

## THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

## THE SENATE

**Same-Sex Relationships (Equal Treatment in Commonwealth Laws—  
Superannuation) Bill 2008***Schedule of the amendments made by the Senate***(1) Opp (1) [Sheet 5635]**

Clause 2, page 2, omit the table, substitute:

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	1 July 2008.	1 July 2008
3. Schedules 2 and 3	1 July 2008.	1 July 2008
4. Schedule 4	1 July 2008.	1 July 2008
5. Schedule 5	1 July 2008.	1 July 2008

**(2) Govt (4) [Sheet QH400]**

Schedule 2, page 12 (line 2) to page 17 (line 8), omit the Schedule, substitute:

**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.

(3) **Govt (6)** [Sheet QH400]

Schedule 4, page 26 (line 2) to page 30 (line 14), omit the Schedule, substitute:

## **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.

#### (4) Govt (7) [Sheet QH400]

Schedule 5, page 31 (line 2) to page 32 (line 16), omit the Schedule, substitute:

## 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.

**HARRY EVANS**  
Clerk of the Senate

The Senate  
24 November 2008