

WHAT SHOULD THE BOARD OF MANAGEMENT OF A PENSION FUND CONSIDER WHEN DEALING WITH DEATH CLAIMS INVOLVING SURVIVING COHABITANTS?

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Summary

This note argues that the Adjudicator's determination *Hlathi* should be welcomed by the pension funds industry because it clarifies the uncertain legal position that emerged in the wake of the judgment in *Volks*. It comments on the requirements in and implications of *Hlathi* for the pension funds industry and pension beneficiaries, and criticises the Adjudicator's determination as failing to expressly incorporate the emotional and intimate or sexual bond requirement in the new factual dependency test. It argues that while *Hlathi* appears to have reverted to the legal position that prevailed prior to *Van der Merwe*, the new test does not expressly incorporate the relevant requirement that a relationship of mutual dependence involves an emotional and intimate or sexual bond. As a result, the note is critical of this omission because it creates a potentially new uncertainty in the law, and calls on the current Adjudicator to clarify this matter.

Keywords: Pension Funds Act; pension fund member; death claims; factual dependants; mutual dependency; emotional and intimate or sexual bond; surviving cohabitants; spouse; dominant-servient test; factual dependency test.