SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS — SUPERANNUATION) BILL 2008

FURTHER SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by the authority of the Attorney-General, the Honourable Robert McClelland MP)
GENERAL OUTLINE

1. The purpose of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008 (the Superannuation Bill) is to eliminate discrimination against same-sex couples and the children of same-sex relationships in Commonwealth Acts that provide for reversionary superannuation benefits upon the death of a scheme member, and in related taxation treatment of superannuation benefits.

2. The Government amendments proposed to the Superannuation Bill will ensure that those people who would have been entitled to one or more payments except that:
   - Schedules 1, 2, 3, or 5 of the Superannuation Bill did not commence on 1 July 2008
   - the first amendment to the Trust Deed made under the Military Superannuation and Benefits Act 1991 made after the commencement of new Section 4 did not commence on 1 July 2008, or
   - the first amendment to the Trust Deed made under the Superannuation Act 1990 made after the commencement of new Section 4 did not commence on 1 July 2008,

will be entitled to make an application to the Finance Minister for one or more replacement payments.

3. The Government amendments will also amend commencement dates for the Bill. These amendments are consistent with amendments previously tabled by the Government in the Senate. The amendment will also provide that Part 1 of Schedule 2, which provides a definition of ‘de facto partner’ in the Acts Interpretation Act 1901, will commence on Royal Assent. Given the reliance of the amendments made by the Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Bill 2008 on this definition it is desirable for this definition to commence as soon as possible.

Financial Impact Statement

4. There is estimated to be an ongoing financial impact for these measures.
NOTES ON AMENDMENTS

Amendment 1

5  This amendment amends Table Item 1 in Clause 2 of the Superannuation Bill as a consequence of the insertion of a new Clause 4 of the Bill by Amendment 4. Table Item 1 as amended by these Parliamentary amendments provides that Clauses 1 to 4 of the Bill will commence on the day that it receives Royal Assent.

Amendment 2

6  This amendment omits Table Item 3 and inserts new Table Items 3, 3A, 3B and 3C into Clause 2 of the Superannuation Bill.

7  Amended Table Item 3 provides that Part 1 of Schedule 2 to the Superannuation Bill commences on the day on which it receives Royal Assent. Part 1 of Schedule 2 to the Superannuation Bill will insert a definition of ‘de facto partner’ into the Acts Interpretation Act 1901. Given the reliance of the amendments made by the Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Bill 2008 on this definition it is desirable for Part 1 of Schedule 2 to commence as soon as possible.

8  Table Item 3A is similar to previous Table Item 3 and provides that Part 2 of Schedule 2 to the Superannuation Bill will commence at the same time as the provisions covered by Table Item 2.

9  Table Item 3B provides that Part 3 of Schedule 2 to the Superannuation Bill commences on the day on which it receives Royal Assent. Part 3 was inserted by previous Government amendments and provides a power for the Governor-General to make regulations prescribing matters of a transitional nature relating to amendments made by the Superannuation Bill. Because this power deals with transitional provisions it is desirable for it to commence as soon as possible.

10 Table Item 3C is similar to previous Table Item 3 and provides that Schedule 3 to the Superannuation Bill will commence at the same time as the provisions covered by Table Item 2.

Amendment 3

11 This amendment inserts Table Item 4A into Clause 2 of the Superannuation Bill. Table Item 4A provides that Part 3 of Schedule 4 to the Superannuation Bill commences on the day on which it receives the Royal Assent. Part 3 was inserted by previous Government amendments and provides application provisions to allow the amendments to the concept of ‘child’ in the Family Law Act which will be made by the Family Law Amendment Bill and supporting regulations to apply from 1 July 2008.

12 Table Item 4 of Clause 2 of the Superannuation Bill is amended as a consequence of the insertion of Table Item 4A.

Amendment 4

13 This amendment inserts new clause 4 into the Superannuation Bill to provide for replacement payments for people who would have been entitled to superannuation payments if the Superannuation Bill had commenced on 1 July 2008. The intention of this provision is to place the
person in the position they would have been in if the provisions of the Superannuation Bill had commenced on 1 July 2008, taking into account any relevant circumstances, including whether they have already received money from their partner’s superannuation through their partner’s estate.

14 Subclause 4(1) provides a mechanism which will allow a person who would have been entitled to one or more payments except that Schedules 1, 2, 3, or 5 of the Superannuation Bill did not commence on 1 July 2008 to make an application to the Finance Minister for one or more replacement payments. If each of paragraphs 4(1)(a), (b) and (c) are satisfied, the Finance Minister must make a determination in accordance with subclause 4(4) in order to fully compensate the person for the payments to which they would have been entitled.

15 Subclause 4(2) provides a mechanism which will allow a person who would have been entitled to one or more payments, except that the first amendment to the Trust Deed made under the *Military Superannuation and Benefits Act 1991* made after the commencement of Clause 4 did not commence on 1 July 2008, to make an application to the Finance Minister for one or more replacement payments. If each of paragraphs 4(2)(a), (b) and (c) are satisfied, the Finance Minister must make a determination in accordance with subclause 4(4) in order to fully compensate the person for the payments to which they would have been entitled.

16 Subclause 4(3) provides a mechanism which will allow a person who would have been entitled to one or more payments except that the first amendment to the Trust Deed made under the *Superannuation Act 1990* made after the commencement of Clause 4 did not commence on 1 July 2008 to make an application to the Finance Minister for one or more replacement. If each of paragraphs 4(3)(a), (b) and (c) are satisfied, the Finance Minister must make a determination in accordance with subclause 4(4) in order to fully compensate the person for the payments to which they would have been entitled.

17 Subclause 4(4) provides that a determination by the Finance Minister made under subclause 4(4) must be in writing and must set out the amount and timing of the replacement payments or the method by which those matters were determined.

18 Subclause 4(5) provides that such an application must be made in writing in a form approved by the Finance Minister.

19 Subclause 4(6) clarifies that a determination by the Finance Minister under this provision will not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to the Superannuation Bill, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.

20 Subclause 4(7) provides for an appropriation for the replacement payments out of the Consolidated Revenue Fund.

21 Subclause 4(8) is included to assist readers, as the determination made by the Finance Minister is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

22 Subclause 4(9) defines ‘Finance Minister’ for the purposes of the clause to mean the Minister who administers the *Financial Management and Accountability Act 1997*. 