2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No. , 2008

(Attorney-General)

A Bill for an Act to amend the law in relation to
superannuation, and for related purposes
## Contents

1. Short title

2. Commencement

3. Schedule(s)

### Schedule 1—Finance and Deregulation amendments

- Parliamentary Contributory Superannuation Act 1948
- Superannuation Act 1922
- Superannuation Act 1976

### Schedule 2—Attorney-General’s amendments

- Federal Magistrates Act 1999
- Judges’ Pensions Act 1968
- Law Officers Act 1964

### Schedule 3—Defence amendments

- Defence Force Retirement and Death Benefits Act 1973
- Defence Forces Retirement Benefits Act 1948

### Schedule 4—Treasury amendments

- Part 1—Superannuation law
  - Retirement Savings Accounts Act 1997
  - Small Superannuation Accounts Act 1995
  - Superannuation (Government Co-contribution for Low Income Earners) Act 2003
  - Superannuation Industry (Supervision) Act 1993
- Part 2—Taxation law

### Schedule 5—Prime Minister and Cabinet amendments

- Governor-General Act 1974

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 No.      , 2008*
A Bill for an Act to amend the law in relation to superannuation, and for related purposes

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.
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provision(s)</strong></td>
<td><strong>Commencement</strong></td>
<td><strong>Date/Details</strong></td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation. 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.</td>
<td></td>
</tr>
<tr>
<td>3. Schedules 2 and 3</td>
<td>At the same time as the provision(s) covered by table item 2.</td>
<td></td>
</tr>
<tr>
<td>5. Schedule 5</td>
<td>At the same time as the provision(s) covered by table item 2.</td>
<td></td>
</tr>
</tbody>
</table>

**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.
Schedule 1—Finance and Deregulation amendments

Parliamentary Contributory Superannuation Act 1948

1 Subsection 4(1)
   Insert:
   
   *couple relationship* has the meaning given by section 4B.

2 Subsection 4(1) (definition of *former spouse*)
   Omit “marital relationship”, substitute “couple relationship”.

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 At the end of section 4
   Add:
   
   (7) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

6 Subsection 4B(1)
   Omit “marital relationship”, substitute “couple relationship”.
   
   Note: The heading to section 4B is replaced by the heading “Couple relationship”.

7 Subsection 4B(1)
Omit “husband or wife”, substitute “partner”.

8 Subsection 4B(2)
Omit “husband or wife” (wherever occurring), substitute “partner”.

9 Subsection 4B(3)
Omit “marital relationship”, substitute “couple relationship”.

10 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 paragraph
4AB(4)(ba) of the Judges’ Pensions Act 1968, as a kind of
relationship prescribed for the purposes of that paragraph;

11 At the end of paragraph 4B(4)(c)
Add:

; or (iii) the product of the relationship between the persons;

Note: Subsection 4(7) is relevant to working out if a child is the
product of the relationship for the purposes of
subparagraph (c)(iii).

12 Subsections 4C(2) and (3)
Omit “marital relationship” (wherever occurring), substitute “couple
relationship”.

13 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 couple relationship and who is:
(i) the natural or adoptive parent of that child; or
(ii) the parent of that child because the child was the
product of the relationship between the person and the
deceased person;

14 At the end of subsection 19AA(2)
Add:

Note: Subsection 4(7) is relevant to working out if a child is the product of
the relationship for the purposes of subparagraph (2)(d)(ii).
15 **Paragraph 19AA(2B)(a)**

Repeal the paragraph, substitute:

(a) the child:

(i) was born while the deceased person was having a 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 the product of that relationship; and

16 **At the end of paragraph 19AA(2B)(a)**

Add:

Note: Subsection 4(7) is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (a)(iii).

17 **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) if, at any time, the person had a partner (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that partner.

Note: Subsection 4(7) is relevant to working out if a child is the product of the relationship for the purposes of paragraph (b).

18 **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.
19 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.

20 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 Schedule 1 continues to apply.

21 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 step-child or a ward, of the person; and
(ii) if, at any time, the person had a partner (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that partner; or

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

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

(ii) if, at any time, the spouse had a partner (whether the persons are the same sex or different sexes)—a child who is the product of the spouse’s relationship with that partner.

Note: Subsection (10) is relevant to working out if a child is the product of the relationship for the purposes of subparagraphs (a)(ii) and (b)(ii).

22 Subsection 3(1)

Insert:

couple relationship has the meaning given by section 8A.

23 Subsection 3(1) (definition of late short-term marital relationship)

Repeal the definition (including the note), substitute:

late short-term couple relationship, in relation to a deceased retirement pensioner, means a 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.

24 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).

25 Subsection 3(1)

Insert:

spouse has a meaning affected by section 8B.
26 At the end of section 3

Add:

(10) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

27 Subsection 8A(1)

Omit “marital relationship”, substitute “couple relationship”.

Note: The heading to section 8A is replaced by the heading “Couple relationship”.

28 Subsection 8A(1)

Omit “husband or wife”, substitute “partner”.

29 Subsection 8A(2)

Omit “husband or wife” (wherever occurring), substitute “partner”.

30 Subsection 8A(3)

Omit “marital relationship”, substitute “couple relationship”.

31 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 paragraph 4AB(4)(ba) of the Judges’ Pensions Act 1968, as a kind of relationship prescribed for the purposes of that paragraph;

32 At the end of paragraph 8A(4)(c)

Add:

; or (iii) the product of the relationship between the persons;

Note: Subsection 3(10) is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (c)(iii).

33 Subsections 8B(2) and (3)

Omit “marital relationship” (wherever occurring), substitute “couple relationship”.
34 Subsections 94(2A), 95(1B) and 96(2A)
Omit “marital relationship”, substitute “couple relationship”.

35 Subsection 96AB(2) (paragraph (a) of the definition of relevant period)
Omit “marital relationship”, substitute “couple relationship”.

36 Paragraph 96BA(1)(a)
Omit “marital relationship”, substitute “couple relationship”.

37 Subsection 96BA(2) (paragraph (a) of the definition of relevant period)
Omit “marital relationship”, substitute “couple relationship”.

38 Subsection 108A(1)
Omit “marital relationship”, substitute “couple relationship”.
Note: The heading to section 108A is altered by omitting “marital relationship” and substituting “couple relationship”.

39 Subsection 108A(5) (subparagraph (a)(i) of the definition of relevant period)
Omit “marital relationship”, substitute “couple relationship”.

40 Paragraph 109AB(2)(c)
Omit “marital relationship”, substitute “couple relationship”.

41 Paragraphs 109AB(3B)(b), (3C)(a) and (b), (5)(c), (5A)(b), (5B)(a) and (b)
Omit “marital relationship”, substitute “couple relationship”.

42 Paragraphs 110(4)(c) and (d) and (5B)(a)
Omit “marital relationship”, substitute “couple relationship”.

43 Subparagraph 110(5B)(b)(i)
Omit “marital relationship”, substitute “couple relationship”.

44 After subparagraph 110(5B)(b)(i)
Insert:
(ia) was not the product of the couple relationship between the spouse and pensioner referred to in paragraph (4)(d); or

45 Subparagraphs 110(5B)(b)(ii) and (iii) Omit “marital relationship”, substitute “couple relationship”.

46 At the end of subsection 110(5B) Add:

Note: Subsection 3(10) is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (5B)(b)(ia).

47 Paragraph 110(7)(c) Omit “marital relationship”, substitute “couple relationship”.

48 Subparagraph 110(7A)(a)(ii) Omit “marital relationship”, substitute “couple relationship”.

49 Subparagraph 110(7A)(b)(i) Omit “marital relationship”, substitute “couple relationship”.

50 After subparagraph 110(7A)(b)(i) Insert:

(ia) was the product of the relationship between the person and the pensioner; or

51 Subparagraphs 110(7A)(b)(ii) and (iii) Omit “marital relationship”, substitute “couple relationship”.

52 At the end of paragraph 110(7A)(b) Add:

Note: Subsection 3(10) is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (b)(ia).

53 Paragraph 110(7B)(a) Omit “marital relationship”, substitute “couple relationship”.

54 Paragraph 110(14)(d)

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10 Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 No. , 2008
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)”.

55 Subparagraph 136(2B)(ma)(ii)

Omit “marital relationship”, substitute “couple relationship”.

56 Subparagraph 136(2B)(ma)(iv)

Omit “short-term marital relationship”, substitute “short-term couple relationship”.

57 Subparagraph 136(2B)(ma)(iv) (paragraph (a) of the definition of relevant period)

Omit “marital relationship”, substitute “couple relationship”.

58 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

Federal Magistrates Act 1999

1 Section 5
Before “In”, insert “(1)”.

2 Section 5
Insert:

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 two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

5 At the end of section 5
Add:

(2) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

6 Subclauses 9E(2), (3) and (4) of Schedule 1
Omit “marital relationship” (wherever occurring), substitute “couple relationship”.

7 Subclause 9E(5) of Schedule 1
Omit “marital relationship”, substitute “couple relationship”.

12 Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 No. , 2008
Note: The heading to subclause 9E(5) of Schedule 1 is replaced by the heading “Meaning of couple relationship”.

8 Subclause 9E(5) of Schedule 1
Omit “husband or wife” (wherever occurring), substitute “partner”.

9 Subclause 9E(6) of Schedule 1
Omit “marital relationship”, substitute “couple relationship”.

10 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 paragraph 4AB(4)(ba) of the Judges’ Pensions Act 1968, as a kind of relationship prescribed for the purposes of that paragraph;

11 At the end of paragraph 9E(7)(c) of Schedule 1
Add:

; or (iii) the product of the relationship between the persons;

Note: Subsection 5(2) is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (iii).

12 After subclause 9F(1) of Schedule 1
Insert:

(1A) If, at any time, a Federal Magistrate, or a retired Federal Magistrate, had a partner (whether the Magistrate and the partner are the same sex or different sexes), then, for the purposes of subparagraph (1)(b)(i), a child of the Magistrate includes a child who is the product of the relationship between the Magistrate and that partner.

Note: Subsection 5(2) is relevant to working out if a child is the product of the relationship for the purposes of subsection (1A).

13 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*

14 Subsection 4(1)

Insert:

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

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

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

(c) a child who is the product of the couple relationship.

Note: Subsection (4) is relevant to working out if a child is the product of the relationship for the purposes of paragraph (c).

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

Repeal the definition.

16 Subsection 4(1)

Insert:

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

17 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).

18 Subsection 4(1)

Insert:

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14 *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008* No. , 2008
spouse has a meaning affected by section 4AC.

19 At the end of section 4

Add:

(4) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

20 Section 4AA

Before “For”, insert “(1)”.

21 At the end of section 4AA

Add:

(2) If, at any time, a deceased Judge had a partner (whether the deceased Judge and the partner are the same sex or different sexes), then, for the purposes of paragraph (1)(a), a child of the deceased Judge includes a child who is the product of the relationship between the deceased Judge and that partner.

Note: Subsection 4(4) is relevant to working out if a child is the product of the relationship for the purposes of subsection (2).

22 Subsection 4AB(1)

Omit “marital relationship”, substitute “couple relationship”.

Note: The heading to section 4AB is replaced by the heading “Couple relationship”.

23 Subsections 4AB(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “partner”.

24 Subsection 4AB(3)

Omit “marital relationship”, substitute “couple relationship”.

25 After paragraph 4AB(4)(b)

Insert:

(ba) the persons’ relationship was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008
No. 1, 2008 15
26 At the end of paragraph 4AB(4)(c)  
   Add:  
   ; or (iii) the product of the relationship between the persons;  
   Note: Subsection 4(4) is relevant to working out if a child is the 
   product of the relationship for the purposes of subparagraph (iii).

27 Subsections 4AC(2) and (3)  
   Omit “marital relationship” (wherever occurring), substitute “couple 
   relationship”.

28 Subsections 10(2), 11(3) and 12(3)  
   Omit “marital relationship” (wherever occurring), substitute “couple 
   relationship”.

29 Paragraph 17A(aa)  
   Omit “4AA(b)”, substitute “4AA(1)(b)”.

30 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 or 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

31 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)”. 

16 Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) 
Bill 2008 No. , 2008
32 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.
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) if, at any time, the member had a partner (whether the persons are the same sex or different sexes)—is a child who is the product of the member’s relationship with that partner; and

3 Subsection 3(1) (at the end of the definition of child)
   Add:
   ; and (c) a person who:
   (i) if, at any time, a spouse who survives the member had a partner (whether the spouse and the partner are the same sex or different sexes)—is a child who is the product of the spouse’s relationship with that partner; and
   (ii) was wholly or substantially dependent upon the member at the time of the member’s death.

   Note: Subsection 3(6) is relevant to working out if a child is the product of the relationship for the purposes of subparagraphs (a)(iii) and (c)(i).

4 Subsection 3(1)
   Insert:
   couple relationship has the meaning given by section 6A.

5 Subsection 3(1) (definition of eligible orphan)
   After “pension”, insert “or spouse pension”.

6 Subsection 3(1)
   Insert:

18 Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 No. , 2008
**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 **At the end of section 3**

    Add:

    (6) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

10 **Subsection 6A(1)**

    Omit “marital relationship”, substitute “couple relationship”.

    Note: The heading to section 6A is replaced by the heading “Couple relationship”.

11 **Subsection 6A(1)**

    Omit “husband or wife”, substitute “partner”.

12 **Subsection 6A(2)**

    Omit “husband or wife” (wherever occurring), substitute “partner”.

13 **Subsection 6A(3)**

    Omit “marital relationship”, substitute “couple relationship”.

14 **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 paragraph 4AB(4)(ba) of the Judges’ Pensions Act 1968, as a kind of relationship prescribed for the purposes of that paragraph;
15 At the end of paragraph 6A(4)(c)
   Add:
   ; or (iii) the product of the relationship between the persons;

Note: Subsection 3(6) is relevant to working out if a child is the
product of the relationship for the purposes of subparagraph (iii).

16 Subsections 6B(2) and (3)
   Omit “marital relationship” (wherever occurring), substitute “couple
   relationship”.

17 Paragraph 6BA(1)(b)
   Omit “marital relationship”, substitute “couple relationship”.

Note: The heading to section 6BA is altered by omitting “marriages” and substituting
“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

20 Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation)
Bill 2008 No. , 2008
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:

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24  Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008  No.  , 2008
(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 Subsection 20(2)
Omit “as the husband or wife of the person”, substitute “in a relationship as a couple (whether the persons are the same sex or different sexes)”.

2 Subsection 20(3)
Repeal the subsection, substitute:

(3) Any child, in relation to a person, includes:
(a) a step-child, an ex-nuptial child or an adopted child of the person; and
(b) if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that other person.

(3A) A child cannot be the product of a relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

3 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

4 Section 4
Insert:
child, of a person, means a child of the person within the meaning of the Superannuation Industry (Supervision) Act 1993.

5 Section 4 (definition of spouse)
Omit “as the husband or wife of the person”, substitute “in a relationship as a couple (whether the persons are the same sex or different sexes)”.

6 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

7 Subsection 54(3) (definition of spouse)
Omit “as the beneficiary’s husband or wife”, substitute “in a relationship as a couple (whether the beneficiary and the person are the same sex or different sexes)”.

8 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

9 Subsection 10(1) (definition of child)
Repeal the definition, substitute:
child, in relation to a person, includes:
(a) an adopted child, a step-child or an ex-nuptial child of the person; and
(b) if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or
Schedule 4  Treasury amendments

Part 1  Superannuation law

different sexes)—a child who is the product of the person’s relationship with that other person.

Note: Subsection (5) is relevant to working out if a child is the product of the relationship for the purposes of paragraph (b).

10 Subsection 10(1) (definition of spouse)

Omit “as the husband or wife of the person”, substitute “in a relationship as a couple (whether the persons are the same sex or different sexes)”.

11 At the end of section 10

Add:

(5) A child cannot be the product of a relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

12 Application of amendments of the Superannuation Industry (Supervision) Act 1993

The amendments of the Superannuation Industry (Supervision) Act 1993 made by this Schedule apply to the 2008-2009 year of income and later years.

28  Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008  No. , 2008
Part 2—Taxation law


13 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.

14 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.
Schedule 5—Prime Minister and Cabinet amendments

Governor-General Act 1974

1 Subsection 2A(2)
   Insert:
   
   **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)
   Omit “marital relationship”, substitute “couple relationship”.
   Note: The heading to section 2B is replaced by the heading “Couple relationship”.

4 Subsections 2B(2) and (3)
   Omit “husband or wife” (wherever occurring), substitute “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 paragraph
   4AB(4)(ba) of the Judges’ Pensions Act 1968, as a kind of
   relationship prescribed for the purposes of that paragraph;

6 At the end of paragraph 2B(4)(c)
   Add:
   
   ; or (iii) the product of the relationship between the persons;
   
   Note: Subsection (7) is relevant to working out if a child is the product
   of the relationship for the purposes of subparagraph (iii).

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).

(7) A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this section unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.

8 Section 2C

Omit “marital relationship” (wherever occurring), substitute “couple relationship”.

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.