

Dependency Percentages in Australia Revisited – Estimating Personal Consumption using Statistical Data

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INTRODUCTION

In undertaking an assessment of the loss of financial dependency suffered as a result of the wrongful death of an adult, the following basic methodology is ordinarily adopted:

- (i) Estimate the ongoing level of earnings that the deceased would have derived but for their death (ie. the deceased's notional earnings); and
- (ii) Deduct from the amount estimated at (i) above an allowance for the amount that the deceased would have spent upon themselves (ie. their personal consumption).

We note the Courts would appear to have adopted a number of different approaches¹ in order to estimate the level of expenditure the deceased spent on themselves. These approaches include (i) the "conventional" method²; (ii) the "dependency percentages" approach; and (iii) the actual expenditure approach.

Our preferred approach would be to estimate the personal consumption based on the deceased's actual expenditure prior to their death. In our opinion, this approach attempts to take account of the deceased's personal circumstances and whilst not perfect, provides a better indication of the deceased's personal consumption.

In our experience, in the absence of statements about the deceased's level of personal consumption many practitioners have attempted to estimate the loss of financial dependency using the "standard dependency percentages" approach as determined by Richard Cumpston and Hugh Sarjeant³ of Cumpston Sarjeant Pty Ltd and set out in Professor Luntz's *Assessment of Damages for Personal Injury and Death*.

In our opinion, in instances where no specific information / instructions are available as to the deceased's personal consumption then the statistical approach may be of assistance to the Court.

However, we have concerns about some of the assumptions adopted by in their calculation of the dependency percentages. In our opinion, the underlying statistical evidence utilised in the derivation of the standard dependency percentages does not support the percentages determined by Messrs Cumpston, Sarjeant and Thomson.

This paper prepares revised calculations using the latest available detailed household expenditure data (refer ABS Catalogue 6530.0) in order to estimate more precise "standard dependency percentages" which take account of different levels of income and detailed household expenditure.

¹ See *Halvorsen Boats Pty Ltd v Robinson* (1993) 31 NSWLR 1 and *French v QBE* [2011] QSC 105

² The conventional method is attempts to use average percentages to determine losses of dependency and has been predominantly used in the United Kingdom Courts. When there are no children it is assumed that 33% of after tax earnings are consumption, 33% is for the joint benefit and 33% is for spouse (dependency). Where there are children it is assumed 75% of earnings are losses of dependency.

³ We note that since the original publication, Messrs Hugh Sarjeant and Paul Thomson of Cumpston Sarjeant have updated those tables to take account of 2003-2004 data.

DEPENDENCY PERCENTAGES – WHAT DO THEY REPRESENT?

In our experience, many legal practitioners (and for that matter forensic accountants) simply adopt the “standard dependency percentages” without an understanding of what those percentages actually represent. In simple terms the rate of dependency is determined as follows:

<i>Total earnings of deceased</i>	<i>A</i>
<i>Less: Expenditure incurred solely on deceased</i>	<i>B</i>
<i>Amount made available to benefit of dependents (A-B)</i>	<i>C</i>
<i>% of dependency (C divided by A expressed as a %)</i>	<i>D</i>

By deduction, the difference between the percentage of dependency and 100% represents the expenditure solely on the deceased / the personal consumption of the deceased.

For example, a dependency percentage of 66% implies that savings in expenses (personal consumption) equal to 34% of available income will be made. On that basis, the assumed personal consumption for various levels of income is set out in the table below:

Income (before tax per year)	Income (after tax per week)	Personal Consumption (per week)
\$ 46,512	\$ 750	\$ 255
\$ 66,875	\$ 1,000	\$ 340
\$151,405	\$ 2,000	\$ 680

Table 1

In relation to those amounts, we are of the opinion it is necessary for practitioners to consider the reasonableness or otherwise of the assumed level of personal consumption in light of their instructions as to the lifestyle the deceased may have lead.

As an example, if the deceased had been working as a miner earning \$2,000 after tax per week and, as a component of the employment package they were provided with meals, then practitioners should question whether personal consumption of \$680 per week is reasonable (assuming consumption at a rate of 34%).

In our opinion, legal practitioners should also consider other items of expenditure and their impact on the standard percentages. Some significant items to consider may include:

Was the deceased a smoker, gambler or drinker? In this regard, we note the statistics assume that expenditure on those items equates to approximately \$27 per adult per week or approximately 2% of after tax income for an average household.

Did the deceased’s employer provide the deceased with a motor vehicle for personal use? In this regard, we note that given the sensitivity of motor vehicle expenditure (see below) the impact of personal consumption can be quite significant.

Having regard to the above, if the statistical approach was to be adopted then it may be appropriate for legal practitioners to make adjustments to the percentages⁴ in order to attempt to take account of the deceased's lifestyle.

THE EXISTING APPROACH TO DEPENDENCY PERCENTAGES

We note that the approach of Cumpston, Sarjeant and Thomson estimates the percentage of dependency of a surviving parent and children with reference to generalised household expenditure data produced by the Australian Bureau of Statistics (ABS).

In our opinion, whilst the use of this data may be of assistance in estimating personal consumption, the resulting dependency percentages calculated by our colleagues are based on a number of inappropriate assumptions that are likely to lead to an inaccurate assessment of the level of personal consumption. In this regard, we make the following observations about the underlying assumptions adopted by Messrs Sarjeant and Thomson.

Assumption 1 - A household consumes all of its disposable income.

The dependency percentages calculated by Messrs Sarjeant and Thomson do not allow for the possibility that a household saves any money (that is, they assume that all household income is consumed).

In our opinion, this is an inappropriate assumption. In this regard we note that ABS data lends support to the notion that as household income increases households savings also increase. Accordingly, undertaking calculations on the basis that a household consumes all of its income would appear to be inappropriate.

Assumption 2 - Directly variable expenditure.

The household expenditure data published by the ABS and relied upon by Cumpston, Sarjeant and Thomson in their calculations is grouped into generalised "categories". From this generalised expenditure data, Messrs Sarjeant and Thomson prepare their calculations assuming that certain categories of expenditure are directly variable (ie. the death of one adult will result in proportional savings).

The ABS also publish detailed household expenditure data. In our opinion, the more detailed household expenditure data suggests that some of the expenditure "categories" assumed by Cumpston, Sarjeant and Thomson to be directly variable are inappropriate. In particular, we note the following examples:

- (i) Included under "**Recreation**" are significant expenses for items including:
- Audio visual equipment such as televisions, satellite dishes, set top boxes etc; and
 - Animal expenses (pets).

In our opinion the aforementioned items of expenditure are fixed in nature and would not be saved as a result of the death of an adult.

⁴ We note such an approach would appear to have been adopted in the decision of *RTA v Cremona* [2001] NSWCA 338.

- (ii) Included under “**Transport Costs**” are significant costs associated with the purchase of a vehicle and vehicle registration and insurance.

In our opinion in the instance where only one motor vehicle was owned and operated the aforementioned items of expenditure are fixed in nature and would not be saved as a result of the death of a member of a household. Further consideration in relation to savings in respect of motor vehicles is detailed under the heading of “Sensitivity of Assumptions” in this paper.

- (iii) Included under the heading of “**Clothing and Footwear**” and “**Recreation**” are significant expenses for items including:

- Boys’ Clothing;
- Girls’ Clothing;
- Infants’ Clothing; and
- Toys.

In our opinion the aforementioned items of expenditure relate to children and would not be saved as a result of the death of an adult.

- (iv) Included under the heading of “**Miscellaneous Goods and Services**” are significant expenses for items including:

- Education fees – primary and secondary school;
- Donations;
- Payments in relation to rental properties; and
- Government fees.

In our opinion the aforementioned items of expenditure are fixed in nature and would not be saved as a result of the death of an adult.

- (v) Various other items of expense obviously include fixed (non-directly variable) components that have not been allowed for, for example:

- Holiday costs would not likely be reduced by 50% if one person as opposed to two travel (eg. travel by car would be unchanged, single rooms are not half the price of double rooms, etc); and
- Some economies of scale in relation to food and consumables are likely available but not allowed for.

Assumption 3 - Superannuation and Life Insurance

Amounts included under the heading of “**Superannuation & Life Insurance**” are assumed by Messrs Sarjeant and Thomson to be personal consumption relating predominantly to superannuation and annuities. In our opinion, these items are not in the nature of personal consumption expenditure but rather lead to the generation of a future asset. Whilst this may be saved as a result of the death of a party the corresponding asset will cease to be accumulated. In our opinion, these amounts should not be treated as personal consumption and are dealt with under the heading of “Asset Accumulating Expenditure” in this paper.

MOST RECENT STATISTICAL DATA

On 06 September 2011, the Australian Bureau of Statistics issued the Household Expenditure Survey 2009-2010 (ABS Catalogue 6530.0). In relation to the above, we note household expenditure is grouped together based on the following income quintiles:

Description	Weekly Income (Before Tax)	Annual Income (Before Tax)
Lowest Quintile	\$ 360	\$ 18,792
Second Quintile	\$ 780	\$ 40,716
Third Quintile	\$1,323	\$ 69,061
Fourth Quintile	\$2,032	\$106,070
Highest Quintile	\$3,942	\$205,772
All Households	\$1,688	\$ 88,114

Table 2

We acknowledge that the data relates to household expenditure in 2009 / 2010 and whilst labelled "detailed tables", it is in a summarised form and not the "micro data" upon which the statistics are produced.

We also note the following other issues in relation to the data:

- (i) The profile for persons within the lowest quintile would appear to be predominately comprised of single person households who are not employed and receive income primarily from government pensions and allowances. We would place little value on the data in estimating personal consumption in loss of financial dependency cases;
- (ii) The profile for persons within the second quintile would appear to be predominately comprised of households with couples with and without dependent children. On average, households within this quintile have 1 working adult and 1.5 dependent children, and receive income from both employment and government pensions and allowances;
- (iii) The profile for persons within the third quintile would appear to be predominately comprised of households with couples with dependent children. On average, households within this quintile have 1.5 working adults and 1.4 dependent children, and receive income primarily from employment;
- (iv) The profile for persons within the fourth quintile would appear to be predominately comprised of households with couples with and without dependent children. On average, households within this quintile have 2 working adults and 1 dependent child, and receive income primarily from employment;

- (v) The profile for persons within the fifth quintile would appear to be predominately comprised of households with couples without dependent children. On average, households within this quintile have 2 working adults and 0.7 dependent children, and receive income primarily from employment; and
- (vi) The data does not outline the number of motor vehicles owned and operated in each income quintile.

Any conclusions drawn from the available statistical data regarding dependency would appear to be most reliable when applied to households of a similar composition.

METHODOLOGY ADOPTED

General methodology adopted / allocation rules

On the basis that financial dependency is generally upon a parent / adult we have excluded expenditure which relates to children.

In undertaking our calculations we have assumed that household expenditure generally falls into the following categories:

- Divisible Expenditure;
- Semi-Divisible Expenditure;
- Non-Divisible Expenditure;
- Support for Others; and
- Asset Accumulating Expenditure.

We attach as **Appendix 1** a table which outlines the detailed expenditure classifications under each heading and our assumptions, but make the following general observations:

Divisible Expenditure

Divisible expenditure relates to expenses which are divisible amongst the household members.

In relation to expenditure ordinarily incurred by adults only (eg. tobacco, alcohol and gambling) we have assumed that expenses should be shared among the adult members of the household and do not relate to children.

We acknowledge that it is likely there may be economies of scale in relation to food and consumables which we have classified as divisible expenditure but are unable to ascertain the extent.

Semi-Divisible Expenditure

Semi-divisible expenditure relates to items which have both fixed and variable components. In our opinion, such expenditure is for the general benefit of the household but also a component of the expenditure could represent consumption of the deceased. For the purposes of our calculations we have assumed that half the expenditure is non-divisible and the other half is divisible.

Non-Divisible Expenditure and Support for Others

Non-divisible expenditure relates to items that are fixed in nature and would not be saved as a result of the death of a person. In the main, these are best represented by housing and occupancy costs but also include purchase costs for assets such as motor vehicles and expenditure which is support for others (eg. gifts or donations).

Asset Accumulating Expenditure

In our opinion it is important to acknowledge that some items of expenditure may be saved as a result of the death of an adult but in doing so the corresponding asset will cease to be accumulated (eg. personal superannuation contributions). In our opinion it is appropriate to treat this expenditure as non divisible.

CALCULATION OF REVISED DEPENDENCY PERCENTAGES / PERSONAL CONSUMPTION

Based on the methodology and classifications outlined above, we determined the dollar value of the expenditure which is directly attributable to, and would be saved in the absence of, one adult member of the household.

We have then divided this by the person's after tax weekly income in order to derive the personal consumption as a percentage of the after tax income. By calculating the deceased's personal consumption we are then able to ascertain the revised dependency percentage.

Standard Dependency Percentages

In summary, where the deceased was the sole earner of the family income our calculations are as follows:

2 parent families

	Weekly Income (b/t)	Number of Children					
		0	1	2	3	4	5
Lowest Quintile	\$ 360	66.2%	71.7%	75.4%	78.0%	80.0%	81.5%
Second Quintile	\$ 780	74.5%	78.6%	81.3%	83.3%	84.8%	85.9%
Third Quintile	\$1,323	75.3%	79.2%	81.8%	83.6%	85.0%	86.1%
Fourth Quintile	\$2,032	78.3%	81.7%	84.0%	85.7%	86.9%	87.9%
Highest Quintile	\$3,942	82.3%	85.0%	86.9%	88.2%	89.2%	89.9%
All Households	\$1,688	79.0%	82.3%	84.6%	86.1%	87.3%	88.2%

Table 3

1 parent families

	Weekly Income (b/t)	Number of Children				
		1	2	3	4	5
Lowest Quintile	\$ 360	50.9%	60.0%	65.5%	69.2%	71.8%
Second Quintile	\$ 780	62.7%	69.5%	73.6%	76.3%	78.3%
Third Quintile	\$1,323	63.6%	70.1%	74.0%	76.6%	78.4%
Fourth Quintile	\$2,032	68.1%	73.9%	77.3%	79.6%	81.3%
Highest Quintile	\$3,942	74.0%	78.5%	81.3%	83.1%	84.4%
All Households	\$1,688	69.2%	74.7%	78.0%	80.2%	81.8%

Table 4

Personal Consumption Percentages

As previously mentioned, the difference between the percentages detailed above and 100% represents the expenditure solely on the deceased / the personal consumption of the deceased.

In summary, where the deceased was the sole earner of the family income our calculations are as follows:

2 parent families

	Weekly Income (b/t)	Number of Children					
		0	1	2	3	4	5
Lowest Quintile	\$ 360	33.8%	28.3%	24.6%	22.0%	20.0%	18.5%
Second Quintile	\$ 780	25.5%	21.4%	18.7%	16.7%	15.2%	14.1%
Third Quintile	\$1,323	24.7%	20.8%	18.2%	16.4%	15.0%	13.9%
Fourth Quintile	\$2,032	21.7%	18.3%	16.0%	14.3%	13.1%	12.1%
Highest Quintile	\$3,942	17.7%	15.0%	13.1%	11.8%	10.8%	10.1%
All Households	\$1,688	21.0%	17.7%	15.4%	13.9%	12.7%	11.8%

Table 5

1 parent families

	Weekly Income (b/t)	Number of Children				
		1	2	3	4	5
Lowest Quintile	\$ 360	49.1%	40.0%	34.5%	30.8%	28.2%
Second Quintile	\$ 780	37.3%	30.5%	26.4%	23.7%	21.7%
Third Quintile	\$1,323	36.4%	29.9%	26.0%	23.4%	21.6%
Fourth Quintile	\$2,032	31.9%	26.1%	22.7%	20.4%	18.7%
Highest Quintile	\$3,942	26.0%	21.5%	18.7%	16.9%	15.6%
All Households	\$1,688	30.8%	25.3%	22.0%	19.8%	18.2%

Table 6

Two or Multiple Income Families

In undertaking an assessment where the family income comprises contributions from parties other than the deceased (ie. two or multiple income families), it is appropriate to adopt the “pooled income approach”⁵. The “pooled income approach” generally seeks to assess the loss of dependency as follows:

- (i) Determine the combined pool of family income.
- (ii) Determine the appropriate percentage of dependency.
- (iii) Apply the percentage determined at (ii) to the total pool.
- (iv) Deduct from the amount determined at (iii) the surviving spouse’s own income.

⁵ As adopted in *Halvorsen Boats Pty Ltd v Robinson* (1993) 31 NSWLR 1.

An example of the use of standard dependency percentages with joint incomes is as follows:

<i>Notional Earnings:</i>	<i>Deceased - \$1,000 after tax per week.</i>
	<i>Spouse - \$1,000 after tax per week.</i>
<i>Total Income Pool:</i>	<i>\$2,000 after tax per week.</i>
<i>Dependents:</i>	<i>Spouse only, no children.</i>
<i>Relevant dependency %:</i>	<i>75.3% to 78.3%⁶</i>
<i>Share of Pooled Income:</i>	<i>\$1,506 to \$1,566 after tax per week.</i>
<i>Deduct: Surviving Spouses income</i>	<i>\$1,000 after tax per week.</i>
<i>Loss of Dependency:</i>	<i>\$506 to \$566 after tax per week.</i>

Sensitivity of Assumptions

We note that our calculations are based on a series of assumptions. In our opinion, the most material assumption relates to motor vehicles. Our estimates of personal consumption are based on the assumption that the only savings in motor vehicle costs as a result of the death of the deceased would be a proportion of fuel costs and repairs and maintenance.

If it was assumed that additional savings did exist (eg. the household had one less vehicle following the death of the deceased), then we would estimate that personal consumption would increase by, on average, 6% of after tax income.

COMPARISON TO INTERNATIONAL STUDIES

By way of additional information, we note that in the United States and Canada very similar methodologies are utilised in the assessment of the loss of financial support suffered upon wrongful death.

The following table sets out our estimate⁷ of the levels of personal consumption for a two adult, one child household:

Study Authors	Country	Lowest Quintile	2nd Quintile	3rd Quintile	4th Quintile	Highest Quintile
Lee & Bossert	Australia	33.8%	25.5%	24.7%	21.7%	17.7%
Sarjeant & Thomson	Australia	31.8%	33.2%	33.3%	34.5%	34.8%
Brown	Canada	32.6%		decreasing to		15.4%
Ruble, Patton & Nelson	United States	41.9%		decreasing to		14.3%
Krueger	United States	34.5%		decreasing to		9.8%

Table 7

⁶ Based on the 3rd and 4th quintile of Table 3

⁷ The results of other studies are presented by income bands as opposed to quintiles and are therefore not directly comparable to the percentages we have calculated for each income quintile. However, we have attempted to ascertain the relevant personal consumption percentages for the highest and lowest income quintiles based on available income statistics for each country. It should be noted that as the consumption percentages are expressed on an after tax basis, the comparability between different countries is dependent on income tax brackets and rates and the results are also subject to issues relating to purchasing power.

From Table 7 above, it is apparent that the personal consumption percentages calculated from our analysis are, in trend terms, broadly in line with equivalent studies undertaken in Canada and the United States⁸. Specifically, the trend whereby personal consumption as a percentage of weekly income decreases as household income increases identified in our analysis is consistent with that determined in all studies other than that prepared by Messrs Sarjeant and Thomson.

ALLOWANCE FOR POST RETIREMENT CONSUMPTION

We note that Messrs Sarjeant and Thomson also suggest that the standard dependency percentage (for a 2 person household) should be applied to superannuation contributions. We disagree with this approach.

We note that the deceased may fund their and their spouse's retirement via a combination of the following sources:

- (i) A portion of the deceased's pre retirement income which was invested;
- (ii) Personal and employer sponsored superannuation contributions;
- (iii) The accumulation of other assets; and
- (iv) Possible age pension payments / part payments.

To the extent that a portion of the deceased's income was being used to fund their own retirement, it may be appropriate to make allowance for the savings in the deceased's personal consumption from the date of their retirement to their notional life expectancy. Obviously the level of consumption needs to be considered in light of the deceased's intended lifestyle during retirement.

From a mathematical perspective, the allowance for post retirement consumption would be determined as follows:

Description		Amount
Life Expectancy at normal retirement	A	xx years
Relevant % multiple of A Years	B	<u>xxx.xx</u>
Weekly Personal Consumption	C	<u>\$ xxx</u>
Present Value	$B \times C$	\$ xxx,xxx
Deferred Factor – Retirement age to present (y years)	D	<u>x.xxx</u>
Present Value of Savings	$B \times C \times D$	<u>\$ xx,xxx</u>

Table 8

CONCLUSION

We are of the opinion that personal consumption / dependency is best estimated by having regard to the deceased's actual personal expenditure. However, in instances where specific information / instructions in this regard are not available, the statistical approach for calculating the deceased's personal consumption may be of assistance to the Court.

⁸ As the consumption percentages are expressed on an after tax basis, the comparability between different countries is dependent on income tax brackets and rates. The results are also subject to issues relating to purchasing power.

However, we believe a more reliable estimate of the rate of personal consumption should be determined with reference to available detailed statistical data. Further, consideration should be given to the likely types of savings that would be obtained following the death of the deceased and, if necessary, making adjustments to the statistical percentages.

In our opinion, the percentages derived in this paper better represent the rates of personal consumption. Our findings demonstrate that personal consumption (as a percentage of household income) decreases as family size and income levels increase, which is consistent with our experience in relation to matters of this nature and findings of studies undertaken in Canada and United States.

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BROAD CATEGORIES OF EXPENDITURE

APPENDIX 1

DIVISIBLE

Food and non-alcoholic beverages, Alcoholic Beverages, Tobacco, Gambling – Adult Only, Clothing and Footwear – Adult Only, Mobile Telephone – Adult Only, Health Insurance, Medical Fees (GP's, Dental Optical etc), Medicines and Therapeutic Appliances, Licenses, Sports Equipment, Fees and Charges, Cultural Fees and Charges (eg. Cinemas, Concerts, Art Galleries, Excursions etc), Air Fares, Rail Fares, Bus Fares, Personal Care (eg. Toiletries, Cosmetics, Hair Cuts), Watches, Jewellery, Sunglasses, Glasses, Handbags, Wallets.

NON-DIVISIBLE

Housing Costs including Rent, Mortgage Payments, Rates, Repairs and Maintenance, Body Corporate, Domestic Fuel and Power Costs such as Electricity, Gas, Heating, Household Furniture and Floor Coverings, Blankets, Linen and Household Furnishings, Household Appliances, Glassware, Tableware, Cutlery and Household Utensils, Tools and Household Durables, Motor Vehicle Purchase, Motor Vehicle Registration, Insurance and Accessories, Audio Visual Equipment and Parts (eg TV's, Game Consoles, Speakers, Home Entertainment Systems), Pay TV Subscriptions, Internet Fees, Stationery, Holiday - Motels, Hotels, Caravan Parks, Costs Associated with Owning Animals.

SEMI DIVISIBLE

Motor Vehicle Fuel, Lubricants and Additives, Computer Games, Books, Magazines, Higher Education Expenses (University / TAFE).

SUPPORT FOR OTHERS

Children / Infants' Clothing and Footwear, Driving Lessons, Education fees – Primary and Secondary, Toys, Donations, Child Support.

ASSET ACCUMULATING EXPENDITURE

Payments for Rental Properties including, Rates, Land Tax, Insurance, Body Corporate, Life Insurance, Superannuation.