p. 1.

29 Lutheran Church of Australia-Commission on Social and Bioethical Questions, *Submission 5*, p. 1.

*Commonwealth recognition of registered relationships*

4.43 While there are outstanding issues regarding the legal recognition of interdependents, the Bill enhances the recognition of same-sex couples in Commonwealth superannuation laws with the addition of the registered relationships as an indicia of a 'couple relationship'.

4.44 In general, this amendment was welcomed with some submitters and witnesses suggesting ways in which the provisions could be further improved.

4.45 Associate Professor Stewart, for example, considered it appropriate for the Bill to amend paragraph 4AB(4)(ba) of the *Judges' Pension Act 1968* as relevant evidence of a 'couple relationship' in the affected Acts. But,

it would be more appropriate to have this general provision in the Acts Interpretation Act.<sup>30</sup>

4.46 Furthermore, Associate Professor Stewart recommended that the provision be extended, 'to enable the government to prescribe the law of another country under which registration is allowed, so as to assist in this evidentiary exercise.'<sup>31</sup>

4.47 However, the committee also received submissions critical of the amendment. The main reason for this criticism was that the provision would not advance the objectives of the Bill due to the inadequacies of the state and territory registration schemes.<sup>32</sup>

4.48 Mr Boreham considered the proposed provision unequal and inefficient, identifying the inconsistent availability of registration schemes as a problem.

Partners in a same sex relationship will be able to access the entitlements recognised in the Bill only if one partner lives in the ACT, Tasmania or Victoria, the only jurisdictions which have registration schemes for same sex partners. Other people in same sex relationships will have to wait until the Parliaments in their jurisdiction get around to establishing registration schemes.<sup>33</sup>

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30 Associate Professor Miranda Stewart, *Submission 37*, p. 4. Also, see Australian Coalition for Equality, *Submission 30*, p. 7.

31 Associate Professor Miranda Stewart, *Submission 37*, p. 4. Also, see Australian Coalition for Equality, *Submission 30*, p. 7. Also, see Mr Corey Irlam, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, p. 36.

32 There was also the criticism that de facto relationships are not registered relationships and should not be presumptively recognised as such: see Mr Rodney Croome, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, p. 37. Also, see Tasmanian Gay & Lesbian Rights Group, *Submission 32*, p. 7.

33 Mr Kevin Boreham, *Submission 33*, p. 2.

4.49 Mr Boreham suggested that the establishment of a national relationships registration scheme would be one way in which the Commonwealth could overcome part of the problem, but acknowledged that this would require a referral of power by the states and territories under section 51(xxxvii) of the Constitution.

It seems much more likely that the States would make such a referral promptly if requested, than that they will each assign the same high priority to drafting, consulting on and enacting consistent partnership registration schemes.<sup>34</sup>

4.50 The committee acknowledges that the recognition of registered relationships provided for in the Bill will have limited application, and notes that the General Law Reform Bill contains identical provisions.

4.51 There was some suggestion that registered relationships should be treated as a completely separate category to de facto relationships. Mr Rodney Croome from the Australian Coalition for Equality, for example, argued:

A registered relationship is neither a de facto relationship with a certificate nor marriage by another name. A registered relationship is a new kind of legally recognised relationship. When a couple, for instance, in Tasmania or the ACT, register their civil partnership or their significant relationship, what they are doing is choosing specifically to no longer to be considered a de facto couple.<sup>35</sup>

4.52 The committee refers to its report on the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008, where this issue is discussed in more detail.

### ***Fiscal implications of statutory recognition of other interdependent relationships***

4.53 Term of reference (iv) requested the committee to inquire into the fiscal implications of the statutory recognition of other interdependent relationships for superannuation and taxation purposes.<sup>36</sup>

4.54 Neither submissions nor evidence provided the committee with any precise information in this regard. Instead, submitters and witnesses limited themselves to general commentary on the likely fiscal implications in relation to 'permanent domestic non-married relationships', and the likely fiscal implications in relation to same-sex partners. Both types of commentary are discussed below.

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34 Mr Kevin Boreham, *Submission 33*, p. 2.

35 Mr Rodney Croome, Australian Coalition for Equality, *Committee Hansard*, Melbourne, 6 August 2008, p. 37. Also, see Tasmanian Gay & Lesbian Rights Group, *Submission 32*, p. 7.

36 Parliament of the Commonwealth of Australia, Journals of the Senate, No. 16, 18 June 2008, pp 509-510.

4.55 The Association of Superannuation Funds of Australia informed the committee that the main groups to benefit from interdependency provisions have been same-sex partners, and the parents of children who were living at home prior to their death.

Other possible beneficiaries...are likely to be very rare in actual practice.<sup>37</sup>

4.56 It was also pointed out that compulsory superannuation is a relatively recent invention, and accordingly, the majority of people do not have superannuation entitlements at the time of their death. The Association of Superannuation Funds of Australia stated that, 'in 2006-07 there were around 140,000 deaths in Australia but only 36,000 death benefits paid by superannuation funds.'<sup>38</sup>

4.57 The combination of these two factors, determinable beneficiaries and non-existent entitlements, led the Community and Public Sector Union and the Superannuated Commonwealth Officers' Association to respectively conclude that the cost of statutorily recognising interdependency relationships, other than same-sex relationships, is likely to be 'negligible,'<sup>39</sup> or at least relatively insignificant.<sup>40</sup>

4.58 The committee observes that almost 90 per cent of Australians are in private superannuation funds, which are not necessarily affected by the Bill, and that most superannuation funds are accumulation funds, which would have no cost implications under the proposed Bill.<sup>41</sup> For those Australians in Commonwealth superannuation (defined benefit) schemes, and private superannuation (defined benefit) funds which incorporate the provisions of the Bill, there will be cost implications.

4.59 The committee notes that the Bill does not intend to encompass 'interdependency relationships' however numerically or fiscally insignificant.

4.60 In the public sector, the Explanatory Memorandum provided the following information on the cost implications of the Bill.

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37 Association of Superannuation Funds of Australia, *Submission 28*, pp 2-3. For example, two siblings living together, or persons with a disability or illness.

38 Association of Superannuation Funds of Australia, *Submission 28*, p. 2.

39 Community and Public Sector Union, *Submission 1a*, p. 7.

40 Superannuated Commonwealth Officers' Association, *Submission 27*, Attachment B, p. 6.

41 Association of Superannuation Funds of Australia, *Submission 28*, p. 2. Also, see Mr Ross Clare, Association of Superannuation Funds of Australia, *Committee Hansard*, Sydney, 5 August 2008, p. 26. Also, see Ms Kate Temby, HREOC, *Committee Hansard*, Melbourne, 6 August 2008, p. 29.

**Table 1: Approximate increase in unfunded liability**

	(\$ million)
Schemes administered by the Department of Finance and Deregulation	81.5
Schemes administered by the Department of Defence	30.0
Schemes administered by the Attorney-General's Department	1.0

**Source:** *Explanatory Memorandum, p. 3.*

4.61 The Explanatory Memorandum also provided information regarding the four year financial impact across various departments and agencies, noting that these will be ongoing.<sup>42</sup>

4.62 The committee received no further information regarding the fiscal implications of the statutory recognition of same-sex relationships in Commonwealth superannuation laws.

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42 Explanatory Memorandum, p. 2.