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Mr Ryan Baxter,
Retirement Income Policy Division,
Department of Treasury
Level 6, 120 Collins Street
MELBOURNE VIC 3000

By email: Ryan.Baxter@treasury.gov.au

31 May 2019

RE: DISCUSSION PAPER ON SUPERANNUATION BINDING DEATH BENEFIT NOMINATIONS AND KINSHIP STRUCTURES

Dear Mr Baxter,

We thank you for your correspondence and welcome the opportunity to make a submission in relation to the need to reflect Aboriginal and Torres Strait Islander kinship structures in the rules governing Superannuation binding death benefit nominations. We note the particular problems faced by those who have been traditionally adopted and also welcome better recognition of family relations which extend beyond the traditional concepts of family in nuclear family structures.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

COMMENT

We support amendments to the law that would permit an Aboriginal or Torres Strait Islander person to make a binding death nomination in respect of their superannuation that reflects cultural kinship considerations.

The notions of kinship can vary between communities, but in terms of raising a child, the most obvious difference that can occur is that “father” encompasses not just the direct lineal father but also the brothers of the father, and later a special relationship for raising the child is often the mother’s brother who has parental responsibilities towards the child. The equivalent is true of mothers including the sisters of the mother and sometimes the sister of the father. Grandparents frequently take responsibility for and raise children who are not only directly descended from them but also who are part of larger blended families. Correspondingly the concept of a child needs to be expanded to reflect these family arrangements.

In consequence, a far broader definition of ‘dependant’ is required to properly accommodate the kinship structures in Aboriginal and Torres Strait Islander Communities.

With respect to the existing recognition of interdependent relationships, it does not encompass other significant relationships of interdependence such as those in households with multi-generational members. We would also invite consideration of a broader category of relative who could be nominated including brothers and sisters and cousin-brothers and cousin-sisters.

Finally with respect to the support provided to senior members of the household in multi-generational households, an adult should be able to nominate senior members of the household as beneficiaries. This is especially important for those employed in mining and other high risk occupations.

Traditional Adoptions

Traditional adoption practices are widespread throughout the Torres Strait and amongst Torres Strait Islander families on the mainland. They are long standing cultural practices which support and protect children, parents and families.

The current lack of formal recognition of traditional adoptions and child rearing practices means that considerable and unnecessary inequity and disadvantage are visited upon those whose family arrangements arise from traditional adoption. This includes succession and the ability to access superannuation. Rates of intestacy among the Torres Strait Islanders is anecdotally quite high and the *Succession Act 1981 (Qld)* does not provide for the situation of traditionally adopted children. Expanding the definition of “child” to include a child who has been recognised as traditionally adopted by the deceased would achieve equivalent status for someone who has been traditionally adopted.

We thank you for the opportunity to provide input at this initial stage and thank you for your careful consideration of these submissions.

Yours faithfully,

Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.