

# Interdependency relationship: not catch-all to be a dependant

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- Nowadays application of the provisions has been expanded to broader types of relationships which satisfy the requirements

When a member passes away, their superannuation death benefit is provided to their dependants who were receiving financial support and might reasonably have expected to continue to receive financial support from the member, had the member not died.

Unlike estates where anyone can inherit, not everyone can be considered a death benefit dependant in superannuation. The death benefit dependants are, in relation to the member, the spouse, children less than 18 years of age, any person with whom the member has an interdependency relationship just before they died and any person who was their dependant just before they died.

Two persons (whether or not related by family) have an interdependency relationship 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.

When the interdependency relationship provisions were introduced, the lawmakers contemplated relationships between same-sex partners. Nowadays the application of the provisions has been expanded to broader types of relationships which satisfy the requirements above.

## Close personal relationship

Indicators of a close personal relationship may include:

- duration of the relationship
- whether or not a sexual relationship exists
- ownership, use and acquisition of property
- degree of mutual commitment to a shared life
- care and support of children
- reputation and public aspects of the relationship (such as whether the relationship is publicly acknowledged)
- degree of emotional support

- extent to which the relationship is one of mere convenience
- any evidence suggesting that the parties intend the relationship to be permanent

These indicators do not form an exclusive list, nor are any of them a requirement for a close personal relationship to exist. Nevertheless the threshold for proving close personal relationship is high even between family members:

- the “duration of the relationship” between the parents and children did not of itself point to an interdependency relationship (*TBCL v Commissioner of Taxation [2016] AATA 264*);
- there was no mutual commitment to a shared life, although the mother of the deceased member took care of the deceased member after the latter’s accident, as the deceased member intended to live independently after recovering from his accident (*D17-18\160 (6 March 2018)*);
- the stepfather who reduced his work hours to support the deceased member and to be present when the latter needed him did not satisfy the requirement that their relationship had the commitment and support necessary for an interdependency relationship (*D18-19\041 [2018] SCTA 180 (23 September 2018)*).

### Living together

To “live together” in a “relationship”, there needs to be some degree of continuity or permanency, including whether the parties intend the relationship to be permanent. These can be inferred from circumstances, including a pattern of behaviour, over a period of time extending beyond the immediate temporality with the death (*Williams v IS Industry Fund Pty Ltd [2016] FCA 524*).

Length of time is not the only determining factor if parties were living together. In *D17-18\165 [2018] SCTA 68 (8 March 2018)*, the claimed cousin qualified as a dependant of the deceased member even though they had been living together for at least 3 months prior to the member’s death as the claimed cousin was partially dependent on the deceased member prior to the latter’s death. However in *D17-18\160 (6 March 2018)*, the mother was not considered a dependant of her son who is the deceased member even though they were living together. Their living arrangement was one of independence for both parties and not one normally associated with an interdependency relationship, immediately before the deceased member died.

Living together immediately prior to the member’s death is generally a requirement to be considered an interdependency relationship. In *D19-20\133 [2020] SCTA 255 (2 March 2020)*, the claimed spouse was not taken to be a dependant of the deceased member as they had maintained separate houses, in different cities (well in excess of a thousand kilometres apart) for at least 3 years before the member’s death. But in case *610554*, the fiancée was found to be a dependant of the member even though they were no longer living together at the time of death of the member as the fiancée moved out of the house due to the member’s drug-fuelled abuse.

In some instances, living together is not required such as when two persons were temporarily living apart (e.g. one of the persons is temporarily working overseas or is in gaol) or either or both of them suffer from a disability (*Reg 1.04 AAAA (3) and (4) of Superannuation Industry (Supervision) Regulations 1994 (“SISR”)*).

### **Providing the other with financial support**

Financial support should not be minor or infrequent.

In *ATO ID 2005/143*, an interdependency relationship was seen to exist between an adult son and his mother when the son lived with his mother and made financial contributions towards the payment of grocery, electricity, telephone and mortgage bills.

In *D17-18\165 [2018] SCTA 68 (8 March 2018)*, a claimed cousin was considered to be partially dependent on the deceased member prior to the latter's death. They were not working and in receipt of the pension and shared living expenses including rent, utilities, food and outgoings. Without the pooling of finances each would have faced difficulties with accommodation and living expenses.

In case *610554*, a fiancée was held to be at least partially financially dependant on the member at the latter's death. They were engaged to be married, purchased real estate together in joint names and jointly borrowed most of the price. Since the member's death, the fiancée had struggled to meet the loan repayments without the member's contribution.

### **Providing domestic support and personal care**

To meet these criteria both domestic support and personal care of a frequent and ongoing nature must be provided (*D19-20\133 [2020] SCTA 255 (2 March 2020)*).

Domestic support can take the form of preparing meals, doing laundry, cleaning, mowing the lawn and gardening.

Personal care should amount to "significant care" provided to a deceased member who is unwell or suffering emotionally. Hence, love, care, affection and psychological assistance provided between the parents and the son were insufficient to indicate that the parents and their son provided each other with "personal care" (*TBCL v Commissioner of Taxation [2016] AATA 264*).

Even without domestic support and personal care, two persons can still be considered to be in an interdependency relationship if 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 (*Reg 1.04AAAA 2 of SISR*).

No interdependency relationship exists if a person provides domestic support and personal care to the deceased member under an employment contract or a contract for services; or on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation. Aged care workers are therefore not considered dependants of the deceased member (*Reg 1.04 AAAA (5) of SISR*).

**Key takeaway**

Although an interdependency relationship is the last resort for a person to qualify as a dependant of the deceased member, the person claiming the interdependency relationship still has the burden to prove their relationship exists. There is no hard and fast rule in determining the existence of an interdependency relationship between two persons as it depends heavily on their overall circumstances which are usually not at all fours with existing precedents. Evidence such as documents and testimonies must be gathered, thoroughly explained and presented to prove such relationship exists.

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