

Lack of nomination form prevents pension payout

by [Amanda Visser](#), 17 January 2013, 19:48



Muvhango Lukhaimane, deputy pension funds adjudicator. Picture: FINANCIAL MAIL

THE absence of a written nomination form has deprived the surviving member of a same-sex relationship of the pension of his partner.

Muvhango Lukhaimane, deputy pension funds adjudicator, has dismissed a complaint by the man against AECI Pension Fund for not receiving his partner's pension. They had been in a relationship since 1984.

It is not mandatory for a pension fund to update details of nominees every year, yet most pension funds and employers remind their members or workers to amend the details of their dependants or beneficiaries. If a fund does not receive an update, then the last one it received remains applicable. In this case, the partner who died was registered as single by the fund.

Ms Lukhaimane found that the trustees in this case were bound to do that which was contained in the rules of the fund.

In this instance, the rules stipulated that the surviving person "who was associated with the member in a customary union or a permanent same-sex life partnership and was nominated in writing to and accepted by the trustees" would be entitled to the pension of his or her spouse.

The surviving partner said in his complaint that the pension fund ought to have known about the relationship as both were members of the same fund and they shared the same postal address, which the fund had used for communication over the years.

Ms Lukhaimane said in this complaint the issue was the receipt of a spouse's pension, as opposed to the distribution of a death benefit. In the case of a death benefit, the overriding factor

would be whether the parties had been dependent on each other. In that instance, it would have been the fiduciary duty of the trustees to find the dependants of the person who died.

The AECI fund had requested — through a communiqué — that its members who were in same-sex relationships and those in customary unions submit details of their partners so the fund could provide for potential claims by spouses, Ms Lukhaimane said.

"The trustees of a fund have to act prudently to protect the interests of all members in a fund. In a defined benefit fund, where the benefits are promised beforehand, a fund has to be able to continuously ensure that it can cover its liabilities. One of the things that is done is to request that members update their marital status whenever necessary," she said.

If people are married and the fund has the details of the spouse, the pension is paid out whether the surviving spouse is nominated or not.

Norton Rose director Michelle David said the pension fund adjudicator was bound by the rules of a fund and had to make a finding on the information on the papers before her. "She is bound by the rules and as a creator of statute she does not have inherent powers outside the Pension Funds Act."

Ms David said the question remained how often a fund communicated with its members to remind them of their obligations to keep their information updated. The fiduciary duties of trustees go beyond a general contract between a member and a service provider.

"It is a very paternalistic responsibility," she said. "It requires a lot more from the board."