# Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008

# No. 134, 2008

## An Act to amend the law in relation to superannuation, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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# Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008

**No. 134, 2008**

## An Act to amend the law in relation to superannuation, and for related purposes

[*Assented to 4 December 2008*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008*.

## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 4 December 2008 |
| 2. Schedule 1 | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |
| 3. Schedule 2, Part 1 | The day on which this Act receives the Royal Assent. | 4 December 2008 |
| 3A. Schedule 2, Part 2 | At the same time as the provision(s) covered by table item 2. | |
| 3B. Schedule 2, Part 3 | The day on which this Act receives the Royal Assent. | 4 December 2008 |
| 3C. Schedule 3 | At the same time as the provision(s) covered by table item 2. | |
| 4. Schedule 4, Parts 1 and 2 | 1 July 2008. | 1 July 2008 |
| 4A. Schedule 4, Part 3 | The day on which this Act receives the Royal Assent. | 4 December 2008 |
| 5. Schedule 5 | At the same time as the provision(s) covered by table item 2. | |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Entitlements from 1 July 2008

(1) If:

(a) a person would have been entitled to one or more payments (the ***lost payments***) under an Act that is amended by Schedule 1, 2, 3 or 5 to this Act if the relevant Schedule had commenced on 1 July 2008; and

(b) because the Schedule did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and

(c) the person makes an application to the Finance Minister for one or more payments (the ***replacement payments***) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(2) If:

(a) a person would have been entitled to one or more payments (the ***lost payments***) under the *Military Superannuation and Benefits Act 1991* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and

(b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and

(c) the person makes an application to the Finance Minister for one or more payments (the ***replacement payments***) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(3) If:

(a) a person would have been entitled to one or more payments (the ***lost payments***) under the *Superannuation Act 1990* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and

(b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and

(c) the person makes an application to the Finance Minister for one or more payments (the ***replacement payments***) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(4) A determination by the Finance Minister under this subsection must:

(a) be in writing; and

(b) set out:

(i) the amount and timing of the replacement payments; or

(ii) the method of determining the amount and timing of the replacement payments.

(5) An application must be in writing in the form approved by the Finance Minister.

(6) To avoid doubt, a determination of the Finance Minister that a person is entitled to one or more replacement payments does not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to this Act, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.

(7) Replacement payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

(8) A determination made under this section is not a legislative instrument.

(9) In this section:

***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

# Schedule 1—Finance and Deregulation amendments

## *Parliamentary Contributory Superannuation Act 1948*

### 1 Subsection 4(1) (definition of *former spouse*)

After "marital", insert "or couple".

### 2 Subsection 4(1)

Insert:

> ***marital or couple relationship*** has the meaning given by section 4B.

### 3 Subsection 4(1)

Insert:

> ***partner***: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

### 4 Subsection 4(1)

Insert:

> ***spouse*** has a meaning affected by section 4C.

### 5 Subsection 4B(1)

After "***marital***", insert "***or couple***".

Note: The heading to section 4B is replaced by the heading "**Marital or couple relationship**".

### 6 Subsection 4B(1)

After "husband or wife", insert "or partner".

### 7 Subsection 4B(2)

After "husband or wife" (wherever occurring), insert "or partner".

### 8 Subsection 4B(3)

After “marital”, insert “or couple”.

## 9 After paragraph 4B(4)(b)

Insert:

(ba) the persons’ relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

## 10 At the end of paragraph 4B(4)(c)

Add:

or (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

## 11 Subsections 4C(2) and (3)

After “marital” (wherever occurring), insert “or couple”.

## 12 Paragraph 19AA(2)(d)

Repeal the paragraph, substitute:

(d) was not or is not survived by a person with whom the deceased person had had a marital or couple relationship and who is:

(i) the natural or adoptive parent of that child; or

(ii) the parent of that child because the child is a child of the person within the meaning of the *Family Law Act 1975*;

## 13 Paragraph 19AA(2B)(a)

Repeal the paragraph, substitute:

(a) the child:

(i) was born while the deceased person was having a marital or couple relationship with another person; or

(ii) was adopted by the deceased person or the deceased person with that other person during the duration of that relationship; or

(iii) was a child of the deceased person, and that other person, within the meaning of the *Family Law Act 1975*; and

## 14 Subsection 19AA(5) (definition of *child*)

Repeal the definition, substitute:

***child***, in relation to a person, means a child of the person, including:

(a) an adopted child or an ex-nuptial child of the person; and

(b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

### 15 Application of amendments of the *Parliamentary Contributory Superannuation Act 1948*

The amendments of the *Parliamentary Contributory Superannuation Act 1948* made by this Schedule apply in relation to a benefit payable under that Act in respect of a person who dies on or after the commencement of this Schedule if the deceased person:

(a) was entitled to a parliamentary allowance at the time of his or her death; or

(b) was entitled to a retiring allowance (whether or not the retiring allowance was immediately payable) at the time of his or her death.

## *Superannuation Act 1922*

### 16 After subsection 48AB(4)

Insert:

(4A) If a pensioner or contributor died before the day on which Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced:

(a) the amendments of the *Superannuation Act 1976* made by that Schedule do not apply in relation to any pension that, apart from this subsection, may be granted under this section in respect of the deceased pensioner or contributor; and

(b) the *Superannuation Act 1976* as in force immediately before the commencement of Schedule 1 continues to apply in relation to any pension granted or that may be granted under this section in respect of the deceased pensioner or contributor.

### 17 At the end of section 48ABA

Add:

(9) For the purposes of applying the definitions of ***eligible child*** and ***spouse*** in subsection (1) in relation to a deceased pensioner who died before the day on which Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced:

(a) the amendments of the *Superannuation Act 1976* made by that Schedule do not apply; and

(b) the *Superannuation Act 1976* as in force immediately before the commencement of that Schedule continues to apply.

## *Superannuation Act 1976*

### 18 Subsection 3(1) (definition of *child*)

Repeal the definition, substitute:

***child***, in relation to a person who has died, means:

(a) a child of the person, including:

(i) an adopted child, an ex-nuptial child, a foster child, a stepchild or a ward, of the person; and

(ii) someone who is a child of the person within the meaning of the *Family Law Act 1975*; or

(b) a child of a spouse of the person, including:

(i) an adopted child, an ex-nuptial child, a foster child, a stepchild or a ward, of the spouse; and

(ii) someone who is a child of the spouse within the meaning of the *Family Law Act 1975*.

### 19 Subsection 3(1) (definition of *late short-term marital relationship*)

Repeal the definition (including the note).

### 20 Subsection 3(1)

Insert:

***late short-term marital or couple relationship***, in relation to a deceased retirement pensioner, means a marital or couple relationship between the pensioner and his or her spouse that began:

(a) less than 3 years before the pensioner's death; and

(b) after the pensioner became a retirement pensioner and had reached the age of 60 years.

## 21 Subsection 3(1)

Insert:

***marital or couple relationship*** has the meaning given by section 8A.

## 22 Subsection 3(1)

Insert:

***partner***: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

## 23 Subsection 3(1)

Insert:

***spouse*** has a meaning affected by section 8B.

## 24 Subsection 3(1)

Insert:

***stepchild***: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***stepchild*** of the person, if he or she would be the person's stepchild except that the person is not legally married to the partner.

## 25 Subsection 8A(1)

After "***marital***", insert "***or couple***".

Note: The heading to section 8A is replaced by the heading "**Marital or couple relationship**".

## 26 Subsection 8A(1)

After "husband or wife", insert "or partner".

## 27 Subsection 8A(2)

After "husband or wife" (wherever occurring), insert "or partner".

## 28 Subsection 8A(3)

After “marital”, insert “or couple”.

## 29 After paragraph 8A(4)(b)

Insert:

(ba) the persons’ relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

## 30 At the end of paragraph 8A(4)(c)

Add:

or (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

## 31 Subsections 8B(2) and (3)

After “marital” (wherever occurring), insert “or couple”.

## 32 Subsections 94(2A), 95(1B) and 96(2A)

After “marital”, insert “or couple”.

## 33 Subsection 96AB(2) (paragraph (a) of the definition of *relevant period*)

After “marital”, insert “or couple”.

## 34 Paragraph 96BA(1)(a)

After “marital”, insert “or couple”.

## 35 Subsection 96BA(2) (paragraph (a) of the definition of *relevant period*)

After “marital”, insert “or couple”.

## 36 Subsection 108A(1)

After “marital”, insert “or couple”.

Note: The heading to section 108A is altered by inserting “**or couple**” after “**marital**”.

## 37 Subsection 108A(5) (subparagraph (a)(i) of the definition of *relevant period*)

After “marital”, insert “or couple”.

### 38 Paragraph 109AB(2)(c)

After “marital”, insert “or couple”.

### 39 Paragraphs 109AB(3B)(b), (3C)(a) and (b), (5)(c), (5A)(b), (5B)(a) and (b)

After “marital”, insert “or couple”.

### 40 Paragraphs 110(4)(c) and (d) and (5B)(a)

After “marital”, insert “or couple”.

### 41 Subparagraph 110(5B)(b)(i)

After “marital”, insert “or couple”.

### 42 After subparagraph 110(5B)(b)(i)

Insert:

(ia) was not a child of the spouse, and the pensioner, within the meaning of the *Family Law Act 1975*; or

### 43 Subparagraphs 110(5B)(b)(ii) and (iii)

After “marital”, insert “or couple”.

### 44 Paragraph 110(7)(c)

After “marital”, insert “or couple”.

### 45 Subparagraph 110(7A)(a)(ii)

After “marital”, insert “or couple”.

### 46 Subparagraph 110(7A)(b)(i)

After “marital”, insert “or couple”.

### 47 After subparagraph 110(7A)(b)(i)

Insert:

(ia) was, within the meaning of the *Family Law Act 1975*, a child of the pensioner and the person with whom the pensioner had that marital or couple relationship; or

### 48 Subparagraphs 110(7A)(b)(ii) and (iii)

After “marital”, insert “or couple”.

## 49 Paragraph 110(7B)(a)

After “marital”, insert “or couple”.

## 50 Paragraph 110(14)(d)

Omit “an adopted child, an ex-nuptial child, a foster child, a step-child or a ward”, substitute “a child of a kind referred to in subparagraph (b)(i) or (ii) of the definition of ***child*** in subsection 3(1)”.

## 51 Paragraph 136(2B)(ma)

After “marital” (wherever occurring), insert “or couple”.

## 52 Application of amendments of the *Superannuation Act 1976*

The amendments of the *Superannuation Act 1976* made by this Schedule apply in relation to a benefit payable under that Act in respect of a person who dies on or after the commencement of this Schedule, if, at the time of his or her death, the deceased person was:

(a) an eligible employee (within the meaning of that Act); or

(b) a deferred benefit member (within the meaning of Division 4A of Part V of that Act); or

(c) a retirement pensioner (within the meaning of that Act).

# Schedule 2—Attorney-General's amendments

## Part 1—Amendment of the Acts Interpretation Act 1901

### *Acts Interpretation Act 1901*

#### 1 After section 22

Insert:

#### 22A References to de facto partners

For the purposes of a provision of an Act that is a provision in which de facto partner has the meaning given by this Act, a person is the ***de facto partner*** of another person (whether of the same sex or a different sex) if:

(a) the person is in a registered relationship with the other person under section 22B; or

(b) the person is in a de facto relationship with the other person under section 22C.

#### 22B Registered relationships

For the purposes of paragraph 22A(a), a person is in a ***registered relationship*** with another person if the relationship between the persons is registered under a prescribed law of a State or Territory as a prescribed kind of relationship.

#### 22C De facto relationships

(1) For the purposes of paragraph 22A(b), a person is in a ***de facto relationship*** with another person if the persons:

(a) are not legally married to each other; and

(b) are not related by family (see subsection (6)); and

(c) have a relationship as a couple living together on a genuine domestic basis.

(2) In determining for the purposes of paragraph (1)(c) whether 2 persons have a relationship as a couple, all the circumstances of their relationship are to be taken into account, including any or all of the following circumstances:

(a) the duration of the relationship;

(b) the nature and extent of their common residence;

(c) whether a sexual relationship exists;

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(e) the ownership, use and acquisition of their property;

(f) the degree of mutual commitment to a shared life;

(g) the care and support of children;

(h) the reputation and public aspects of the relationship.

(3) No particular finding in relation to any circumstance mentioned in subsection (2) is necessary in determining whether 2 persons have a relationship as a couple for the purposes of paragraph (1)(c).

(4) For the purposes of paragraph (1)(c), the persons are taken to be living together on a genuine domestic basis if the persons are not living together on a genuine domestic basis only because of:

(a) a temporary absence from each other; or

(b) illness or infirmity of either or both of them.

(5) For the purposes of subsection (1), a de facto relationship can exist even if one of the persons is legally married to someone else or is in a registered relationship (within the meaning of section 22B) with someone else or is in another de facto relationship.

(6) For the purposes of paragraph (1)(b), 2 persons are ***related by family*** if:

(a) one is the child (including an adopted child) of the other; or

(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

(c) they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

(7) For the purposes of subsection (6), ***adopted*** means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children.

# Part 2—Amendment of other Acts

## *Federal Magistrates Act 1999*

### 2 Section 5

Insert:

> ***marital or couple relationship*** has the meaning given by subclause 9E(5) of Schedule 1.

### 3 Section 5 (definition of *marital relationship*)

Repeal the definition.

### 4 Section 5

Insert:

> ***partner***: a person is the ***partner*** of another person if the 2 persons have a relationship as a couple (whether the persons are the same sex or different sexes).

### 5 Subclauses 9E(2), (3) and (4) of Schedule 1

After "marital" (wherever occurring), insert "or couple".

### 6 Subclause 9E(5) of Schedule 1

After "***marital***", insert "***or couple***".

Note: The heading to subclause 9E(5) of Schedule 1 is replaced by the heading "*Meaning of* ***marital or couple relationship***".

### 7 Subclause 9E(5) of Schedule 1

After "husband or wife" (wherever occurring), insert "or partner".

### 8 Subclause 9E(6) of Schedule 1

After "marital", insert "or couple".

### 9 After paragraph 9E(7)(b) of Schedule 1

Insert:

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B

of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

### 10 At the end of paragraph 9E(7)(c) of Schedule 1

Add:

or (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

### 11 After subparagraph 9F(1)(b)(i) of Schedule 1

Insert:

(ia) the person is a child of the Magistrate within the meaning of the *Family Law Act 1975*;

### 12 Application of amendments of the *Federal Magistrates Act 1999*

The amendments of the *Federal Magistrates Act 1999* made by this Schedule apply in relation to any payment payable under clause 9D of Schedule 1 to that Act in respect of a person who dies on or after the commencement of this Schedule if, at the time of his or her death, the deceased person:

(a) held office as a Federal Magistrate; or

(b) was a retired disabled Federal Magistrate.

## *Judges' Pensions Act 1968*

### 13 Subsection 4(1)

Insert:

***child of a marital or couple relationship***, in relation to a marital or couple relationship, means:

(a) a child born of the marital or couple relationship; or

(b) a child adopted by the people in the marital or couple relationship during the period of the relationship; or

(c) someone who is, within the meaning of the *Family Law Act 1975*, a child of both of the people in the marital or couple relationship.

### 14 Subsection 4(1) (definition of *child of a marital relationship*)

Repeal the definition.

## 15 Subsection 4(1)

Insert:

> ***marital or couple relationship*** has the meaning given by section 4AB.

## 16 Subsection 4(1)

Insert:

> ***partner***: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

## 17 Subsection 4(1)

Insert:

> ***spouse*** has a meaning affected by section 4AC.

## 18 After paragraph 4AA(a)

Insert:

(aa) the child is a child of the deceased Judge within the meaning of the *Family Law Act 1975*; or

## 19 Subsection 4AB(1)

After "***marital***", insert "***or couple***".

Note: The heading to section 4AB is replaced by the heading "**Marital or couple relationship**".

## 20 Subsections 4AB(1) and (2)

After "husband or wife" (wherever occurring), insert "or partner".

## 21 Subsection 4AB(3)

After "marital", insert "or couple".

## 22 After paragraph 4AB(4)(b)

Insert:

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B

of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

### 23 At the end of paragraph 4AB(4)(c)

Add:

or (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

### 24 Subsections 4AC(2) and (3)

After "marital" (wherever occurring), insert "or couple".

### 25 Subsections 10(2), 11(3) and 12(3)

After "marital" (wherever occurring), insert "or couple".

### 26 Application of amendments of the *Judges' Pensions Act 1968*

(1) The amendments of the *Judges' Pensions Act 1968* made by this Schedule apply in relation to any pension payable under that Act in respect of a person who dies on or after the commencement of this Schedule if, at the time of his or her death, the deceased person was a Judge or a retired Judge.

(2) The amendments of the *Judges' Pensions Act 1968* made by this Schedule apply in relation to any pension payable under the *Building and Construction Industry Improvement Act 2005* in respect of a person who dies on or after the commencement of this Schedule if, at the time of his or her death, the deceased person was or had been the ABC Commissioner.

## *Law Officers Act 1964*

### 27 Subsection 16(1)

Omit "other than subsection 6(3) (including the provisions relating to widows and children)", substitute "other than subsection 4(2) (including the provisions relating to spouses and children)".

### 28 Application of amendments of the *Law Officers Act 1964*

The amendments of the *Law Officers Act 1964* made by this Schedule apply in relation to any pension payable under section 16 of that Act because of the application of the *Judges' Pensions Act 1968* in respect of a person who:

(a) was appointed as Solicitor-General before 1 January 1998; and

(b) dies on or after the commencement of this Schedule.

## Part 3—Regulations

### 29 Regulations may deal with transitional, saving or application matters

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to amendments and repeals made by this Schedule or any other Schedule to this Act.

# Schedule 3—Defence amendments

## *Defence Force Retirement and Death Benefits Act 1973*

### 1 Subsection 3(1) (subparagraph (a)(ii) of the definition of *child*)

Omit “and”, substitute “or”.

### 2 Subsection 3(1) (after subparagraph (a)(ii) of the definition of *child*)

Insert:

(iii) was, immediately before the member’s death, someone who would have been the stepchild of the member except that the member was not legally married to a spouse who survives the member; or

(iv) is a child of the member within the meaning of the *Family Law Act 1975*; and

### 3 Subsection 3(1) (at the end of the definition of *child*)

Add:

; and (c) a person who:

(i) is, within the meaning of the *Family Law Act 1975*, a child of a spouse who survives the member; and

(ii) was wholly or substantially dependent upon the member at the time of the member’s death.

### 4 Subsection 3(1) (definition of *eligible orphan*)

After “pension”, insert “or spouse pension”.

### 5 Subsection 3(1)

Insert:

***marital or couple relationship*** has the meaning given by section 6A.

### 6 Subsection 3(1)

Insert:

***partner***: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

## 7 Subsection 3(1) (definition of *pension benefit*)

After "widow's pension", insert ", spouse pension".

## 8 Subsection 3(1)

Insert:

***spouse*** has a meaning affected by section 6B.

## 9 Subsection 6A(1)

Omit "**marital relationship**", substitute "***marital or couple relationship***".

Note: The heading to section 6A is replaced by the heading "**Marital or couple relationship**".

## 10 Subsection 6A(1)

After "husband or wife", insert "or partner".

## 11 Subsection 6A(2)

After "husband or wife" (wherever occurring), insert "or partner".

## 12 Subsection 6A(3)

After "marital", insert "or couple".

## 13 After paragraph 6A(4)(b)

Insert:

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

## 14 At the end of paragraph 6A(4)(c)

Add:

; or (iii) a child of both of the persons for the purposes of the *Family Law Act 1975*;

## 15 Subsections 6B(2) and (3)

After “marital” (wherever occurring), insert “or couple”.

### 16 Paragraph 6BA(1)(b)

After “marital”, insert “or couple”.

Note: The heading to section 6BA is altered by omitting “**marriages**” and substituting “**marital or couple relationships**”.

### 18 Subsection 49D(1) (note)

After “widow’s pension” (wherever occurring), insert “or spouse pension”.

### 19 Subsection 75(5)

Omit “widow’s pension”, substitute “spouse pension”.

### 20 Paragraphs 98B(4)(ab), (ac) and (c)

Omit “widow”, substitute “spouse”.

### 21 Paragraphs 98D(1)(a), (b) and (c)

Omit “widow” (wherever occurring), substitute “spouse”.

### 22 Paragraphs 98D(2)(a) and (b), (3)(b) and (4)(b)

Omit “widow”, substitute “spouse”.

### 23 Subparagraph 98J(3)(b)(ii)

Omit “widow’s pension”, substitute “spouse pension”.

### 24 Application of amendments of the *Defence Force Retirement and Death Benefits Act 1973*

The amendments of the *Defence Force Retirement and Death Benefits Act 1973* made by this Schedule apply in relation to a benefit payable under that Act in respect of a person who dies on or after the commencement of this Schedule, if, at the time of his or her death, the deceased person was:

(a) a contributing member (within the meaning of that Act); or

(b) a recipient member (within the meaning of that Act); or

(c) a person in respect of whom deferred benefits were applicable under section 78 of that Act.

## *Defence Forces Retirement Benefits Act 1948*

## 25 After section 64

Insert:

### 64AA Special grant of pension where spouse pension would be payable

(1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the ***start day***):

(a) a pension is not payable to a person under section 57 or 64 of this Act; and

(b) a pension benefit:

(i) is not payable to the person under Division 1 of Part VI of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day; but

(ii) would have been payable to the person under that Division if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;

the Authority may grant, from a specified date, a pension to the person at a rate and on conditions that the Authority determines in writing, having regard to any matters prescribed and any other matters it considers relevant.

(2) The Authority must not grant a pension to the person unless the Authority, having regard to any matters prescribed and any other matters it considers relevant, is satisfied that:

(a) the person is in necessitous circumstances; or

(b) the grant of the pension is otherwise warranted.

(3) The specified date from which the pension is granted:

(a) must not be earlier than the start day; and

(b) unless the Authority is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.

(4) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date had the person been, at the date of death of the deceased pensioner, the widow of the deceased pensioner for the purposes of this Act.

(5) If:

(a) a pension is paid to a person under section 57 of this Act as a widow of a pensioner; and

(b) the Authority grants a pension under this section to another person in respect of the pensioner;

then, for the purpose of calculating the rate of pension payable to the other person under this section, this Act has effect as if the reference in paragraph 57(1)(a) to five-eighths were a reference to three-eighths.

(6) A determination made under subsection (1) is not a legislative instrument.

(7) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

### 64AB Special grant of pension where child's pension would be payable to eligible child

(1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the ***start day***):

(a) a pension is not payable in respect of a person under section 55, 57 or 64 of this Act; and

(b) a pension benefit:

(i) is not payable to the person under section 42 of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day; but

(ii) would have been payable to the person under that section if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;

the Authority may grant, from a specified date, a pension to the person at a rate and on conditions that the Authority determines in writing, having regard to any matters prescribed and any other matters it considers relevant.

(2) The specified date from which the pension is granted:

(a) must not be earlier than the start day; and

(b) unless the Authority is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.

(3) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date had the person been, at the date of death of the deceased pensioner and at all times after that:

(a) the child of the deceased pensioner for the purposes of this Act; and

(b) an eligible child for the purposes of this Act.

(4) A determination made under subsection (1) is not a legislative instrument.

(5) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

### 64AC Special grant of pension where child's pension would be payable to eligible orphan

(1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the ***start day***):

(a) a pension is not payable in respect of a person under section 55, 57, 58 or 64 of this Act; and

(b) a pension benefit:

(i) is not payable to the person under section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day (the ***amended Act***); but

(ii) would have been payable to the person under that section if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;

the Authority may grant, from a specified date, a pension to the person at a rate and on conditions that the Authority determines in writing, having regard to any matters prescribed and any other matters it considers relevant.

(2) The specified date from which the pension is granted:

(a) must not be earlier than the start day; and

(b) unless the Authority is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.

(3) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date:

(a) had the person been, at the date of death of the deceased pensioner and at all times after that:

(i) the child of the deceased pensioner for the purposes of this Act; and

(ii) an eligible child for the purposes of this Act; and

(b) had the person become entitled to a pension under subsection 55(2), 57(4) or 58(1) of this Act at the time when he or she would have first become entitled, in the circumstances set out in subsection (1), to pension benefit under section 43 of the amended Act.

(4) A determination made under subsection (1) is not a legislative instrument.

(5) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

## 26 Application of amendment of the *Defence Forces Retirement Benefits Act 1948*

The amendment of the *Defence Forces Retirement Benefits Act 1948* made by this Schedule applies in relation to a pension or benefit payable under that Act in respect of a person who dies on or after the commencement of this Schedule, if, at the time of his or her death, the deceased person was:

(a) receiving a pension under section 38, 39 or 41 of that Act; or

(b) receiving a benefit under subsection 51(1) of that Act.

# Schedule 4—Treasury amendments

## Part 1—Superannuation law

### *Retirement Savings Accounts Act 1997*

#### 1 Subsections 20(2) and (3)

Repeal the subsections, substitute:

(2) The ***spouse***, in relation to a person, includes:

(a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

(3) Any ***child***, in relation to a person, includes:

(a) a stepchild, an ex-nuptial child or an adopted child of the person; and

(b) a child of the person's spouse; and

(c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

#### 2 Application of amendments of the *Retirement Savings Accounts Act 1997*

The amendments of the *Retirement Savings Accounts Act 1997* made by this Schedule apply to the 2008-2009 year of income and later years.

### *Small Superannuation Accounts Act 1995*

#### 3 Section 4

Insert:

***child***, of a person, means a child of the person within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

### 4 Section 4 (definition of *spouse*)

Repeal the definition (not including the note), substitute:

***spouse*** of a person includes:

(a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

### 5 Application of amendments of the *Small Superannuation Accounts Act 1995*

The amendments of the *Small Superannuation Accounts Act 1995* made by this Schedule apply to the 2008-2009 year of income and later years.

## *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*

### 6 Subsection 54(3) (definition of *spouse*)

Repeal the definition, substitute:

***spouse*** of a beneficiary of a Government co-contribution includes:

(a) a person (whether of the same sex or a different sex) with whom the beneficiary is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(b) a person who, although not legally married to the beneficiary, lives with the beneficiary on a genuine domestic basis in a relationship as a couple.

### 7 Application of amendments of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*

The amendments of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* made by this Schedule apply to the 2008-2009 income year and later income years.

## *Superannuation Industry (Supervision) Act 1993*

### 8 Subsection 10(1) (definition of *child*)

Repeal the definition, substitute:

***child***, in relation to a person, includes:

(a) an adopted child, a stepchild or an ex-nuptial child of the person; and

(b) a child of the person's spouse; and

(c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

### 9 Subsection 10(1)

Insert:

***relative*** of an individual means the following:

(a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or of his or her spouse;

(b) a spouse of the individual or of any other individual referred to in paragraph (a).

Note: Subsection (6) may be relevant to determining relationships for the purposes of paragraph (a) of the definition of ***relative***.

### 10 Subsection 10(1) (definition of *spouse*)

Repeal the definition, substitute:

***spouse*** of a person includes:

(a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind

of relationship prescribed for the purposes of that section; and

(b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

## 11 At the end of section 10

Add:

(5) For the purposes of paragraph (a) of the definition of ***relative*** in subsection (1), if one individual is the child of another individual because of the definition of ***child*** in subsection (1), relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

## 12 Subsection 17A(9) (paragraphs (b) and (c) of the definition of *relative*)

Repeal the paragraphs, substitute:

(b) a spouse or former spouse of the individual, or of an individual referred to in paragraph (a).

## 13 After subsection 17A(9)

Insert:

(9A) For the purposes of paragraph (a) of the definition of ***relative*** in subsection (9), if one individual is the child of another individual because of the definition of ***child*** in subsection 10(1), relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

## 14 Subsection 65(6)

Repeal the subsection.

## 15 Subsection 70E(4) (definition of *relative*)

Repeal the definition.

## 16 Application of amendments of the *Superannuation Industry (Supervision) Act 1993*

(1) Subject to subitems (2) and (3), the amendments of the *Superannuation Industry (Supervision) Act 1993* made by this Schedule apply to the 2008-2009 year of income and later years.

*Amendments affecting section 65*

(2) The amendments of the *Superannuation Industry (Supervision) Act 1993* made by this Schedule apply for the purposes of the operation of section 65 of that Act in relation to:

(a) money lent on or after the day on which this Act receives the Royal Assent; and

(b) any other financial assistance commenced to be given on or after the day on which this Act receives the Royal Assent.

*Amendments affecting section 66*

(3) The amendments of the *Superannuation Industry (Supervision) Act 1993* made by this Schedule apply for the purposes of the operation of section 66 of that Act in relation to assets acquired on or after the day on which this Act receives the Royal Assent.

## 17 Transitional provision—in-house assets

(1) If:

(a) an asset of a superannuation fund consists of:

(i) a loan or an investment made before the day on which this Act receives the Royal Assent; or

(ii) a loan or an investment made after that day under a contract entered into before that day; or

(iii) an asset that becomes subject to a lease or a lease arrangement before that day; and

(b) apart from this item, the asset would be an in-house asset of the fund at any time after the commencement of this Schedule; and

(c) the asset would be an in-house asset of the fund only because of the amendments of the *Superannuation Industry (Supervision) Act 1993* (the ***SIS Act***) made by this Schedule;

then, for the purposes of the operation of Part 8 of the SIS Act on or after the commencement of this Schedule, the asset is not an in-house asset of the fund.

(2) For the purposes of subparagraph (1)(a)(iii), if:

(a) a lease or a lease arrangement, enforceable by legal proceedings, in respect of an asset was entered into before the day on which this Act receives the Royal Assent; and

(b) the lease or lease arrangement came into force on or after that day;

the asset is taken to have become subject to the lease or lease arrangement before that day.

# Part 2—Taxation law

## *Income Tax (Transitional Provisions) Act 1997*

### 18 After section 295-465

Insert:

#### 295-485A Meaning of *spouse* and *child* for 2008-2009 income year

(1) This section applies only for the 2008-2009 income year.

(2) For the purposes of section 295-485 of the *Income Tax Assessment Act 1997*, paragraph 295-485(1)(a) of that Act applies as if:

(a) the reference to a spouse or former spouse of the deceased were a reference to:

(i) a spouse of the deceased within the meaning of the *Superannuation Industry (Supervision) Act 1993* as in force immediately after the commencement of Schedule 4 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008*; or

(ii) an individual who was formerly such a spouse; and

(b) the reference to a child of the deceased were a reference to a child of the deceased within the meaning of the *Superannuation Industry (Supervision) Act 1993* as in force immediately after the commencement of Schedule 4 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008*.

### 19 At the end of Division 302

Add:

#### 302-195A Meaning of *death benefits dependant* for 2008-2009 income year

(1) This section applies only for the 2008-2009 income year.

(2) For the purposes of Subdivision 82-B of Division 82, Division 302 and section 303-5 of the *Income Tax Assessment Act 1997*, the

definition of ***death benefits dependant*** in section 302-195 of that Act applies as if paragraphs (a) and (b) of the definition were replaced with the following paragraphs:

(a) a spouse of the deceased within the meaning of the *Superannuation Industry (Supervision) Act 1993* as in force immediately after the commencement of Schedule 4 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* or a person who was formerly such a spouse; or

(b) a child of the deceased within the meaning of the *Superannuation Industry (Supervision) Act 1993* as in force immediately after the commencement of Schedule 4 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008*, who is aged less than 18.

# Part 3—Application of amendments of the Family Law Act 1975

## 20 Application of amendments of the *Family Law Act 1975*

For the purposes of an amendment made by this Schedule that refers to the *Family Law Act 1975*:

(a) the amendments of that Act made by items 5 and 21 of Schedule 1, and Schedule 3A, to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (the ***De Facto Financial Matters Act***) are taken to have commenced on 1 July 2008; and

(b) the first regulations made for the purposes of subparagraph 60H(1)(b)(ii) of the *Family Law Act 1975* inserted by Schedule 3A to the De Facto Financial Matters Act are taken to have commenced on 1 July 2008; and

(c) the first regulations made for the purposes of subsection 60HB(1) of the *Family Law Act 1975* inserted by Schedule 3A to the De Facto Financial Matters Act are taken to have commenced on 1 July 2008.

# Schedule 5—Prime Minister and Cabinet amendments

## *Governor-General Act 1974*

### 1 Subsection 2A(2)

Insert:

> ***marital or couple relationship*** has the meaning given by section 2B.

### 2 Subsection 2A(2)

Insert:

> ***spouse*** has a meaning affected by section 2C.

### 3 Subsection 2B(2)

After "***marital***", insert "***or couple***".

Note: The heading to section 2B is replaced by the heading "**Marital or couple relationship**".

### 4 Subsections 2B(2) and (3)

After "husband or wife" (wherever occurring), insert "or partner".

### 5 After paragraph 2B(4)(b)

Insert:

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

### 6 At the end of paragraph 2B(4)(c)

Add:

or (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

### 7 At the end of section 2B

Add:

(6) For the purposes of this section, a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

## 8 Section 2C

After “marital” (wherever occurring), insert “or couple”.

## 9 Application of amendments of the *Governor-General Act 1974*

The amendments of the *Governor-General Act 1974* made by this Schedule apply in relation to a person who is appointed as Governor-General on or after the commencement of this Schedule.

[*Minister’s second reading speech made in—*
*House of Representatives on 28 May 2008*
*Senate on 16 June 2008*]

(107/08)