

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	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Finance and Deregulation amendments		3
	<i>Parliamentary Contributory Superannuation Act 1948</i>	3
	<i>Superannuation Act 1922</i>	6
	<i>Superannuation Act 1976</i>	6
Schedule 2—Attorney-General’s amendments		12
	<i>Federal Magistrates Act 1999</i>	12
	<i>Judges’ Pensions Act 1968</i>	14
	<i>Law Officers Act 1964</i>	16
Schedule 3—Defence amendments		18
	<i>Defence Force Retirement and Death Benefits Act 1973</i>	18
	<i>Defence Forces Retirement Benefits Act 1948</i>	21
Schedule 4—Treasury amendments		26
Part 1—Superannuation law		26
	<i>Retirement Savings Accounts Act 1997</i>	26
	<i>Small Superannuation Accounts Act 1995</i>	26
	<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	27
	<i>Superannuation Industry (Supervision) Act 1993</i>	27
Part 2—Taxation law		29
	<i>Income Tax (Transitional Provisions) Act 1997</i>	29
Schedule 5—Prime Minister and Cabinet amendments		31
	<i>Governor-General Act 1974</i>	31

1 **A Bill for an Act to amend the law in relation to**
2 **superannuation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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	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.	
3. Schedules 2 and 3	At the same time as the provision(s) covered by table item 2.	
4. Schedule 4	1 July 2008.	1 July 2008
5. Schedule 5	At the same time as the provision(s) covered by table item 2.	

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

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

7 **3 Schedule(s)**

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

1
2 **Schedule 1—Finance and Deregulation**
3 **amendments**
4

5 *Parliamentary Contributory Superannuation Act 1948*

6 **1 Subsection 4(1)**

7 Insert:

8 *couple relationship* has the meaning given by section 4B.

9 **2 Subsection 4(1) (definition of *former spouse*)**

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

11 **3 Subsection 4(1)**

12 Insert:

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

16 **4 Subsection 4(1)**

17 Insert:

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

19 **5 At the end of section 4**

20 Add:

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

26 **6 Subsection 4B(1)**

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

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

29 **7 Subsection 4B(1)**

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

2 **8 Subsection 4B(2)**

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

4 **9 Subsection 4B(3)**

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

6 **10 After paragraph 4B(4)(b)**

7 Insert:

8 (ba) the persons’ relationship was registered under a law of a
9 State or Territory prescribed for the purposes of paragraph
10 4AB(4)(ba) of the *Judges’ Pensions Act 1968*, as a kind of
11 relationship prescribed for the purposes of that paragraph;

12 **11 At the end of paragraph 4B(4)(c)**

13 Add:

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

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

18 **12 Subsections 4C(2) and (3)**

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

21 **13 Paragraph 19AA(2)(d)**

22 Repeal the paragraph, substitute:

23 (d) was not or is not survived by a person with whom the
24 deceased person had had a couple relationship and who is:
25 (i) the natural or adoptive parent of that child; or
26 (ii) the parent of that child because the child was the
27 product of the relationship between the person and the
28 deceased person;

29 **14 At the end of subsection 19AA(2)**

30 Add:

31 Note: Subsection 4(7) is relevant to working out if a child is the product of
32 the relationship for the purposes of subparagraph (2)(d)(ii).

1 **15 Paragraph 19AA(2B)(a)**

2 Repeal the paragraph, substitute:

3 (a) the child:

- 4 (i) was born while the deceased person was having a
5 couple relationship with another person; or
6 (ii) was adopted by the deceased person or the deceased
7 person with that other person during the duration of that
8 relationship; or
9 (iii) was the product of that relationship; and

10 **16 At the end of paragraph 19AA(2B)(a)**

11 Add:

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

15 **17 Subsection 19AA(5) (definition of *child*)**

16 Repeal the definition, substitute:

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

- 19 (a) an adopted child or an ex-nuptial child of the person; and
20 (b) if, at any time, the person had a partner (whether the persons
21 are the same sex or different sexes)—a child who is the
22 product of the person's relationship with that partner.

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

25 **18 Application of amendments of the *Parliamentary***
26 ***Contributory Superannuation Act 1948***

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

- 31 (a) was entitled to a parliamentary allowance at the time of his or
32 her death; or
33 (b) was entitled to a retiring allowance (whether or not the
34 retiring allowance was immediately payable) at the time of
35 his or her death.

1 ***Superannuation Act 1922***

2 **19 After subsection 48AB(4)**

3 Insert:

- 4 (4A) If a pensioner or contributor died before the day on which
5 Schedule 1 to the *Same-Sex Relationships (Equal Treatment in*
6 *Commonwealth Laws—Superannuation) Act 2008* commenced:
- 7 (a) the amendments of the *Superannuation Act 1976* made by
8 that Schedule do not apply in relation to any pension that,
9 apart from this subsection, may be granted under this section
10 in respect of the deceased pensioner or contributor; and
 - 11 (b) the *Superannuation Act 1976* as in force immediately before
12 the commencement of Schedule 1 continues to apply in
13 relation to any pension granted or that may be granted under
14 this section in respect of the deceased pensioner or
15 contributor.

16 **20 At the end of section 48ABA**

17 Add:

- 18 (9) For the purposes of applying the definitions of *eligible child* and
19 *spouse* in subsection (1) in relation to a deceased pensioner who
20 died before the day on which Schedule 1 to the *Same-Sex*
21 *Relationships (Equal Treatment in Commonwealth Laws—*
22 *Superannuation) Act 2008* commenced:
- 23 (a) the amendments of the *Superannuation Act 1976* made by
24 that Schedule do not apply; and
 - 25 (b) the *Superannuation Act 1976* as in force immediately before
26 the commencement of Schedule 1 continues to apply.

27 ***Superannuation Act 1976***

28 **21 Subsection 3(1) (definition of *child*)**

29 Repeal the definition, substitute:

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

- 31 (a) a child of the person, including:
 - 32 (i) an adopted child, an ex-nuptial child, a foster child, a
33 step-child or a ward, of the person; and

- 1 (ii) if, at any time, the person had a partner (whether the
2 persons are the same sex or different sexes)—a child
3 who is the product of the person’s relationship with that
4 partner; or
- 5 (b) a child of a spouse of the person, including:
- 6 (i) an adopted child, an ex-nuptial child, a foster child, a
7 step-child or a ward, of the spouse; and
- 8 (ii) if, at any time, the spouse had a partner (whether the
9 persons are the same sex or different sexes)—a child
10 who is the product of the spouse’s relationship with that
11 partner.

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

14 **22 Subsection 3(1)**

15 Insert:

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

17 **23 Subsection 3(1) (definition of *late short-term marital***
18 ***relationship*)**

19 Repeal the definition (including the note), substitute:

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

23 (a) less than 3 years before the pensioner’s death; and
24 (b) after the pensioner became a retirement pensioner and had
25 reached the age of 60 years.

26 **24 Subsection 3(1)**

27 Insert:

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

31 **25 Subsection 3(1)**

32 Insert:

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

1 **26 At the end of section 3**

2 Add:

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

8 **27 Subsection 8A(1)**

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

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

11 **28 Subsection 8A(1)**

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

13 **29 Subsection 8A(2)**

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

15 **30 Subsection 8A(3)**

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

17 **31 After paragraph 8A(4)(b)**

18 Insert:

19 (ba) the persons’ relationship was registered under a law of a
20 State or Territory prescribed for the purposes of paragraph
21 4AB(4)(ba) of the *Judges’ Pensions Act 1968*, as a kind of
22 relationship prescribed for the purposes of that paragraph;

23 **32 At the end of paragraph 8A(4)(c)**

24 Add:

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

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

29 **33 Subsections 8B(2) and (3)**

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

1 **34 Subsections 94(2A), 95(1B) and 96(2A)**

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

3 **35 Subsection 96AB(2) (paragraph (a) of the definition of**
4 ***relevant period*)**

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

6 **36 Paragraph 96BA(1)(a)**

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

8 **37 Subsection 96BA(2) (paragraph (a) of the definition of**
9 ***relevant period*)**

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

11 **38 Subsection 108A(1)**

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

13 Note: The heading to section 108A is altered by omitting “**marital relationship**” and
14 substituting “**couple relationship**”.

15 **39 Subsection 108A(5) (subparagraph (a)(i) of the definition**
16 ***of relevant period*)**

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

18 **40 Paragraph 109AB(2)(c)**

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

20 **41 Paragraphs 109AB(3B)(b), (3C)(a) and (b), (5)(c), (5A)(b),**
21 **(5B)(a) and (b)**

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

23 **42 Paragraphs 110(4)(c) and (d) and (5B)(a)**

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

25 **43 Subparagraph 110(5B)(b)(i)**

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

27 **44 After subparagraph 110(5B)(b)(i)**

28 Insert:

1 (ia) was not the product of the couple relationship between
2 the spouse and pensioner referred to in paragraph (4)(d);
3 or

4 **45 Subparagraphs 110(5B)(b)(ii) and (iii)**

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

6 **46 At the end of subsection 110(5B)**

7 Add:

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

10 **47 Paragraph 110(7)(c)**

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

12 **48 Subparagraph 110(7A)(a)(ii)**

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

14 **49 Subparagraph 110(7A)(b)(i)**

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

16 **50 After subparagraph 110(7A)(b)(i)**

17 Insert:

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

20 **51 Subparagraphs 110(7A)(b)(ii) and (iii)**

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

22 **52 At the end of paragraph 110(7A)(b)**

23 Add:

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

27 **53 Paragraph 110(7B)(a)**

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

29 **54 Paragraph 110(14)(d)**

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

4 **55 Subparagraph 136(2B)(ma)(ii)**

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

6 **56 Subparagraph 136(2B)(ma)(iv)**

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

9 **57 Subparagraph 136(2B)(ma)(iv) (paragraph (a) of the**
10 **definition of *relevant period*)**

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

12 **58 Application of amendments of the *Superannuation Act***
13 **1976**

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

- 18 (a) an eligible employee (within the meaning of that Act); or
19 (b) a deferred benefit member (within the meaning of
20 Division 4A of Part V of that Act); or
21 (c) a retirement pensioner (within the meaning of that Act).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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*”.

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

3 **8 Subclause 9E(5) of Schedule 1**

4 Omit "husband or wife" (wherever occurring), substitute "partner".

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

6 Omit "marital relationship", substitute "couple relationship".

7 **10 After paragraph 9E(7)(b) of Schedule 1**

8 Insert:

9 (ba) the persons' relationship was registered under a law of a
10 State or Territory prescribed for the purposes of paragraph
11 4AB(4)(ba) of the *Judges' Pensions Act 1968*, as a kind of
12 relationship prescribed for the purposes of that paragraph;

13 **11 At the end of paragraph 9E(7)(c) of Schedule 1**

14 Add:

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

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

18 **12 After subclause 9F(1) of Schedule 1**

19 Insert:

20 (1A) If, at any time, a Federal Magistrate, or a retired Federal
21 Magistrate, had a partner (whether the Magistrate and the partner
22 are the same sex or different sexes), then, for the purposes of
23 subparagraph (1)(b)(i), a child of the Magistrate includes a child
24 who is the product of the relationship between the Magistrate and
25 that partner.

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

28 **13 Application of amendments of the *Federal Magistrates Act***
29 **1999**

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

- 6 (a) held office as a Federal Magistrate; or
7 (b) was a retired disabled Federal Magistrate.

8 ***Judges' Pensions Act 1968***

9 **14 Subsection 4(1)**

10 Insert:

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

- 13 (a) a child born of the couple relationship; or
14 (b) a child adopted by the people in the couple relationship
15 during the period of the relationship; or
16 (c) a child who is the product of the couple relationship.

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

19 **15 Subsection 4(1) (definition of *child of a marital***
20 ***relationship*)**

21 Repeal the definition.

22 **16 Subsection 4(1)**

23 Insert:

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

25 **17 Subsection 4(1)**

26 Insert:

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

30 **18 Subsection 4(1)**

31 Insert:

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

2 **19 At the end of section 4**

3 Add:

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

9 **20 Section 4AA**

10 Before “For”, insert “(1)”.

11 **21 At the end of section 4AA**

12 Add:

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

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

20 **22 Subsection 4AB(1)**

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

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

23 **23 Subsections 4AB(1) and (2)**

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

25 **24 Subsection 4AB(3)**

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

27 **25 After paragraph 4AB(4)(b)**

28 Insert:

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

1 **26 At the end of paragraph 4AB(4)(c)**

2 Add:

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

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

6 **27 Subsections 4AC(2) and (3)**

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

9 **28 Subsections 10(2), 11(3) and 12(3)**

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

12 **29 Paragraph 17A(aa)**

13 Omit “4AA(b)”, substitute “4AA(1)(b)”.

14 **30 Application of amendments of the *Judges’ Pensions Act***
15 ***1968***

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

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

27 ***Law Officers Act 1964***

28 **31 Subsection 16(1)**

29 Omit “other than subsection 6(3) (including the provisions relating to
30 widows and children)”, substitute “other than subsection 4(2) (including
31 the provisions relating to spouses and children)”.

1 **32 Application of amendments of the *Law Officers Act 1964***

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

- 6 (a) was appointed as Solicitor-General before 1 January 1998;
7 and
8 (b) dies on or after the commencement of this Schedule.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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:

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

4 **7 Subsection 3(1) (definition of *pension benefit*)**

5 After “widow’s pension”, insert “, spouse pension”.

6 **8 Subsection 3(1)**

7 Insert:

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

9 **9 At the end of section 3**

10 Add:

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

16 **10 Subsection 6A(1)**

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

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

19 **11 Subsection 6A(1)**

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

21 **12 Subsection 6A(2)**

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

23 **13 Subsection 6A(3)**

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

25 **14 After paragraph 6A(4)(b)**

26 Insert:

- 27 (ba) the persons’ relationship was registered under a law of a
28 State or Territory prescribed for the purposes of paragraph
29 4AB(4)(ba) of the *Judges’ Pensions Act 1968*, as a kind of
30 relationship prescribed for the purposes of that paragraph;
-

1 **15 At the end of paragraph 6A(4)(c)**

2 Add:

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

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

6 **16 Subsections 6B(2) and (3)**

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

9 **17 Paragraph 6BA(1)(b)**

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

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

13 **18 Subsection 49D(1) (note)**

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

16 **19 Subsection 75(5)**

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

18 **20 Paragraphs 98B(4)(ab), (ac) and (c)**

19 Omit “widow”, substitute “spouse”.

20 **21 Paragraphs 98D(1)(a), (b) and (c)**

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

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

23 Omit “widow”, substitute “spouse”.

24 **23 Subparagraph 98J(3)(b)(ii)**

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

26 **24 Application of amendments of the *Defence Force***
27 ***Retirement and Death Benefits Act 1973***

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

- 6 (a) a contributing member (within the meaning of that Act); or
- 7 (b) a recipient member (within the meaning of that Act); or
- 8 (c) a person in respect of whom deferred benefits were
- 9 applicable under section 78 of that Act.

10 ***Defence Forces Retirement Benefits Act 1948***

11 **25 After section 64**

12 Insert:

13 **64AA Special grant of pension where spouse pension would be**
 14 **payable**

- 15 (1) If, at any time after the day on which Schedule 3 to the *Same-Sex*
 16 *Relationships (Equal Treatment in Commonwealth Laws—*
 17 *Superannuation) Act 2008* commenced (the **start day**):
 18 (a) a pension is not payable to a person under section 57 or 64 of
 19 this Act; and
 20 (b) a pension benefit:
 21 (i) is not payable to the person under Division 1 of Part VI
 22 of the *Defence Force Retirement and Death Benefits Act*
 23 *1973*, as in force on the start day; but
 24 (ii) would have been payable to the person under that
 25 Division if a deceased pensioner had been, at the time of
 26 his or her death, a recipient member under that Act;
 27 the Authority may grant, from a specified date, a pension to the
 28 person at a rate and on conditions that the Authority determines in
 29 writing, having regard to any matters prescribed and any other
 30 matters it considers relevant.
- 31 (2) The Authority must not grant a pension to the person unless the
 32 Authority, having regard to any matters prescribed and any other
 33 matters it considers relevant, is satisfied that:
 34 (a) the person is in necessitous circumstances; or
 35 (b) the grant of the pension is otherwise warranted.

- 1 (3) The specified date from which the pension is granted:
2 (a) must not be earlier than the start day; and
3 (b) unless the Authority is satisfied that special circumstances
4 exist that justify an earlier date being specified, must not be
5 earlier than the date the grant is made.
- 6 (4) The rate of the pension must not exceed the rate at which pension
7 would have been payable under this Act to the person from the
8 specified date had the person been, at the date of death of the
9 deceased pensioner, the widow of the deceased pensioner for the
10 purposes of this Act.
- 11 (5) If:
12 (a) a pension is paid to a person under section 57 of this Act as a
13 widow of a pensioner; and
14 (b) the Authority grants a pension under this section to another
15 person in respect of the pensioner;
16 then, for the purpose of calculating the rate of pension payable to
17 the other person under this section, this Act has effect as if the
18 reference in paragraph 57(1)(a) to five-eighths were a reference to
19 three-eighths.
- 20 (6) A determination made under subsection (1) is not a legislative
21 instrument.
- 22 (7) The grant of a pension to a person under this section does not
23 affect any other person's entitlement to a pension, or the rate of
24 that pension, under another section of this Act.

25 **64AB Special grant of pension where child's pension would be**
26 **payable to eligible child**

- 27 (1) If, at any time after the day on which Schedule 3 to the *Same-Sex*
28 *Relationships (Equal Treatment in Commonwealth Laws—*
29 *Superannuation) Act 2008* commenced (the *start day*):
30 (a) a pension is not payable in respect of a person under
31 section 55, 57 or 64 of this Act; and
32 (b) a pension benefit:
33 (i) is not payable to the person under section 42 of the
34 *Defence Force Retirement and Death Benefits Act 1973*,
35 as in force on the start day; but

- 1 (ii) would have been payable to the person under that
2 section if a deceased pensioner had been, at the time of
3 his or her death, a recipient member under that Act;
4 the Authority may grant, from a specified date, a pension to the
5 person at a rate and on conditions that the Authority determines in
6 writing, having regard to any matters prescribed and any other
7 matters it considers relevant.
- 8 (2) The specified date from which the pension is granted:
9 (a) must not be earlier than the start day; and
10 (b) unless the Authority is satisfied that special circumstances
11 exist that justify an earlier date being specified, must not be
12 earlier than the date the grant is made.
- 13 (3) The rate of the pension must not exceed the rate at which pension
14 would have been payable under this Act to the person from the
15 specified date had the person been, at the date of death of the
16 deceased pensioner and at all times after that:
17 (a) the child of the deceased pensioner for the purposes of this
18 Act; and
19 (b) an eligible child for the purposes of this Act.
- 20 (4) A determination made under subsection (1) is not a legislative
21 instrument.
- 22 (5) The grant of a pension to a person under this section does not
23 affect any other person's entitlement to a pension, or the rate of
24 that pension, under another section of this Act.

25 **64AC Special grant of pension where child's pension would be**
26 **payable to eligible orphan**

- 27 (1) If, at any time after the day on which Schedule 3 to the *Same-Sex*
28 *Relationships (Equal Treatment in Commonwealth Laws—*
29 *Superannuation) Act 2008* commenced (the **start day**):
30 (a) a pension is not payable in respect of a person under
31 section 55, 57, 58 or 64 of this Act; and
32 (b) a pension benefit:
33 (i) is not payable to the person under section 43 of the
34 *Defence Force Retirement and Death Benefits Act 1973*,
35 as in force on the start day (the **amended Act**); but

- 1 (ii) would have been payable to the person under that
2 section if a deceased pensioner had been, at the time of
3 his or her death, a recipient member under that Act;
4 the Authority may grant, from a specified date, a pension to the
5 person at a rate and on conditions that the Authority determines in
6 writing, having regard to any matters prescribed and any other
7 matters it considers relevant.
- 8 (2) The specified date from which the pension is granted:
9 (a) must not be earlier than the start day; and
10 (b) unless the Authority is satisfied that special circumstances
11 exist that justify an earlier date being specified, must not be
12 earlier than the date the grant is made.
- 13 (3) The rate of the pension must not exceed the rate at which pension
14 would have been payable under this Act to the person from the
15 specified date:
16 (a) had the person been, at the date of death of the deceased
17 pensioner and at all times after that:
18 (i) the child of the deceased pensioner for the purposes of
19 this Act; and
20 (ii) an eligible child for the purposes of this Act; and
21 (b) had the person become entitled to a pension under subsection
22 55(2), 57(4) or 58(1) of this Act at the time when he or she
23 would have first become entitled, in the circumstances set out
24 in subsection (1), to pension benefit under section 43 of the
25 amended Act.
- 26 (4) A determination made under subsection (1) is not a legislative
27 instrument.
- 28 (5) The grant of a pension to a person under this section does not
29 affect any other person's entitlement to a pension, or the rate of
30 that pension, under another section of this Act.

31 **26 Application of amendment of the *Defence Forces***
32 ***Retirement Benefits Act 1948***

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

- 1 (a) receiving a pension under section 38, 39 or 41 of that Act; or
2 (b) receiving a benefit under subsection 51(1) of that Act.

1
2 **Schedule 4—Treasury amendments**

3 **Part 1—Superannuation law**

4 ***Retirement Savings Accounts Act 1997***

5 **1 Subsection 20(2)**

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

9 **2 Subsection 20(3)**

10 Repeal the subsection, substitute:

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

- 12 (a) a step-child, an ex-nuptial child or an adopted child of the
13 person; and
14 (b) if, at any time, the person was in a relationship as a couple
15 with another person (whether the persons are the same sex or
16 different sexes)—a child who is the product of the person’s
17 relationship with that other person.

18 (3A) A child cannot be the product of a relationship between two
19 persons (whether the persons are the same sex or different sexes)
20 for the purposes of this Act unless the child is the biological child
21 of at least one of the persons or is born to a woman in the
22 relationship.

23 **3 Application of amendments of the *Retirement Savings***
24 ***Accounts Act 1997***

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

27 ***Small Superannuation Accounts Act 1995***

28 **4 Section 4**

29 Insert:

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

3 **5 Section 4 (definition of spouse)**

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

7 **6 Application of amendments of the *Small Superannuation***
8 ***Accounts Act 1995***

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

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

13 **7 Subsection 54(3) (definition of spouse)**

14 Omit “as the beneficiary’s husband or wife”, substitute “in a
15 relationship as a couple (whether the beneficiary and the person are the
16 same sex or different sexes)”.

17 **8 Application of amendments of the *Superannuation***
18 ***(Government Co-contribution for Low Income Earners)***
19 ***Act 2003***

20 The amendments of the *Superannuation (Government Co-contribution*
21 *for Low Income Earners) Act 2003* made by this Schedule apply to the
22 2008-2009 income year and later income years.

23 ***Superannuation Industry (Supervision) Act 1993***

24 **9 Subsection 10(1) (definition of *child*)**

25 Repeal the definition, substitute:

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

- 27 (a) an adopted child, a step-child or an ex-nuptial child of the
28 person; and
29 (b) if, at any time, the person was in a relationship as a couple
30 with another person (whether the persons are the same sex or

Schedule 4 Treasury amendments

Part 1 Superannuation law

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

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

5 **10 Subsection 10(1) (definition of *spouse*)**

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

9 **11 At the end of section 10**

10 Add:

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

16 **12 Application of amendments of the *Superannuation***
17 ***Industry (Supervision) Act 1993***

18 The amendments of the *Superannuation Industry (Supervision) Act*
19 *1993* made by this Schedule apply to the 2008-2009 year of income and
20 later years.

1

2 **Part 2—Taxation law**

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

4 **13 After section 295-465**

5 Insert:

6 **295-485A Meaning of *spouse* and *child* for 2008-2009 income year**

- 7 (1) This section applies only for the 2008-2009 income year.
- 8 (2) For the purposes of section 295-485 of the *Income Tax Assessment*
9 *Act 1997*, paragraph 295-485(1)(a) of that Act applies as if:
- 10 (a) the reference to a spouse or former spouse of the deceased
11 were a reference to:
- 12 (i) a spouse of the deceased within the meaning of the
13 *Superannuation Industry (Supervision) Act 1993* as in
14 force immediately after the commencement of
15 Schedule 4 to the *Same-Sex Relationships (Equal*
16 *Treatment in Commonwealth Laws—Superannuation)*
17 *Act 2008*; or
- 18 (ii) an individual who was formerly such a spouse; and
- 19 (b) the reference to a child of the deceased were a reference to a
20 child of the deceased within the meaning of the
21 *Superannuation Industry (Supervision) Act 1993* as in force
22 immediately after the commencement of Schedule 4 to the
23 *Same-Sex Relationships (Equal Treatment in Commonwealth*
24 *Laws—Superannuation) Act 2008*.

25 **14 At the end of Division 302**

26 Add:

27 **302-195A Meaning of *death benefits dependant* for 2008-2009 income**
28 **year**

- 29 (1) This section applies only for the 2008-2009 income year.
- 30 (2) For the purposes of Subdivision 82-B of Division 82, Division 302
31 and section 303-5 of the *Income Tax Assessment Act 1997*, the

Schedule 4 Treasury amendments
Part 2 Taxation law

- 1 definition of *death benefits dependant* in section 302-195 of that
2 Act applies as if paragraphs (a) and (b) of the definition were
3 replaced with the following paragraphs:
- 4 (a) a spouse of the deceased within the meaning of the
5 *Superannuation Industry (Supervision) Act 1993* as in force
6 immediately after the commencement of Schedule 4 to the
7 *Same-Sex Relationships (Equal Treatment in Commonwealth*
8 *Laws—Superannuation) Act 2008* or a person who was
9 formerly such a spouse; or
- 10 (b) a child of the deceased within the meaning of the
11 *Superannuation Industry (Supervision) Act 1993* as in force
12 immediately after the commencement of Schedule 4 to the
13 *Same-Sex Relationships (Equal Treatment in Commonwealth*
14 *Laws—Superannuation) Act 2008*, who is aged less than 18.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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:

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

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

9 **8 Section 2C**

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

12 **9 Application of amendments of the *Governor-General Act***
13 **1974**

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