



## *Changes to the treatment of same sex couples, de facto relationships and their children*

### **The Federal Government has legislated to provide recognition for same sex couples and their children.**

#### **What has changed?**

The Federal Government has legislated to provide recognition for same sex partners and their children. In total 68 different Commonwealth laws have been amended to achieve recognition of same sex relationships and their children, as well as extending the rights available to opposite sex de facto couples.

Some of the key areas of change include superannuation, family law, social security and taxation. For further information on how these changes may impact you please read the information below and also speak with your ANZ Financial Planner.

The definitions of several concepts have also changed. Below we provide some of the amended definitions.

Some of these changes are already in effect while others come into effect on 1 July 2009.

#### **What are the changes to superannuation?**

If you are in a same sex relationship, the primary areas of change that may apply to you are:

- > death benefits and contributions
- > small superannuation funds
- > tax on superannuation death benefits
- > tax on Total and Permanent Disablement (TPD) insurance proceeds.

#### **Death benefits and contributions – in effect since July 2008**

The new laws now recognise same sex partners and their children as dependants for death benefit purposes. Same sex couples may now also have access to superannuation contributions splitting, spouse contributions, anti-detriment payments, reversionary pensions and more.

#### **What is an anti-detriment payment?**

An anti-detriment payment is an amount paid by a superannuation fund in the event of the death of a member as compensation for the contributions tax paid by the deceased member. An anti-detriment payment is only available on the payment of a lump sum death benefit and notionally represents the amount that would have been included in the death benefit had there been no tax on the relevant contributions.

Defined benefit schemes, such as the Federal Government's Commonwealth Superannuation Scheme, may now be able to pay reversionary pensions to same sex partners.

Also, the children of same sex couples may now be recognised and may gain access to strategies involving child death benefit pensions (subject to usual restrictions) and anti-detriment payments.

#### **Small superannuation funds – in effect since 4 December 2008**

A person's same sex partner and their partner's children may now be included as the person's relatives. This could have practical implications for self-managed superannuation fund and small Australian Prudential Regulation Authority fund transactions. The fund is no longer able to loan money to, or acquire an insurance policy from, a same sex partner or their partner's children.

### **Tax on superannuation death benefits – in effect since 1 July 2008**

A surviving member of a same sex couple may now be treated as a death benefit dependant for the taxation of superannuation benefits. This may qualify them for tax-free status on superannuation lump sum death benefits.

Children of a same sex family may also qualify for tax-free status on superannuation lump sum death benefits if they are under age 18 or otherwise qualify as a 'financial dependant'.

They may also be able to establish child death benefit pensions where one or more of the following are met in relation to the child:

- > they are under age 18
- > they were financially dependent on the deceased and are at least age 18 and under 25
- > they have a qualifying disability.

### **Tax on Total and Permanent Disablement insurance proceeds – in effect since 1 July 2008**

The law exempts a life insured and their relatives from Capital Gains Tax (CGT) on Total and Permanent Disablement (TPD) proceeds they receive. This means the life insured's same sex partner, or child of their same sex partner, may now receive TPD proceeds without incurring a CGT liability.

## **How might these changes affect you?**

If you are in a same sex relationship, the law may now enable you:

- > to nominate your partner or your partner's children as a dependant for death benefit payment purposes. In the event of your death this payment will also qualify for tax free status on superannuation lump sum death benefits if your partner's children are under age 18.
- > to elect your partner's children to receive a child death benefit pension (subject to usual restrictions).
- > to revert your pension to your partner in the event of your death (reversionary pension)\*
- > to make superannuation contributions on behalf of your partner (Spouse Contributions)\*
- > to split your superannuation contributions (tax deductible Personal and Employer) with your partner\*
- > and your same sex partner and your partner's children to be exempt from paying CGT on TPD proceeds that an insured life receives.

\*Please seek financial advice to ensure that these financial planning strategies are suitable for you and your partner.

## **What do you need to do?**

Please speak with your ANZ Financial Planner if you feel that any of these legislative changes may impact you. Your ANZ Financial Planner is best placed to consider your personal circumstances in light of these changes to legislation.

If you are in a same sex or opposite sex relationship and wish to update your superannuation beneficiary details, you will need to complete a 'Nomination of Beneficiary Form – binding and non-binding'.

You can obtain a copy of this form from your ANZ Financial Planner.

## **Changes to key concepts**

The definitions of several concepts have also changed, as outlined below:

**Spouse** – now includes a person who is the de facto partner of another, irrespective of whether the persons are of the same or different sexes.

**Couple relationship** – is effectively a de facto relationship. A couple relationship exists under the same circumstances as a de facto relationship i.e. the duration of the relationship, the nature and extent of their common residence etc. (According to usual legal conditions).

**Child** – a child in respect of a person is now defined as:

- > their biological child (nuptial or ex-nuptial)
- > their step-child (with the exception of family law where a person's step-child is generally not regarded as their child)
- > their spouse's adopted child where the adoption took place with the person's consent (i.e. the person has not adopted the child but has consented to their spouse adopting the child)
- > a child born under surrogacy arrangements where a court has made an order under State or Territory law to regard them as the person's child
- > a child born to the person or their spouse by use of artificial conception procedures

**Relative** – a relative of a person is now defined as:

- > their spouse
- > their parent, grandparent, brother, sister, uncle, aunt, nephew, niece, adopted child and lineal descendant
- > their spouse's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, adopted child and lineal descendant

This new broader definition of relative captures same sex partners and their relatives for the first time.

**Family relationship** – a relationship between couples, and relationships involving children. The determination of family relationships is critical for the calculation of certain benefits and charges such as family tax benefits, Medicare levy surcharge and the baby bonus. To assist in the identification of a family relationship, a 'tracing rule' has been developed that has two key parts:

- > The first part recognises couples (of same or opposite sex) to be a family group.
- > The second part recognises the child of one partner in the family to be the child of the other partner in that relationship.

## **Any questions?**

For details on changes to family law, social security and taxation or if you have any questions or would like further information, please:

- > speak with your ANZ Financial Planner
- > email us at [customer@ing.com.au](mailto:customer@ing.com.au) or [anz.investments@ing.com.au](mailto:anz.investments@ing.com.au) for ANZ OneAnswer
- > call Customer Services on 13 38 63 weekdays 8am to 8pm (Sydney time).

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