Did you know?

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Same-sex couples and life insurance

In late November 2008 a number of same-sex reforms were passed by the Australian Parliament. These reforms amended a raft of existing legislation – relating to superannuation, taxation, family law, social security, life insurance and other areas – to provide recognition and more equality for same-sex couples and their children. In this article we will look specifically at how this legislation affects life insurance benefits.

Superannuation death benefits

The Superannuation Industry (Supervision) Act 1993 (SIS Act) has been amended to provide equal treatment for same-sex de facto couples and their children and is largely back-dated with effect from 1 July 2008.

The new definition of **'spouse'** now includes *'another person (whether of the same sex or a different sex) who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple'* (section 10, SIS Act). This means that same-sex partners will now automatically qualify as 'SIS dependants' under superannuation law.

The new definition of **'child'** now includes:

- a child of a person's spouse, which recognises children of a same-sex or opposite-sex de facto partner by a former relationship,
- a child as defined in family law, such as children born to a woman as the result of an artificial conception procedure while that woman was married to, or was a de factor partner of another person (whether of the same or a different sex), and
- children of a person because of a court order made under a State or Territory law that gives effect to a surrogacy agreement.

Same-sex de facto partners or children of either partner who are under the age of 18 will also receive the **death benefit tax concessions** (will become 'tax dependants') without having to prove interdependency or financial dependency. In other words, superannuation death benefits (including life insurance proceeds) will be provided tax-free to these persons.

Another amendment concerns the status of beneficiaries for so-called **anti-detriment payments**. From 1 July 2008, if a lump-sum benefit is paid to a same-sex de facto partner or child (of any age) of a same-sex relationship, the super fund may be able to claim a deduction to fund an anti-detriment payment. From 1 July 2009, a same-sex partner will be able to contribute to a partner's superannuation account as a 'spouse'. In addition, a same-sex partner may qualify for a spouse contribution tax offset of 18% for up to $3,000 of contributions (i.e. $540) per year.

Non-super insurance benefits

Ordinary term life insurance has historically provided more scope for same-sex couples to provide death benefits to their partners. This has been achieved primarily through the use of nominated beneficiaries under section 48A of the Insurance Contracts Act 1984, which allows the proceeds of term life policies to be paid to any individual, regardless of their relationship to the policy owner/life insured. Such payments are tax-free.

The same result is achieved if same-sex couples take out a term life policy when one of the partners is the original beneficial owner of the policy and the other is the life insured, thanks to the CGT exemption death and terminal illness payments (section 118-300 of the Income Tax Assessment Act 1997 (ITAA 97)).

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The payment of TPD and trauma proceeds, however, is not covered by the exemption under section 118-300. The only exemption available for TPD and trauma proceeds is the one under section 118-37 of ITAA 97 for:

a) 'compensation or damages you receive for any wrong or injury you suffer in your occupation; and
b) compensation or damages you receive for any wrong, injury or illness you or your relative suffers personally'.

The above definition of **relative** includes a person's spouse or de facto spouse, which currently does not include a same-sex de facto partner. From 1 July 2009, the definition of spouse will include the life insured's same sex partner or a child of the same sex partner, allowing them to receive TPD and trauma proceeds tax-free.

In addition, there have been changes to the Life Insurance Act 1995 with relation to same-sex couples. The **protection against creditors** contained in section 204 of the Act now also extends to the rights and interests of a same-sex de facto partner. Term life policy money paid under sections 211 and 212 of the Life Insurance Act, where there a single or multiple life policies not exceeding a total amount of $50,000 and payable to a deceased's legal personal representative, may now be paid to same-sex de facto partners without the need to go through probate or administration of the deceased estate.

As you can see, the legislative changes that have taken effect (or that will be implemented from 1 July 2009) will make it easier for advisers to provide more tax-effective strategies to a wider range of clients.

Summary

Proposed and current legislative changes to superannuation and taxation law will provide a more equal playing field for same-sex couples in a de facto relationship.

These changes will enable life insurance advisers to provide a wider range of clients with more tax-effective strategies with regard to life insurance, both inside and outside the superannuation environment.