

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH
LAWS — GENERAL LAW REFORM) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Hon Robert McClelland MP)

SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS – GENERAL LAW REFORM) BILL 2008

Outline.....	2
Financial Impact Statement	5
Regulation Impact Statement	5
Key concepts and definitions.....	6
Notes on clauses	14
Schedule 1—Agriculture, Fisheries and Forestry amendments	18
Schedule 2—Attorney-General's amendments.....	20
Schedule 3—Broadband, Communications and the Digital Economy amendments.....	41
Schedule 4—Defence amendments.....	46
Schedule 5—Education, Employment and Workplace Relations amendments	58
Schedule 6—Families, Housing, Community Services and Indigenous Affairs amendments	67
Schedule 7—Finance and Deregulation amendments	94
Schedule 8—Foreign Affairs and Trade amendments	108
Schedule 9—Health and Ageing amendments	113
Schedule 10—Immigration and Citizenship amendments	131
Schedule 11—Infrastructure, Transport, Regional Development and Local Government amendments	155
Schedule 12—Innovation, Industry, Science and Research amendments	166
Schedule 13—Prime Minister and Cabinet amendments	168
Schedule 14—Treasury amendments	171
Schedule 15—Veteran’s Affairs amendments	203

Outline

1 The purpose of this Bill is to eliminate discrimination against same-sex couples and the children of same-sex relationships in a wide range of Commonwealth laws. The Bill will amend 68 Commonwealth laws to achieve this purpose, including the following Acts:

Schedule 1—Agriculture, Fisheries and Forestry

- *Australian Meat and Live-stock Industry Act 1997*
- *Farm Household Support Act 1992*

Schedule 2—Attorney-General

- *Acts Interpretation Act 1901*
- *Administrative Decisions (Judicial Review) Act 1977*
- *Age Discrimination Act 2004*
- *Australian Federal Police Act 1979*
- *Bankruptcy Act 1966*
- *Crimes Act 1914*
- *Crimes (Superannuation Benefits) Act 1989*
- *Customs Act 1901*
- *High Court Justices (Long Leave Payments) Act 1979*
- *Judges (Long Leave Payments) Act 1979*
- *Passenger Movement Charge Collection Act 1978*
- *Proceeds of Crime Act 2002*
- *Service and Execution of Process Act 1992*
- *Sex Discrimination Act 1984*
- *Witness Protection Act 1994*

Schedule 3—Broadband, Communications and the Digital Economy

- *Australian Postal Corporation Act 1989*
- *Broadcasting Services Act 1992*
- *Telstra Corporation Act 1991*

Schedule 4—Defence

- *Defence Force (Home Loans Assistance) Act 1990*
- *Defence (Parliamentary Candidates) Act 1969*
- *Royal Australian Air Force Veterans' Residences Act 1953*

Schedule 5—Education, Employment and Workplace Relations

- *Education Services for Overseas Students Act 2000*
- *Higher Education Support Act 2003*
- *Judicial and Statutory Officers (Remuneration and Allowances) Act 1984*

- *Safety, Rehabilitation and Compensation Act 1988*
- *Seafarers Rehabilitation and Compensation Act 1992*
- *Student Assistance Act 1973*

Schedule 6—Families, Housing, Community Services and Indigenous Affairs

- *A New Tax System (Family Assistance) Act 1999*
- *A New Tax System (Family Assistance) (Administration) Act 1999*
- *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Social Security Act 1991*

Schedule 7—Finance and Deregulation

- *Commonwealth Electoral Act 1918*
- *Medibank Private Sale Act 2006*
- *Members of Parliament (Life Gold Pass) Act 2002*
- *Parliamentary Entitlements Act 1990*
- *Superannuation Act 1976*

Schedule 8—Foreign Affairs and Trade

- *Australian Passports Act 2005*
- *Export Market Development Grants Act 1997*
- *Trade Representatives Act 1933*

Schedule 9—Health and Ageing

- *Aged Care Act 1997*
- *Health Insurance Act 1973*
- *National Health Act 1953*
- *Prohibition of Human Cloning for Reproduction Act 2002*
- *Research Involving Human Embryos Act 2002*

Schedule 10—Immigration and Citizenship

- *Australian Citizenship Act 2007*
- *Immigration (Education) Act 1971*
- *Immigration (Guardianship of Children) Act 1946*
- *Migration Act 1958*

Schedule 11—Infrastructure, Transport, Regional Development and Local Government

- *Airports Act 1996*
- *Civil Aviation (Carriers' Liability) Act 1959*
- *Navigation Act 1912*

Schedule 12—Innovation, Industry, Science and Research

- *Pooled Development Funds Act 1992*

Schedule 13—Prime Minister and Cabinet

- *Privacy Act 1988*

Schedule 14—Treasury

- *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*
- *Corporations Act 2001*
- *Fringe Benefits Tax Assessment Act 1986*
- *Financial Sector (Shareholdings) Act 1998*
- *Foreign Acquisitions and Takeovers Act 1975*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Insurance Acquisitions and Takeovers Act 1991*
- *Life Insurance Act 1995*

Schedule 15—Veterans' Affairs

- *Defence Service Homes Act 1918*
- *Military Rehabilitation and Compensation Act 2004*
- *Veterans' Entitlements Act 1986*

2 The amendments contained in this Bill are required because same-sex de facto relationships and registered relationships are not accorded recognition in a wide range of Commonwealth laws which already provide recognition to opposite-sex de facto relationships. This differential treatment prevents same-sex couples from accessing many benefits which are available to opposite-sex couples. It also relieves them of a number of obligations which are commonly imposed on opposite-sex couples.

3 The amendments are also required to ensure that functional recognition is provided to the children of same-sex relationships. The amendments will ensure that children of same-sex couples are not disadvantaged solely because of their family structure. It will also mean that legislative provisions which extend rights and duties to children and relatives will extend to children of same-sex relationships.

4 The Bill will remove discrimination by amending a number of different definitions across Commonwealth legislation. These amendments will include a new model definition of 'de facto partner' which will apply equally to same and opposite-sex de facto couples. The definitions of 'child' and 'parent' will be expanded where appropriate to include the children of same-sex couples. Amendments will also be made to ensure that de facto partners, children of same-sex couples, and persons whose relationship is traced through them will be considered to be members of a person's family, and relatives for the purposes of relevant Commonwealth legislation. The general approach taken by the Bill is to extend the existing meaning of these terms to include same-sex relationships. A more detailed discussion of the definitions and approaches adopted in the Bill may be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Financial Impact Statement

5 The measures in this Bill will have the following financial impact over four years:

Expense (\$ million)				
	2008–09	2009–10	2010–11	2011–12
Department of Families, Housing, Community Services and Indigenous Affairs	9.7	-18.5	-25.2	-30.5
Department of Employment, Education and Workplace Relations	11.8	-7.4	-32.1	-39.1
Department of Veterans' Affairs	1.2	3.7	3.4	3.7
Department of Immigration and Citizenship	0.4
Department of Health and Ageing	0.3	0.9	0.9	1.0
Medicare Australia	0.2	-	-	-

(A minus sign before an estimate indicates a reduction in expenses, no sign before an estimate indicates increased expenses.)

Capital (\$ million)				
	2008–09	2009–10	2010–11	2011–12
Department of Veterans' Affairs	0.2	-	-	-
Department of Immigration and Citizenship	0.1

(A minus sign before an estimate indicates a reduction in capital, no sign before an estimate indicates increased capital.)

Revenue (\$ million)				
	2008–09	2009–10	2010–11	2011–12
Australian Taxation Office	-0.4	3.2	-0.8	-1.0

(A minus sign before an estimate indicates a reduction in revenue, no sign before an estimate indicates a gain to revenue.)

6 The measures have an ongoing financial impact.

Regulation Impact Statement

7 A regulation impact statement is not required. The Office of Best Practice Regulation has advised that no further analysis was required as the Bill will have little to no regulatory impact.

Key concepts and definitions

8 This section provides an explanation of the key concepts and definitions used in the Bill.

De facto partner

9 This Bill (Item 1 of Schedule 2 to this Bill) inserts a definition of ‘de facto partner’ into the *Acts Interpretation Act 1901*. The definition encompasses members of both same-sex and opposite-sex de facto relationships.

10 Section 22A of the Acts Interpretation Act will require that an Act or a provision of an Act may specify that the definition in the Acts Interpretation Act applies to that Act or that provision. This approach is a departure from the usual approach in the Acts Interpretation Act which is for words to be defined to have a meaning ‘unless the contrary intention appears’. This means that the application of the definition of ‘de facto partner’ in the Acts Interpretation Act will have no effect unless it is ‘triggered’ by express provisions in the substantive Act. This approach avoids any possibility of unintended consequences in other legislation.

11 Section 22A will prescribe two different circumstances in which a person will be considered to be the de facto partner of another person. Paragraph 22A(a) of the Acts Interpretation Act will provide that a person is a de facto partner of another person if the person is in a ‘registered relationship’ with another person under section 22B of the Acts Interpretation Act. Paragraph 22A(b) of the Acts Interpretation Act will provide that a person is a de facto partner of another person if the person is in a ‘de facto relationship’ with that person under section 22C of the Acts Interpretation Act. The definition of ‘de facto partner’ is gender neutral and applies to both same-sex and opposite-sex couples.

Registered relationships

12 Under section 22B of the Acts Interpretation Act, a person will be considered to be in a registered relationship with another person for the purposes of paragraph 22A(a) of the Acts Interpretation Act if the relationship is registered under a prescribed law of a State or Territory as a prescribed kind of relationship. This will only apply to relationships that are registered under State or Territory laws that are prescribed for the purposes of the Acts Interpretation Act and are of a kind that has been prescribed. For example, provisions of State and Territory laws that provide for registration of ‘caring’ or ‘interdependent’ relationships will not be prescribed as kinds of relationships that will be taken to be a registered relationship for the purposes of the Acts Interpretation Act.

13 The types of relationships that will be prescribed under section 22B of the Acts Interpretation Act are relationships that can be registered under some State and Territory laws that provide for registration of certain relationships. Only State and Territory laws or provisions of laws that provide for registration of relationships—same-sex or opposite-sex—will be prescribed.

De facto relationships

14 Section 22C of the Acts Interpretation Act will provide that, for the purposes of paragraph 22A(b) of the Acts Interpretation Act, a person is in a de facto relationship with another person if the members of the couple are not legally married, are not related by family and have a relationship as a couple living together on a genuine domestic basis.

15 Subsection 22C(2) of the Acts Interpretation Act will provide that all the circumstances of the relationship between the persons are to be taken into account when determining whether two persons have a relationship as a couple for the purposes of paragraph 22C(1)(c) of the Acts Interpretation Act, including any or all of the following relevant factors:

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- the duration of the relationship
- the nature and extent of their common residence
- whether a sexual relationship exists
- the degree of financial dependence or interdependence, and any arrangements for financial support, between them
- the ownership, use and acquisition of their property
- the degree of mutual commitment to a shared life
- the care and support of children, and
- the reputation and public aspects of the relationship.

16 Subsection 22C(3) of the Acts Interpretation Act will clarify that no particular finding in relation to any circumstance used in subsection 22C(2) of the Acts Interpretation Act is to be regarded as necessary in deciding whether the persons have a de facto relationship. For example, the fact that a couple do not have children is not a determinative factor when determining whether they are in a de facto relationship. In the same way a lack of a sexual relationship will not exclude the couple from being in a de facto relationship.

17 Subsection 22C(4) of the Acts Interpretation Act will provide that persons are to be taken to be living together on a genuine domestic basis if they are not in fact living together on a genuine domestic basis only because of:

- a temporary absence from each other (eg due to work commitments), or
- illness or infirmity of either or both of them (eg one partner living in a nursing home).

18 Subsection 22C(5) of the Acts Interpretation Act will clarify that a de facto relationship can exist even if one person in the relationship is legally married to another person, in a registered relationship with another person, or in another de facto relationship. This reflects current laws which allow a person to be in a de facto relationship with a person even if they are married to another person.

19 Subsection 22C(6) of the Acts Interpretation Act will provide that for the purposes of paragraph 22C(1)(b), two persons are to be considered to be related by family if:

- one is the child (including an adopted child) of the other
- one is another descendant of the other (even if the relationship between them is traced through an adoptive parent), or
- they have a parent in common (who may be an adoptive parent of either or both of them).

For the purposes of determining if two persons are related by family, the fact that adoption has been declared void or has ceased to have effect is to be disregarded. This means that if a person has previously been adopted and that adoption has been declared void or has ceased to take effect, the fact of adoption is still to be taken into account when determining whether that person and another person are related by family.

Child

20 The insertion of the key definition of ‘child’ expands the classes of children that may be taken to be a child of a couple. The insertion of this definition does not replace the definition of ‘child’ as it is currently understood in any of the other Acts or provisions of Acts to be amended. This definition expands the current classes of children for the purposes of the Acts or provisions of Acts to be amended. It provides that a child will be considered to be a person’s child where the child is the product of a relationship the person has or had as a couple with another person.

21 The key definition of ‘child’ will also extend recognition to children of opposite-sex relationships who are not already covered by the existing definitions in the Acts or provisions of Acts to be amended. For example, a child who is biologically related to either member of an opposite-sex couple who is conceived through a private surrogacy arrangement, either by the use of Artificial Insemination or through sexual intercourse, would be recognised.

22 Consent to the procreation of a child is not an express requirement in the key definition of ‘child’. This is because the term ‘product of the relationship’ implies an element of joint endeavour. The use of the term ‘product of the relationship’ allows all the circumstances of a particular case to be considered, which means that a unilateral action by one party would not be likely to fall within the definition of the ‘product of the relationship’.

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23 A child cannot be a product of the relationship unless the child is:

- the biological child of at least one person in the relationship, ie is conceived utilising the gametes of one party to the relationship, or
- the birth child of a woman in the relationship.

24 Examples 1 to 6 below outline circumstances where a child would be considered to be the ‘product of the relationship’. The circumstances indicated in examples 7 to 9.

Example 1

J forms a relationship as a couple with S. During the relationship J and S decide that S will undergo an artificial conception procedure using gametes from S and a donor. The procedure takes place and S gives birth to H.

25 Whilst H is the biological child of S, he is not the biological child of J. H will be considered J's child for the purposes of the key definition of 'child'. That is, H is the product of the relationship between J and S and is S's biological child. This would continue to be the case even if the relationship between J and S were to break down at a later time.

Example 2

J forms a relationship as a couple with S. During the relationship J and S decide that S will undergo an artificial conception procedure using donated gametes. The procedure takes place and S gives birth to H.

26 Whilst H is the birth child of S, he is not the biological child of either J or S. H will be considered J's child for the purposes of the definition of 'child'. That is, H is the product of the relationship between J and S and S is H's birth mother. This would continue to be the case even if the relationship between J and S were to break down at a later time.

Example 3

J forms a relationship as a couple with S. During the relationship J and S enter into an arrangement with T, a person of the opposite-sex, whereby S will have sexual intercourse with T so that S may become pregnant. All parties agree that T will have no role in the life of the child following the child's conception. The arrangement takes place and S gives birth to H.

27 Whilst H is the biological child of S, H is not the biological child of J. H will be considered J's child for the purposes of the definition of 'child'. That is, H is the product of the relationship between J and S because H is S's biological child and there was an element of joint endeavour between J and S in the procreation of H. H would continue to be considered J and S's child even if the relationship between J and S were to break down at a later time.

Example 4

J forms a relationship as a couple with S. During the relationship J and S enter into a surrogacy arrangement with T, whereby T will become pregnant using gametes from S and gametes from an anonymous donor. All parties agree that T will have no role in the life of the child following the child's birth. The arrangement takes place and T gives birth to H.

28 Whilst H is the biological child of S, H is not the biological child of J. H will be considered J's child for the purposes of the definition of 'child'. That is, H is the product of the relationship between J and S because H is S's biological child there is also an element of joint endeavour between J and S in the procreation of H. H would continue to be considered J and S's child even if the relationship between J and S were to break down at a later time.

Example 5

J forms a relationship as a couple with S. During the relationship J and S decide that S will undergo an artificial conception procedure using donated gametes. The procedure takes place. The relationship between J and S breaks down and J leaves the relationship before S gives birth to H.

29 Whilst H is the birth child of S, he is not the biological child of either J or S. H will be considered J's child for the purposes of the definition of 'child'. That is, H is the product of the relationship between J and S and S is H's birth mother. The child is still the product of the relationship between J and S even though their relationship has broken down. This will continue to be the case even if S and J enter other relationships.

Example 6

J, a man, is married to S, a woman. Together they have a child H who is the biological child of both J and S.

30 The child H clearly satisfies the common law definition of 'child'. H is also the product of J and S's relationship because both J and S are biologically related to H and S is the birth mother of H.

Example 7

J forms a relationship as a couple with S. During the relationship S has sexual intercourse with T without the knowledge of J, becomes pregnant and gives birth to H.

31 If J decides to leave S, H cannot be considered J's child for the purposes of the definition of 'child'. This is because H is S's biological child but H is not the product of the relationship between J and S as there was no element of joint endeavour. H's connection with J only arose because J was in a relationship with S when H was conceived without the knowledge of J.

Example 8

J, a man has a relationship with S, a woman, and they have a child H. J leaves S and forms a relationship with T, another man, and they raise H together.

32 H is the product of the relationship between J and S. Whilst H is J's biological child, and is in a new relationship with T, H is not the product of the relationship between S and T.

Example 9

J forms a relationship as a couple with S. S has a child H from a previous relationship.

33 H cannot be considered J's child for the purposes of the definition of 'child'. Whilst H is S's biological child, and S is in the relationship, H is not the product of the relationship between J and S. H's connection with J only arose because J commenced a relationship with S and H was conceived before the relationship started. However, in Acts that provide for the recognition of step-children, H may be considered to be J's step-child if the key definition of 'step-child' is inserted (outlined below).

Parent

34 As the insertion of the key definition of ‘child’ will expand the classes of children that may be taken to be a child of a couple, a key definition of ‘parent’ will be inserted in the Acts to be amended (where necessary) to ensure that both members of a couple are recognised as parents of the child where that child is the product of the relationship.

35 The definition does not limit who can be considered a parent of a person for the purposes of the Acts to be amended. It adds to the current definition of parent so that a person can be considered to be a parent of a person if that person is the person’s child because of the key definition of ‘child’.

Step child

36 The ordinary meaning of ‘stepchild’ is a ‘child of a husband or wife by a former union’. As same-sex couples cannot marry, the child of one member of the couple by a former relationship cannot be considered to be the other member of the couple’s stepchild. This is also the case for children of opposite-sex de facto partners by a former relationship.

37 This Bill expands the definition of ‘stepchild’ to include a child of an opposite-sex or same-sex de facto partner by a former relationship. This is achieved by providing that a ‘stepchild’ includes a child who would be the stepchild of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. It is not necessary to establish that the person and the parent are capable of being legally married.

38 The definition is inclusive and does not limit who is a stepchild for the purposes of the relevant Act. The insertion of this definition ensures that stepchildren of both opposite-sex and same-sex de facto relationships are recognised for the purposes of relevant Acts. The example below outlines circumstances where a child would be considered to be a ‘stepchild’:

Example 1

J forms a de facto relationship as a couple with S. S has a child H from a previous relationship.

39 While H cannot be considered J’s child for the purposes of the definition of ‘child’, H will be considered to be J’s ‘stepchild for the purposes of the relevant Act as H would be the stepchild of J, except that H is not legally married to S.

Step-parent

40 The ordinary meaning of ‘step-parent’ is a ‘spouse of a parent of a child by a former union’. As same-sex couples cannot marry, a same-sex de facto partner of a parent cannot be considered to be a step-parent of a child born into a former relationship of the parent, de facto or otherwise. This also applies to opposite-sex de facto partners of parents of children who are born into a former relationship of the birth parent, de facto or otherwise.

41 This Bill expands the definition of ‘step-parent’ (where relevant) to include a same-sex or opposite-sex de facto partner of a parent of a child by a former relationship. This is achieved by providing that the partner is a ‘step-parent’ where that partner would be the child’s step-parent, except that the partner and the parent are not legally married. It is not necessary to establish that the partner and the parent are capable of being legally married.

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42 The definition is inclusive and does not limit who is a step-parent for the purposes of the relevant Act. The insertion of this definition ensures that step-parents of children of both opposite-sex and same-sex de facto relationships are recognised for the purposes of relevant Acts.

43 The example below outlines a circumstance where a person would be considered to be a step-parent:

Example 1

J forms a relationship as a couple with S. S has a child H from a previous relationship.

44 While H cannot be considered J’s child for the purposes of the definition of ‘child’, J will be considered to be H’s step-parent for the purposes of the relevant Act as J would be the step-parent of H if J were able to marry S.

Tracing rule

45 Where other family relationships such as ‘brother’, ‘aunt’, and ‘grandparents’ are provided for in an Act, a tracing rule has been developed that will allow relationships referred to in the Acts to include relationships that are traced through the child-parent relationship. Examples 1 and 2 below outline circumstances where the tracing rule can be used to determine a relationship.

Example 1

J forms a relationship as a couple with S. During the relationship J and S decide that S will undergo an artificial conception procedure using donated gametes. The procedure takes place and S gives birth to H. Later, J and S decide to have another child – S will again undergo an artificial conception procedure using donated gametes, but from a different source. The procedure takes place and S gives birth to T. Whilst T is the child of S and J, he is not the biological sibling of H.

46 The use of the tracing rule in this instance will allow T to be considered as H’s brother because the relationship is traced through the definitions of child and parent. This will continue to be the case even if the relationship between J and S were to break down at a later time. Without the tracing rule, T will only be considered to be H’s half-brother.

Example 2

J forms a relationship as a couple with S. S has a brother T. During the relationship, J and S decide that J will undergo an artificial conception procedure using donated gametes. The procedure takes place and J gives birth to H.

47 T will be considered as H’s uncle in this instance because the relationship is traced through the definitions of ‘child’ and ‘parent’. This will continue to be the case

even if the relationship between J and S were to break down at a later time. Without the tracing rule, T will have no familial link to H and would not be considered to be T's uncle.

Notes on clauses

Clause 1—Short title

48 Clause 1 provides for the Act to be cited as the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*.

Clause 2—Commencement

49 Clause 2 provides for the commencement of the Act.

50 Subclause 2(1) provides that each provision of the Act specified in column 1 of the table set out in the subclause 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.

[51](#) The note at the end of the table explains that the table relates only to the provisions of the Act as originally passed by both Houses of the Parliament and assented to. The table will not be expanded to deal with provisions inserted in the Act after assent.

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52 Subclause 2(2) provides that column 3 of the table contains additional information that is not part of the Act. It also clarifies that information in column 3 may be added or edited in any published version of the Act.

53 Item 1 of the table provides that clauses 1 to 3 will commence on the day on which the Act receives Royal Assent.

[54](#) Item 2 of the table provides that Schedule 1 to the Bill will commence on the day after the Act receives Royal Assent.

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[55](#) Item 3 of the table provides that Schedule 2, Part 1 to the Bill will commence on the day after the Act receives Royal Assent.

56 Item 4 of the table provides that Schedule 2, Items 2 and 3 will commence at the same time as the provisions covered by Item 28 of the table because it is a related amendment. Item 28 will commence on 1 July 2009.

57 Item 5 of the table provides that Schedule 2, Items 4 to 23 will commence on the day after the Act receives Royal Assent.

58 Item 6 of the table provides that Schedule 2, Item 24 will commence on either the start of the day after the Act receives Royal Assent or immediately after the commencement of Item 13 of Schedule 2 to the *Family Law (De facto Financial Matters and Other Measures) Act 2008* whichever is the latter. This is because the *Family Law (De facto Financial Matters and Other Measures) Bill 2008* is currently before the Parliament.

59 Item 7 of the table provides that Schedule 2, Item 25 will commence on the day after the Act receives Royal Assent.

60 Item 8 of the table provides that Schedule 2, Item 26 will commence on either the start of the day after the Act receives Royal Assent or immediately after the commencement of Item 13 of Schedule 2 to the *Family Law (De facto Financial Matters and Other Measures) Act 2008* whichever is the latter. This is because the *Family Law (De facto Financial Matters and Other Measures) Bill 2008* is currently before the Parliament.

61 Item 9 of the table provides that Schedule 2, Item 27 will commence on the day after the Act receives Royal Assent.

62 Item 10 of the table provides that Schedule 2, Item 28 will commence on either the start of the day after the Act receives Royal Assent or immediately after the commencement of Item 13 of Schedule 2 to the *Family Law (De facto Financial Matters and Other Measures) Act 2008* whichever is the latter. This is because the *Family Law (De facto Financial Matters and Other Measures) Bill 2008* is currently before the Parliament.

63 Item 11 of the table provides that that Schedule 2, Items 29 to 86 will commence on the day after the Act receives Royal Assent.

[64](#) Item 12 of the table provides that that Schedule 3, 4, and 5 will commence on the day after the Act receives Royal Assent.

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[65](#) Item 13 of the table provides that Schedule 6, Part 1 will commence on the day after the Act receives Royal Assent.

[66](#) Item 14 of the table provides that that Schedule 6, Part 2 will commence on 1 July 2009.

[67](#) Item 15 of the table provides that that Schedule 7, Items 1 to 7 will commence three months after the day on which the Act receives Royal Assent.

[68](#) Item 16 of the table provides that that Schedule 7, Items 8 to 55 will commence on the day after the Act receives Royal Assent.

69 Item 17 of the table provides that that Schedule 7, Part 3 will commence on the day after the Act receives Royal Assent. However, if Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* does not commence on or before the day after the Act receives Royal Assent, the provision(s) do not commence at all. This is because the Bill is drafted to operate in different ways depending on whether Schedule 1 to the *Same-sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* does not commence on or before the day after the Act receives Royal Assent, or does so commence (see the next item).

70 Item 18 of the table provides that that Schedule 7, Part 4, Item 58 will commence on the day after the Act receives Royal Assent. However, if Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commences on or before the day after the Act receives Royal Assent, the provision(s) do not commence at all.

71 Item 19 of the table provides that Schedule 7, Part 4, Item 59 will commence immediately after the commencement of Schedule 1 to the *Same-Sex Relationships*

(Equal Treatment in Commonwealth Laws—Superannuation) Act 2008. However, if Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commences on or before the day after the Act receives Royal Assent, the provision(s) do not commence at all.

72 Item 20 of the table provides that Schedule 7, Part 4, Item 60 will commence the day after the Act receives Royal Assent. However, if Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commences on or before the day after the Act receives Royal Assent, the provision(s) do not commence at all.

73 Item 21 of the table provides that Schedule 7, Part 4, Item 61 will commence immediately after the commencement of Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008*. However, if Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commences on or before the day after the Act receives Royal Assent, the provision(s) do not commence at all.

74 Item 22 of the table provides that that Schedule 8, Part 1 to the Bill will commence on 1 July 2009.

[75](#) Item 23 of the table provides that Schedule 8, Part 2 to the Bill will commence on the day after the Act receives Royal Assent.

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[76](#) Item 24 of the table provides that Schedule 9, Part 1 to the Bill will commence on the day after the Act receives Royal Assent.

[77](#) Item 25 of the table provides that Schedule 9, Part 2 to the Bill will commence on 1 January 2009.

[78](#) Item 26 of the table provides that Schedule 9, Part 3 to the Bill commences on 1 July 2009.

79 Item 27 of the table provides that Schedule 10, Part 1 to the Bill will commence on a 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 the Act receives Royal Assent, they commence on the first day after the end of that period.

80 Item 28 of the table provides that Schedule 10, Parts 2 and 3 to the Bill will commence on 1 July 2009.

81 Item 29 of the table provides that Schedule 10, Part 4 to the Bill will commence on a 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 the Act receives Royal Assent, they commence on the first day after the end of that period.

[82](#) Item 30 of the table provides that Schedule 11, Part 1 to the Bill will commence either on the start of the day after the Act receives Royal Assent or immediately after the commencement of Schedule 2 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Amendments) Act 2008* whichever the latter.

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83 Item 31 of the table provides that Schedule 11, Part 2 to the Bill will commence on the day after the Act receives Royal Assent. However, the provision(s) do not

commence at all if Schedule 2 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Amendments) Act 2008* does not commence on or before the day after the Act receives Royal Assent.

[84](#) Item 32 of the table provides that Schedule 11, Part 3 to the Bill will commence on the day after the Act receives Royal Assent. However, the provision(s) do not commence at all if Schedule 2 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Amendments) Act 2008* commences on or before the day after the Act receives Royal Assent.

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85 Item 33 of the table provides that Schedule 11, Part 4 to the Bill will commence on the day after the Act receives Royal Assent.

[86](#) Item 34 of the table provides that Schedule 11, Part 4 to the Bill will commence on the day after the Act receives Royal Assent.

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[87](#) Item 35 of the table provides that Schedule 13 to the Bill will commence on 1 July 2009.

[88](#) Item 36 of the table provides that Schedule 14 to the Bill will commence on the day after the Act receives Royal Assent.

[89](#) Item 37 of the table provides that Schedule 15 to the Bill will commence on 1 July 2009.

Clause 3—Schedule(s)

90 Clause 3 provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1—Agriculture, Fisheries and Forestry amendments

91 This Schedule contains amendments to the *Australian Meat and Live-stock Industry Act 1997* and the *Farm Household Support Act 1992* (within the Agriculture, Fisheries and Forestry portfolio) to remove differential treatment of same-sex couples and their children.

Australian Meat and Live-stock Industry Act 1997

92 The *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act) formalises the structural arrangements of the red meat and livestock industry.

Item 1

93 This item repeals paragraph (b) of the definition of ‘associate’ in section 3 of the AMLI Act, which provides that an associate includes the subject person’s spouse or de facto spouse. The item inserts a new paragraph (b) providing that an associate includes a person’s spouse or ‘de facto partner’ within the meaning of the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

94 The definition of ‘associate’ is relevant to section 25A of the AMLI Act. If the Secretary refuses to grant or renew a licence to a person or suspends or cancels an existing licence, he or she can also take action in relation to the licence of an associate of a person against whom such action was taken.

Farm Household Support Act 1992

95 The *Farm Household Support Act 1992* (the FHS Act) regulates the provision of income support and advice to farmers who may not have a long term productive, sustainable and profitable future in the sector, the provision of financial incentives to farmers to leave farming, and the provision of relief payments to farmers who are in exceptional circumstances and to certain small business operators.

Item 2

96 Subsection 12(3) of the FHS Act provides that an armed services widow who receives a pension under Part II or IV of the *Veteran’s Entitlements Act 1986* is not eligible for farm household support, exceptional circumstances relief payment or farm help income support unless she has been receiving this benefit continuously since 1 November 1986, and was also receiving a social security benefit before that date. ‘Armed services widow’ is not defined in the Act, and therefore the term ‘widow’ may take its ordinary meaning, which only relates to married couples. This discriminates against same-sex and opposite-sex de facto couples.

97 Subsection 3(1) of the FHS Act provides a list of terms which have the same meaning as in the *Social Security Act 1991*. The item adds the term ‘armed services widow’ to this list. This removes discrimination because the term is defined in a non-discriminatory way in the Social Security Act.

Item 3

98 Sub-section 12(4) of the FHS Act provides that an armed services widower who receives a pension under Part II or IV of the *Veteran's Entitlements Act 1986* is not eligible for farm household support, exceptional circumstances relief payment or farm help income. 'Armed services widower' is not defined in the Act, and therefore the term 'widower' may take its ordinary meaning, which only relates to married couples. This discriminates against same-sex and opposite-sex de facto couples.

99 Subsection 3(1) of the FHS Act provides a list of terms which have the same meaning as in the Social Security Act. The item adds the term 'armed services widower' to this list. This removes discrimination because the term is defined in a non-discriminatory way in the Social Security Act.

Schedule 2—Attorney-General’s amendments

100 This Schedule contains amendments to the following Acts within the Attorney-General’s portfolio to remove differential treatment of same-sex couples and their children:

- *Acts Interpretation Act 1901*
- *Administrative Decisions (Judicial Review) Act 1977*
- *Age Discrimination Act 2004*
- *Australian Federal Police Act 1979*
- *Bankruptcy Act 1966*
- *Crimes Act 1914*
- *Crimes (Superannuation Benefits) Act 1989*
- *Customs Act 1901*
- *High Court Justices (Long Leave Payments) Act 1979*
- *Judges (Long Leave Payments) Act 1979*
- *Passenger Movement Charge Collection Act 1978*
- *Proceeds of Crime Act 2002*
- *Service and Execution of Process Act 1992*
- *Sex Discrimination Act 1984*
- *Witness Protection Act 1994*

Part 1—Amendments to the Acts Interpretation Act 1901

Acts Interpretation Act 1901

101 The *Acts Interpretation Act 1901* contains machinery provisions, rules of interpretation and definitions of frequently used expressions which apply to all Commonwealth Acts, unless a contrary intention applies. The *Acts Interpretation Act* includes provisions relating, for example, to the dates of commencement of Acts and the effect of the repeal of an Act. A purpose of the *Acts Interpretation Act* is to reduce the size of legislation by avoiding the repetition of provisions by placing these provisions in an act of general application.

Item 1

102 This item inserts new sections 22A, 22B and 22C into the *Acts Interpretation Act*. Section 22A introduces the key definition of ‘de facto partner’ which refers to the associated definitions of ‘registered relationships’ (defined by section 22B) and ‘de facto relationships’ (defined by section 22C). A description of the definition of ‘de facto partner’ and the associated definitions can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Part 2—Amendments of other Acts

Administrative Decisions (Judicial Review) Act 1977

103 The *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) establishes procedures for judicial review of administrative decisions. The ADJR Act applies to all administrative decisions made under federal laws except decisions made by the Governor-General or decisions that are specifically excluded by Schedule 1 to the Act. A person who has a right under the Act to seek review of a decision also has a right under section 13 of the ADJR Act to request the decision maker to provide a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision. Schedule 2 to the ADJR Act lists classes of decisions which are exempt from the requirement under section 13 to provide such a written statement of reasons.

Item 2

104 This item replaces the existing subparagraph (d)(iv) of Schedule 2 to the ADJR Act. Paragraph (d) of Schedule 2 to the ADJR Act provides for a number of exemptions from section 13 of the ADJR Act for certain classes of decisions under the *Migration Act 1958*. Paragraph (d)(iv) refers to decisions relating to a person who, having entered Australia, within the meaning of that Act, as a diplomatic or consular representative of another country, a member of the staff of such a representative or the spouse or a dependent relative of such a representative, was in Australia at the time of the decision. The amendment will insert a new subparagraph (d)(iv). The effect of the amendment is to insert the words ‘de facto partner’ after the word ‘spouse’ and to make certain drafting changes, including to make clear that the words ‘enter Australia’, ‘spouse’, ‘de facto partner’ and ‘relative’ have the same meaning as in the Migration Act. In particular, new definitions of ‘spouse’ ‘relative’ and ‘de facto partner’ are being inserted into the Migration Act by Schedule 10 to the Bill.

Item 3

105 This item inserts an application provision that relates to the amendments to the ADJR Act being inserted at Item 1 of this Schedule. It limits these amendments to those decisions to which section 13 of the ADJR Act would otherwise apply which are made on or after commencement of the amendments.

Age Discrimination Act 2004

106 The *Age Discrimination Act 2004* prohibits discrimination on the basis of age. The amendments extend who is to be considered a ‘near relative’ to include same-sex partners and their families for the purposes of section 29. Section 29 establishes that it is unlawful to discriminate on the grounds of age when a person is offering to provide accommodation to another person and also establishes an exemption to this principle. Under subsection 29(3) a person may discriminate against another person on the grounds of age when the accommodation that person is offering to provide to another person is being resided in by that person or their near relatives.

Item 4

107 This item inserts the key definition of ‘child’ into subsection 29(4) of the Age Discrimination Act. This definition extends the range of persons who can be considered a child of a person under section 29 of the Age Discrimination Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

108 This item inserts a definition of ‘de facto partner’ into subsection 29(4) of the Age Discrimination Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. This definition extends the range of individuals who can be considered the de facto partner of a person under section 29 of the Age Discrimination Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

109 This item replaces the term ‘de facto spouse’ with ‘de facto partner’ in the definition of ‘near relative’ at subparagraph 29(4)(a). The term ‘de facto partner’ has the meaning being inserted by Item 5 of this Schedule.

Item 7

110 This item inserts the key definition of ‘parent’ into subsection 29(4) of the Age Discrimination Act to extend the range of persons who for the purpose of section 29 of the Age Discrimination Act can be considered the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 20 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

111 This item inserts new subsection (5) into section 29 of the Age Discrimination Act. The item inserts a tracing rule that will allow a person’s near relatives to be traced through the definitions of ‘parent’, ‘child’ and ‘de facto partner’ as they relate to a person for the purposes of the definition of ‘near relative’ in subsection 29(4) of the Age Discrimination Act. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Australian Federal Police Act 1979

112 The *Australian Federal Police Act 1979* (the AFP Act) establishes the Australian Federal Police (AFP) and, amongst other things, provides for the forfeiture and recovery of employer-funded superannuation benefits which are payable, or have been paid, to AFP employees who have been convicted of corruption offences and sentenced to more than 12 months imprisonment.

113 The AFP Act also allows for the restraint of the property of an AFP employee convicted of a corruption offence, or who might be convicted of a corruption offence,

where that person has been paid a Commonwealth funded superannuation benefit. The property that may be restrained includes property that is subject to the effective control of the person. Property may be subject to effective control of a person regardless of whether that person has an interest in the property. In determining whether or not property is subject to the effective control of a person, a court may have regard to, among other things, the family relationships between persons having an interest in the property and other persons. The term family relationship is currently undefined.

Item 9

114 This item inserts new subsection (3) into section 42F of the AFP Act. The item inserts a tracing rule that will allow a person's family relationships to be traced through the definitions of 'child' and 'de facto partner' for the purposes of subparagraph 42F(2)(e). A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

115 Subparagraph 42F(3)(a) provides that a 'de facto partner' has the meaning within the key definition of 'de facto partner' in the Acts Interpretation Act. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

116 This item also inserts new subsection (4) into section 42F of the AFP Act which inserts the key definition of 'child'. This will extend the range of persons who can be considered a child of a person under the AFP Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

117 The overall effect of this item is to indicate (but not limit) the types of family relationships the court may have regard to in determining whether or not property is subject to the effective control of a person.

Item 10

118 This item inserts an application provision which provides that the amendments to the AFP Act being inserted by Item 9 of this Schedule will apply to an application for a superannuation order or restraining order made on or after commencement of this Schedule.

119 Regardless of whether an application for an order is made prior to, on or after the commencement of this Schedule, a court may have regard to the family relationships of persons with an interest in property and other persons when determining whether property is subject to the effective control of a person. In any case the court is not required to have regard to family relationships. In applications for an order made prior to the commencement of this Schedule, a court would need to rely on its own interpretation of family relationships. In applications for an order made on or after the commencement of this Schedule, a court could rely on the definition of family relationships (which is not exhaustive) as inserted by Item 9 of this Schedule.

Bankruptcy Act 1966

120 The *Bankruptcy Act 1966* sets out the law relating to the administration of personal insolvencies in Australia. The amendments described in this Schedule will expand who is considered to be a ‘related entity’, ‘close relative’ and a ‘family member’ of a bankrupt under the Bankruptcy Act for the purpose of dealing with a bankrupt’s estate.

Item 11

121 This item inserts the key definition of ‘child’ into subsection 5(1) of the Bankruptcy Act. This will extend the range of persons who can be considered a child of a person under the Bankruptcy Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 12

122 This item repeals the term ‘de facto spouse’ and inserts the term ‘de facto partner’ in the definition of a ‘close relative’ of a person in subsection 5(1). It will expand the range of persons to be considered a close relative of a person under the Bankruptcy Act to include the same-sex partner of a person. The definition of ‘de facto partner’ will be inserted by Item 13 of this Schedule.

Item 13

123 This item inserts a definition of ‘de facto partner’ into subsection 5(1) of the Bankruptcy Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. This definition extends the range of individuals who can be considered the close relative of a person to include someone who is in a same-sex relationship with that person. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 14

124 This item repeals the definition of ‘de facto spouse’ which is replaced by the definition of ‘de facto partner’ inserted by Item 13 of this Schedule.

Item 15

125 This item repeals the definition of ‘parent’ and inserts the key definition of ‘parent’ into subsection 5(1) of the Bankruptcy Act to extend the range of persons who can be considered to be the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 11 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 16

126 This item inserts into subparagraph 5(1)(g) of the definition of ‘related entity’ of the Bankruptcy Act a reference to the definition of ‘de facto partner’ which is inserted by Item 13 of this Schedule. This extends the meaning of ‘related entity’ to include the de facto partner of a person for the purposes of the Bankruptcy Act.

Item 17

127 This item replaces the term ‘de facto spouse’ with ‘de facto partner’ in the definition of ‘relative’ in subsection 5(1) of the Bankruptcy Act. This extends the meaning of ‘relative’ to include the de facto partner of a person for the purposes of the Bankruptcy Act.

Item 18

128 This item inserts the key definition of ‘stepchild’ into subsection 5(1) of the Bankruptcy Act. It extends the range of persons who can be considered a stepchild in the Bankruptcy Act to include someone who would be considered the stepchild of a person but for the fact that the person and the other member of a de facto relationship are not married. A description of the key definition of a ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 19

129 This item inserts new subsection (6) into section 5 of the Bankruptcy Act. The item inserts a tracing rule that will allow a person’s family members to be traced through the definitions of ‘parent’, ‘child’ and ‘de facto partner’ as they relate to a person for the purposes of the Bankruptcy Act (unless a contrary intention appears). A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 20

130 This item inserts into subparagraphs 60(4)(a) and (b) of the Bankruptcy Act a reference to ‘de facto partner’, the definition of which is inserted by Item 13 of this Schedule. This extends the legal actions that a bankrupt can continue with upon becoming a bankrupt to include actions in respect of the death of, or personal injury or wrong done to the bankrupt’s de facto partner.

Item 21

131 This item inserts a note into the end of subsection 60(4) that refers the reader to the subsection 5(6) explanation of who the members of a person’s family may be as inserted by Item 19 of this Schedule. This will assist in establishing who is a family member for the purpose of determining the legal actions that a bankrupt can continue with upon becoming a bankrupt as described in Item 20 of this Schedule.

Item 22

132 This item inserts into subparagraphs (d)(i) and (g)(i) and (g)(ii) of subsection 116(2) of the Bankruptcy Act a reference to ‘de facto partner’, the definition of which is inserted by Item 13 of this Schedule. This extends the

provisions relating to specified types of property interests of a bankrupt that may not be considered property divisible amongst creditors to include certain property interests that have a specified link to a bankrupt's de facto partner.

Item 23

133 This item inserts a note into the end of subparagraph 116(2)(g) of the Bankruptcy Act that refers the reader to the subsection 5(6) explanation of who the members of a person's family may be as inserted by Item 19 of this Schedule. This will assist to establish who is a family member, for the purposes of subparagraph 116(2)(g), under which the right of the bankrupt to recover damages or compensation for personal injury, wrong or death of a family member is not to be considered property divisible amongst creditors.

Item 24

134 This item will amend subparagraph 116(2)(r) which will be newly inserted by the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*. This item replaces the term 'de facto spouse' with 'de facto partner' in subparagraph 116(2)(r) to provide that, any property that, a trustee of a bankrupt estate is required to transfer to a former de facto partner of the bankrupt, under an order under Part VIIIAB of the Family Law Act is not property that can be divisible amongst creditors of the bankrupt.

Items 25 and 27

135 These items replace the term 'de facto spouse' with 'de facto partner' in paragraphs (b) and (c) of subsection 120(5) and paragraphs (b) and (c) of subsection 121(6). The definition of 'de facto partner' is inserted by Item 13 of this Schedule. By virtue of these amendments, certain transactions between a bankrupt and his or her de facto partner, and promises by a person to become a bankrupt's de facto partner, will have no value as consideration for the purposes of these provisions.

Item 26

136 This item will amend subparagraph 120(5)(f) which will be newly inserted by the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*. This item replaces the term 'de facto spouse' with 'de facto partner' in subparagraph 120(5)(f). A definition of this term is inserted by Item 13 of this Schedule. Subparagraph 120(5)(f) clarifies that a grant of a right of residence by a person who later becomes bankrupt to his or her former de facto partner following the dissolution of their relationship in property transferred to that former de facto partner has no value as consideration for the purposes of determining whether it is void against the trustee of the bankrupt's estate as an undervalued transaction unless the transfer relates to a property settlement or agreement under the Family Law Act.

Item 28

137 This item will amend subparagraph 121(6)(f) which will be newly inserted by the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*. This item replaces the term 'de facto spouse' with 'de facto partner' in subparagraph 121(6)(f), which will have the definition as inserted by Item 13.

Subparagraph 121(6)(f) clarifies that a grant of a right of residence, by a person who later becomes bankrupt, to his or her former de facto partner following the dissolution of their relationship, in property transferred to that former de facto partner has no value as consideration, for the purposes of determining whether it is void against the trustee of the bankrupt's estate as one to defeat creditors, unless the transfer relates to a property settlement or agreement under the Family Law Act.

Item 29

138 This item inserts into paragraph 134(1)(ma) of the Bankruptcy Act a reference to 'de facto partner', the definition of which is inserted by Item 13 of this Schedule. This extends the provision relating to the trustee in bankruptcy's discretion to make allowances out of a bankrupt estate to include a bankrupt's de facto partner.

Items 30, 32 and 33

139 These items insert a note at the end of paragraph 134(1)(ma) and subsections 265(2) and 268(6) of the Bankruptcy Act to alert the reader to the tracing rule that defines a 'family member' being introduced at subsection 5(6) by Item 80. Subsection 5(6) will allow a bankrupt person's family members to be traced through the definitions of 'parent', 'child' and 'de facto partner' as they relate to a person for the purposes of the Bankruptcy Act. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 31

140 This item replaces the term 'de facto spouse' with 'de facto partner' in the definition of 'spouse' as it applies in Division 4B of the Bankruptcy Act. The definition of 'de facto partner' is inserted by Item 58. This extends the term spouse that appears in section 139T of Division 4B to include a bankrupt's de facto partner.

Crimes Act 1914

141 The *Crimes Act 1914*, amongst other things, makes provision for search, information gathering and arrest powers (Part 1AA), the sentencing, imprisonment and release of federal offenders (Part 1B), the investigation of Commonwealth offences (Part 1C), and forensic procedures (Part 1D). The provisions in these Parts include rules and/or rights in relation to: the conduct of strip searches and identification parades, the taking of fingerprints, recordings, handwriting samples and photographs, arrest periods, communication with friends, relatives and lawyers, and the carrying out of forensic procedures.

142 Many of these provisions refer to terms such as parent or relative. For example, the rules for conduct of a strip search in section 3ZI of the Crimes Act provide, among other things, that a strip search of a person who is at least 10 years of age but under 18 years of age must be conducted in the presence of a parent or guardian. In another example, section 23C provides, amongst other things, that in calculating the period of arrest for non-terrorism offences, time during which the questioning of the person is suspended or delayed to allow the person to communicate with a relative or parent is to be disregarded.

143 The overall effect of the amendments made by Items 34 to 40 of this Schedule is to expand the definition of who is a parent or relative for the purposes of relevant

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provisions in the Crimes Act. The amendments do not change the rules and/or rights as they currently exist in the Crimes Act.

Item 34

144 This item inserts the key definition of ‘child’ into subsection 3(1) of the Crimes Act. This will extend the range of persons who can be considered a child of a person under the Crimes Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 35

145 This item inserts a definition of ‘de facto partner’ into subsection 3(1) of the Crimes Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 36

146 This item inserts a new definition of ‘parent’ into subsection 3(1) which will replace the definition of ‘parent’ to be removed by Item 40. This item will apply the concepts of legal entitlement to custody and legal responsibility for the maintenance and well-being of a child, which currently define a parent under subsection 23WA(1), to the key definition of ‘child’ to be inserted at Item 38, for the purposes of determining who is a parent under the Crimes Act.

Item 37

147 This item inserts into subsection 3(1) a statement that a person’s relative will be defined by the definition at subsection 3(3), which will be inserted by Item 38.

Item 38

148 This item inserts new subsection 3(3) into section 3 of the Crimes Act. The item inserts a tracing rule that will allow the relatives of a person to be traced through the definitions of ‘child’ and ‘de facto partner’. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 39

149 This item inserts new subsection (4) into section 16A of the Crimes Act. The item inserts a tracing rule that, for the purposes of section 16A, will allow the family of a person to be traced through the definitions of ‘child’ and ‘de facto partner’. Section 16A prescribes the matters must take into account when passing a sentence. One of these matters is the probable effect that any sentence or order under consideration would have on any of the person’s family. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 40

150 This item removes the definition of ‘parent’ from subsection 23WA(1). A new definition of ‘parent’ will be inserted by Item 36 of this Schedule.

Crimes (Superannuation Benefits) Act 1989

4 The *Crimes (Superannuation Benefits) Act 1989* provides for the forfeiture and recovery of employer-funded superannuation benefits which are payable, or have been paid, to Commonwealth employees who have been convicted of corruption offences and sentenced to more than 12 months imprisonment.

5 The Crimes (Superannuation Benefits) Act also allows for the restraint of the property of a Commonwealth employee convicted of a corruption offence, or who might be convicted of a corruption offence, where that person has been paid a Commonwealth funded superannuation benefit. The property that may be restrained includes property that is subject to the effective control of the person. Property may be subject to effective control of a person regardless of whether that person has an interest in the property. In determining whether or not a property is subject to the effective control of a person, a court may have regard to, among other things, the family relationships between persons having an interest in the property and other persons. The term family relationship is currently undefined.

Item 41

151 This item inserts new subsection (3) into section 10 of the Crimes (Superannuation Benefits) Act. The item inserts a tracing rule that will allow family relationships to be traced through the definitions of ‘child’ and ‘de facto partner’ as they relate to a person for the purposes of subparagraph 10(2)(e) of the Crimes (Superannuation Benefits) Act. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

152 This item also inserts new subsection (4) into section 10 of the Crimes (Superannuation Benefits) Act which inserts the key definition of ‘child’. This will extend the range of persons who can be considered a child of a person under the Crimes (Superannuation Benefits) Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

153 The overall effect of this item is to indicate (but not limit) the types of family relationships the court may have regard to in determining whether or not property is subject to the effective control of a person.

Item 42

154 This item inserts an application provision which provides that the amendments to the Crimes (Superannuation Benefits) Act being inserted by Item 41 of this Schedule will apply to an application for a superannuation order or restraining order made on or after commencement of this Schedule.

155 Regardless of whether an application for an order is made prior to, on or after the commencement of this Schedule, a court may have regard to the family

relationships of persons with an interest in property and other persons when determining whether property is subject to the effective control of a person. In any case the court is not required to have regard to family relationships. In applications for an order made prior to the commencement of this Schedule, a court would need to rely on its own interpretation of family relationships. In applications for an order made on or after the commencement of this Schedule, a court could rely on the definition of family relationships (which is not exhaustive) as inserted by Item 41 of this Schedule.

Customs Act 1901

156 The *Customs Act 1901* contains a range of provisions relating to the payment of duty on imported goods, the application of trade measures, the movement of people and goods in and out of Australia, and protection of Australia's border and maritime environments. The amendments indicate (but do not limit) the types of family relationships the court may have regard to in determining who is a member of a person's family for the purposes of the valuation of goods, establishing effective control of goods, issues related to persons detained by a Customs officer, and establishing whether anti-dumping measures may be imposed on certain imported goods.

Item 43

157 This item inserts the key definition of 'child' into subsection 4(1) of the Customs Act. This will extend the range of persons who can be considered a child of a person under the Customs Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 44

158 This item inserts the key definition of 'parent' into subsection 4(1) of the Customs Act to extend the range of persons under the Customs Act who can be considered the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 43 of this Schedule. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 45

159 This item inserts new section 4AAA into the Customs Act. The item inserts a tracing rule that will allow the members of a person's family, referred to throughout the Customs Act, to be traced through the definitions of 'child' and 'de facto partner'. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 46

160 This item repeals and substitutes subparagraph 154(3)(a)(i) of the Customs Act. This item removes the phrase 'connected by a blood relationship or by marriage or by adoption' and inserts the phrase 'members of the same family'. The new phrase is consistent with a WTO Valuation Agreement. It indicates (but does not limit) the

types of family relationships Customs officers may have regard to in determining who is a member of a person's family for the purposes of the valuation of goods under Division 2 of the Customs Act.

Item 47

161 This item inserts a note into subsection 154(3) of the Customs Act which refers the reader's attention to section 4AAA (which is being inserted by Item 45 of this Schedule) for assistance in determining who is a member of a family under subparagraph 154(3)(a)(i) as will be inserted by Item 46 of this Schedule. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 48

162 This item inserts the same note at the end of both sections 219ZJB and 219ZJC of the Customs Act, which has the same effect described in Item 47 of this Schedule but in relation to determining who a family member of a person detained under those sections. This is relevant in determining who a detaining Customs officer may contact where a detained person wishes to have a family member notified of the person's detention.

Item 49

163 This item inserts new subsection 243AB(3) into the Customs Act which refers to the tracing rule to be inserted by Item 45 for the purpose of determining a family relationship under subparagraph 243AB(2)(e). Property in the control of a family member of a person may be considered, under certain circumstances, to be in the effective control of a person. This property can be the subject of a restraining order where proceedings for the payment of pecuniary penalties against a person who has engaged in prescribed narcotics dealings under Part XIII of the Customs Act have been instituted under section 243B of the Customs Act.

Item 50

164 This item repeals and substitutes subparagraph 269TAA(4)(a)(i) of the Customs Act. This item removes the phrase 'connected by a blood relationship or by marriage or by adoption' and inserts the phrase 'members of the same family', for the purposes of determining who is a family member, and hence whether two people are deemed to be 'associates' of each other, under Part XVB of the Customs Act. If, among other things, two people are associates, it is possible that the purchase or sale of goods may not be treated as an 'arms length transaction' under section 269TAA of the Customs Act. It is necessary to establish whether certain transactions are arms length in nature in determining whether the goods exported to Australia have been dumped. If such dumped goods are found to have caused material injury to the Australian industry producing like goods, then anti-dumping measures may be imposed on those dumped goods.

Item 51

165 This item inserts a note at the end of subsection 269TAA(4) of the Customs Act which has the same effect described in Item 47 of this Schedule but in relation to

determining who is a member of a family under new subparagraph 269TAA(4)(a)(i) inserted by Item 50 of this Schedule. Section 4AAA will be referred to in assisting in the determination of whether two persons are deemed to be associates of each other for the purposes of Part XVB of the Customs Act.

Item 52

166 This item sets out the application provisions in relation to the amendments to the Customs Act.

167 Subitem 52(1) sets out the application provision which is required in order to ensure that the valuation of goods imported into Australia before the commencement of proposed new subparagraph 154(3)(a)(i) is not retrospectively affected by the proposed amendment.

168 Goods may be imported into Australia prior to the commencement of proposed new subsection 154(3)(a)(i), but the customs value of the goods may not be determined by a Collector until after the commencement of proposed new subsection 154(3)(a)(i). The application provision ensures that a Collector will determine the value of imported goods by reference to the provision in force at the time the goods were imported.

169 Subitem 52(2) sets out the application provision which is required in order to ensure that an application for an order against property under Division 3 of Part XIII of the Customs Act made prior to the commencement of the extended concept of family through the tracing rule in new section 4AAA, is not affected by the new tracing rule. Such an order may only be applied for if a proceeding for the recovery of a pecuniary penalty under section 243B in Division 3 has been instituted. Therefore, the new tracing rule will only apply in respect of proceedings instituted under section 243B after the commencement of the new tracing rule.

High Court Justices (Long Leave Payments) Act 1979

170 The *High Court Justices (Long Leave Payments) Act 1979* (the HC Justices Leave Payments Act) makes provision for payments in lieu of long leave on the retirement or death of Justices of the High Court. The amendments to the HC Justices Leave Payments Act that are described in this Schedule will allow for the payment of any unpaid long service leave on the death of a Justice of the High Court, to a person who was the Justice's de facto partner at the time of the Justice's death.

Item 53

171 This item deletes the phrase 'widow or widower' wherever it occurs in paragraphs 5(2)(a) and (b) of the HC Justices Leave Payments Act and substitutes it with the phrase 'surviving spouse or de facto partner'. A description of the definition of the term 'de facto partner' can be found with reference to the Acts Interpretation Act and the Key Definition and Concepts Section of this Explanatory Memorandum.

Item 54

172 This item inserts paragraph (2A) in subsection 5(2) of the HC Justices Leave Payments Act to address the possible circumstance where a Justice leaves more than one surviving spouse or de facto partner. In this circumstance the Attorney-General

has the discretion to distribute the amount between or among the surviving spouse or de facto partner(s). This discretionary power mirrors the existing discretionary power that the Attorney-General has in relation to the Justice being survived only by dependants and the distribution of an amount of money amongst them.

Item 55

173 This item inserts a new subsection (5) into section 5 of the HC Justices Leave Payments Act to stipulate that the term ‘surviving spouse or de facto partner’ applies only to the person(s) who were in such a relationship with a Justice immediately before the Justice’s death.

Item 56

174 This item provides that the amendments of the HC Justices Leave Payments Act apply in respect of a Justice who dies on or after the commencement of this item. As the entitlement to a payment arises on the death of a Justice, this ensures that the entitlement to a payment is determined under the law as in force when the entitlement arises.

Judges (Long Leave Payments) Act 1979

175 The *Judges (Long Leave Payments) Act 1979* (the Judges Leave Payment Act) makes provision for payments in lieu of long leave on the retirement or death of judges of the Federal Court and Family Court. The amendments to the Judges Leave Payment Act that are described in this Schedule will allow for the payment of any unpaid long service leave on the death of a Federal Court or Family Court judge to a person who was the judge’s de facto partner at the time of the judge’s death.

Item 57

176 This item deletes the phrase ‘widow or widower’ wherever it occurs in paragraphs 5(2)(a) and (b) of the Judges Leave Payment Act and substitutes it with the phrase ‘surviving spouse or de facto partner’. A description of the definition of the term ‘de facto partner’ can be found with reference to the Acts Interpretation Act and the Key Definition and Concepts Section of this Explanatory Memorandum.

Item 58

177 This item inserts paragraph (2A) in subsection 5(2) of the Judges Leave Payment Act to address the possible circumstance where a Justice leaves more than one surviving spouse or de facto partner. In this circumstance the Attorney-General has the discretion to distribute the amount between or among the surviving spouse or de facto partner(s). This discretionary power mirrors the existing discretionary power that the Attorney-General has in relation to the Judge being survived only by dependants and the distribution of an amount of money amongst them.

Item 59

178 This item inserts a new subsection (5) into section 5 of the Judges Leave Payment Act to stipulate that the term ‘surviving spouse or de facto partner’ applies only to person(s) who was/were in such a relationship with a Judge immediately before the Judge’s death.

Item 60

179 This item provides that the amendments of the Judges Leave Payment Act apply in respect of a Judge who dies on or after the commencement of this Schedule. As the entitlement to a payment arises on the death of a Judge, this ensures that the entitlement to a payment is determined under the law as in force when the entitlement arises.

Passenger Movement Charge Collection Act 1978

180 The *Passenger Movement Charge Collection Act 1978* (the Passenger Movement Act) is an Act relating to the passenger movement charge imposed in respect of the departure of people from Australia. The Passenger Movement Act sets out when a person who is departing Australia is liable to pay the passenger movement charge, how that charge is collected and refunded, and the persons who are exempt from paying the passenger movement charge.

Item 61

181 This item replaces the definition of ‘child’ with the key definition of ‘child’ in section 3 of the Passenger Movement Act. This will extend the range of persons who can be considered a child of a person under the Passenger Movement Act to include a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 62

182 This item inserts a definition of ‘de facto partner’ into section 3 of the Passenger Movement Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. This definition extends the range of individuals who can be considered the de facto partner of a person the Passenger Movement Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 63

183 This item removes the current definition of ‘spouse’ in section 3 of the Passenger Movement Act and replaces it with a new definition that defines the ‘spouse’ of a person as including a ‘de facto partner’ of a person. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 64

184 This item inserts the key definition of ‘stepchild’ into section 3 of the Passenger Movement Act. It extends the range of persons who can be considered a stepchild in the Passenger Movement Act to include someone who would be considered the stepchild of a person but for the fact that the person and the other member of a de facto relationship are not married. A description of the key definition of a ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Proceeds of Crime Act 2002

185 The *Proceeds of Crime Act 2002* provides a scheme to trace, restrain and confiscate the proceeds of crimes against Commonwealth laws. It can sometimes also be used to confiscate the proceeds of crimes against foreign laws. The *Proceeds of Crime Act* also contains provisions for the confiscation of proceeds obtained by a person through the exploitation of their criminal notoriety.

Item 65

186 This item deletes the term '(including de facto spouse)' and replaces it with the term 'or de facto partner' in paragraph (c) of both subsection 180(1) and subsection 181(1). This item broadens the examples of people who can be examined (the *Proceeds of Crime Act* already includes 'any person' in these sub-sections and may already include people within the definition of 'de facto partner') in relation to restraining orders and the confirmation of forfeiture.

Item 66

187 This item inserts a new subsection (6) into section 337 of the *Proceeds of Crime Act*. The item inserts a tracing rule that will allow the family relationships of a person to be traced through the definitions of 'child' and 'de facto partner'. This will be used in determining effective control of property under section 337. Property which is effectively controlled by a person is subject to restraining orders and other orders under the *Proceeds of Crime Act*. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 67

This item inserts the key definition of 'child' into section 338 of the *Proceeds of Crime Act*. This will ensure that the range of persons who can be considered a child of a person under the POCA includes a child who is a product of a relationship a person has or had as a couple with another person. A description of the key definition of a 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 68

188 This item inserts a definition of 'de facto partner' into section 338 of the *Proceeds of Crime Act*, which provides that a 'de facto partner' includes a de facto partner within the meaning of the key definition of 'de facto partner' in the *Acts Interpretation Act*. This definition extends the range of individuals who can be considered the de facto partner of a person under the POCA. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 69

189 This item ensures that the system of including asterisks alongside defined terms in the *Proceeds of Crime Act* is maintained for 'de facto partner'.

Item 70

190 This item ensures that the system of including asterisks alongside defined terms in the Proceeds of Crime Act is maintained for ‘child’.

Item 71

191 This item inserts the key definition of ‘parent’ into section 338 of the Proceeds of Crime Act to extend the range of persons who can be considered the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 67 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 72

192 This item provides that the amendments to the Proceeds of Crime Act only apply in relation to proceedings under the Proceeds of Crime Act made on or after the commencement of this Schedule. Where the Proceeds of Crime Act includes references to people and relationships, and those references are amended by this Schedule, the amendments in this Schedule are not intended to cause the application of the Proceeds of Crime Act to be constrained in any way for proceedings commenced prior to the commencement date of the amendments in this Schedule.

Service and Execution of Process Act 1992

193 The *Service and Execution of Process Act 1992* (the SEP Act) regulates the service and execution of one State or Territory’s process and the enforcement of judgments in a State or Territory other than the one in which it was issued.

Item 73

194 This item inserts the key definition of ‘child’ into section 95 of the SEP Act. This will extend the range of persons who can be considered a child of a person under Division 3 of Part 5 of the SEP Act to include a child who is a product of a relationship a person has or had as a couple with another person for the purposes of section 96 of the SEP Act, as explained at Item 75. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 74

195 This item inserts the key definition of ‘parent’ into section 95 of the SEP Act to extend the range of persons who can be considered the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 73 for the purposes of section 96 of the SEP Act, as explained at Item 75 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 75

196 This item inserts a new subsection (5) into section 96 of the SEP Act. The item inserts a tracing rule that will allow the members of a witness’s family to be traced through the definitions of ‘child’ and ‘de facto partner’ for the purposes of section 96.

Section 96 outlines the circumstances in which courts may make suppression orders in proceedings under sections 83 and 86 of the SEP Act. One of those circumstances is where the court is satisfied that publication of a report of the proceedings would give rise to a substantial risk that a member of a witness's family would die, suffer personal injury or have their property damaged. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Sex Discrimination Act 1984

197 The *Sex Discrimination Act 1984* provides protection against discrimination on the grounds of sex, marital status, pregnancy, potential pregnancy in a range of areas of public life. Section 7A defines discrimination on the ground of family responsibilities. Subsection 14(3A) makes it unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee.

Item 76

198 This item repeals the current definition of 'child' in subsection 4A(2) of the Sex Discrimination Act and replaces it with the key definition of 'child'. The new definition expands the ordinary meaning of child to include the categories of children included in the previous definition, and in addition children who are the product of a relationship that a person has or had as a couple with another person (whether of the same sex or a different sex).

199 The objective of extending the definition of 'child' is to ensure that a child who is the product of a same-sex relationship is in the same position as a child who is a product of an opposite-sex relationship. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 77

200 This item inserts a definition of 'de facto partner' into subsection 4A(2) of the Sex Discrimination Act which provides that 'de facto partner' for the purposes for the Sex Discrimination Act means a de facto partner within the meaning of the Acts Interpretation Act. A description of the key definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 78

201 This item inserts the key definition of 'parent' into subsection 4A(2) of the Sex Discrimination Act which provides that without limiting who is a parent of a person, someone is the parent of a child because paragraph (b) of the definition of a 'child'.

202 The insertion of this definition aims to ensure that both members of a couple are recognised as parents of the child where that child is the product of the relationship. This definition draws on elements of the key definition of 'parent'. A description of the definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 79

203 This item repeals the existing definition of ‘spouse’ and inserts a new definition of ‘spouse’ into subsection 4A(2) of the Sex Discrimination Act which takes account of the new definition of ‘de facto partner’ and to include a former de facto partner.

Item 80

204 This item inserts the key definition of ‘stepchild’ into subsection 4A(2) of the Sex Discrimination Act. This new term is defined to ensure that a child of an opposite-sex or same-sex de facto relationship is considered the step-child of a new partner who is in a de facto relationship with a person from the original relationship. This definition seeks to address a situation where a person would be considered a step-child but for the parent of the child being legally married to the partner. A description of the definition of ‘step-child’ can be found in the Key Definition and Concepts Sections of this Explanatory Memorandum.

Item 81

205 This item inserts a new subsection 4A(3) into the Sex Discrimination Act. This clause is a tracing rule that provides that anyone else who would be a relative of a person because of paragraph (b) of the definition of ‘child’ in subsection (2) then other relationships are to be traced to or through the person on the basis that the person is the child of the other person. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 82

206 This item inserts a new subsection 9(10A) into the Sex Discrimination Act. Section 9 is designed to ensure that the validity of the Sex Discrimination Act is supported to the maximum extent possible by all available Commonwealth constitutional power and that the legislation does not purport to operate in areas where the Commonwealth does not have constitutional power.

207 Subsection 9(10A) lists the international instruments that are relied upon as a Constitutional basis under Article 51(xxix) of the Constitution in enacting subsection 14(3A).

208 Subsection 9(10A) indicates that subsection 14(3A) has effect in relation to discrimination involving dismissal of employees on the ground of family responsibilities to the extent that the provisions implement Australia’s responsibilities under certain international instruments. These are the:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958 (ILO 111), and
- Convention on the Rights of the Child (CRC).

209 The ICCPR contains two Articles directed at prohibiting discriminatory

treatment and ensuring equal access to civil and political rights. Article 2(1) requires Parties not to discriminate in the application of the rights recognised in the Covenant. Article 26 of the ICCPR protects the right to equality before the law and the right to the equal protection of the law without any discrimination. Discrimination on the ground of sexual preference is considered to be prohibited by these provisions.

210 Article 2(2) of ICESCR is similar to article 2(1) of the ICCPR, and prohibits discrimination in implementing the rights enunciated in the Covenant on the same list of grounds. Discrimination on the ground of sexual preference is considered to be prohibited by this provision.

211 ILO 111 requires Parties to it to pursue policies designed to eliminate discrimination in respect of employment and occupation. Under the Convention, discrimination includes distinctions that are declared by Parties to it. Sexual preference has been declared as such a distinction in the Human Rights and Equal Opportunity Commission Regulations 1989.

212 Article 5 of the CRC requires Parties to respect the rights, responsibilities and duties of parents, legal guardians or other persons legally responsible for a child. Article 18(2) calls on Parties to provide assistance to parents and legal guardians in the performance of their child-rearing responsibilities. These provisions apply equally to parents and legal guardians of both genders and equally to those in same-sex and opposite-sex relationships.

Item 83

213 This item adds the words ‘or 10A’ at the end of subsection 10(1) of the Sex Discrimination Act. Section 10 of the Sex Discrimination Act is designed to ensure that State and Territory legislation about sex discrimination can continue to operate concurrently with the Sex Discrimination Act. That section applies to the extent that the Act does not rely on international treaty obligations under subsection 9(10). This item makes it clear that section 10 similarly does not apply to the extent that the Act has effect by virtue of new subsection 9(10A).

Item 84

214 This item inserts a new section 11A into the Sex Discrimination Act. This item is designed to ensure that State and Territory legislation about discrimination involving dismissal of employees on the ground of family responsibilities can continue to operate concurrently with the Sex Discrimination Act.

Witness Protection Act 1994

215 The *Witness Protection Act 1994* establishes a National Witness Protection Program (NWPP), operated by the Australian Federal Police. The Witness Protection Act sets out procedures governing the placement and removal of witnesses from the NWPP, including new identities. The Witness Protection Act also enables foreign witnesses to be placed on the NWPP in certain circumstances.

Item 85

216 This item inserts a definition of a ‘parent’ into subsection 3 of the Witness Protection Act. The item combines the key definition of ‘child’ and the key definition of ‘parent’. This will extend the range of persons who can be considered a child of a person under the Witness Protection Act to include a child who is a product of a relationship a person has or had as a couple with another person and extend the range of persons who can be considered the parent of a person to include the parent of a child within the meaning of this definition of ‘parent’. A description of the key definitions of a ‘child’ and a ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 86

217 This item inserts a power for the Governor-General to make regulations of a transitional nature that relate to amendments made by this Schedule or any other Schedule to the Act.

Schedule 3—Broadband, Communications and the Digital Economy amendments

218 This Schedule contains amendments to the following Acts within the Broadband, Communications and the Digital Economy portfolio to remove differential treatment of same-sex couples and their children:

- *Australian Postal Corporations Act 1989*
- *Broadcasting Services Act 1992*, and
- *Telstra Corporation Act 1991*.

Australian Postal Corporation Act 1989

219 The *Australian Postal Corporations Act 1989* (the APC Act) establishes Australia Post and regulates a range of matters, including its operations, arrangements relating to its directors and dealings with postal articles and their contents.

Item 1

220 Section 90K of the APC Act sets out the circumstances that must exist to allow current employees of Australia Post to use or disclose information or a document if it is not specially protected. This item inserts a note at the end of subsection 90K(2) of the APC Act that refers the reader to the meaning of ‘next of kin’ that will be inserted by Item 2 into subsection 90K(6) for the purposes of determining to whom information or documents can be disclosed in specific circumstances.

Item 2

221 This item inserts new subsection 90K(6) and (7) to provide that certain relationships should be taken into account in determining whether a person is ‘next of kin’ of another person for the purposes of subsection 90K(2).

222 Subsection 90K(6) extends the relationships that can be recognised as ‘next of kin’. Persons who must be taken into account in determining the next of kin include:

- the de facto partner of the person (within the meaning of the Acts Interpretation Act)
- someone who is the child of the person, or of whom the person is a child, because of new subsection (7), and
- anyone else who would be a relative of the person because someone mentioned in paragraph (a) or (b) is taken into account.

223 A description of the key definition of ‘de facto partner’ used in new subsection 90K(6)(a) and of the tracing rule used in paragraph 90K(6)(c) can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

224 This item also inserts the key definition of ‘child’ into subsection 90K(7) of the APC Act. This will extend the range of persons who can be considered a child of a person under the APC Act to include a child who is a product of a relationship a person has or had as a couple with another person, for the purposes of establishing

who is a person's next of kin. A description of the key definition of a 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Broadcasting Services Act 1992

225 The *Broadcasting Services Act 1992* sets out different categories of broadcasting services, datacasting services and online services, and the regulatory framework under which they must operate.

Item 3

This item repeals the phrase 'including a de facto spouse' in the definition of 'associate' in subsection 6(1) Broadcasting Services Act as a consequence of the insertion of a definition of 'spouse' into subsection 6(1) by Item 8.. The definition of 'associate' defines who is an 'associate' in relation to a person's control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper for the purposes of the Broadcasting Services Act. This is particularly relevant for the purposes of Schedule 1 of the Broadcasting Services Act which deals with control and ownership of company interests. The effect is to expand the class of people that will be considered an associate under the Broadcasting Services Act to include a person's same-sex partner.

Item 4

226 This item replaces the word 'Note' at the end of the definition of associate in subsection 6(1) with 'Note 1' as a consequence of the amendment in Item 5 of this Schedule, which introduces Note 2.

Item 5

227 This item inserts a new note at the end of the definition of 'associate' in subsection 6(1) to refer the reader's attention to the new subsection 6(3) inserted by Item 9 of this Schedule. This will assist in establishing who is an associate by reference to the tracing rule inserted by Item 9 of this Schedule.

Item 6

228 This item inserts the key definition of 'child' into subsection 6(1) of the Broadcasting Services Act. This will extend the range of persons who can be considered a child of a person under the Broadcasting Act to include a child who is a product of a relationship a person has or had as a couple with another person, for the purposes of the Broadcasting Services Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 7

229 This item inserts the key definition of 'parent' into subsection 6(1) of the Broadcasting Services Act. This definition ensures that both members of a couple are recognised as parents of the child where that child is the product of the relationship. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

230 This item inserts a definition of ‘spouse’ into subsection 6(1) of the Act. The definition provides that a ‘spouse’ includes someone who is a de facto partner within the meaning of the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 9

231 This item subsection 6(3) which is a tracing rule that will allow the determination of who is an associate of a person to be traced through the definitions of ‘child’ to be inserted by Item 6 of this Schedule. A description of ‘child’ and the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 10

232 This item inserts a transitional provision. Schedule 1 to the Broadcasting Services Act sets out principles for identifying control and ownership of company interests. The principles provide a means of ascertaining who is in a position to exercise control of certain licences, newspapers and companies.

233 The concept of control of media interests is relevant to a number of provisions within the Broadcasting Services Act. Most of these provisions are contained in Part 5, which regulates control of commercial broadcasting licences and datacasting transmitter licences. By way of example, Division 5A of Part 5 of the Broadcasting Services Act sets out media diversity rules which require the maintenance of minimum numbers of independent media groups.

234 The expanded definition of ‘associate’ proposed by this Schedule of the Bill may alter the application of the various control and ownership rules in the Broadcasting Services Act. By expanding the circumstances in which a person will be an ‘associate’ of another person, the proposed amendment will expand the range of parties to whom the control and ownership rules may apply. Potentially this could result in persons having what is considered under the Broadcasting Services Act to be unacceptable control over certain types of companies as a result of the amendments proposed in this Schedule.

235 In order to provide an adequate period for affected parties to consider the expanded definition of ‘associate’, and to reduce the risk of inadvertent breaches of the Broadcasting Services Act, a six month moratorium is imposed. The duration of the moratorium is consistent with transitional arrangements being imposed for other Commonwealth Acts and is considered an appropriate period of time to enable affected parties to implement measures to ensure compliance with the Broadcasting Services Act as amended.

Telstra Corporation Act 1991

236 The *Telstra Corporation Act 1991* regulates a range of matters relating to the operations of Telstra Corporation Limited, its ownership (including the imposition of restrictions on foreign ownership), certain employee entitlements, and transitional

arrangements stemming from the sale of the Commonwealth's equity interest in Telstra.

Item 11

237 This item inserts into clause 2 of the Schedule to the Telstra Corporation Act a '(1)' before the words 'In Part 2A' which creates a new subclause (1) at clause 2 of Schedule 2 as a consequence of the insertion of subclause (2) by Item 17 of this Schedule. The object of the Schedule is to define terms used in Part 2A of the Telstra Corporation Act (which deals with ownership restrictions).

Item 12

238 This item inserts the key definition of 'child' into new subclause 2(1) of the Schedule to the Telstra Corporation Act. This will extend the range of persons who can be considered a child of a person under the Telstra Corporation Act to include a child who is a product of a relationship a person has or had as a couple with another person, for the purposes of the Broadcasting Services Act.. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 13

239 This item inserts the key definition of 'parent' into new subclause 2(1) of the Schedule to the Telstra Corporation Act to extend the range of persons under Part 2A of the Telstra Corporation Act who can be considered the parent of a person to include the parent of a child within the meaning of the definition inserted by Item 12. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 14

240 This item repeals paragraph (b) of the definition of 'relative' in clause 2 of the Schedule to the Telstra Corporation Act which refers to 'non-marital domestic relationships', and substitutes into new subclause 2(1) of the Schedule to the Telstra Corporation Act a paragraph referring to a 'de facto partner', within the meaning of the Acts Interpretation Act. A description of the key definition of 'de facto partner' can be found in the Key Definition and Concepts section of this Explanatory Memorandum.

Item 15

241 This item repeals the term 'son, daughter' from paragraph (d) of the definition of 'relative' in Clause 2 of the Schedule to the Telstra Corporation Act and substitutes the term 'child'. This amendment makes it clear that the provision applies to children of a person because of the definition of 'child' in new subclause 2(1) of the Schedule being inserted by Item 12. A description of the key definition of 'child' can be found in the Key Concepts and Definition Section of this Explanatory Memorandum.

Item 16

242 This item adds a note at the end of the definition of 'relative' in Clause 2 of the Schedule to the Telstra Corporation Act to signpost that the scope of family

relationships referred to in the definition may be affected by the tracing rule in new subclause 2(2) being inserted by Item 17 of this Schedule.

Item 17

243 This item inserts new subclause (2) at the end of clause 2 of the Schedule to the Telstra Corporation Act. This subclause extends the definition of 'relative' in new subclause 2(1) by using the tracing rule to expand the meaning of the classes of relationship referred to in that definition. Subclause 2(2) provides that if a child is the child of another person because of the definition of 'child' in clause 2 (inserted by Item 12 of this Schedule), relationships traced to or through the person are to be determined on the basis that the person is the child of the other person. The effects of expanding the definition of a person's 'relative' are described at Item 18 of this Schedule. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 18

244 This item inserts a transitional provision to deal with the expanded definition. Division 4 of Part 2A of the Telstra Corporation Act imposes limits on foreign ownership of Telstra Corporation Limited. Section 8BI of the Telstra Corporation Act provides that Telstra must take all reasonable steps to ensure that an 'unacceptable foreign ownership situation' does not arise. For the purposes of the foreign ownership rules, the effect of expanding the definition of 'relative' in the Telstra Corporations Act, as proposed under this Schedule, to include same-sex partners and their children, is that in determining the stake a foreign person has in Telstra, it will include (where applicable) any stake in Telstra held by that person's same-sex partner and any children. In order to ensure that Telstra is not inadvertently in breach of section 8BI because of the change, a six month moratorium is imposed in respect of any contravention of section 8BI. The duration of the moratorium, being six months, is consistent with other transitional arrangements being imposed for other Commonwealth Acts and is considered an appropriate period of time to enable the entity to implement reasonable measures to ensure compliance with section 8BI after expiration of the moratorium period.

245 The broadening of the people considered to be associates could result in shareholders being in an 'unacceptable foreign ownership' position under Part 2A of the Telstra Corporation Act once the amendments apply in this Schedule apply. Shareholders in this position will invoke criminal sanctions under Part 2A of the Telstra Corporation Act and will also be able to take advantage of this moratorium to organise their financial affairs.

Schedule 4—Defence amendments

246 This Schedule contains amendments to the acts that govern a range of benefits provided to members and former members of the Australian Defence Forces:

Defence Force (Home Loans Assistance) Act 1990

Defence (Parliamentary Candidates) Act 1969

Royal Australian Air Force Veterans' Residences Act 1953, and

War Gratuity Act 1945.

Defence Force (Home Loans Assistance) Act 1990

247 The *Defence Force (Home Loans Assistance) Act 1990* (the Home Loans Assistance Act) provides for the payment of a subsidy on home loan interest, for members and former members of the Australian Defence Force who served prior to 1 July 2008. If the member or former member in receipt of a subsidy under the Home Loans Assistance Act dies, the subsidy may be passed to their surviving widow or widower.

Item 1

248 This item amends section 3 of the Home Loans Assistance Act as a consequence of the addition of a new subsection (2) in that section by Item 9 of this Schedule.

Item 2

249 The current definition of 'child' in section 3 of the Home Loans Assistance Act provides that a 'child', in relation to a person, means a child, stepchild or legally adopted child of the person who is aged under 16 and or a student.

250 This item replaces the current definition of 'child' in section 3 of the Home Loans Assistance Act with a new definition of 'child'. The new definition expands the classes of child who may be considered to be a child of a person for the purposes of the Home Loans Assistance Act. The new definition does not limit who is considered to be the child of a person.

251 Subparagraph (a)(i) of the definition of 'child' provides that someone is the child of a person if they are the legally adopted child or a stepchild of the person and they are aged under 16 or a student. This provision replicates the existing definition of 'child'. Subparagraph (a)(ii) of the definition of 'child' provides that a someone is a child of a person if they are the product of a relationship the person has or had as a couple with another person (whether of the same-sex or a different sex) and they are aged under 16 or a student. This incorporates elements of the key definition of 'child', a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

252 This item also inserts a note at the end of the definition of 'child' in section 3 of the Home Loans Assistance Act that directs the reader to subsection 3(2) of the Home Loans Assistance Act.

Items 3 and 5

253 The definition of ‘spouse’ in section 3 of the Home Loans Assistance Act provides that a ‘spouse’ is person of the opposite sex to a person who lives with the person as his or her spouse, on a permanent and *bona fide* domestic basis, although not legally married to the person. This definition discriminates against the same-sex de facto partner of a person because they cannot be recognised as the spouse of that person due to the fact that they are same-sex as their partner.

254 Item 3 inserts a definition of ‘de facto partner’ into section 3 of the Home Loans Assistance Act to replace the definition of ‘spouse’, which provides that a ‘de facto partner’ has the meaning given by key definition of ‘de facto partner’ in the AIA. This definition expands the range of persons who can be considered to be de facto partners than were previously recognised in the definition of ‘spouse’ in the Home Loans Assistance Act.

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255 Item 5 repeals the current discriminatory definition of ‘spouse’ in section 3 of the Home Loans Assistance Act as it is made redundant as a consequence of the amendments made by Item 3 of this Schedule.

Item 4

256 This item inserts the key definition of ‘parent’ into section 3 of the Home Loans Assistance Act to extend the range of persons who can be considered to be the parent of a person for the purposes of the Home Loans Assistance Act to include the parent of a child within the meaning of the definition of ‘child’ inserted by Item 2 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

257 This item inserts a new definition of ‘surviving spouse or de facto partner’ into section 3 of the Home Loans Assistance Act. The effect of this amendment is to ensure that the definition of a relationship, for the purpose of the payment of benefits to a person whose partner dies, includes a same-sex relationship as well as an opposite-sex relationship. The previous term ‘widow’ or ‘widower’ was gender specific and restricted to those in marriage or marriage-like relationships. The express inclusion of ‘de facto partner’ with its extended meaning, and thus same-sex relationships, within this definition is not intended to change the treatment of married or opposite-sex de facto couples. It removes same-sex discrimination but does not change or re-define any other indicia of a relationship.

Items 7 and 8

258 These items remove the definitions of ‘widow’ and ‘widower’, respectively, in section 3 of the Home Loans Assistance Act. The new inclusive phrase ‘surviving spouse or de facto partner’ inserted by Item 6 of this Schedule, describes the groups previously included as widows and widowers without the need for the de facto partner of a deceased person to refer to the extended definition of ‘spouse’ to check whether they are included in the term and with no potential for confusion as to the relevance of the sex of the persons to whom a benefit is payable.

Item 9

259 This item inserts a new subsection (2) at the end of section 3 of the Home Loans Assistance Act. The new subsection makes it clear that a child for the purposes of the for the purposes of subparagraph (a)(ii) of the Home Loans Assistance Act may only be the product of a person's relationship with a partner if the child is the biological child of at least one of the persons in the relationship, or is born to a woman in the relationship. This incorporates elements of the key definition of 'child', which is described in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 10

260 This item inserts the term 'de facto partner' into paragraphs 5(1)(b) and (c) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule.

Item 11

261 This item inserts the term 'de facto partner' into paragraphs 6(a),(b) and (c) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule.

Item 12

262 This item replaces section 8 of the Home Loans Assistance Act with a new section that refers to 'de facto partner' as a consequence of the amendments in Items 3 and 5 of this Schedule. In doing so, the scope of subsection 8(2) is slightly expanded, as to give full effect to the new definition of 'de facto partner', both the temporary separations currently recognised in subsection 8(2) and the potentially permanent separations due to illness or infirmity are taken not to affect a person's eligibility under the Home Loans Assistance Act. The section provides a means of prioritising the interest in a home loan interest subsidy in the event that a member leaves more than one person who may be able to seek to claim an entitlement as a surviving spouse or de facto partner. This situation is not new and is currently dealt with by section 8 of the Home Loans Assistance Act.

Item 13

263 This item replaces the term 'widow or widower' in subsection 10(3) of the Home Loans Assistance Act with the new term 'surviving spouse or de facto partner' as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. The amendment makes clear that the issue of certificates under the Home Loans Assistance Act is not limited to the widow or widower of a marriage to a deceased member, but extends also to a de facto partner who survives a deceased partner, regardless of the sex of the partner.

Item 14

264 This item replace the terms 'widow or widower' from subparagraph 12(1)(b)(ii) of the Home Loans Assistance Act with the new term 'surviving spouse or de facto partner' as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. The amendment makes clear that the criterion for issue of certificates

under the Home Loans Assistance Act is not limited to the widow or widower of a marriage to a deceased member, but extends also to a de facto partner who survives a deceased partner, regardless of the sex of the partner.

Item 15

265 This item replaces the term ‘widow or widower’ from subsection 12(3) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. The amendment makes clear that the limit on issue of a certificate under the Home Loans Assistance Act applies to the widow or widower of a marriage to a deceased member, and also applies to a de facto partner who survives a deceased partner, regardless of the sex of the partner.

Item 16

266 This item provides that the amendments to sections 10 and 12 of the Home Loans Assistance Act made by this Schedule only apply in relation to scheme members who die on or after the commencement of the amendments made by Schedule 4 to the Bill. It does not permit the issue of a certificate to the surviving same-sex partner of a member who dies before the commencing day.

Item 17

267 This item replaces the term ‘widow or widower’ from subsection 15(4) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. The amendment makes clear that the time limit for seeking a loan increase under the Home Loans Assistance Act is not limited to the widow or widower of a marriage to a deceased member, but extends also to a de facto partner who survives a deceased partner, regardless of the sex of the partner.

Item 18

268 This item inserts the phrase ‘or de facto partner’ into paragraph 15(1)(b) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, the limit on grant of a home loan increase applies equally in relation to a situation involving either an opposite or same-sex de facto partner.

Item 19

269 This item inserts the phrase ‘or de facto partner’ into paragraphs 17(1)(a) and (b) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, the rules about sale or transfer of a home in relation to which subsidy is payable apply equally in relation to a situation involving either an opposite or same-sex de facto partner.

Item 20

270 This item inserts the term ‘or de facto partner’s’ into paragraph 17(1) and (b) of the Home Loans Assistance Act as a consequence of the amendments made by

Items 3 and 5 of this Schedule. It has a similar effect to the amendments made by Item 20 of this Schedule.

Item 21

271 This item inserts the phrase ‘or de facto partner’ into paragraph 18(1)(b) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, the rules about sale or transfer of a home in relation to which subsidy is payable may apply equally in relation to a situation involving a home that a member owns jointly with either a spouse or de facto partner.

Item 22

272 This item provides that the amendments to sections 14, 15, 17 and 18 of the Home Loans Assistance Act made by this Schedule only apply in relation to scheme members who die on or after the commencement of the amendments made by Schedule 4 to the Bill. It prevents the processing of an application for a home loan increase from the surviving same-sex partner of a member who died before the commencing day.

Item 23

273 This item inserts the phrase ‘or de facto partner’ into paragraph 20(2)(d) of the Home Loans Assistance Act as a consequence of the amendments in Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, a subsidy may be payable to either an opposite or same-sex de facto partner.

Item 24

274 This item provides that the amendment to paragraph 20(2)(d) of the Home Loans Assistance Act only applies in relation to a scheme member who dies on or after the commencement of the amendments made by Schedule 4 to the Bill. It ensures that a person who held a certificate allowing them to seek a home loan for which subsidy could be paid is not prevented from doing so only because they have a same-sex partner who becomes recognised for the purposes of the Home Loans Assistance Act on the commencing day. This ensures that the introduction of the measures does not have an arbitrary or unduly harsh impact on a member of a couple not currently recognised under the Home Loans Assistance Act.

Item 25

275 This item inserts the phrase ‘or de facto partner’ into subparagraph 20(2)(e)(i) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, a member may own a home in relation to which subsidy becomes payable with either an opposite or same-sex de facto partner.

Item 26

276 This item replaces the terms ‘widow or widower’ in subsections 24(1), (2) and (3) of the Home Loans Assistance Act and replaces them with the terms ‘surviving spouse or de facto partner’ as a consequence of the amendments made by

Items 6, 7 and 8 of this Schedule. The amendment makes clear that the subsidy period under the Home Loans Assistance Act is not limited to the widow or widower of a marriage to a deceased member, but extends also to a de facto partner who survives a deceased partner, regardless of the sex of the partner.

Item 27

277 This item inserts a new definition of ‘surviving spouse or de facto partner’ into subsection 24(4) of the Home Loans Assistance Act as a consequence of the amendments in Items 6, 7 and 8. It. This internal definition provides that the additional conditions for payment of subsidy to the surviving spouse or partner of a deceased member imposed under section 24 do not operate to limit the entitlement of a person who has an entitlement under the Home Loans Assistance Act in their own right.

Item 28

278 This item removes the definition of ‘widow or widower’ in subsection 24(4) of the Home Loans Assistance Act as a consequence of the amendment made by Item 26 of this Schedule, which inserts the more inclusive phrase ‘surviving spouse or de facto partner’.

Item 29

279 This item inserts the phrase ‘or de facto partner’ into subsection 26(1) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. The amendments make clear that after the commencing day, a subsidised loan limit may be assessed in relation to either an opposite or same-sex de facto partner. Currently only a spouse or opposite sex de facto partner can be considered when assessing whether the higher couple’s subsidised loan limit is available in relation to a home loan interest subsidy.

Item 30

280 This item inserts the phrase ‘or de facto partners’ into subsection 26(2) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. The amendments made by this item, taken together with the amendments in Items 30, 31 and 32 of this Schedule, provide that after the commencing day, a subsidised loan limit may be assessed in relation to a surviving de facto partner who is either an opposite or same-sex de facto partner. The amendment has the effect of ending the entitlement to payment of subsidy on the earlier of the dates that either member of a dual entitled couple would otherwise have ceased to be entitled to subsidy. Currently only a spouse or opposite sex de facto partner who is in a dual entitled couple has access to the continuing subsidy entitlement provided for a widow or widower after the death of a member and is subject to this specific subsidy end date. The amendment will extend the same entitlement and limitation to a same-sex de facto partner in a couple where each partner is separately entitled to payment of subsidy under the Home Loans Assistance Act.

Item 31

281 This item is made as a consequence of the amendments in Items 3 and 5. It inserts the phrase ‘or de facto partner’ into subparagraph 26(2)(a)(i) of the Home Loans Assistance Act. The amendment provides that after the commencing day, a subsidised loan limit may be assessed in relation to a deceased de facto partner who is either an opposite or same-sex de facto partner.

Item 32

282 This item replaces the term ‘widow or widower’ in subparagraph 26(2)(a)(ii) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This amendment has the effect that the conditions on the subsidy period relating to a joint loan apply to either the surviving spouse or partner of a deceased member.

Item 33

283 This item replaces the terms ‘widow or widower’ in paragraph 26(2)(b) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This amendment has the effect that the conditions on the subsidy relating to a joint loan apply to either the surviving spouse or partner of a deceased member as if the surviving spouse or partner were the sole subsidised borrower in relation to the home loan.

Item 34

284 This item inserts the phrase ‘or de facto partner’ into paragraph 29(c) of the Home Loans Assistance Act as a consequence of the amendments made by Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, conversion of a joint tenancy into a tenancy in common with either an opposite or same-sex de facto partner will result in the termination of subsidy payments in relation to a home for which a home loan interest subsidy is payable.

Item 35

285 This item provides that the amendment to paragraph 29(c) of the Home Loans Assistance Act made by Item 34 of this Schedule only applies in relation to a scheme member who dies on or after the commencement of the amendments made by Schedule 4 to the Bill. It ensures that a person who converted a joint tenancy into a tenancy in common with a same-sex de facto partner before the commencing day is not required to repay subsidy for a period when the partner was not recognised for any purpose by the legislation. This ensures that the introduction of the measures does not have an arbitrary or unduly harsh impact on a member of a couple not currently recognised under the Home Loans Assistance Act.

Item 36

286 This item inserts references to a ‘person’s de facto partner or former de facto partner’ and to ‘a person and his or her former de facto partner’ into paragraph 29(d) of the Home Loans Assistance Act as a consequence of the amendments made by

Items 3 and 5 of this Schedule. This amendment makes clear that after the commencing day, the transfer of a home to either a spouse or de facto partner (whether or not the subsidised borrower is also provided an interest) under an order of the Family Court will result in the termination of subsidy payments in relation to a home for which a home loan interest subsidy is payable.

Item 37

287 This item replaces the reference to the terms ‘widow or widower’ in paragraph 29(g) of the Home Loans Assistance Act and substitutes the terms ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. The amendment makes clear that subsidy payments cease if the subsidised borrower is not survived by a de facto partner, regardless of the sex of the partner. Currently, subsidy would cease permanently if a subsidised borrower died and left a same-sex de facto partner, but could be continued if the subsidised borrower died and was survived by an opposite sex de facto partner or a spouse.

Item 38

288 This item replaces the term ‘widow or widower’ from paragraph 29(h) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. It omits the definition of ‘widow or widower’ from paragraph 29(h) of the Home Loans Assistance Act and substitutes the more inclusive phrase ‘surviving spouse or de facto partner’. The amendment makes clear that subsidy payments cease if the subsidised borrower’s interest in the home in relation to which subsidy is payable does not transfer or pass to a person who was the spouse or de facto partner of the subsidised borrower.

Item 39

This item replaces the phrase ‘is survived by a widow or widower’ from paragraph 30(1)(a) of the Home Loans Assistance Act with the phrase ‘has a surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8. This amendment, together with the amendment made by Item 40 of this Schedule, makes clear that after the commencing day, subsidy may continue to be paid in relation to a home that was owned jointly by a subsidised borrower and their spouse or de facto partner, prior to the borrower’s death. Currently, this provision excludes the continued payment of subsidy to the same-sex de facto partner of a subsidised borrower who dies. The amendment will remove this discriminatory treatment.

Item 40

289 This item replaces the term ‘surviving widow or widower’ in paragraph 30(1)(b) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This amendment, together with the amendment made by Item 39 of this Schedule, makes clear that after the commencing day, subsidy may continue to be paid in relation to a home that was owned jointly by a subsidised borrower and their spouse or de facto partner, prior to the borrower’s death.

Item 41

290 This item replaces the phrase ‘is survived by a widow or widower’ in paragraph 30(2)(a) of the Home Loans Assistance Act with the new phrase ‘has a surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This amendment makes clear that after the commencing day, subsidy may be suspended in relation to a home that was owned solely by a subsidised borrower and not by their spouse or de facto partner, prior to the borrower’s death. Currently, this provision would allow subsidy to terminate permanently, instead of permitting the suspension of subsidy for the potential benefit of the same-sex de facto partner of a subsidised borrower who dies. The amendment will remove this discriminatory treatment.

Item 42

291 This item replaces the definition of ‘surviving widow or widower’ from paragraph 30(3)(b) of the Home Loans Assistance Act and substitutes the more inclusive phrase ‘surviving spouse or de facto partner’ as a consequence of the amendments in Items 6, 7 and 8. It. This amendment makes clear that after the commencing day, suspended subsidy may be reinstated in relation to a home that was owned solely by a subsidised borrower and not by their spouse or de facto partner, prior to the borrower’s death. Currently, this provision would allow subsidy to terminate permanently, instead of permitting the suspension of subsidy for later reinstatement once the interest in the home is passed, to the same-sex de facto partner of a subsidised borrower who dies. The amendment will remove this discriminatory treatment.

Item 43

292 This item omits the reference to a ‘surviving widow or widower who was legally married to the borrower’ from paragraph 30(4)(b) of the Home Loans Assistance Act and substitutes the more inclusive phrase ‘surviving spouse or de facto partner’ as a consequence of the amendments in Items 6, 7 and 8. It. This amendment, read together with the amendment in item 41A, makes clear that after the commencing day, suspended subsidy may not be reinstated for the surviving spouse or de facto partner of the subsidised borrower if the couple had separated prior to the borrower’s death, regardless of the nature of the couple relationship.

Item 44

293 This item replaces the definition of ‘surviving widow or widower’ from paragraph 30(4)(d) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This amendment makes clear that after the commencing day, suspended subsidy may not be reinstated for the surviving spouse or de facto partner of the subsidised borrower if the couple had separated prior to the borrower’s death, regardless of the nature of the couple relationship.

Item 45

294 This item replaces the definition of ‘surviving widow or widower’ from subsection 30(6) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7

and 8 of this Schedule. This amendment makes clear that after the commencing day, the surviving spouse or de facto partner of a subsidised borrower is to be treated as if they were the subsidised borrower, for the purposes of the Act. This allows the rules about the payment of subsidy to apply to the surviving spouse or de facto partner in the same way that they would for any other subsidised borrower, regardless of the fact that initial eligibility criteria may not have been met.

Item 46

295 This item replaces the definition of ‘surviving widow or widower’ from paragraph 36A(1)(d) of the Home Loans Assistance Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 6, 7 and 8 of this Schedule. This ensures that a person is covered by the scope of rules on the use and disclosure of personal information, whether they were in either a marriage or a de facto relationship with a deceased person who was eligible, entitled or in receipt of subsidy under the Home Loans Assistance Act.

Defence (Parliamentary Candidates) Act 1969

296 The *Defence (Parliamentary Candidates) Act 1969* (the Parliamentary Candidates Act) permits a member of the Australian Defence Force who intends to become a candidate for election to the Commonwealth Parliament or a State (or the Legislative Assembly or similar body in a Territory) to apply for discharge, termination or transfer into the Reserves. This ensures that the member is not in the active service of the Executive in the event that they are elected to serve as a member of a legislative body, and so helps preserve the separation of executive and legislative power.

297 To ensure that a member is not disadvantaged by their decision to stand for election, the Parliamentary Candidates Act provides a right of return and pays the costs of a removal required by the member and their family back to the member’s location at enlistment. As that family is described only by reference to dependency, the Act is being amended to make clear that the family includes a member’s same-sex partner, and a child who is the product of a same-sex relationship.^

Item 47

298 Subsection 16(3) of the Parliamentary Candidates Act provides that for the purposes of section 16 (which provides for the return of a member, family and household effects etc. to place of enlistment) a member of the family of a person is dependent upon them if he or she is wholly or substantially so dependent.

299 This item replaces subsections 16(3) with new subsections 16(3) and 16(4) of the Parliamentary Candidates Act. Subsection 16(3) The new subsections will assist a decision-maker to establish which of the persons wholly or substantially dependant upon a member may be taken to be a member of the family entitled to a removal at Commonwealth expense.

300 Subsection 16(3) provides that for the purposes of section 16 of the Parliamentary Candidates Act, the members of a family, in relation to any person, are taken to include the following:

- a member's de facto partner within the meaning of the key definition of 'de facto partner' in the Acts Interpretation Act
- a child of the person because of the definition of 'child' in new subsection 16(2) of the Parliamentary Candidates Act, and

301 Paragraph 16(3)(c) is a tracing rule that provides that anyone else who would be a member of a person's family because a de facto partner, a child or someone of whom the person is a child is taken into account is taken to be a member of that person's family. For example, in relation the child of a parent, another child of that parent would be considered to be the child's sibling. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

302 This item also inserts subsection 16(4) into the Parliamentary Candidates Act which defines 'child' and 'dependent' for the purposes of section 16 of the Parliamentary Candidates Act. 'Dependent' is defined to mean 'wholly or substantially dependent' to retain its current meaning in subsection 16(4) of the Parliamentary Candidates Act.

303 The key definition of 'child' is also inserted to extend the range of persons who can be considered to be the child of a person for the purposes of the Parliamentary Candidates Act. This definition does not limit who is already considered to be a child for the purposes of section 16 of the Parliamentary Candidates Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Royal Australian Air Force Veterans' Residences Act 1953

304 The *Royal Australian Air Force Veterans' Residences Act 1953* (the RAAF Veterans' Act) establishes the Royal Australian Air Force Veterans' Residences Trust, which administers a Fund for the purpose of providing accommodation for persons in necessitous circumstances. Persons are eligible for this assistance due to their former service with the RAAF or similar bodies, or due to their being the widow, widower or surviving parent of a deceased person with the required former service, and to the dependants of an eligible person. The proposed amendments to the RAAF Veterans' Act make clear that the list of eligible persons includes a member's surviving partner, regardless of the sex of the partner, and a parent of the former member, or the parent's partner.

Item 48

305 This item inserts a definition of 'de facto partner' into the section 2 of the RAAF Veterans' Act which provides that 'de facto partner' for the purposes for the RAAF Veterans' Act means a de facto partner within the meaning of the Acts Interpretation Act. A description of the key definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

306 The new definition slightly expands the coverage of this Act as the current definitions of ‘eligible persons’ are confined to those who are legally married or a widow or widower of such a marriage. The amendment removes marital status discrimination which was not removed in the context of changes made by the *Sex Discrimination (Consequential Amendments) Act 1986*, which removed sex discrimination but did not amend terms specific to marital status.

Item 49

307 This item inserts an alternative conjunction ‘or’ at the end of paragraphs (a), (b) and (c) of the definition of ‘eligible person’ so that it is clear that each item in the list is a separate alternative.

Item 50

308 This item substitutes paragraphs 2(d), (e) and (f) of the RAAF Veterans’ Act with alternatives that are inclusive of de facto relationships. The previous wording only allowed recognition of eligible persons who were legally married to the former serving member or, if the member was deceased, the member’s parent. The new wording permits those persons who can show that they were a de facto partner of a former member or their parent to be eligible on the same basis as those persons who are legally married.

Item 51

309 This item inserts a definition of ‘parent’ into section 2 of the RAAF Veterans’ Act. The definition expands the classes of person that may be taken to be a parent of a child by applying the key definitions of ‘parent’ and ‘child’. The definition does not limit who can be considered to be a parent of a person for the purposes of the RAAF Veterans’ Act. A description of the key definitions of ‘child’ and ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 52

310 This item inserts a definition of ‘surviving spouse or de facto partner’ into section 2 of the RAAF Veterans’ Act. The definition is inclusive of both spouses and de facto partners.

Item 53

311 This item provides that amendments to the RAAF Veterans’ Act made by Schedule 4 to the Bill only apply in relation to a person referred to in paragraphs (a), (b) or (c) of the definition of ‘eligible person’ in section 2 of the RAAF Veterans’ Act who dies on or after the commencement of the amendments.

Schedule 5—Education, Employment and Workplace Relations amendments

312 This Schedule contains amendments to the following Acts within the Education, Employment and Workplace Relations portfolio to remove differential treatment of same-sex couples and their children:

- *Education Services for Overseas Students Act 2000*
- *Higher Education Support Act 2003*
- *Judicial and Statutory Officers (Remuneration and Allowances) Act*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Seafarers Rehabilitation and Compensation Act 1988*, and
- *Student Assistance Act 1973*.

Education Services for Overseas Students Act 2000

313 The *Education Services for Overseas Students Act 2000* (the ESOS Act) protects Australia's reputation for delivering quality education services and the interests of overseas students, by setting minimum standards and providing tuition and financial assurance. The Bill amends the definition of the term 'associate' in the ESOS Act to replace the term 'de facto spouse' with 'de facto partner' and insert definitions of the terms 'parent' and 'child' to describe the children born into a family, where only one parent is linked biologically to them or is their birth mother.

Item 1

314 This item amends the definition of 'associate' in subsection 6(1) of the ESOS Act by replacing the term 'de facto spouse' with 'de facto partner'. This will extend the range of persons who can be considered to be the associate of a person to include a person within the definition of 'de facto partner' to be inserted by Item 3.

Item 2

315 This item inserts the key definition of 'child' into subsection 6(7) of the ESOS Act to extend the range of persons who can be considered to be the associate of a person to include a child who is the product of a relationship the person has or had as a couple with another person. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 3

316 This item inserts a definition of 'de facto partner' into subsection 6(7) of the ESOS Act, which provides that a 'de facto partner' includes a de facto partner within the meaning of the key definition of 'de facto partner' in the Acts Interpretation Act. This definition extends the range of persons who can be considered to be the associate of a person to include someone who is in a same-sex relationship with that person. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 4

317 This item inserts the key definition of ‘parent’ into subsection 6(7) of the ESOS Act to extend the range of persons who can be considered to be the associate of a person to include the parent of a child within the meaning of the definition inserted by Item 2. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

318 This item inserts subsection 6(8) into the ESOS Act. Subsection 6(8) is a tracing rule that allows relationships within the meaning of ‘sibling’ in paragraph 6(1)(d) of the ESOS Act to be traced through the definitions of ‘parent’ and ‘child’. This means in relation to a child, the other children of the parent are that child’s siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Higher Education Support Act 2003

319 The *Higher Education Support Act 2003* (the HES Act) provides for the Commonwealth to give financial support for higher education through grants and other payments principally made to higher education providers and through financial assistance to students. This Schedule will amend the definition of ‘overseas student’ in the HES Act to clarify that the definition does not include de facto partners of New Zealand consular representatives and their dependent relatives, as well as the spouses of those representatives.

Item 6

320 This item inserts into clause 1 of Schedule 1 of the HES Act a ‘(1)’ before the words ‘In this Act’ as a consequence of amendments made by Item 9.

Item 7

321 This item amends the definition of ‘overseas student’ within Clause 1 of Schedule 1 of the HES Act by inserting a reference after the word ‘spouse’ to the key definition of ‘de facto partner’ in the Acts Interpretation Act. The insertion of this reference expands the range of persons who are not to be considered an ‘overseas student’ for the purposes of the HES Act to include someone who is in a same-sex relationship with a diplomatic or consular representative of New Zealand. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

322 This item inserts a note at the end of the definition of ‘overseas student’ in Clause 1 of Schedule 1 of the HES Act indicating that subclause (2) of Schedule 1 of the HES Act (inserted by Item 9) may be relevant in determining relationships for the purposes of paragraph (e) of the definition of ‘overseas student’.

Item 9

323 This item inserts new subclauses (2) and (3) into Schedule 1 to the HES Act. Subclause (2) extends the term 'dependent relative' to include the dependent relatives of a person who is in a same-sex relationship with a diplomatic or consular representative of New Zealand and the child of that person who is a child within the meaning of the key definition of child in subclause (3).

324 Paragraphs (2)(a) and (2)(b) of Schedule 1 of the HES Act provides that 'dependent relative' in paragraph (e) of Clause 1 of Schedule 1 includes:

- an exnuptial or adoptive child of the representative, or someone of whom the representative is an exnuptial or adoptive child
- someone who is a child of the representative, or of whom the representative is a child, because of the key definition of 'child' in subclause (3).

A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

325 Paragraph (2)(c) is a tracing rule that allows relatives traced through or to relationships within paragraphs 2(a) and 2(b) to be considered a 'dependent relative' within the meaning of paragraph (e) of Clause 1 of Schedule 1 of the HES Act. For example, in relation to a child, the brother of the parent is that child's uncle. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Judicial and Statutory Officers (Remuneration and Allowances) Act 1984

326 The *Judicial and Statutory Officers (Remuneration and Allowances) Act 1984* (the JSO Act) provides for the remuneration and allowances payable to the holders of certain judicial and statutory offices.

Item 10

327 This item inserts subsection 4(4B) into the JSO Act. Subsection 4(4B) provides that 'spouse' includes a de facto partner of a person within the meaning of the key definition of 'de facto partner' in the Acts Interpretation Act for the purposes of subsection 4(4A) of the JSO Act. This expands the meaning of 'spouse' in subsection 4(4A) which deals with travelling allowances that are payable to Justices of the High Court if their spouses accompany them and the cost of the travel of the spouse is borne by the Commonwealth. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Safety, Rehabilitation and Compensation Act 1988

328 The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) establishes a scheme of rehabilitation and compensation for employees of the Commonwealth, Commonwealth Authorities and licensed private sector corporations who are injured in the course of their employment. The SRC Act's primary objective is to minimise the human and financial cost of work-related injury and disease while at the same time providing appropriate compensation and support for employees and their families, in particular for persons who are dependent on the employee.

329 The SRC Act does not currently provide compensation to a spouse of an employee of the same sex or to children from such relationships. The proposed amendments therefore provide equal access to compensation for same sex partners of an employee and their families.

330 The provisions also update gender specific terminology and outdated terms throughout the Act to be consistent with anti-discrimination policy.

Item 11

331 This item inserts the key definition of ‘child’ into subsection 4(1) of the SRC Act. The item makes clear that the definition of ‘child’ being inserted into the SRC Act extends the existing range of persons who can be considered as the child of a person for the purposes of the SRC Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 12

332 This item inserts a definition of ‘de facto partner’ into subsection 4(1) of the SRC Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. This definition extends the range of persons who can be considered to be the spouse of a person as a consequence of the amendments made by Item 16 to the definition of spouse. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 13

333 This item amends paragraph (a) of the definition of ‘dependant’ in subsection 4(1) of the SRC Act to replace gender-specific language with gender-neutral language (such as replacing ‘son’ and ‘daughter’ with ‘child’). This allows a person who is a child of a person within the meaning of the key definition of ‘child’ inserted by Item 11 to be considered a ‘dependant’ of that person for the purposes of the SRC Act.

Item 14

334 This item inserts a note at the end of the definition of ‘dependant’ in subsection 10(2) of the SRC Act to direct the reader to subsection 4(2) of the SRC Act, which is inserted by Item 19.

Item 15

335 This item inserts the key definition of ‘parent’ in subsection 4(1) of the SRC Act to extend the range of persons who can be considered to be parent of a child within the meaning of the key definition of ‘child’ inserted by Item 11. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 16

336 This item removes paragraph (a) of the definition of 'spouse' in subsection 4(1) of the SRC Act and inserts a reference to the definition of 'de facto partner' inserted by Item 12. It extends the meaning of 'spouse' to include (in relation to an employee or deceased employee) a de facto partner of the employee whether of the same or opposite sex to the employee.

337 The existing requirement that a spouse be living with the employee is now contained in the definition of 'de facto partner' which is inserted by Item 12. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 17

338 This item inserts the key definition of 'stepchild' in subsection 4(1) of the SRC Act. This extends the range of persons who can be considered to be the 'stepchild' to include a person who would be the stepchild of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of 'stepchild' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 18

339 This item inserts the key definition of 'step-parent' in subsection 4(1) of the SRC Act. This extends the range of persons who can be considered to be the 'step-parent' to include a person who would be the step-parent of someone who is child of the de facto partner of the person, except that the person and the parent are not legally married. A description of the definition of 'step-parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 19

340 Generally, subsection 4(2) of the SRC Act is a tracing rule providing that relationships referred to in paragraph (a) of the definition of 'dependant' include relationships that are traced through 'illegitimate relationships or relationships by adoption.'

341 This item replaces subsection 4(2) with a new subsection 4(2) to allow relationships referred to in the SRC Act to include relationships between de facto partners or relationships of parent and child that arise because of adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships. It also includes a tracing rule that allows relationships traced through adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships to be recognised for the purposes of the SRC Act. For example, in relation to a child, the other children of the parent are that child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

342 This item also replaces outdated references to 'illegitimate' relationships with 'ex-nuptial' relationships.

Items 20 and 21

343 These items amend subsection 4(6) and subparagraph 19(12)(b)(i) of the SRC Act to replace the gender-specific language with gender-neutral language (such as replacing 'son' and 'daughter' with 'child'). This allows a person who is a child of a person within the meaning of the key definition of 'child' inserted by Item 11 to be considered as a child of that person for the purposes of subsection 4(6) and subparagraph 19(12)(b)(i) of the SRC Act.

Items 22, 24 and 25

344 These items insert notes at the end of subsections 19(12), 29(2) and 29(4) of the SRC Act to direct the reader to the tracing rule contained in subsection 4(2) of the SRC Act, which is relevant to subparagraph 19(12)(b)(i), paragraph 29(2)(d) and paragraph 29(4)(f).

Item 23

345 Subsection 19(13) of the SRC Act is a tracing rule that relationships referred to in the definition of 'prescribed person' in subsection (12) of the SRC Act shall be taken to include illegitimate relationships, relationships by adoption and relationships that are traced through illegitimate relationships or relationships by adoption.

346 This item repeals subsection 19(13) as the insertion of the tracing rule made by Item 19 will make this provision unnecessary.

Item 26

347 This item provides that amendments to the SRC Act made by Schedule 5 to the Bill only apply in respect of a payment made under the SRC Act on or after the commencement of the amendments. It also provides that amendments to the SRC Act made by Schedule 5 to the Bill only apply in relation to lump sum benefits which are payable in respect of the death of a person if the death occurs on or after the commencement of the amendments.

Seafarers Rehabilitation and Compensation Act 1992

348 The *Seafarers Rehabilitation and Compensation Act 1988* (the Seafarers Act) establishes an industry specific scheme of rehabilitation and compensation for seafaring employees who are injured in the course of their employment. The Seafarers Act's primary objective is to minimise the human and financial cost of work-related injury and disease while at the same time providing appropriate compensation and support for employees and their families, in particular for persons who are dependent on the employee.

349 The Seafarers Act does not currently provide compensation to a spouse of an employee of the same sex or to children from such relationships. The amendments therefore provide equal access to compensation for same sex partners of an employee and their families.

350 The provisions also update gender-specific terminology to be consistent with anti-discrimination policy.

Item 27

351 This item inserts the key definition of ‘child’ into section 3 of the Seafarers Act. The item makes clear that the definition of ‘child’ being inserted into the Seafarers Act extends the existing range of persons who can be considered as the child of a person for the purposes of the Seafarers Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 28

352 This item inserts a definition of ‘de facto partner’ into section 3 of the Seafarers Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. This definition extends the range of persons who can be considered to be the spouse of a person as a consequence of the amendments made by Item 32 to the definition of spouse. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 29

353 This item amends paragraph (b) of the definition of ‘dependant’ in section 3 of the Seafarers Act to replace gender-specific language with gender-neutral language (such as replacing ‘son’ and ‘daughter’ with ‘child’). This allows a person who is a child of a person within the meaning of the key definition of ‘child’ inserted by Item 27 to be considered a ‘dependant’ of that person for the purposes of the Seafarers Act.

Item 30

354 This item inserts the key definition of ‘parent’ in section 3 of the Seafarers Act to extend the range of persons who can be considered to be parent of a child within the meaning of the key definition of ‘child’ inserted by Item 27. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 31

355 This item amends subparagraph (b)(i) of the definition of ‘prescribed person’ in section 3 of the Seafarers Act to replace gender-specific language with gender-neutral language (such as replacing ‘son’ and ‘daughter’ with ‘child’). This allows a person who is a child of an employee within the meaning of the key definition of ‘child’ inserted by Item 27 to be considered a ‘prescribed person’ in relation to an employee for the purposes of the Seafarers Act.

Item 32

356 This item removes paragraph (a) of the definition of ‘spouse’ in section 3 of the Seafarers Act and inserts a reference to the key definition of ‘de facto partner’ inserted by Item 40. It extends the meaning of ‘spouse’ to include (in relation to an

employee or deceased employee) a de facto partner of the employee whether of the same or opposite sex to the employee.

357 The existing requirement that a spouse be living with the employee is now contained in the definition of 'de facto partner' which is inserted by Item 28. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 33

358 This item inserts the key definition of 'stepchild' in section 3 of the Seafarers Act. This extends the range of persons who can be considered to be the 'stepchild' to include a person who would be the stepchild of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of 'stepchild' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 34

359 This item inserts the key definition of 'step-parent' in section 3 of the Seafarers Act. This extends the range of persons who can be considered to be the 'step-parent' to include a person who would be the step-parent of someone who is a child of the de facto partner of the person, except that the person and the parent are not legally married. A description of the definition of 'step-parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 35

360 This item amends subsection 15(3) of the Seafarers Act to replace the gender-specific terms 'son or daughter' with the gender-neutral term 'child'. This allows a person who is a child of a person within the meaning of the key definition of 'child' inserted by Item 27 to be considered a 'person who is wholly or partly dependant' on an employee for the purposes of the Seafarers Act.

Item 36

361 Section 16 of the Seafarers Act is a tracing rule providing that relationships referred to in paragraph (a) of the definition of 'dependant' include relationships that are traced through 'ex-nuptial relationships or relationships by adoption.'

362 This item replaces section 16 of the Seafarers Act to allow relationships referred to in the Seafarers Act to include relationships that arise because of adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships. It includes a tracing rule that allows relationships traced through adoption, the definitions of 'parent' and 'child' and ex-nuptial relationships to be recognised for the purposes of the Seafarers Act. For example, in relation to a child, the other children of the parent are that child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 37 and 38

363 These items insert notes at the end of subsections 43(3) and 43(5) of the Seafarers Act to direct the reader to the tracing rule contained in section 16 of the Seafarers Act, which is relevant to paragraph 43(3)(d) and paragraph 43(5)(f).

Item 39

364 This item provides that amendments to the Seafarers Act made by Schedule 5 to the Bill only apply in respect of a payment made under the Seafarers Act on or after the commencement of the amendments. It also provides that amendments to the Seafarers Act made by Schedule 5 to the Bill only apply in relation to lump sum benefits which are payable in respect of the death of a person if the death occurs on or after the commencement of the amendments.

Student Assistance Act 1973

365 The *Student Assistance Act 1973* provides for the entitlement to various forms of student assistance benefits and recovery of student assistance debts.

Item 40

366 This item inserts the key definition of 'child' into subsection 43B(5) of the Student Assistance Act to extend the range of persons who can be considered to be the parent of a person for the purposes of waiving a debt incurred as a result of overpayment of an entitlement paid under the Student Assistance Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 41

367 This item amends paragraph (a) of the definition of 'parent' in subsection 43B(5) of the Student Assistance Act by inserting part of the key definition of 'parent'. This extends the range of persons who can be considered to be the parent of a person as a consequence of the insertion of the key definition of 'child'. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Schedule 6—Families, Housing, Community Services and Indigenous Affairs amendments

368 This Schedule contains amendments to the following Acts within the Families, Housing, Community Services and Indigenous Affairs portfolio to remove differential treatment of same-sex de facto couples and their children:

- *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *A New Tax System (Family Assistance) Act 1999*
- *A New Tax System (Family Assistance) (Administration) Act 1999*
- *Social Security Act 1991*

Part 1—Amendments commencing on the day after Royal Assent

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

369 The *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (the Land Grant Act) provides for the grant of land in the Jervis Bay Territory to the Wreck Bay Aboriginal Community and for the establishment of the Wreck Bay Aboriginal Community Council. The amendments to the Land Grant Act are necessary because under the current provisions of section 37 of the Act, the definitions of ‘child’, ‘parent’, ‘relative’ and ‘spouse’ mean that the operation of the Act is confined to opposite-sex relationships. This results in potential discrimination against same-sex couples and their children in relation to who is a relative of a member of the Wreck Bay Aboriginal Community Council.

Item 1

370 This item inserts the key definition of ‘child’ into subsection 37(1) of the Land Grant Act to expand who can be considered a child for the purposes of who is a relative of a person whose name is on the Register of Members of the Community Council. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 2

371 This item inserts the key definition of ‘parent’ into subsection 37(1) of the Land Grant Act to expand who can be considered a parent for the purposes of who is a relative of a person whose name is on the Register of Members of the Community Council. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 3

372 This item inserts a definition of ‘de facto partner’ into subsection 37(1) of the Land Grant Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts

Interpretation Act. This definition expands the range of persons for the purposes of who is a relative of a person whose name is on the Register of Members of the Community Council. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 4

373 This item inserts subsection 37(5) into the Land Grant Act. Subsection 37(5) of the Land Grant Act is a tracing rule that allows relationships within the meaning of ‘relative’ in subsection 37(1) to be traced through the definition of child. For example, in relation to a child, the other children of the parent are that child’s siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Corporations (Aboriginal and Torres Strait Islander) Act 2006

374 The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) is a special statute of incorporation for Aboriginal and Torres Strait Islander peoples that takes account of the special risks and requirements of the Indigenous corporate sector. It aligns with modern corporate governance standards and corporations law to improve governance and capacity in the Indigenous corporate sector. It provides sufficient flexibility for corporations to accommodate specific cultural practices and tailoring to reflect the needs and circumstances of Indigenous groups. It also recognises the role of registered native title bodies corporate under native title legislation.

375 The amendments to the CATSI Act remove discrimination against same-sex couples and their children by changing relationship definitions in the Act.

Item 5

376 This item removes the reference to ‘de facto spouses’ in paragraph 293-1(2)(d) of the CATSI Act as a consequence of the amendments made by Items 8 and 10.

Item 6

377 This item inserts new section 694-115 into the CATSI Act. Section 694-115 of the CATSI Act is a tracing rule that allows relationships (including the relationship of family) to be traced through the definitions of parent and child for the purposes of the CATSI Act.

378 Paragraphs 694-115(a) and 694-115(b) of the CATSI Act provide that relationships (including the relationship of family) are taken to include:

- relationships between de facto partners (within the meaning of the Acts Interpretation Act), and
- relationships that arise if someone is an exnuptial or adoptive child of a person or if someone is a child of a person because of the definition of ‘child’ in section 700-1 inserted by Item 7.

379 Paragraph (c) is a tracing rule that allows relationships traced through or to relationships within paragraphs (a) and (b) to be considered relationships (including

the relationship of family) for the purposes of the CATSI Act. For example, in relation to a child, the brother of the parent is that child's uncle. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 7

380 This item inserts the key definition of 'child' into section 700-1 of the CATSI Act to expand who can be considered a child for the purposes of the CATSI Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

381 This item repeals the unnecessary definition of 'de facto spouse' in section 700-1 of the CATSI Act as it is made redundant as a consequence of the insertion of the definition of 'spouse' by Item 10.

Item 9

382 This item inserts the key definition of 'parent' into section 700-1 of the CATSI Act to expand the range of persons who can be considered to be the parent of a child for the purposes of the CATSI Act. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 10

383 This item inserts a definition of 'spouse' into the CATSI Act that provides that 'spouse' includes a de facto partner within the meaning of the Acts Interpretation Act. This expands the range of person who can be considered to be a person's spouse for the purposes of the CATSI Act. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Part 2—Amendments commencing on 1 July 2009

A New Tax System (Family Assistance) Act 1999

384 The *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) sets out the eligibility rules for family assistance payments and details the various methods of calculating rate, depending on the individual's circumstances.

Items 11 and 12

385 These items insert definitions of 'relationship child' and 'relationship parent' into subsection 3(1). These terms will have the same meaning as in the *Social Security Act 1991* (Social Security Act). These terms are defined in subsection 5(10) of the Social Security Act which is inserted by Items 57 and 58 of this Schedule.

Item 13

386 Subsection 22(2) of the Family Assistance Act provides that an individual is an FTB child of an adult if the individual is aged under 18 and:

- the adult is legally responsible for the day-to-day care, welfare and development of the individual
- the individual is in the adult's care, and
- the individual is an Australian resident, is a special category visa holder residing in Australia or is living with the adult.

An individual can also be considered to be an FTB child if they are aged under 18 and there is a family law order, a registered parenting plan or parenting plan under the *Family Law Act 1975* in force in relation to them and they are in the care of the adult who is supposed to care for them (and they meet the residence requirements).

387 It is not clear whether the non-biological same-sex parent of a child of a same-sex couple would be able to prove legal responsibility for a child in his or her care without a parenting order. This imposes a higher burden than on the birth mother and birth father (or adoptive parents) who do not need a parenting order to prove legal responsibility.

388 This item inserts new subsection 22(2A) of the Family Assistance Act to expand the range of individuals who can be the FTB child of an adult. New subsection 22(2A) of the Family Assistance Act provides that an individual is an FTB child of an adult if

- the individual is aged under 18
- the adult is the relationship parent of the individual
- there is no order of a court (such as a family law order) that stops the adult from being legally responsible for the day-to-day care, welfare and development of the individual
- the individual is in the adult's care, and
- the individual is an Australian resident, is a special category visa holder residing in Australia or is living with the adult.

389 The effect of this amendment allows the 'relationship child' of a non-biological same-sex parent to be recognised as an FTB child of that parent. This is contingent on the criteria in new subsection 22A(2A) of the Family Assistance Act being met, including that there is no order of a court (such as a family law order) that stops the adult from being legally responsible for the day-to-day care, welfare and development of the individual.

Items 14 to 18

390 Section 23 of the Family Assistance Act provides that a child continues to be an FTB child or regular care child of an individual if the child ceases to be in the individual's care without consent and the individual takes reasonable steps to regain the care of a child. This provision currently operates where an individual is considered to be an FTB child of an adult for the purposes of subsections 22(2) and 22(3) of the Family Assistance Act. The effect is that the individual can continue

to receive FTB in respect of the child for up to 14 weeks (the ‘qualifying period’) after care ceases.

391 These items amend section 23 of the Family Assistance Act to ensure that the provision applies where an individual is an FTB child of an adult by virtue of new subsection 22(2A) inserted by Item 13.

392 Item 17 inserts a definition of ‘parent’ into subsection 23(5) that provides that a ‘parent’ includes a relationship parent.

393 Item 18 inserts new subsection 23(6) which provides that if a child (other than an adopted child) is the relationship child of a person who is the product of the relationship, the two persons in the relationship are taken to be the child’s only parents for the purposes of the definition of ‘qualifying child’ in subsection 23(5).

Item 19

394 Section 28 of the Family Assistance Act allows for the splitting of FTB between members of the same couple in certain blended family situations. The concept of an FTB child who is an ‘immediate child’ of an individual in this provision currently includes a natural or adopted child of the individual or a child for whom the individual is legally responsible. This item expands this concept to include a ‘relationship child’.

Item 20

395 Section 36 of the Family Assistance Act sets out the circumstances in which an individual is eligible for the baby bonus. Under subsection 36(2), an individual who is a parent of a child is eligible for baby bonus provided other specified conditions are satisfied. This item inserts a new subsection 36(7) into the Family Assistance Act to expand who is considered a parent of a child to include to include a ‘relationship parent’.

A New Tax System (Family Assistance) (Administration) Act 1999

396 The *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance (Administration) Act) contains administrative, procedural and technical rules that apply in relation to the administration of family assistance payments, for example claims and determinations.

Item 21

397 Subdivision CA of Division 4 of the Family Assistance (Administration) Act provides a mechanism for determining the eligibility of an individual to receive a special grandparent rate if they are determined to be conditionally eligible for child care benefit by fee reduction. Section 50R of the Family Assistance (Administration) Act provides that relationships between:

- an adopted child and his or her adoptive parent, and
- a step-child and his or her step-parent

are to be treated as if they were biological child-parent relationships for the purposes of determining whether an individual is a grandparent or great-grandparent of another

person for the purposes of Subdivision CA of Division 4 of the Family Assistance (Administration) Act.

398 This item inserts paragraph 50R(1)(c) of the Family Assistance (Administration) Act to provide that the relationship between a 'relationship child' and his or her 'relationship parent' is also to be taken as a biological child-parent relationship. The effect of this insertion is that the parents of the 'relationship parent' of a 'relationship child' will be taken to be the grandparents of that relationship child.

399 Subsection 3(2) of the Family Assistance (Administration) Act provides that expressions used in the Family Assistance (Administration) Act that are defined in the Family Assistance Act. This means that 'relationship parent' and 'relationship child' in paragraph 50R(1) of the Family Assistance (Administration) Act will have the same meaning as in the Family Assistance Act.

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Item 22

400 This item inserts a reference to 'relationship parent' into paragraphs (a) and (b) of the definition of 'step-parent' for the purposes of Subdivision CA of Divisions 4 of the Family Assistance (Administration) Act. Subsection 50R(2) of the Family Assistance (Administration) Act provides that the step-parent of a child means the person who is the current or former partner of the biological or adoptive parent of the child and is not the biological or adoptive parent of the child.

401 The insertion of the reference to 'relationship parent' in paragraph 50R(2)(a) will mean that the subsequent partner of a 'relationship parent' is the step-parent of any 'relationship child' of the 'relationship parent'. The insertion of the reference to a 'relationship parent' in paragraph 50R(2)(b) will mean that a 'relationship parent' is not considered to be a 'step-parent'. These amendments will bring this definition into line with how same-sex parents are treated in the key definition of 'step-parent' that is being inserted into various Acts by this Bill.

402 Subsection 3(2) of the Family Assistance (Administration) Act provides that expressions used in the Family Assistance (Administration) Act that are defined in the Family Assistance Act. This means that 'relationship parent' and 'relationship child' in paragraph 50R(1) of the Family Assistance (Administration) Act will have the same meaning as in the Family Assistance Act.

Social Security Act 1991

403 The *Social Security Act 1991* provides for entitlement to, and rate of, social security payments which are intended for people who cannot adequately support themselves.

Item 23

404 This item inserts into subsection 4(1) of the Social Security Act a signpost to the definition of 'prohibited relationship' in subsections 4(12) and 4(13) of the Social Security Act inserted by Item 34.

Items 24, 25 and 26

405 The existing definition of ‘member of a couple’ in subsection 4(2) of the Social Security Act provides that a person is a ‘member of a couple’ if they are legally married to another person and are not living separately and apart from the other person on a permanent basis, or if they are

- living with a person of the opposite sex
- not legally married to that person
- in a marriage-like relationship with that person (in the Secretary’s opinion which is formed as mentioned in subsections 4(3) and 4(3A) of the Social Security Act)
- over the age of consent applicable in the State or Territory in which they live, and
- not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

This means that currently only persons who are married or in an opposite-sex de facto relationship are considered to be a ‘member of a couple’ for the purposes of the Social Security Act.

406 Item 24 inserts new paragraph 4(2)(aa) into the Social Security Act which provides for a person who is in a relationship (whether of the same or opposite sex) registered under a law of a State or Territory to be considered a ‘member of a couple’. This means that registration of a relationship is conclusive evidence as to whether a person is a member of a couple with another person. New paragraph 4(2)(aa) of the Social Security Act will provide that a person is a ‘member of a couple’ if:

- the person is in a relationship with another person, whether the partner is of the same sex or different sex
- the relationship between the person and the partner is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, and
- in the Secretary’s opinion, the person is not living separately and apart from the partner on a permanent or indefinite basis.

407 Item 25 amends subparagraph 4(2)(b)(i) of the Social Security Act by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

408 Item 26 amends subparagraph 4(2)(b)(iii) of the Social Security Act by replacing the term ‘marriage-like’ with ‘de facto’.

409 The effect of these amendments is to ensure that the definition of ‘member of a couple’, for the purposes of the Social Security Act, includes a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples.

Items 27 and 28

410 Subparagraph 4(2)(b)(v) of the Social Security Act currently refers to a prohibited relationship for the purposes of section 23B of the Marriage Act. To allow for easy interpretation of what is a ‘prohibited relationship’, these items amend subsection 4(2) of the Social Security Act so that a prohibited relationship for the purposes of section 23B of the Marriage Act can be clearly specified in subsection 4(12) (see Item 34 of this Schedule.)

411 Item 27 amends subparagraph 5E(2)(b)(v) by removing the phrase ‘for the purposes of section 23B of the *Marriage Act 1961*’.

412 Item 28 repeals the note in subsection 4(2) of the Social Security Act, as the information in note 2 is made redundant by the insertion of new subsection 4(12) as a consequence of Item 34, which inserts the meaning of ‘prohibited relationship’.

Items 29 to 31

413 Subsection 4(3) of the Social Security Act contains criteria for the Secretary to have regard to in forming an opinion whether a person is a member of a couple for the purposes of paragraph 4(2)(a) and subparagraph 4(2)(b)(iii) of the Social Security Act. These amendments will enable same-sex and opposite-sex de facto couples to be considered as being in a de facto relationship for the purposes of subparagraph 4(2)(b)(iii) of the Social Security Act.

414 The criteria in subsection 4(3) of the Social Security Act are similar to the criteria in the key definition of ‘de facto partner’ within the meaning of the Acts Interpretation Act. It is for this reason that the key definition of ‘de facto partner’ will not be inserted into this section to retain the language already present in subsection 4(3) of the Social Security Act.

415 Item 29 inserts new subparagraph 4(2)(aa)(ii) in subsection 4(3) for the purposes of the Secretary forming an opinion about the relationship between two people.

416 Items 30 and 31 make amendments to criteria that the Secretary is to have regard to in forming an opinion as to whether a person is a member of a couple by inserting non-discriminatory language in subparagraph 4(3)(c)(i) and subparagraph 4(3)(e)(iv) of the Social Security Act to expand the meaning of the criteria, so it is relevant:

- whether the people hold themselves out in a de facto relationship with each other; and
- whether the people see their relationship as a de facto relationship.

The insertion of non-discriminatory language in subparagraph 4(3)(c)(i) and subparagraph 4(3)(e)(iv) of the Social Security Act is not intended to change the treatment of married or opposite-sex de facto couples.

Item 32

417 This item amends subsection 4(3A) of the Social Security Act as a consequence of amendments made by Item 26.

Item 33

418 This item amends paragraph 4(7)(a) of the Social Security Act to replace the words ‘a matrimonial’ with ‘their’ to remove marital status discrimination from determining whether two people are members of an ‘illness separated couple’ for the purposes of the Social Security Act.

Item 34

419 This item inserts a new subsection 4(12) in the Social Security Act that specifies what is a prohibited relationship for the purposes of the Social Security Act. This item is based on note 2 in subsection 4(2) of the Social Security Act (which is repealed by Item 28 of this Schedule which refers to the Marriage Act. The new definition will provide that a relationship between a person and

- an ancestor or a descendant, or
- a brother, sister, half-brother or half-sister

is to be considered a ‘prohibited relationship’ for the purposes of the Social Security Act.

420 This item also inserts a new subsection 4(13) in the Social Security Act to provide that a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child. These new subsections adopt the same approach as the definition of ‘prohibited relationship’ in subsection 23B(2) of the Marriage Act.

Item 35

421 This item inserts the key definition of ‘child’ into subsection 5(1) of the Social Security Act to expand who can be considered a child for the purposes of the Social Security Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 36

422 Subparagraph (a)(i) of the definition of ‘parent’ in subsection 5(1) of the Social Security Act currently provides that ‘parent’ means (except in Part 2.11 and in the Youth Allowance Rate Calculator in section 1067G), in relation to a young person, other than an adopted child—a natural parent of the young person.

423 This item removes the reference to young person and provides that ‘parent’ means (except in Part 2.11 and in the Youth Allowance Rate Calculator in section 1067G) in relation to a person, other than an adopted child, a natural parent or relationship parent of that person. The reference to ‘young person’ is removed because the meaning of parent is relevant to provisions about a person generally (as well as a young person).

Item 37

424 This item amends subparagraph 5(1)(a)(ii) of the Social Security Act replacing the words ‘young person’ with ‘child’.

Items 38 and 39

425 Subparagraph (b) of the definition of ‘parent’ in subsection 5(1) of the Social Security Act defines ‘parent’ for the purposes of Part 2.11 and the Youth Allowance Rate Calculator in section 1067G of the Social Security Act. These items insert references to ‘relationship parent’ into subparagraph (b)(i) and subparagraph (b)(ii) of the definition of ‘parent’ in subsection 5(1) of the Social Security Act to include parents that are ‘relationship parents’. The definition of ‘relationship parent’ is inserted by Item 9 of this Schedule.

Item 40 and 41

426 These items inserts signposts into subsection 5(1) of the Social Security Act to indicate that the terms ‘relationship child’ and ‘relationship parent’ have the meaning given by new subsection 5(25) of the Social Security Act (inserted by Item 47 of this Schedule), which defines the terms ‘relationship child’ and ‘relationship parent’.

Item 42

427 This item inserts the key definition of ‘step-child’ in subsection 5(1) of the Social Security Act. This expands the range of persons who can be considered to be the ‘step-child’ to include a person who would be the step-child of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of ‘step-child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 43

428 This item inserts the key definition of ‘step-parent’ in subsection 5(1) of the Social Security Act. This expands the range of persons who can be considered to be the ‘step-parent’ to include a person who would be the step-parent of someone who is child of the de facto partner of the person, except that the person and the parent are not legally married. A description of the definition of ‘step-parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 44

429 This item repeals the definition of ‘substitute’ care in subsection 5(1) of the Social Security Act as it is no longer referred to anywhere in the Social Security Act and is redundant.

Item 45

430 Subsection 5(2) of the Social Security Act provides that a young person is a ‘dependent child’ of an adult if the young person has not turned 16 and:

- the adult is legally responsible for the day-to-day care, welfare and development of the young person and the young person is in the adult’s care, or
- the young person is not a dependent child of someone else who is legally responsible (whether alone or jointly with another person) for the day-to-day

care, welfare and development of that person, and the young person is wholly or substantially in the adult's care.

431 While the non-biological parent of a child of a same-sex couple may be able to prove legal responsibility for a child in his or her care without a parenting order, they are generally not assumed to be legally responsible. This imposes a higher burden than that placed on a birth mother and birth father (or adoptive parents) who do not need a parenting order to prove legal responsibility.

432 This item inserts new paragraph 5(2)(aa) into the Social Security Act to expand the range of young persons who are taken to be the 'dependent child' of an adult. New paragraph 5(2)(aa) into the Social Security Act deems a young person to be a 'dependent child' of an adult if:

- they are not a dependent child of the adult under paragraph 5(2)(a) of the Social Security Act
- the adult is a relationship parent of the young person
- there is no order of a court (such as a family law order) that stops the adult from being legally responsible for the day-to-day care, welfare and development of the young person, and
- the young person is in the adult's care.

433 The effect of this insertion is that a 'relationship child' of a non-biological same-sex parent can be recognised as the 'dependent child' of that parent. This is contingent on the criteria in new paragraph 5(2)(aa) into the Social Security Act being met, including that there is no order of a court (such as a family law order) that stops the adult from being legally responsible for the day-to-day care, welfare and development of the individual.

Item 46

This item inserts a reference to paragraph 5(2)(aa) into subparagraph 5(2)(b)(i) of the Social Security Act as a consequence of amendments made by Item 45 of this Schedule.

Item 47

434 This item inserts new subsection 5(25) of the Social Security Act, providing for definitions of 'relationship child' and 'relationship parent'. The definitions make use of the key definitions of 'child' inserted in

- section 5(1) of the Social Security Act,
- paragraph (b) of the definition of 'child' in section 1207A of the Social Security Act, and
- paragraph (b) of the definition of 'child' in subsection 1209R(5) of the Social Security Act.

435 These amendments provide that a 'relationship parent' is a person who is the parent of a child who is the product of the relationship between the person and the biological or adoptive parent. By the same operation, a 'relationship child' is a child

who is the product of the relationship between the ‘relationship parent’ and the biological or adoptive parent.

Item 48

436 This item inserts into section 5E of the Social Security Act a ‘(1)’ before the words ‘A person’ as a consequence of amendments made by Item 50 of this Schedule.

Item 49

437 The definition of ‘parent’ in subsection 5(1) of the Social Security Act (as amended by Items 36 to 39 of this Schedule) includes natural parents, adoptive parents and relationship parents. This item replaces the words ‘natural parent, adoptive parent’ in paragraph 5E(a) with the simpler term ‘parent’ so that it has the same meaning as the revised definition of ‘parent’ in subsection 5(1) of the Social Security Act.

Item 50

438 This item inserts subsection 5E(2) into the Social Security Act. Subsection 5E(2) is a tracing rule that allows relationships for the purposes of subparagraph 5E(1)(b)(i) of the Social Security Act to be traced to or through those relationships and considered as if they were a blood relationship. This expands who is considered to be a relative (other than a parent) for the purposes of the Social Security Act. This tracing rule applies where one person is the relationship child of a person or step-child of a person and that person is the step-parent.

439 This means in relation to a relationship child, the other children of the parent are that child’s siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 51

440 This item amends paragraph 8(8)(z) of the Social Security Act to replace gender-specific language with gender-neutral language (such as replacing ‘son’ and ‘daughter’ with ‘child’). This allows a person who is a child of a person within the meaning of the definition of ‘child’ inserted by Item 35 and the definition of ‘parent’ (as amended by Items 36 to 39 of this Schedule) to be considered for the purposes of paragraph 8(8)(z) of the Social Security Act.

Item 52

441 This item inserts a note at the end of subsection 10B(3) of the Social Security Act that provides that paragraph (b) of the definition of ‘parent’ in subsection 5(1) of the Social Security Act is relevant to the term ‘parent’ in subsection 10B(3).

Item 53

442 This item inserts a reference to ‘relationship child’ into paragraph 14A(3)(a) of the Social Security Act, which expands the range of persons to whom the transfer of liquid assets may be taken to have not occurred for the purposes of section 14A of the Social Security Act to include a relationship child.

Item 54

443 This item makes a technical amendment to the term ‘step child’ in paragraph (a) of the definition of ‘eligible descendant’ in subsection 17A(1) of the Social Security Act to correct a drafting error.

Item 55

444 This item replaces the words ‘natural parent, adoptive parent’ in paragraph (a) of the definition of ‘immediate family member’ in paragraph 23(1) of the Social Security Act with the simpler term ‘parent’ (which includes natural parents, adoptive parents and relationship parents).

Item 56

445 This item inserts into subsection 23(1) of the Social Security Act a signpost to the definition of ‘prohibited relationship’ in subsections 4(12) and 4(13) of the Social Security Act, inserted by Item 50 of this Schedule.

Item 57 and 58

446 These items insert signposts into subsection 5(1) of the Social Security Act to indicate that the terms ‘relationship child’ and ‘relationship parent’ have the meaning given by new subsection 5(25) of the Social Security Act, which defines the terms ‘relationship child’ and ‘relationship parent’.

Item 59

447 This item repeals the definition of ‘widow’ in subsection 23(1) of the Social Security Act as it is no longer used in the Social Security Act.

Item 60

448 This item amends paragraph 23(14)(a) of the Social Security Act to replace gender-specific terms ‘mother’ and ‘father’ with the gender-neutral term ‘parent’. This allows a person who is a parent of a child within the meaning of the definition of ‘parent’ (as amended by Items 36 to 39 of this Schedule) to be considered a ‘family member’ in relation to a ‘relevant person’ for the purposes of the Social Security Act (other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G).

Item 61

449 This item inserts a note at the end of subsection 23(14) of the Social Security Act that provides that paragraph (a) of the definition of ‘parent’ in subsection 5(1) of the Social Security Act is relevant to the term ‘parent’ in subsection 23(14).

Item 62

450 This item inserts subsections 23(22) and 23(23) into the Social Security Act. Subsection 23(22) of the Social Security Act is a tracing rule that provides that if one person is the relationship child of a person and that person is the relationship parent, relationships are to be traced to or through those persons as if they were parent and

child. For example, in relation to the child, the other children of the parent are that child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

451 New subsection 23(23) provides that the tracing rule in subsection 23(22) does not apply when determining whether a person and his or her partner are within a prohibited relationship as defined in subsection 14(12).

Item 63

452 This item inserts new subsection 24(1A) into the Social Security Act which provides that the Secretary may determine, in writing, that the person is not to be treated as a member of a couple if:

- a person is in a relationship with another person, whether the partner is of the same sex or different sex; and
- the relationship between the person and the partner is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection; and
- the person is not living separately and apart from the partner on a permanent or indefinite basis; and
- the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple.

This ensures that a person who is in a registered same-sex relationship will be treated in the same way as the other member of a couple categories under subsection 24(2) of the Social Security Act.

Items 64 and 65

453 Subsection 24(2) provides that the Secretary may determine in writing that a person is not to be treated as a member of a couple with another person for the purposes of the Social Security Act if:

- they have a relationship with a person of the opposite sex
- they are not legally married to that person
- the relationship between the person and the partner is a marriage-like relationship, and
- the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple.

This means that the Secretary's discretion only expands to persons who are in an opposite-sex de facto relationship, and for a special reason in the particular case, should not be treated as a member of a couple.

454 Item 60 amends subparagraph 24(2)(a) by replacing the phrase 'a person of the opposite sex' with 'another person, whether of the same sex or a different sex'.

455 Item 65 amends subparagraph 4(2)(c) by replacing the term 'marriage-like' with 'de facto'.

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456 The effect of these amendments is to ensure that the Secretary's discretion in determining who is not to be treated as a member of a couple, includes same-sex relationships as well as opposite-sex relationships. The inclusion of same-sex relationships within this discretion is not intended to change the treatment of married or opposite-sex de facto couples.

Item 66

457 This item inserts new subsection 24(3) into the Social Security Act, providing that a determination made under subsections 24(1), (1A) or (2) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. In other words, this provision is merely declaratory of the law.

Item 67

458 This item repeals note 2 and inserts a new note 2 at the end of subsection 553B(3) of the Social Security Act that provides that paragraph (b) of the definition of 'parent' in subsection 5(1) of the Social Security Act is relevant to the term 'parent' in subsection 553B(3).

Item 68

459 This item inserts subsection 993(3) into the Social Security Act. Subsection 993(3) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship, the two persons in the relationship are taken to be the young person's only parents for the purposes of the section. This provision limits who can be a parent of a relationship child for the purposes of determining if a young person is a double orphan where that young person is not a refugee.

Item 69

460 This item inserts into section 994 of the Social Security Act a '(1)' before the words 'A young person' as a consequence of amendments made by Item 70 of this Schedule.

Item 70

461 This item inserts subsection 994(2) into the Social Security Act. Subsection 994(2) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship, the two persons in the relationship are taken to be the young person's only parents for the purposes of the section. This provision limits who can be a parent of a relationship child for the purposes of determining if a young person is a double orphan where that young person is a refugee.

Item 71

462 This item inserts new subsection 995(3) into the Social Security Act. New subsection 995(3) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with another person, the two persons in the relationship are taken to

be the young person's only parents for the purposes of section 993. This provision limits who can be a parent of a relationship child for the purposes of determining if a young person is a double orphan where that young person is a refugee.

Item 72

463 This item inserts a reference to 'relationship child' into paragraphs 1061PL(2)(a) and 1061PL(2)(b) of the Social Security Act. This expands the range of persons who can be considered to have a dependent child for the purposes of determining whether a person is to be regarded as 'independent' in relation to qualification for the pensioner education supplement under Part 2.24A of the Social Security Act.

Item 73

464 This item inserts subsection 1061PL(8) into the Social Security Act. Subsection 1061PL(8) relates to parents of relationship children when determining whether a person is to be regarded as 'independent' in relation to qualification for the pensioner education supplement under Part 2.24A of the Social Security Act.

465 Subsection 1061PL(8) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with another person, the two persons in the relationship are taken to be the young person's only parents for the purposes of subsections 1061PL(3), (4), (5), (6) and (7). This amendment restricts who is considered to be a child's parent when determining whether a person is independent if they have been orphaned, if the parents cannot exercise their responsibilities or if it is unreasonable for the person to live at home.

Items 74 to 83

466 These items amend Pension Rate Calculator provisions in Chapter 3 of the Social Security Act. The effect of these amendments is to ensure that same-sex de facto relationships are included as well as opposite-sex de facto relationships for the purposes of the Pension Rate Calculator provisions in the Social Security Act. The inclusion of same-sex relationships within these provisions is not intended to change the treatment of married or opposite-sex de facto couples.

Subsections 1064(4), 1066(3) and 1066A(5)

467 Subsections 1064(4), 1066(3) and 1066A(5) of the Social Security Act provide that a person's pension rate is not to exceed the rate at which it would be payable to the person if

- they are in an opposite-sex relationship with another person
- the relationship between them is a marriage-like relationship having regard to all the circumstances of the relationship, including the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A) of the Social Security Act, and
- either or both of them are under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of Pension Rate Calculators A, C and D, which determines the rate of pension payable under these calculators.

468 Items 74, 78 and 80 amend subparagraphs 1064(4)(a), 1066(3)(a) and 1066A(5)(a) respectively by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

469 Item 75, 79 and 81 amend subparagraph 1064(4)(b), 1066(3)(b) and 1066A(5)(b) respectively by replacing the term ‘marriage-like’ with ‘de facto’.

Subsection 1065(3)

470 Subsection 1065(3) of the Social Security Act provides that the disability support pension rate of a person if they are permanently blind and over the age of 21 is not to exceed the rate at which it would be payable to the person if

- they are in an opposite-sex relationship with another person
- the relationship between them is a marriage-like relationship having regard to all the circumstances of the relationship, including the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A) of the Social Security Act, and
- either or both of them are under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of Pension Rate Calculator B, which determines the rate of disability support pension payable.

471 Item 76 amends subparagraph 1065(3)(a) by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

[472](#) Item 77 amends subparagraph 1065(3)(b) by replacing the term ‘marriage-like’ with ‘de facto’.

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Subsection 1066B(4)

473 Subsection 1066B(4) of the Social Security Act provides that the disability support pension rate of a person if they are permanently blind and under the age of 21 is not to exceed the rate at which it would be payable to the person if

- they are in an opposite-sex relationship with another person
- the relationship between them is a marriage-like relationship having regard to all the circumstances of the relationship, including the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A) of the Social Security Act, and
- the other person is under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of Pension Rate Calculator E, which determines the rate of disability support pension payable.

474 Item 82 amends subparagraph 1066(4)(a) by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

475 Item 83 amends subparagraph 1066(4)(b) by replacing the term ‘marriage-like’ with ‘de facto’.

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Item 84

476 This item inserts a reference to ‘relationship child’ into paragraphs 1067A(3)(a) and 1067A(3)(b), of the Social Security Act. This expands the range of persons who can be considered to have a dependent child for the purposes of determining whether a person is to be regarded as ‘independent’ in relation to Parts 2.11, 3.4A, 3.4B and 3.5 and 3.7 of the Social Security Act.

Item 85

477 This item inserts subsection 1067A(13) into the Social Security Act. Subsection 1067A(13) relates to parents of relationship children when determining whether a person is to be regarded as ‘independent’ in relation to Parts 2.11, 3.4A, 3.4B and 3.5 and 3.7 of the Social Security Act.

478 Subsection 1067A(13) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with another person, the two persons in the relationship are taken to be the young person’s only parents. For the purposes of subsections 1067A(5), (6), (7), (8), (9) and (11). This amendment restricts who is considered to be a child’s parent when determining whether a person is independent if:

- they have been orphaned
- if the parents cannot exercise their responsibilities
- if it is unreasonable for the person to live at home, or
- they are disadvantaged.

Item 86

479 This item inserts into section 1067B of the Social Security Act a ‘(1)’ before the words ‘A person is taken to be’ as a consequence of amendments made by Item 88 of this Schedule.

Item 87

480 This item inserts a reference to ‘relationship child’ into paragraphs 1067B(d) and 1067B(e) of the Social Security Act. This will mean that that a person cannot be considered to be an ‘accommodated independent person’ if they have or have ever had a natural, adoptive or relationship child that is wholly or substantially dependent on that person or their partner.

Item 88

481 This item inserts subsection 1067B(2) into the Social Security Act. Subsection 1067B(2) relates to parents of relationship children when determining

whether a person is to be regarded as an ‘accommodated independent person’ in relation to determining the rate of youth allowance in Part 3.5 of the Social Security Act.

482 Subsection 1067B(2) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with another person, the two persons in the relationship are taken to be the young person’s only parents for the purposes of paragraph 1067B(1)(b). This amendment restricts who is considered to be a child’s parent when determining whether a person lives at the home of either or both of his or her parents.

Items 89 to 92

483 The existing definition of current ‘member of a Youth Allowance (YA) couple’ in subsection 1067C(1) of the Social Security Act provides that a person is a current ‘member of a YA couple’ if they are legally married to another person and are not living separately and apart from the other person on a permanent basis, or if they

- are in a relationship with person of the opposite sex,
- are not legally married to that person
- are in a marriage-like relationship with that person (in the Secretary’s opinion which is formed as mentioned in subsections 1067C(3) and 1067C(4) of the Social Security Act)
- were over the age of consent applicable in the State or Territory in which they lived if at the time when the relationship became a marriage-like relationship, they were living in Australia
- were over the age of consent applicable in the State or Territory in which they first lived if at the time the relationship became a marriage-like relationship, both persons were living outside Australia, and
- are not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

This means that currently only persons who are married or in an opposite-sex de facto relationship can be considered to be a current ‘member of a YA couple’ for the purposes of the Social Security Act.

484 Item 89 inserts new paragraph 1067C(1)(aa) into the Social Security Act which provides for a person in a registered same-sex relationship to be considered a ‘member of a YA couple’. It provides that a person is a ‘member of a YA couple’ if all of the following conditions are met:

- the person is in a relationship with another person, whether the partner is of the same sex or different sex;
- the relationship between the person and the partner is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection;
- in the Secretary’s opinion, the person is not living separately and apart from the partner on a permanent or indefinite basis. In forming his or her opinion,

the Secretary must have regard to all the circumstances mentioned in subsection 4(3) of the Social Security Act.

This means that registration of a relationship is conclusive of whether a person is a member of a YA couple with another person for the purposes of sections 1067A and 1067B.

485 Item 90 amends subparagraph 1067C(1)(b)(i) of the Social Security Act by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

[486](#) Item 91 amends subparagraphs 1067C(1)(b)(iv), 1067C(1)(b)(v) and 1067C(1)(b)(vi) of the Social Security Act by replacing the term ‘marriage-like’ with ‘de facto’.

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487 The effect of these amendments is to ensure that the definition of current ‘member of a YA couple’, for the purpose of the Social Security Act, includes a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples.

488 Subparagraph 1067C(1)(b)(vii) of the Social Security Act currently refers to a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*. This reference is made redundant as a consequence of the amendments made by Item 34 of this Schedule.

489 Item 92 amends subparagraph 1067C(1)(b)(vii) by removing the phrase ‘for the purposes of section 23B of the *Marriage Act 1961*’.

Items 93 to 96

490 The existing definition of former ‘member of a Youth Allowance (YA) couple’ in subsection 1067C(2) of the Social Security Act provides that a person has been a ‘member of a YA couple’ if they were legally married to another person (whether or not they are still legally married) and are not living separately and apart from the other person on a permanent basis, or if they

- were in a relationship with person of the opposite sex,
- were not legally married to that person
- were in a marriage-like relationship for a period of at least 12 continuous months (in the Secretary’s opinion (formed as mentioned in subsections 1067C(3) and 1067C(4) of the Social Security Act) or were in a marriage-like relationship for at least 6 months (in special circumstances determined by the Secretary)
- were over the age of consent applicable in the State or Territory in which they lived if at the time when the relationship became a marriage-like relationship, they were living in Australia
- were over the age of consent applicable in the State or Territory in which they first lived if at the time the relationship became a marriage-like relationship, both persons were living outside Australia, and

- were not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

This means that currently only persons who were married or in an opposite-sex de facto relationship can be considered to be a former ‘member of a YA couple’ for the purposes of the Social Security Act.

491 Item 93 inserts new paragraph 1067C(2)(aa) into the Social Security Act which provides for a person in a registered same-sex relationship to be considered a former ‘member of a YA couple’. It provides that a person is a former ‘member of a YA couple’ if all of the following conditions are met:

- the person is in a relationship with another person, whether the partner is of the same sex or different sex;
- the relationship between the person and the partner is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection;
- in the Secretary’s opinion, the person is not living separately and apart from the partner on a permanent or indefinite basis. In forming his or her opinion, the Secretary must have regard to all the circumstances mentioned in subsection 4(3) of the Social Security Act.

This means that registration of a relationship is conclusive of whether a person is a former member of a YA couple with another person for the purposes of sections 1067A and 1067B.

492 Item 94 amends subparagraph 1067C(2)(b)(i) of the Social Security Act by replacing the phrase ‘a person of the opposite sex’ with ‘another person, whether of the same sex or a different sex’.

493 Item 95 amends subparagraphs 1067C(2)(b)(iv), 1067C(2)(b)(v) and 1067C(2)(b)(vi) of the Social Security Act by replacing the term ‘marriage-like’ with ‘de facto’.

494 The effect of these amendments is to ensure that the definition of former ‘member of a YA couple’, for the purpose of the Social Security Act, includes a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples.

495 Subparagraph 1067C(2)(b)(vii) of the Social Security Act currently refers to a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*. This reference is made redundant as a consequence of the amendments made by Item 34 of this Schedule.

496 Item 96 amends subparagraph 1067C(2)(b)(vii) by removing the phrase ‘for the purposes of section 23B of the *Marriage Act 1961*’.

Items 97 and 98

497 These items insert references to subparagraphs 1067C(1)(aa)(ii) and 1067C(2)(aa)(ii) into subsection 1067C(3) of the Social Security Act as a

consequence of the amendments made by Items 89 and 93 of this Schedule (respectively).

Item 99

498 This item amends subsection 1067C(4) of the Social Security Act as a consequence of amendments made by Items 91 and 95 of this Schedule.

Item 100

499 This item repeals the note in section 1067C of the Social Security Act, as the information in the note is made redundant by the insertion of new subsection 4(12) as a consequence of Item 34 of this Schedule, which inserts the meaning of ‘prohibited relationship’.

Item 101

500 This item inserts subsection 1067D(4) into the Social Security Act. Subsection 1067D(4) relates to parents of relationship children when determining whether a person is taken to be required to live away from home in relation to determining the rate of youth allowance in Part 3.5 of the Social Security Act.

501 Subsection 1067D(4) provides that if a young person (other than an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with another person, the two persons in the relationship are taken to be the young person’s only parents for the purposes of paragraph 1067D(1)(b). This amendment restricts who is considered to be a child’s parent when determining whether the person does not live at the home of either or both his or her parents

Items 102 and 103

502 Subsection 1067G(2) of the Social Security Act provides that a person’s youth allowance rate is not to exceed the rate at which it would be payable to the person if

- they are living with another person as the spouse of the other person on a genuine domestic basis with that person
- the other person is of the opposite sex
- either or both of them are under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of this limit on the rate of youth allowance payable to a person.

503 Item 102 amends paragraph 1067G(2)(a) by inserting ‘(whether the persons are the same sex or different sexes)’ after ‘to the other person’.

504 Item 103 repeals paragraph 1067G(2)(b) as a consequence of the amendments made by Item 102.

505 The effect of these amendments is to ensure that the limit on a person’s youth allowance applies to a same-sex relationship as well as an opposite-sex relationship.

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The inclusion of same-sex relationships within this definition is not intended to change the treatment of or opposite-sex de facto couples within the meaning of this provision.

Item 104

506 This item inserts subparagraph 1067G-B3AA(b)(ia) into the Social Security Act which provides an alternative criterion for working out the maximum basic rate of youth allowance if:

- the person is a relationship parent of a relationship child aged under 16, and
- there is no order of a court that stops the person from being legally responsible for the day-to-day care, welfare and development of the child.

This provision relates to a person who is receiving youth allowance as if the person had a dependent child for the purposes of point 1067G-B3.

Items 105 and 106

507 Item 105 inserts the phrase '(other than a relationship child)' after the words 'a child' in subparagraph (b)(i) of subpoint 1067G-G9(2) of the Social Security Act. Point 1067G-G9 is contained within the youth allowance rate calculator and is applied when working out a person's actual means for the purposes of the family actual means test. Subpoint 1067G-G9(2) provides that certain amounts spent or saved in a particular tax year are not included in the actual means of a person. Subparagraph (b)(i) of subpoint 1067G-G9(2) provides that spending for the maintenance of a child of a person if the person does not have legal responsibility for the day-to-day care, welfare and development of the child is not included in the actual means of a person.

508 Item 106 inserts subparagraph 1067G-G(2)(b)(ia) into subpoint 1067-G9(2) of the Social Security Act. This insertion extends subpoint 1067G-G9(2) to provide that amounts spent or saved by a person which is spent on maintenance of his or her relationship child will be excluded from the person's 'actual means' if there is a court order that stops the person being legally responsible for the day-to-day care, welfare and development of the child.

509 These amendments will ensure that spending for the maintenance of a relationship child of a person where a court order stops the person from being legally responsible for the day-to-day care, welfare and development of the person's child will be treated equally to spending for the maintenance of a natural or adoptive child of a person where the person does not have legal responsibility for the day-to-day care, welfare and development of the child is treated equally for the purposes of determining a person's actual means under point 1067G-G9 for the family actual means test contained in the youth allowance rate calculator.

Items 107, 108, 113, 114, 119, 120, 123 and 124

510 These items amend points 1067G-H21, 1067G-H22, 1067L-D17, 1067L-D18, 1068-G5, 1068-G6, 1068B-D5 and 1068B-D6 of the Social Security Act to replace gender-specific language with gender-neutral language (such as replacing 'son' and 'daughter' with 'child'). This allows a person who is a child of a person within the meaning of the definition of 'child' inserted by Item 35 of this Schedule and the

definition of ‘parent’ (as amended by Items 36 to 39 of this Schedule) to be considered for the purposes these provisions.

Item 109

511 This item inserts into section 1067J of the Social Security Act a ‘(1)’ before the words ‘A person’ as a consequence of amendments made by Item 110 of this Schedule.

Item 110

512 This item inserts subsection 1067J(2) into the Social Security Act. Subsection 1067J(2) provides that if a person (other than a person who is an adopted child) is the relationship child of a person who is the product of the relationship that the person has or had as a couple with a third person, the two persons in the relationship are taken to be the young person’s only parents for the purposes of subsection 1067J(1).

[513](#) Section 1067J is contained within the Austudy payment rate calculator and provides when a person is taken to be living at home. Section 1067J provides that a person lives at home if the person lives at the home of either or both of his or her parents. New subsection 1067J(2) will provide that a relationship child will only be taken to be living at home where they live with either or both of their relationship parents.

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Items 111 and 112

514 Subsection 1067L(2) of the Social Security Act provides that a person’s Austudy rate is not to exceed the rate at which it would be payable to the person if

- they are living with another person as the spouse of the other person on a genuine domestic basis with that person
- the other person is of the opposite sex and under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of this limit on the rate of Austudy payable to a person.

515 Item 111 amends paragraph 1067L(2)(a) by inserting ‘(whether the persons are the same sex or different sexes)’ after ‘to the other person’.

[516](#) Item 112 amends paragraph 1067L(2)(b) by removing ‘of the opposite sex’ as a consequence of the amendments made by Item 170 of this Schedule.

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517 The effect of these amendments is to ensure that the limit on a person’s youth allowance applies to a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of or opposite-sex de facto couples within the meaning of this provision.

Items 115, 116, 121 and 122

518 These items amend Benefit Rate Calculator B and Parenting Payment Rate Calculator provisions in Chapter 3 of the Social Security Act. The effect of these amendments is to ensure that same-sex de facto relationships are included as well as opposite-sex de facto relationships for the purposes of the Benefit Rate Calculator B and the Parenting Payment Rate Calculator in the Social Security Act. The inclusion of same-sex relationships within these provisions is not intended to change the treatment of married or opposite-sex de facto couples.

Subsection 1068(2)

519 Subsection 1068(2) of the Social Security Act provides that a person's benefit rate is not to exceed the rate at which it would be payable to the person if

- they are in an opposite-sex relationship with another person
- the relationship between them is a marriage-like relationship having regard to all the circumstances of the relationship, including the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A) of the Social Security Act, and
- either or both of them are under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of Benefit Rate Calculator B which determines the rate of pension payable under these calculators.

520 Item 115 amends subparagraph 1068(2)(a) by replacing the phrase 'a person of the opposite sex' with 'another person, whether of the same sex or a different sex'.

521 Item 116 amends subparagraph 1068(2)(b) by replacing the term 'marriage-like' with 'de facto'.

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Subsection 1068A(3)

522 Subsection 1068A(3) of the Social Security Act provides that a person's pension Parenting Payment (single) rate is not to exceed the benefit Parenting Payment (partnered) rate at which it would be payable to the person if

- they are in an opposite-sex relationship with another person
- the relationship between them is a marriage-like relationship having regard to all the circumstances of the relationship, including the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A) of the Social Security Act, and
- either or both of them are under the age of consent applicable in the State or Territory in which they are living.

This means that currently only persons who are in an opposite-sex de facto relationship are considered for the purposes of the Parenting Payment Rate Calculator which determines the rate of pension payable under these calculators.

523 Item 121 amends subparagraph 1068A(3)(a) by replacing the phrase 'a person of the opposite sex' with 'another person, whether of the same sex or a different sex'.

[524](#) Item 122 amends subparagraph 1068A(3)(b) by replacing the term ‘marriage-like’ with ‘de facto’.

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Item 117

525 This item inserts a reference to ‘relationship child’ into paragraph 1068-B1A. This expands the range of persons who can be considered to be a dependent child for the purposes of determining a person’s maximum basic rate of widow allowance, Newstart allowance (18 or over) sickness allowance (18 or over) partner allowance, and mature age allowance.

Item 118

526 This item inserts subparagraph (a)(i) of subpoint 1068-B1B into the Social Security Act which provides an alternative criterion for working out the maximum basic rate if the person is a relationship parent of a child under 16 and there is no order of a court that stops the person from being legally responsible for the day-to-day care, welfare and development of the child. This is relevant to working out a person’s maximum basic rate of widow allowance, Newstart allowance (18 or over) sickness allowance (18 or over) partner allowance, and mature age allowance.

Item 125

527 This item replaces the definition of ‘child’ in subsection 1207A of the Social Security Act with a new definition of ‘child’ which adopts elements of the key definition of ‘child’. The item expands who can be considered a child for the purposes of a person for the purposes of Part 3.18 of the Social Security Act.

[528](#) New paragraph (a) of the definition of ‘child’ in subsection 1207A of the Social Security Act provides that a ‘child’ in relation to a person includes an adopted child, step-child or foster-child of the person. This provision replicates the existing provision.

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529 New paragraph (b) of the definition of ‘child’ in subsection 1207A of the Social Security Act expands the definition to include a child who is the product of a relationship. Paragraph (b) is qualified by providing that for a ‘child’ to be the product of a relationship, the child must be, the biological child of at least one person in the relationship, or born to a woman in the relationship. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 126

530 This item replaces subsection 1207B(2) into the Social Security Act with a new subsection 1207B(2) of the Social Security Act. Subsection 1207B(2) is a tracing rule that allows relationships for the purposes of section 1207B to be traced, because of the definition of ‘child’ in section 1207A, to or through those relationships on the basis that the person is the child of the other person. For example, in relation to a child, the other children of the parent are that child’s siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 127

531 This item repeals the definition of ‘child’ in subsection 1209R(5) of the Social Security Act and inserts the key definition of ‘child’ to expand who can be considered a child for the purposes of determining who is a principal beneficiary of a trust for the purposes of section 1209 of the Social Security Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

532 New paragraph (a) of the definition of ‘child’ in subsection 1209R(5) of the Social Security Act provides that a ‘child’ in relation to a person includes an adopted child, step-child or foster-child of the person. This provision replicates the existing provision.

533 New paragraph (b) of the definition of ‘child’ in subsection 1209R(5) of the Social Security Act expands the definition to include a child who is the product of a relationship. Paragraph (b) is qualified by providing that for a ‘child’ to be the product of a relationship, the child must be, the biological child of at least one person in the relationship, or born to a woman in the relationship. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Schedule 7—Finance and Deregulation amendments

534 This Schedule contains amendments to the following Acts within the Finance and Deregulation portfolio to remove differential treatment of same-sex couples and their children:

- *Commonwealth Electoral Act 1918*
- *Medibank Private Sale Act 2006*
- *Members of Parliament (Life Gold Pass) Act 2002*
- *Parliamentary Entitlements Act 1990*, and
- *Superannuation Act 1976*.

This Schedule also removes marital status discrimination from the *Members of Parliament (Life Gold Pass) Act 2002*.

Part 1—General amendments

Commonwealth Electoral Act 1918

535 The *Commonwealth Electoral Act 1918* (the Electoral Act) establishes the machinery and regulations for federal elections.

Item 1

536 This item inserts the key definition of ‘child’ at the end of the definition of ‘child’ in subsection 4(1) of the Electoral Act to extend the range of persons who can be considered to be the child of a person for the purposes of the Electoral Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 2

537 This item inserts a definition of ‘de facto partner’ into subsection 4(1) of the Electoral Act, which provides that a ‘de facto partner’ has the meaning given by the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 3

538 This item inserts a definition of ‘next of kin’ into subsection 4(1) of the Electoral Act that provides that the term ‘next of kin’ in sections 94A, 95AA, 96A and 96 of the Electoral Act have a meaning affected by subsection 4(11) of the Electoral Act, which is inserted by Item 5 of this Schedule.

Item 4

539 This item repeals the definition of ‘spouse’ in subsection 4(1) of the Electoral Act as a consequence of amendments made by Item 2 of this Schedule.

Item 5

540 This item inserts subsection 4(11) into the Electoral Act. Paragraphs 4(11)(a) and 4(11)(b) provide that the following persons are to be taken into account in determining whether a person is next of kin of another person:

- a de facto partner of the person
- a child of the person because of the definition of 'child' inserted by Item 1 of this Schedule, or
- someone of whom the person is a child (ie the parent of the person) because of the definition of child inserted by Item 1 of this Schedule.

541 Paragraph 4(11)(c) is a tracing rule that provides that anyone else who would be a relative of a person because a de facto partner, a child or someone of whom the person is a child is taken into account. For example, the sibling of a de facto partner of a person could be considered as next of kin because they would be considered to be a relative. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

542 This item inserts a reference to the definition of 'de facto partner' into paragraph 95(1)(a) of the Electoral Act to extend the range of persons entitled to be treated as an eligible overseas elector.

Item 7

543 Section 104 of the Electoral Act allows a person to make a request for their address not to be shown on the electoral roll where it would place the personal safety of the person or of members of the person's family at risk. This item inserts subsection 104(11) into the Electoral Act to expand who is considered to be a member of a person's family for the purposes of section 104 of the Electoral Act.

544 Paragraphs 104(11)(a) and 104(11)(b) provide that for the purposes of section 104 of the Electoral Act, members of a person's family are taken to include:

- a de facto partner of the person
- a child of the person, or
- someone of whom the person is a child (ie the parent of the person).

545 Paragraph 104(11)(c) is a tracing rule that provides that anyone else who would be a relative of a person because a de facto partner, a child or someone of whom the person is a child is taken into account. For example, the sibling of a de facto partner of a person could be considered a member of the person's family for the purposes of section 104 because they would be considered to be a member of the family. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Medibank Private Sale Act 2006

546 The *Medibank Private Sale Act 2006* (the MPS Act) allows the sale of the Commonwealth's equity in Medibank Private Limited, and for other purposes that do not require a sale scheme. As the MPS Act does not mandate a sale of the Commonwealth's equity, it does not conflict with the Government's decision not to proceed with the sale of Medibank Private Limited.

Item 8

547 This item amends clause 33 of Schedule 2 of the MPS Act as a consequence of the addition of a new subclause (2) in that clause by Item 14 of this Schedule.

Item 9

548 This item inserts the key definition of 'child' into clause 33 of Schedule 2 of the MPS Act to extend the range of persons who can be considered to be the child of a person for the purposes of the MPS Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 10

549 This item inserts the key definition of 'parent' into clause 33 of Schedule 2 of the MPS Act to extend the range of persons who can be considered to be the parent of a child within the meaning of the key definition of 'child' inserted by Item 9 of this Schedule. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 11 to 14

550 The definition of 'relative' in clause 33 of Schedule 2 of the MPS Act provides that a relative, in relation to a person, means:

- the person's spouse
- another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person
- a parent or remoter lineal ancestor of the person
- a son, daughter or remoter issue of the person, or
- a brother or sister of the person.

551 The current definition of 'relative' in clause 33 of Schedule 2 of the MPS Act does not include same-sex couples as they are not considered the spouse, husband or wife of a person. The definition also does not make provision for the children of same-sex couples or the child's parents.

552 Item 11 replaces paragraph (b) of the definition of 'relative' with a non-discriminatory reference to a person's de facto partner within the meaning of the Acts Interpretation Act.

553 Item 12 amends paragraph (d) of the definition of ‘relative’ in clause 33 of Schedule 2 to the MPS Act to replace the gender-specific terms ‘son’ and ‘daughter’ with the gender-neutral term ‘child’. The amendment also ensures the application of the definition of ‘child’ inserted by Item 9 of this Schedule.

554 Item 13 inserts a note at the end of the definition of ‘relative’ in clause 33 of Schedule 2 to the MPS Act to direct the reader to subclause 33(2) of the MPS Act, which is relevant to the definition of ‘relative’.

555 Item 14 inserts subclause 33(2) into clause 33 of Schedule 2 to the MPS Act. Subclause 33(2) is a tracing rule that allows relationships within the meaning of ‘parent’, ‘remoter lineal ancestor’, ‘child’, remoter issue’, ‘brother’ and ‘sister’ to be traced through the definitions of ‘parent’ and ‘child’. This means that in relation to a child, the other children of the parent are that child’s siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

556 The effect of these amendments is to expand who is considered to be a relative of a person for the purposes of the MPS Act.

Item 15

557 Part 4 of Schedule 2 to the MPS Act contains restrictions on the ownership of Medibank Private by particular individuals or entities. The MPS Act refers to these restrictions collectively as ‘unacceptable ownership situations’.

Subitem (1)

558 In calculating an individual’s ownership stake for these MPS Act provisions, the ownership interests of their relatives are taken into account. The amendments made by Items 8 to 14 will expand the class of people who are considered to be relatives for this purpose. Those amendments could potentially place people in breach of the ownership restrictions.

[559](#) Subitem (1) ensures that individuals who are affected by the amendments made by Items 8 to 14 have an opportunity to rectify an unacceptable ownership situation that is created by those amendments. Those individuals will have a grace period of 6 months, starting on the day on which the amendments commence, to remedy the situation.

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Subitem (2)

560 Clause 32 of Schedule 2 to the MPS Act allows regulations to require individuals and entities to give notice of their ownership interests to the Finance Minister or to a Medibank Private company.

561 Subitem (2) will give individuals who are affected by the amendments made by Items 8 to 14 a grace period from any regulations made under clause 32. Individuals who are caught for the first time by any such regulations, simply because of the amendments made by Items 8 to 14 of this Schedule, will have 6 months during which they are not required to comply with any such regulations.

Members of Parliament (Life Gold Pass) Act 2002

562 The *Members of Parliament (Life Gold Pass) Act 2002* (the Life Gold Pass Act) sets out the domestic travel arrangements for Life Gold Pass Holders (ie former Prime Ministers, former Senators or Members) and their spouses (including spouses of sitting Senators or Members who have satisfied the relevant qualifying period for a Life Gold Pass, widows and widowers). The Life Gold Pass Act provides a uniform set of arrangements as to the type of travel that may be undertaken. Qualifying periods for a Life Gold Pass are determined by the Remuneration Tribunal.

563 The Life Gold Pass Act currently only provides entitlements to a Life Gold Pass holder's, or qualifying Senator or Member's, legally married spouse. The amendments will extend the travel entitlements for spouses to include the de facto partners (including same sex partners) of Life Gold Pass holders. Generally, this is achieved by retaining the term 'spouse' in the Life Gold Pass Act for married couples and adding the term de facto partner, as defined in the Acts Interpretation Act, wherever the term 'spouse' occurs.

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Item 16

564 This item amends the simplified outline in section 3 of the Life Gold Pass Act to reflect that both spouses and de facto partners are now covered by the Life Gold Pass Act.

Item 17

565 This item inserts a definition of 'de facto partner' into section 4 of the Life Gold Pass Act, which provides that a 'de facto partner' includes a de facto partner within the meaning of the key definition of 'de facto partner' in the Acts Interpretation Act. A description of the key definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 18

566 This item inserts a definition of 'surviving spouse or de facto partner' into section 4 of the Life Gold Pass Act. This term replaces the terms 'widow' and 'widower' in the Life Gold Pass Act. Paragraph (a) of the definition provides that a 'surviving spouse or de facto partner' of a deceased Life Gold Pass holder means a spouse or de facto partner of the person immediately before the Life Gold Pass holder died, who was named in a nomination in force under section 9B (this includes both actual and deemed nominations).

567 Paragraph (b) of the definition provides that in circumstances where a sitting Senator or Member, who has satisfied the relevant qualifying period for the issue of a Life Gold Pass, dies while in office and does not have a valid nomination under section 9B of the Life Gold Pass Act, the surviving spouse or de facto partner will be the person nominated previously by the Senator or Member for the purposes of other travel entitlements administered by the Department.

568 Paragraph (c) provides that, where different people are named in a nomination under section 9B and a nomination provided to the Department for other travel

entitlement purposes under paragraph (b) of the definition of ‘surviving spouse or de facto partner’, the most recent nomination in force applies.

Example 1

Senator J is eligible for a Life Gold Pass, but dies while in office. Senator J previously submitted a nomination form under section 9B just after the amendments commenced. However, this was ten months ago and since then Senator J has separated from her spouse (although is still legally married) and has a de facto partner. Senator J has a nomination provided to the Department which specifies her de facto partner for travel purposes. Under the operation of this definition, the de facto partner would be the ‘surviving spouse or de facto partner’ for purposes of the Life Gold Pass Act.

569 This item provides that the nomination form is to be provided to the Department. The reference to ‘Department’ in the Life Gold Pass Act is a reference to the Department of Finance and Deregulation by virtue of subsection 19A(3) of the Acts Interpretation Act and reflects the current processes in relation to the administration of parliamentary entitlements. That is, when accessing most entitlements, current and former Parliamentarians are required to submit forms to the Department of Finance and Deregulation (not a specified individual) to access their entitlements.

Items 19 and 20

570 These items repeal the definitions of ‘widow’ and ‘widower’, as these terms have been replaced by the term ‘surviving spouse or de facto partner’, inserted by Item 18 of this Schedule.

Items 21, 22 and 23

571 These items replace references to the terms ‘widow or widower’ in subsections 9(2) and 9(4) and paragraphs 9(3)(a) and 9(3)(b) of the Life Gold Pass Act with the new term ‘surviving spouse or de facto partner’ as a consequence of the amendments made by Items 18, 19 and 20 of this Schedule.

Item 24

572 This item inserts provisions setting out a nomination process for a spouse or de facto partner entitled to travel under the Life Gold Pass Act. The nomination of an entitled person enables the Department to clearly determine the (surviving) spouse or de facto partner entitled to travel under the Life Gold Pass Act.

573 Section 9A provides that there must be a nomination in force under section 9B in relation to a person’s spouse or de facto partner in order for the spouse or de facto partner to be entitled to domestic return trips under the Life Gold Pass Act. Subsection 9A(2) provides that only one spouse or de facto partner of a person may be nominated at any time.

574 Subsection 9B(1) provides that a Life Gold Pass holder may nominate his or her spouse or de facto partner who is entitled to domestic return trips under the Life Gold Pass Act. Subsection 9B(2) sets out the requirements for a valid nomination, namely, that it is in writing, names the spouse or de facto partner and specifies the date of effect for the nomination, called the ‘start day’. The start day may be prior to the date

the nomination is actually made, but cannot be earlier than the day the nominated person became the person's spouse or de facto partner. This means that a nomination can be backdated, but not to a time earlier than when the nominated person became the spouse or de facto partner of the Life Gold Pass holder.

575 Subsection 9B(4) provides that a nomination is in force from the start day until the day the Life Gold Pass holder revokes the nomination in writing, or the day before the Life Gold Pass holder nominates another person as his or her spouse or de facto partner, whichever is the earlier.

576 Subsection 9B(5) makes it clear that if a subsequent nomination for another spouse or de facto partner includes a period when travel was undertaken by a previous spouse or de facto partner, the trips taken by the previous spouse or de facto partner is within entitlement. In this situation the number of trips the subsequent spouse or de facto partner would be entitled to is reduced under section 14 of the Life Gold Pass Act. This is referred to in the note at the end of subsection 9B(5), which sets out that under section 14 of the Life Gold Pass Act the total trips that may be taken by the subsequently nominated spouse or de facto partner in the year in which the start day occurs cannot exceed the number of trips left untaken in that year by the previously nominated spouse or de facto partner.

Example 1

Spouse A is a nominated traveller from 1 July 2008 and undertook travel in February 2009. The Department receives a nomination form for De facto Partner B with the start day as 1 January 2009. Travel undertaken by Spouse A in these circumstances would not be outside of entitlement. The number of trips De facto Partner B is entitled to is reduced by the number of trips already taken by Spouse A.

Items 25, 27, 28, 30, 31, 32, 34, 38, 43, 45 and 47

577 These items insert the term 'de facto partner' after the term spouse, wherever occurring, in sections 10, 11, 12, 13, 14, 19, 22, 23, 24 and 29 of the Life Gold Pass Act to ensure the provisions apply in respect of de facto partners, as well as spouses.

Items 26, 29, 44 and 46

578 These items replace references to 'widow' and 'widower' wherever occurring in sections 10, 11, 21 and 28 of the Life Gold Pass Act with the new terminology of 'surviving spouse or de facto partner' as a consequence of amendments made by Items 18, 19 and 20 of this Schedule.

Item 33

579 This item makes a minor technical amendment to the table heading in column 3 of the table in subsection 14(1) of the Life Gold Pass Act, by replacing the reference to 'using the pro-rating formula in' with 'under'.

Items 35, 36, 37, 39, 40 and 41

580 The nomination process (and the commencement of a start day) is not an 'event' for the purposes of Items 2 and 3 in the table in subsection 14(1) of the Life Gold

Pass Act. Accordingly, this term has been removed by Items 35 and 39 of this Schedule.

581 Items 30, 37, 40 and 41 remove the references to a ‘spouse’ and insert references to the nomination process under sections 9A and 9B of the Life Gold Pass Act. The start day on the nomination form is the relevant date for the pro-rating of the entitlement in the table in subsection 14(1) of the Life Gold Pass Act.

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Item 42

582 This item replaces subsection 14(2) of the Life Gold Pass Act, which deals with the pro-rating formula for calculating an entitlement to domestic return trips where an entitlement does not exist for an entire financial year. The pro-rating formula has not changed and is now in new subsection 14(2A) of the Life Gold Pass Act. However, new subsection 14(2) provides that where there is more than one spouse or de facto partner in a financial year, the entitlement for the second (or subsequent) spouse or de facto partner is limited to the lower amount of either the pro-rated amount or the total number of trips less any trips taken by the former spouse or de facto partner.

Example 1

Under subsection 11(2), the spouse or de facto partner of a former Member of Parliament (who is entitled to a Life Gold Pass) is entitled to a maximum of 25 domestic return trips per year.

- De facto Partner C has a nomination under the Life Gold Pass Act for the period 1 July to 31 March.
- De facto Partner D has a nomination under the Life Gold Pass Act for the period 1 April to 30 June.

De facto Partner C took 3 domestic return trips prior to 31 March. Subsection 14(2) operates so that De facto Partner D is actually entitled to 6 trips – the lower of the two amounts calculated as follows:

- Under paragraph 14(2)(a), De facto Partner D is entitled to 6 return trips: $[25 \times ((30+31+30)/365) = 6.2, \text{ rounded to the nearest whole number, } 6 \text{ trips}]$; or
- Under paragraph 14(2)(b), De facto Partner D is entitled to 22 trips : $[25 - 3]$.

Example 2

Using the same scenario as above, De facto Partner C took 21 domestic return trips prior to 31 March. Subsection 14(2) operates so that De facto Partner D is actually entitled to 4 trips – the lower of the two amounts calculated as follows:

- Under paragraph 14(2)(a), De facto Partner still entitled to 6 return trips: $[25 \times ((30+31+30)/365) = 6.2, \text{ rounded to the nearest whole number, } 6 \text{ trips}]$; or
- Under paragraph 14(2)(b), De facto Partner D is limited to the number of trips remaining as part of the entitlement – ie 4 trips: $[25 - 21]$.

Item 48

583 This item deals with transitional and application matters. Subitem 48(1) provides that spouses who are entitled to travel prior to the commencement of the amendments are deemed to have a valid nomination in place under sections 9A and 9B and a new nomination is not required in respect of those spouses. However, following commencement of the amendments, these deemed nominations may be revoked or a subsequent nomination may be provided under section 9B of the Life

Gold Pass Act (see subitem 48(2)). Similarly subitem 48(1)(b) provides that where a Life Gold Pass holder dies after the commencement of the amendments without having made a valid nomination under sections 9A and 9B, there is a deemed nomination in respect of the spouse for the purposes of the definition of ‘surviving spouse or de facto partner’.

584 Subitem 48(3) provides that any nomination made under section 9B of the Life Gold Pass Act on or after commencement of the amendments made by Schedule 7 to the Bill cannot have a start day earlier than the day on which these amendments commence.

Example 1

A Life Gold Pass holder has been legally married to Spouse G since April 2007. The Life Gold Pass Holder has previously not provided evidence of their marriage to the Department, but following the commencement of the amendments, this evidence is provided. Spouse G is deemed to have a nomination under section 9A and 9B of the Life Gold Pass Act as he/she was entitled to travel prior to the amendments.

Example 2

De facto Partner H has been in a relationship with a Life Gold Pass holder since May 2007. Subitem (3) operates so that the Life Gold Pass holder may only provide a nomination form in respect of De facto Partner H, in order for him/her to access the entitlement, with a start day that is on or after the commencement date of the amendments.

585 Subitem 48(4) makes it clear that the definition of ‘surviving spouse or de facto partner’ is to be applied where a sitting Member of Parliament dies on or after the commencement of the amendments.

Example 1

A Member of the House of Representatives (entitled to a Life Gold Pass) dies after the commencement of the amendments, while they are still a sitting Member. They have two relationships: Spouse J and the more recent De facto Partner K. There is no nomination made in respect of Spouse J under section 9A or 9B of the Life Gold Pass Act, however, Spouse J is deemed to have a nomination under section 9B (see discussion relating to subitem 48(1), above). The Member has submitted a family travel nomination form to the Department, nominating De facto Partner K. Applying the definition of ‘surviving spouse or de facto partner’, De facto Partner K will be entitled to travel under the Life Gold Pass Act.

586 Subitem 48(5) provides that a person who was a ‘widow’ or ‘widower’ for the purposes of the Life Gold Pass Act prior to the amendments is taken to be the ‘surviving spouse or de facto partner’.

Parliamentary Entitlements Act 1990

587 The *Parliamentary Entitlements Act 1990* provides an entitlements framework, which enables Senators and Members to effectively represent their constituents and efficiently undertake parliamentary, electorate and/or official business.

Item 49

588 This item inserts into section 3 of the Parliamentary Entitlements Act a '(1)' before the words 'In this Act' as a consequence of amendments made by Item 52.

Items 50 and 52

589 Section 3 of the Parliamentary Entitlements Act currently provides that 'dependent child', in relation to a Senior Officer, means:

- a person under 16 who is in the custody, care and control of the Officer or is a person to whom the Officer has access,
- a person under 16 who is wholly or substantially in the care and control of the Officer where no other person has the custody, care and control of the person, or
- a person who is at least 16 but under 25, receiving full-time education at a school, college or university, and wholly or substantially dependent upon the Officer.

590 While the non-biological same-sex parent of a child who is a Senior Officer may be able to prove that a child is in their custody, care and control without a parenting order, they are generally assumed not to have custody, care and control of the child. If a Senior Officer in this circumstance does not have parenting order, the only way that a child of a Senior Officer who is aged under 16 can be considered as the dependent child of the Officer is where the child is wholly or substantially in the care and control of the Officer and no other person has the custody, care and control of the child. This imposes a higher burden than that placed on a birth mother and birth father (or adoptive parents) who do not need a parenting order to prove that they have custody, care and control of their children.

591 Item 50 repeals subparagraph (a)(ii) from the definition of 'dependent child' and inserts references to subsections (2) and (3), as outlined in Item 52 below.

592 Item 52 inserts new subsections 3(2) and 3(3) into the Parliamentary Entitlements Act to extend the range of persons aged under 16 who are taken to be the 'dependent child' of a Senior Officer. New subsection 3(2) of the Parliamentary Entitlements Act deems a person aged under 16 to be a 'dependent child' of an adult if:

- the Officer does not have a legal right to custody, care and control of the person, as long as there is no order of a court (such as a family law order) that stops the adult from the legal right to having custody, care and control of the person (paragraph 2(a));
- the person is the product of a relationship the Officer has or had as a couple with another person, whether of the same sex or a different sex (paragraph 2(b)). The reference to the phrase 'product of the relationship' is intended to have the same meaning it has within the meaning of the key definition of 'child' (a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum); and
- the person is in the care and control of the Officer.

593 The effect of this insertion is that a child who is aged under 16 of a non-biological same-sex parent who is a Senior Officer can be recognised as the ‘dependent child’ of that Officer. This is contingent on the criteria in new subsection 3(2) of the Parliamentary Entitlements Act being met, including that there is no order of a court (such as a family law order) that stops the adult from having the legal right to custody, care and control of the person.

Example

J is a Senior Officer and is in a same-sex relationship with her de facto partner C (who is not a Senior Officer). During the relationship, J and C decide that C will undergo an artificial conception procedure using gametes from C and a donor. The procedure takes place and C gives birth to R. While R is the biological child of C, he is not the biological child of J. Further, R lives with J and C and is in the care and control of J.

R will be considered to be J’s dependent child for the purposes of the Parliamentary Entitlements Act. This would continue to be the case even if the relationship between J and S were to break down at a later time.

594 Subparagraph (a)(iii) of the definition of ‘dependent child’ provides that a person under 16 is a ‘dependent child’ in relation to a Senior Officer, if he or she meets the criteria in new subsection 3(3) of the Parliamentary Entitlements Act. The relevant criteria are that:

- there is no person who has the custody, care and control of the child; and
- the child is not a dependent child of a Senior Officer because the child is covered by subsection 3(2); and
- there is no other person in relation to whom, if they were a Senior Officer, the child would be a dependent child because of being covered by subsection 3(2); and
- the child is wholly or substantially in the care and control of the Senior Officer.

Example

T is a Senior Officer and has de facto partner H. H has a child, S, from a previous relationship (and his previous partner is deceased). T is not biologically related to S and S is not the product of the relationship between T and H. Therefore, S is not a dependent child for the purposes of paragraph (a) (ie T does not have the ‘custody, care and control’ of S) or paragraph (b) (as subsection (2) is not satisfied, given S is not a product of the relationship between T and H).

H dies. No-one has the custody, care and control of S (both biological parents, i.e S and his previous partner, are deceased). As H is not a Senior Officer and is deceased, paragraphs (3)(b) and 3(c) do not apply. S is substantially in the care and control of T. Therefore, paragraph (3) is satisfied and S is T’s dependent child for the purposes of the Parliamentary Entitlements Act.

Item 51

595 The current definition of ‘spouse’ in section 3 of the Parliamentary Entitlements Act discriminates against same-sex couples, as only opposite-sex

de facto couples and married couples are recognised for the purposes of the Parliamentary Entitlements Act.

596 This item replaces the definition of ‘spouse’ in section 3 of the Parliamentary Entitlements Act with a new definition that provides that a ‘spouse’ includes a de facto partner of a member within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Parts 2, 3 and 4—Superannuation amendments

Superannuation Act 1976

597 The *Superannuation Act 1976* establishes the superannuation scheme, known as the Commonwealth Superannuation Scheme (CSS). The scheme has been closed to new members since 1 July 1990. The Superannuation Act specifies the circumstances where a member is required or permitted to make contributions. The circumstances include where a member is on a period of unpaid maternity or parental leave.

598 If Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* has commenced at the time this Bill receives Royal Assent, the Superannuation Act will be amended by the amendments contained in Part 2 and Part 3 of Schedule 7 to this Bill.

599 If Schedule 1 *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* has not commenced at the time this Bill receives Royal Assent, the Superannuation Act will be amended by the amendments contained in Part 2 and Part 4 of Schedule 7 to this Bill.

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Item 55

600 This item provides that the amendments made by Schedule 7 (whether Parts 2, 3 or 4) only apply in respect of leave that commences on or after these amendments commence.

Amendments if Schedule 1 to the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008 has commenced at the time this Act receives Royal Assent

Items 53 and 56

601 Section 51 of the Superannuation Act currently provides various rules relating to whether a member is, or is not, permitted or required to contribute during a period of leave without pay exceeding 12 weeks.

602 Paragraph 51(6)(a) of the Superannuation Act provides that where a member is on leave without pay for reasons in relation to the birth of a child of the person, or of the spouse of the person, the provisions of section 51 do not apply. This is because contributions relating to leave without pay of this type are covered by section 51A of

the Superannuation Act, which provides that a member on this type of leave can elect to make contributions.

603 Item 53 amends paragraph 51(6)(a) of the Superannuation Act by inserting a reference to a de facto partner within the meaning of the Acts Interpretation Act. The term 'de facto partner' is described in the Key Concepts and Definitions section of this Explanatory Memorandum. The amendment will expand paragraph 51(6)(a) so that the provisions of section 51 will not apply to a member who is on unpaid leave related to the birth of a child of their de facto partner.

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604 Item 56 inserts a new subsection 51(7) into the Superannuation Act. The effect of this amendment is to extend the meaning of child for the purposes of paragraph 51(6)(a) to include a child who is the product of a relationship the person has or had with a partner (whether of the same sex or a different sex). This incorporates elements of the key definition of 'child', which is described in the Key Concepts and Definitions section of this Explanatory Memorandum.

605 Item 56 also inserts a note at the end of new subsection 51(7) to provide that subsection 3(10) of the Superannuation Act is relevant to working out if a child is the product of the relationship for the purposes of subsection 51(7).

Items 54 and 57

606 Section 51A of the Superannuation Act provides that a member who is on unpaid maternity or parental leave is not required to pay contributions during a period of leave unless he or she has elected to pay contributions in respect of the whole or a part of the period of leave.

607 Item 54 amends subparagraph 51A(1)(b)(i) of the Superannuation Act by inserting a reference to a de facto partner within the meaning of the Acts Interpretation Act. The term 'de facto partner' is described in the Key Concepts and Definitions section of this Explanatory Memorandum. The effect of this amendment will be to expand paragraph 51A(1)(b) to allow a member who is on leave without pay related to the birth of a child of their de facto partner to elect to continue to pay contributions during the period of that leave.

608 Item 57 inserts a new subsection 51A(8) into the Superannuation Act. The effect of the amendment is to extend the meaning of child for the purposes of subparagraph 51A(1)(b)(i) to include a child who is the product of a relationship the person has or had with a partner (whether of the same sex or a different sex). This incorporates elements of the key definition of 'child', a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

609 Item 57 also inserts a note at the end of new subsection 51A(8) to provide that subsection 3(10) of the Superannuation Act is relevant to working out if a child is the product of the relationship for the purposes of subsection 51A(8).

Amendments if Schedule 1 of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008 has not commenced at the time this Act receives Royal Assent

Items 58 and 60

610 These items will amend sections 51 and 51A of the Superannuation Act if Schedule 1 of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* has not commenced at the time this Act receives Royal Assent.

611 Items 58 and 60 insert new subsections 51(7) and 51A(8) into the Superannuation Act to extend the meaning of child for the purposes of paragraph 51(6)(a) and subparagraph 51A(1)(b)(i) to a child within the meaning of the key definition of ‘child’. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 59 and 61

612 These items will, on commencement of Schedule 1 of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008*, repeal subsections 51(7) and 51A(8) as inserted by Items 58 and 60 respectively and substitute new subsection 51(7) and 51A(8) and two notes. The new subsections will extend the meaning of child for the purposes of paragraph 51(6)(a) and subparagraph 51A(1)(b)(i) to include a child who is the product of a relationship the person has had with a partner (whether of the same sex or a different sex). This incorporates elements of the key definition of ‘child’, which is described in the Key Concepts and Definitions section of this Explanatory Memorandum.

613 The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* will insert new subsection 3(10) into the Superannuation Act, which includes other elements contained in the key definition of ‘child’. Item 61 inserts a note at the end of new subsection 51A(8) of the Superannuation Act providing that subsection 3(10) of the Superannuation Act is relevant to working out if a child is the product of the relationship for the purposes of subsection 51A(8).

Schedule 8—Foreign Affairs and Trade amendments

614 This Schedule contains amendments to the following Acts within the Foreign Affairs and Trade portfolio to remove differential treatment of same-sex couples and their children:

- *Australian Passports Act 2005*
- *Export Market Development Grants Act 1997*, and
- *Trade Representatives Act 1933*.

Australian Passports Act 2005

615 The *Australian Passports Act 2005* (the Passports Act) provides for the issue and administration of Australian passports, to be used as evidence of identity and citizenship by Australian citizens who are travelling internationally.

616 The amendments to the Passports Act will extend the range of documents that will be accepted as authoritative to authenticate the name of a person seeking an Australian travel document, to include a certificate, entry or record relating to the registration of a relationship (including a same-sex relationship) that has been issued or made by the Registrar of births, deaths and marriages of a State or Territory.

Item 1

617 This item inserts a new paragraph 53(3)(ca) into the Passports Act to allow a name on a certificate, entry or record relating to the registration of a relationship to be recognised as a form of document for subsection 53(3). This will extend the range of documents the Passports Act will accept as authoritative to authenticate the name of a person seeking an Australian travel document. Australian travel document is defined by subsection 6(1) to mean an Australian passport or a travel-related document.

618 In order for a certificate, entry or record to be accepted for this purpose, it must meet the requirements in subparagraphs 53(3)(ca)(i)–(iii). These subparagraphs require that the certificate, entry or record must:

- be issued or made under a law of a State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act
- relate to a kind of relationship prescribed for the purposes of section 22B of the Acts Interpretation Act, and
- be issued or made by a Registrar of births, deaths and marriages of the State or Territory concerned.

619 The phrase ‘certificate, entry or record’ is used to allow for future electronic methods of access to registration information. This is consistent with the approach adopted to the recognition of name change and marriage certificates in paragraphs 53(3)(c) and (d) of the Passports Act.

Export Market Development Grants Act 1997

620 The *Export Market Development Grants Act 2005* (the EMDG Act) provides an assistance scheme under which small and medium Australian exporters committed to

and capable of seeking out and developing export business are repaid part of their expenses incurred in promoting those products. Determination of whether a person is a 'relative' of another person is relevant to the assessment of allowable expenses for overseas marketing visits.

621 The determination of whether a person is a 'relative' of another person under the EMDG Act is relevant to the assessment of allowable expenses for overseas marketing visits. The amendments provide for the payment of expenses in a manner that is not discriminatory on the basis of sexual preference.

Items 2–5

622 A list of terms defined in Part 9 of the EMDG Act appears immediately after the contents page of the Act. These items amend the EMDG Act to reflect the insertion and repeal of definitions in that Part of the Act by this Schedule.

623 The terms which will be inserted into this list as a consequence of definitions inserted in subsection 107(1) are:

- 'child' (inserted by Item 7 of this Schedule)
- 'de facto partner' (inserted by Item 8 of this Schedule), and
- 'parent' (inserted by Item 10 of this Schedule).

624 The term 'de facto spouse' will be removed from this list as a consequence of the repeal of the definition of this term by Item 9 of this Schedule.

Item 6

625 This item amends section 107 of the EMDG Act as a consequence of the addition of a new subsection (2) in that section by Item 12 of this Schedule.

Item 7

626 The item inserts the key definition of 'child' into subsection 107(1) of the EMDG Act.

627 This term is used in new subsection 107(2) inserted by Item 12 of this Schedule, and in the definition of 'parent' inserted by Item 10 of this Schedule. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

628 This item inserts the key definition of 'de facto partner' into subsection 107(1) of the Act. This definition replaces and expands the class of de facto relationships recognised in the EMDG Act and puts beyond doubt the application of the definition to both same-sex and opposite-sex de facto relationships. A description of the definition of 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 9

629 This item repeals the definition of ‘de facto spouse’ in subsection 107(1) of the EMDG Act as a consequence of the insertion of the definition of ‘de facto partner’ by Item 8 of this Schedule.

Item 10

630 This item inserts the key definition of ‘parent’ into subsection 107(1) of the EMDG Act in order to expand the class of persons who are recognised as parents of a child for the purposes of the EMDG Act. This definition ensures that both members of a couple are recognised as parents of a child where that child is the product of their relationship, where the child comes within the definition of ‘child’ inserted into subsection 107(1) by Item 5 of this Schedule.

631 A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 11

632 This item replaces the term ‘de facto spouse’ with ‘de facto partner’ in the definition of ‘spouse’ in section 107 of the EMDG Act as a consequence of the amendments in Items 8 and 9 of this Schedule.

Item 12

633 The term ‘relative’ (in relation to an individual) is defined in section 107 of the EMDG Act to include, for the purposes of the EMDG Act, a spouse of the individual or any individual who is (or is a spouse of) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual.

634 This item inserts a new subsection 107(2) into the EMDG Act in order to expand the definition of ‘relative’ to ensure that relationships of the kinds included in the section 107 definition of ‘relative’ may be traced through same-sex relationships.

635 Subsection 107(2) will provide that relationships may be traced to or through:

- a de facto partner of an individual (within the definition inserted by Item 8 of this Schedule)
- an exnuptial or adoptive child of an individual, or
- a person who is related to the first individual because of the definitions of child and parent inserted by Items 7 and 10 of this Schedule.

636 Relationships between a child and the relatives of a person who is his or her parent through adoption or because of the definition of ‘child’ inserted by Item 7 of this Schedule are intended to be assessed in the same way as if the child were the biological child of that person.

637 A description and examples of the operation of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 13

638 This item provides that the amendments made to the EMDG Act by this Schedule apply in relation to grants in respect of a grant year commencing on or after 1 July 2009.

Trade Representatives Act 1933

639 The *Trade Representatives Act 1933* provides for the appointment of Trade Representatives for the Commonwealth and for other purposes.

640 The amendments to the Trade Representatives Act clarify that in relation to payment of allowances and pecuniary benefits to a family of a Trade Representative or Trade officer, a same-sex de facto partner and a child who is the product of a same-sex relationship will be members of a person's family. The amendments generally rely upon the definition of 'de facto partner' proposed to be inserted into the Acts Interpretation Act.

Item 14

641 Section 11 allows the Minister to make a determination of the terms and conditions of appointment of a Trade Representative and other officers that may be appointed by a Trade Representative ('relevant persons'). The determination may provide for payment of allowances and pecuniary benefits to and in respect of members of the families of relevant persons.

642 Subsection 11(11) of the Trade Representatives Act defines 'relevant person' for the purposes of section 11 of the Trade Representatives Act.

643 This item repeals subsection 11(11) in order to insert a new subsection (11) expanding the ordinary meaning of 'members of a person's family'. It re-enacts existing subsection (11) as new subsection (12), and adds to it the key definition of 'child'.

644 New subsection 11(11) is intended to expand the ordinary meaning of 'family' to ensure there is no discrimination against same-sex couples and their children. The subsection provides that a person's family includes:

- a person's 'de facto partner' within the meaning of the Acts Interpretation Act (see the Key Concepts and Definitions section of this Explanatory Memorandum for a description of this concept)
- someone who is the child of a person (or of whom a person is a child) because of the definition of 'child' in subsection 11(12) inserted into the Trade Representatives Act by this item, and
- anyone else who would be a member of the person's family if someone mentioned in paragraphs 11(11)(a) or (b) is taken to be a member of the person's family.

645 The amendments in this section are not intended to exclude existing family members from being a member of a person's family. New subsection 11(12) provides definitions of 'relevant person' and 'child' for the purposes of section 11 of the Trade Representatives Act. The definition of 'relevant person' mirrors the definition of

'relevant person' currently contained in subsection 11(11) of the Trade Representatives Act. In addition, subsection 11(12) contains the key definition of 'child', to ensure that a child who is the product of a relationship that two people had as a couple is recognised. This definition of child is used in new subsection 11(11) to broaden the definition of 'family' as described above. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Schedule 9—Health and Ageing amendments

646 This Schedule contains amendments to the following Acts within the Health and Ageing portfolio to remove differential treatment of same-sex couples and their children:

- *Aged Care Act 1997*
- *Health Insurance Act 1973*
- *National Health Act 1953*
- *Prohibition of Human Cloning for Reproduction Act 2002*, and
- *Research Involving Human Embryos Act 2002*.

Part 1—Amendments commencing on the day after Royal Assent

Prohibition of Human Cloning for Reproduction Act 2002

647 The object of the *Prohibition of Human Cloning for Reproduction Act 2002* (the Prohibition of Cloning Act) is to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by prohibiting certain practices.

Item 1

648 The current definition of ‘spouse’ in subsection 8(1) of the Prohibition of Cloning Act discriminates against same-sex couples because the common understanding of the word ‘spouse’ is confined the opposite-sex partner of a person.

649 This item replaces the definition of ‘spouse’ in subsection 8(1) of the Prohibition of Cloning Act with a new definition that provides that a ‘spouse’ includes a de facto partner of a member within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum. This will expand the class of individuals who are able to consent to dealings with excess embryos to include a same-sex partner of a person referred to in the Prohibition of Cloning Act.

Research Involving Human Embryos Act 2002

650 The object of the *Research Involving Human Embryos Act 2002* (the Human Embryos Act) is to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by regulating activities that involve the use of certain human embryos created by assisted reproductive technology or by other means.

Item 2

651 The current definition of ‘spouse’ in subsection 7(1) of the Human Embryos Act discriminates against same-sex couples because the common understanding of the word ‘spouse’ is confined the opposite-sex partner of a person.

652 This item replaces the definition of ‘spouse’ in subsection 7(1) of the Human Embryos Act with a new definition that provides that a ‘spouse’ includes a de facto partner of a member within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum. This will expand the class of individuals who are able to consent to dealings with excess embryos to include a same-sex partner of a person referred to in the Human Embryos Act.

Part 2—Amendments commencing on 1 January 2009

Health Insurance Act 1973

653 The *Health Insurance Act 1973* for the most part, regulates the payment of Medicare benefits, including rules concerning persons who are eligible for Medicare benefits, the arrangements for safety net entitlements, and rules in relation to the provision of services that attract Medicare benefits (for example, in relation to diagnostic imaging and pathology services).

654 The key amendments to the Health Insurance Act will:

- provide for same-sex de facto partners and their dependent children, including children who are the product of their relationship, to register as a family for the purposes of the Medicare safety nets, thereby removing discrimination against same-sex couples and their children, and
- clarify that couples in same-sex relationships and the relatives of such persons will be considered to be ‘connected to’ a requester or provider of pathology or diagnostic imaging services for the purposes of the prohibited practices provisions of Part IIBA of the Health Insurance Act, thereby ensuring the consistent application of Part IIBA to persons in same-sex and opposite-sex relationships.

Item 3

655 Subsection 3(1) of the Health Insurance Act contains a definition of ‘Australian resident’ for the purposes of the Health Insurance Act. Sub-subparagraph (f)(v)(A) of the definition of ‘Australian resident’ makes reference to a person in respect of whom ‘another person, being the person’s spouse, parent or child, is an Australian citizen or the holder of a permanent visa under [the *Migration Act 1958*]’. This item provides that each of the terms ‘spouse’, ‘parent’ and ‘child’ appearing in sub-subparagraph f(v)(A) have the same meaning as they do in the *Migration Act 1958*.

Item 4

656 This item inserts subsection 3(18) into the Health Insurance Act. New subsection 3(18) provides that someone cannot be considered to be the product of a relationship for the purposes of the Health Insurance Act, unless they:

- are the biological child of at least one person in the relationship, or
- are born to a woman in the relationship.

657 This insertion incorporates the elements of the key definition of ‘child’, inserted by Items 6, 8 and 14 of this Schedule. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

658 Subsection 10AA(6) of the Health Insurance Act currently provides that a person is not entitled to be simultaneously treated as a member of more than one registered family unless the person is a child and members of more than one registered family jointly share the right to have, and to make decisions concerning, the daily care and control of the child.

659 This item replaces paragraph 10AA(6)(b) of the Health Insurance Act with a new paragraph 10AA(6)(b). The effect of this amendment is that a person is not entitled to be simultaneously treated as a member of more than one registered family unless the person is a child and the person is a dependent child in relation to persons in more than one registered family. This amendment aligns the definitions in paragraph 10AA(6)(b) with the definition of ‘dependent child’ in subsection 10AA(7).

Item 6

660 The definition of ‘dependent child’ in subsection 10AA(7) of the Health Insurance Act currently provides that ‘dependent child’, in relation to any person, means:

- a child aged under 16 who is in the custody, care and control of that person
- a child aged under 16 who is wholly or substantially in the care and control of the person where no other person has the custody, care and control of the child, or
- a student child who is wholly or substantially dependent on the person.

661 While the non-biological same-sex parent of a child may be able to prove that a child is in their custody, care and control without an order of the court (such as a parenting order), they are generally assumed not to have custody, care and control of the child. If a person does not have a parenting order, the only way that a child who is aged under 16 can be considered as the dependent child of the person is where the child is wholly or substantially in the care and control of the person and no other person has the custody, care and control of the child. This imposes a higher burden than that placed on the birth mother and birth father (or adoptive parents) who do not need a parenting order to prove that they have custody, care and control of their children.

662 This item repeals the current definition of ‘dependent child’ and inserts a new definition of ‘dependent child’ to extend the range of persons aged under 16 who are taken to be the ‘dependent child’ of a person for the purposes of determining who is a ‘registered family’ for the purposes of the Health Insurance Act. The new definition of ‘dependent child’ inserted into subsection 10AA(7) of the Health Insurance Act retains the existing definition of ‘dependent child’ and includes a provision that deems a child aged under 16 to be a ‘dependent child’ of a person if:

- the child is a child of the person within the meaning of the key definition of ‘child’, (a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum)
- the child is in the care and control of the person, and
- the person does not have a legal right to custody, care and control of the child, as long as there is no order of a court (such as a family law order) that stops the adult from having the legal right to having custody, care and control of the child.

663 The effect of this insertion is that a child, who is aged under 16, of a non-biological same-sex parent can be recognised as the ‘dependent child’ of that person. This is contingent on the criteria in new paragraph 10AA(7)(b) of the Health Insurance Act being met, including that there is no order of a court (such as a family law order) that stops the adult from having the legal right to having custody, care and control of the person.

Example

J is in a same-sex relationship with her de facto partner C. During the relationship, J and C decide that C will undergo an artificial conception procedure using gametes from C and a donor. The procedure takes place and C gives birth to R. While R is the biological child of C, he is not the biological child of J. Further, R lives with J and C and is in the care and control of J.

R will be considered to be J’s dependent child. This could continue to be the case even if the relationship between J and C were to break down at a later time.

664 New paragraph (c) of the definition of ‘dependent child’ provides that a ‘dependent child’ in relation to a person includes a child under the age of 16 years who is not otherwise a dependent child under paragraphs (a) or (b) of the definition of ‘dependent child’ in subsection 10AA(7), and who is wholly or substantially in the care and control of the person. This provision replicates an existing provision.

Example

T has de facto partner H. H has a child, S, from a previous relationship (and his previous partner is deceased). T is not biologically related to S and S is not the product of the relationship between T and H. Therefore, S is not a dependent child for the purposes of paragraph (a) (ie T does not have the ‘custody, care and control’ of S) or paragraph (b) (as subparagraph (b)(ii) is not satisfied, given S is not a product of the relationship between T and H).

H dies. No-one has the custody, care and control of S (both biological parents, i.e H and his previous partner, are deceased). S is substantially in the care and control of T. Therefore, paragraph (c) is satisfied and S is T’s dependent child.

665 This item also inserts a note at the end of the new definition of ‘dependent child’ in subsection 10AA(7) to provide that subsection 3(18) of the Health Insurance Act is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (b)(ii) of the definition of ‘dependent child’.

Item 7

666 Subsection 10AA(7) of the Health Insurance Act currently provides that, in relation to a person, a 'spouse' is:

- a person who is legally married to, and is not living, on a permanent basis, separately and apart from, that person, and
- a de facto spouse of that person.

667 This item repeals paragraph (b) of the current definition of 'spouse' in subsection 10AA(7) of the Health Insurance Act and substitutes a new paragraph (b) providing that 'spouse', in relation to a person, means 'a de facto partner of the person who is not living, on a permanent basis, separately and apart from the person'. This amendment has been made as a consequence of amendments made to the *National Health Act 1953* by Items 15, 16 and 17 of this Schedule. The amendment also clarifies that to be a 'spouse' under the Medicare safety net provisions, de facto partners must, like legally married persons, not be living, on a permanent basis, separately and apart from each other.

Item 8

668 This item repeals the definition of 'child' in subsection 23DZZID(1) of the Health Insurance Act and inserts elements of the key definition of 'child' to extend who can be considered a child for the purposes of Part IIBA of the Health Insurance Act. The definition does not limit who can be considered to be a parent of a person for the purposes of Part IIBA of the Health Insurance Act which deals with prohibited practices in relation to pathology services and diagnostic imaging services.

669 New paragraph (a) of the definition of 'child' provides that a 'child' in relation to a person includes an adopted child or stepchild of the person. This provision replicates the existing provision. New paragraph (b) of the definition of 'child' extends the definition to include a child who is the product of a relationship. This item also inserts a note to provide that subsection 3(18) of the Health Insurance Act (inserted by Item 4 of this Schedule) is relevant to working out if someone is the product of the relationship. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 9

670 This item repeals the definition of 'parent' in subsection 23DZZID(1) of the Health Insurance Act and inserts a new definition, providing that a person is the parent of anyone who is the person's child.

Item 10

671 This item inserts a note at the end of the definition of 'relative' in subsection 23DZZID(1) of the Health Insurance Act to direct the reader to subsection 23DZZID(3) inserted by Item 13 of this Schedule.

Item 11

672 This item amends paragraph (b) of the definition of 'spouse' in subsection 23DZZID(1) of the Health Insurance Act by replacing 'de facto spouse' with 'de facto partner' as a consequence of amendments made to the *National Health Act 1953* by Items 15, 16 and 17 of this Schedule.

Item 12

673 This item inserts the key definition of 'step-child' in subsection 23DZZID(1) of the Health Insurance Act. This extends the range of persons who can be considered to be the 'step-child' to include a person who would be the step-child of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of 'step-child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 13

674 This item inserts new subsection 23DZZID(3) into the Health Insurance Act. Subsection 23DZZID(3) of the Health Insurance Act is a tracing rule that allows relationships because of the definition of 'child' in section 23DZZID to be traced through a person if that person is the child of another person. For example, in relation a child, the other children of the parent are that child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 14

675 This item inserts the key definition of 'parent' into subsection 46A of the Health Insurance Act to expand who can be considered a parent for the purposes of who is a parent of a child whose name is on the Australian Childhood Immunisation Register. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

National Health Act 1953

676 The *National Health Act 1953* contains provisions relating to pharmaceutical, sickness and hospital benefits, and of medical and dental services. Part II of the National Health Act relates to the provision of National health services, including certain vaccination programs. Part VII of the National Health Act concerns the prescribing, supply and access to pharmaceutical benefits, including in relation to persons eligible to receive those benefits, the amounts to be charged, and the arrangements for Pharmaceutical Benefits Scheme (PBS) safety net entitlements.

677 The amendments to National Health Act will allow same-sex de facto partners and their dependent children to access the following benefits which they cannot presently access:

- Pharmaceutical Benefits Scheme (PBS) safety net entitlements as a family
- certain concessional beneficiary entitlements for dependents (other concessional entitlements for dependents flow from other Acts, eg the Social Security Act), and

- provisions applicable to spouse and children of members of a friendly society.

The amendments also clarify that:

- where 'child and 'parent' are defined for certain provisions in the National Health Act, 'child' includes an adoptive child, a stepchild, and someone who would be a stepchild of a person except that the person is not legally married to their de facto partner
- a dependant child of a person's spouse can be a member of the person's PBS safety net family, and
- where the National Health Act sets out criteria for persons dependant on a concessional beneficiary, a child can be 'dependant' if the concessional beneficiary has the whole or substantial care and control of the child and the child is not otherwise a dependent child under the criteria.

Items 15, 16 and 17

678 The definition of 'spouse' in subsection 4(1) of the National Health Act currently includes a 'de facto spouse'. The definition of 'de facto spouse' is a 'person who is living with another person of the opposite sex on a bona fide domestic basis although not legally married to that other person.' This definition discriminates against same-sex couples because the common meaning of 'spouse' is a relationship between a man and a woman and the definition of 'de facto spouse' explicitly excludes same-sex couples.

679 Item 15 inserts a new non-discriminatory definition of 'de facto partner' into subsection 4(1) of the National Health Act. The new definition provides that a person is the 'de facto partner' of another person (whether of the same sex or different sexes) if they:

- have a relationship that is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act, or
- live with each other on a genuine domestic basis although not legally married to each other.

680 Evidence of registration of a relationship under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act is sufficient to satisfy the requirements for paragraph (a) of the definition of 'de facto partner' in subsection 4(1) of the National Health Act.

681 Item 16 repeals the definition of 'de facto spouse' in subsection 4(1) of the National Health Act because it is made redundant by the insertion of the definition of 'de facto partner'.

682 Item 17 replaces 'de facto spouse' in the definition of 'spouse' with 'de facto partner' as a consequence of Items 15 and 16 of this Schedule to provide that a 'spouse' includes a de facto partner.

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Item 18

683 This item inserts subsection 4(6) into the National Health Act. New subsection 4(6) provides that someone cannot be considered to be the product of a relationship for the purposes of the National Health Act, unless they:

- are the biological child of at least one person in the relationship, or
- are born to a woman in the relationship.

This is relevant to the elements of the key definition of 'child', inserted by Items 19, 21, 23, and 26 of this Schedule. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 19

684 This item inserts a new definition of 'parent' into subsection 9BA(7) of the National Health Act. The definition expands the classes of person that may be taken to be a parent of a child for the purposes of the National HPV Vaccination Program Register. The definition does not limit who can be considered to be a parent of a person for the purposes of section 9BA(7) of the National Health Act.

685 New paragraph (a) of the definition of 'parent' provides that someone is the parent of a child if the child is the stepchild or adoptive child of the person. New paragraph (b) of the definition of parent extends the definition of 'parent' to include someone who would be the parent of a child if the child would be the stepchild of the person except that the person is not legally married to the person's partner. This includes stepchildren of both same-sex and opposite-sex de facto couples.

686 New paragraph (c) of the definition of 'parent' extends the definition to include the parent of a child who is the product of a relationship. New paragraph (c) is qualified by providing that for a 'child' to be the product of a relationship, the child must be the biological child of at least one person in the relationship, or born to a woman in the relationship. These are elements of the key definition of 'child', a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

687 This item also inserts a note indicating that subsection 4(6) of the National Health Act (inserted by Item 18 of this Schedule) is relevant to working out if someone is the product of the relationship. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 20

688 This item inserts a note at the end of the definition of 'child' in subsection 84(1) of the National Health Act to direct the reader to subsection 84(3B) inserted by Item 21 of this Schedule.

Item 21

689 This item inserts new subsection 84(3B) into the National Health Act to clarify and extend the meaning of 'child' in subsection 84(1) of the National Health Act.

Subsection 84(3B) does not limit the definition of ‘child’ in subsection 84(1) of the National Health Act for the purposes of Part VII of the National Health Act.

690 New paragraph (a) of the definition of ‘child’ provides that a ‘child’ in relation to a member of a friendly society includes a stepchild or adopted child of the member. New paragraph (b) of the definition of child extends the definition of ‘child’ to include someone who would be the stepchild of the member if the member and their de facto partner were married. This includes stepchildren of both same-sex and opposite-sex de facto couples.

691 New paragraph (c) of the definition of ‘child’ extends the definition to include a child who is the product of a relationship the member of a friendly society has or had as a couple with another person (whether of the same sex or a different sex). New paragraph (c) is qualified by subsection 4(6) of the National Health Act providing that for a ‘child’ to be the product of a relationship, the child must be the biological child of at least one person in the relationship, or born to a woman in the relationship. These are elements of the key definition of ‘child’, a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

692 This item also inserts a note indicating that subsection 4(6) of the National Health Act (inserted by Item 18 of this Schedule) is relevant to working out if someone is the product of the relationship.

Item 22

693 This item corrects a grammatical error in paragraph 84(4)(b) of the National Health Act by replacing ‘of the spouse’ with ‘or the spouse’.

Item 23

694 Paragraphs 84(4)(a) and 84(4)(b) of the definition of ‘dependant’ in subsection 84(4) of the National Health Act currently provides that a ‘dependant’, in relation to a person to whom paragraph (c) or (d) of the definition of ‘concessional beneficiary’ applies is a person who is an Australian resident within the meaning of the Health Insurance Act and is:

- the spouse of the person, or
- a child under the age of 16 years who is in the custody, care and control of the person or the spouse of the person.

695 While the non-biological same-sex parent of a child may be able to prove that a child is in their custody, care and control without a parenting order, they are generally assumed not to have custody, care and control of the child. This imposes a higher burden than that placed on the birth mother and birth father (or adoptive parents) who do not need a parenting order to prove that they have custody, care and control of their children.

696 This item inserts paragraphs 84(4)(ba) and 84(4)(bb) into the definition of ‘dependant’ in subsection 84(4) of the National Health Act to amend the meaning of dependant in relation to the relevant classes of concessional beneficiary. The insertion of these paragraphs extends the range of persons aged under 16 who are taken to be a ‘dependant’ of a person to whom paragraph (c) or (d) of the National

Health Act definition of concessional beneficiary applies . New paragraph 84(4)(ba) provides that a reference to a dependant (for the relevant classes of concessional beneficiary) includes a reference to a child under the age of 16 years:

- who is a child of the person within the meaning of the key definition of ‘child’, (a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum)
- who is in the care and control of the person or their spouse, and
- for whom the person does not have a legal right to custody, care and control, as long as there is no order of a court (such as a family law order) that stops the adult from the legal right to having custody, care and control of the child.

The effect of this insertion is that a child, who is aged under 16, of a non-biological same-sex parent can be recognised as a ‘dependant’ in relation to certain classes of concessional beneficiary for the purposes of Part VII of the National Health Act.

697 This is contingent on the other criteria in the definition of ‘dependant’ in paragraph 84(4) of the National Health Act being met. This includes being an Australian resident with the meaning of the Health Insurance Act, and the requirement in subparagraph 84(4)(ba)(i), that there is no order of a court (such as a family law order) that stops the adult from having the legal right to having custody, care and control of the person.

Example

J is in a same-sex relationship with her de facto partner C. During the relationship, J and C decide that C will undergo an artificial conception procedure using gametes from C and a donor. The procedure takes place and C gives birth to R. While R is the biological child of C, he is not the biological child of J. Further, R lives with J and C and is in the care and control of J.

R will be considered to be J’s child. This could continue to be the case even if the relationship between J and C were to break down at a later time.

698 New paragraph 84(4)(bb) of the National Health Act provides that a ‘dependant’, in relation to the relevant classes of concessional beneficiary, includes a child under the age of 16 years who is not otherwise a dependant child under paragraphs 84(4)(b) or (ba) and who is wholly or substantially in the care and control of the concessional beneficiary.

Example

T has de facto partner H. H has a child, S, from a previous relationship (and his previous partner is deceased). T is not biologically related to S and S is not the product of the relationship between T and H. Therefore, S is not a dependant child for the purposes of paragraph (b) (ie T does not have the ‘custody, care and control’ of S) or paragraph (ba) (as subparagraph (ba)(ii) is not satisfied, given S is not a product of the relationship between T and H).

H dies. No-one has the custody, care and control of S (both biological parents, i.e H and his previous partner, are deceased). S is substantially in the care and control of T. Therefore, paragraph (c) is satisfied and S is T’s dependant child.

Item 24

699 This item inserts a note at the end of subsection 84(4) to indicate that subsection 4(6) of the National Health Act (inserted by Item 18 of this Schedule) is relevant to working out whether someone is the product of the relationship for the purposes of subparagraph 84(ba)(ii) of the National Health Act.

Item 25

700 Division 1A of the National Health Act deals with safety net concession cards and pharmaceutical benefits entitlement cards. Section 84B of the National Health Act provides that for the purposes of Division 1A, a person's spouse and any dependent child of the person are members of a person's family.

701 This item inserts a reference to the dependent child of a person's spouse into paragraph 84B(1)(b) of the National Health Act to extend who can be considered to be a members of a person's family for the purposes of Division 1A of the National Health Act. This extends the persons who may be included as a member of a person's family for the purposes of PBS safety net entitlements so that a dependent child of a person's spouse may be included as part of a family for PBS safety net purposes.

Item 26

702 The definition of 'dependent child' in subsection 84B(4) of the National Health Act currently provides that 'dependent child', in relation to any person, means:

- a child aged under 16 who is in the custody, care and control of that person
- a child aged under 16 who is wholly or substantially in the care and control of the person where no other person has the custody, care and control of the child, or
- a student child who is wholly or substantially dependent on the person.

703 While the non-biological same-sex parent of a child may be able to prove that a child is in their custody, care and control without a parenting order, they are generally assumed not to have custody, care and control of the child. If a person does not have parenting order, the only way that a child who is aged under 16 can be considered as the dependent child of the person is where the child is wholly or substantially in the care and control of the person and no other person has the custody, care and control of the child. This imposes a higher burden than that placed on a birth mother and birth father (or adoptive parents) who do not need a parenting order to prove that they have custody, care and control of their children.

704 This item repeals the current subsection 84B(4) definition of 'dependent child' and replaces it to extend the range of persons aged under 16 who are taken to be the 'dependent child' of a person for the purposes of determining who is a member of a family for the PBS safety net. The new definition of 'dependent child' inserted into subsection 84B(4) of the National Health Act retains the existing definition of 'dependent child' and includes a provision that deems a child aged under 16 to be a 'dependent child' of a person if:

- the child is a child of the person within the meaning of the key definition of ‘child’, (a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum)
- the child is in the care and control of the person, and
- the person does not have a legal right to custody, care and control of the child, as long as there is no order of a court (such as a family law order) that stops the adult from the legal right to having custody, care and control of the child.

The effect of this insertion is that a child, who is aged under 16, of a non-biological same-sex parent can be recognised as the ‘dependent child’ of that person. This is contingent on the criteria in new paragraph 84B(4)(b) of the National Health Act being met, including that there is no order of a court (such as a family law order) that stops the adult from having the legal right to having custody, care and control of the person.

Example

J is in a same-sex relationship with her de facto partner C. During the relationship, J and C decide that C will undergo an artificial conception procedure using gametes from C and a donor. The procedure takes place and C gives birth to R. While R is the biological child of C, he is not the biological child of J. Further, R lives with J and C and is in the care and control of J.

R will be considered to be J’s dependent child. This could continue to be the case if the relationship between J and C were to break down at a later time and R lives with J following the break down of the relationship.

New paragraph (c) of the definition of ‘dependent child’ provides that a ‘dependent child’ in relation to a person includes a child under the age of 16 years who is not otherwise a dependent child under paragraphs 84B(4)(a) or (b) and who is wholly or substantially in the care and control of the person. This provision replicates an existing provision.

Example

T has de facto partner H. H has a child, S, from a previous relationship (and his previous partner is deceased). T is not biologically related to S and S is not the product of the relationship between T and H. Therefore, S is not a dependent child for the purposes of paragraph (a) (ie T does not have the ‘custody, care and control’ of S) or paragraph (b) (as subparagraph (b)(ii) is not satisfied, given S is not a product of the relationship between T and H).

H dies. No-one has the custody, care and control of S (both biological parents, i.e H and his previous partner, are deceased). S is wholly and substantially in the care and control of T. Therefore, paragraph (c) is satisfied and S is T’s dependent child.

705 This item also inserts a note at the end of the new definition of ‘dependent child’ in subsection 84B(4) of the National Health Act to indicate that subsection 4(6) of the National Health Act is relevant to working out if a child is the product of the relationship for the purposes of subparagraph (b)(ii) of the definition of ‘dependent child’.

706 The subsection 84B(4) definition of ‘dependent child’ also applies to provisions concerning eligibility for access to PBS subsidized medicines while overseas. Those eligibility provisions are set out at sections 86 and 86A of the National Health Act and refer to the section 84B(4) definition of ‘dependent child’.

Item 27

707 Subsection 84B(4) of the National Health Act provides that, in relation to a person, a spouse is

- a person who is legally married to, and is not living, on a permanent basis, separately and apart from, that person, and
- a de facto spouse of that person.

708 The definition of ‘de facto partner’ in subsection 4(1) of the National Health Act (inserted by Items 10, 11 and 12 of this Schedule) does not require that the persons be living together. The effect of the insertion of the definition of ‘de facto partner’ is that subsection 84B(4) will discriminate on the basis of marital status because married people must be living together permanently in order to be considered ‘family’ for entitlement purposes.

709 This item corrects this potential anomaly by including a requirement for de facto partners to not be living separately and apart from each other on a permanent basis. This requirement will exist for de facto partners regardless of whether they are de facto partners because they:

- have a relationship that is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act (whether of the same sex or different sexes), or
- live with each other on a genuine domestic basis (whether of the same sex or different sexes) although not legally married to each other.

Item 28

710 Paragraph 84B(5)(a) of the National Health Act provides that a person who is legally married is not to be taken to be living separately and apart from their partner on a permanent basis only because of the illness or infirmity of either or both of them. This allows a legally married couple to live apart only due to illness or infirmity (eg one partner living in a nursing home) and still be considered to be spouses.

711 This item amends paragraph 84B(5)(a) of the National Health Act to also allow de facto partners who have a relationship that is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act (whether of the same sex or different sexes) to live apart only due to illness or infirmity and be considered to be spouses.

Item 29

712 Paragraph 84B(5)(b) of the National Health Act provides that a person is not to be taken to have ceased to live with another person on a de facto basis if they are living apart only because of the illness or infirmity of either or both of them. This allows de facto partners who have ceased to live together only due to illness or

infirmity (eg one partner living in a nursing home) to continue to be considered to be spouses.

713 This item amends paragraph 84B(5)(b) to replace the phrase ‘a person is not taken to have ceased to live with another person (the person’s partner)’ with ‘a person who is the spouse of another person (the person’s partner) under paragraph (c) of the definition [of spouse] is not taken to have ceased to live with the person’s partner’. This replicates the existing provision so that in a case where persons who are de facto partners by virtue of paragraph 84B(4)(c) cease to live together only due to illness or infirmity they continue to be considered to be spouses.

Part 3—Amendments commencing on 1 July 2009

Aged Care Act 1997

714 The *Aged Care Act 1997* provides for the funding and delivery of, and access to, high quality and affordable residential, community and flexible aged care that meets the needs of all people who require such care, and their carers. The amendments to the Aged Care Act ensures that a member of a same-sex de facto relationship who enter permanent residential aged care are treated equally to members of opposite-sex couples who enter permanent residential aged care.

715 Aged care income and assets testing will, in future, be applied to these couples, rather than their being treated as individuals. In addition, children of the relationship will be taken into account for income and assets testing purposes. The amount of a person’s aged care fees and accommodation costs are determined based on the value of his or her income and assets.

716 In the assets test, a person who is a member of a couple is taken to have 50% of the couple’s combined assets. In the income test, half of the couple’s combined ordinary income is taken to be the person’s income. However, if one member of a couple is in receipt of an income support payment, the full amount of that payment is taken to be that person’s income for the purpose of the income test.

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Item 30

717 This item inserts a new definition of ‘child’ into subsection 44-11(1) of the Aged Care Act to extend the range of persons who can be considered as the child of a person for the purposes of the definition of ‘close relation’ in subsection 44-11(1). This definition is used in determining the value of a person’s assets, working out the maximum amount of accommodation bond or accommodation charge a person is eligible to pay, and determining whether a person is eligible to be a ‘supported resident’, a ‘concessional resident’ or an ‘assisted resident’ under the Aged Care Act.

718 Paragraph (a) of the definition of ‘child’ provides that a ‘child’ in relation to a person includes a stepchild or adopted child of the person. Paragraph (b) of the definition of ‘child’ extends the definition of ‘child’ to include someone who would be the stepchild of the person, if the person was legally married to the person’s partner. This is intended to ensure that the child of the person’s partner is included as a ‘child’ of the person, notwithstanding that the child could not be a stepchild of the person because the person and the person’s partner were not legally married (or in the case of same-sex couples, could not be legally married).

719 Paragraph (c) of the definition of ‘child’ extends the definition to include a child who is the product of a relationship. Paragraph (c) is qualified by providing that for a ‘child’ to be the product of a relationship, the child must be the biological child of at least one person in the relationship, or born to a woman in the relationship. These are elements of the key definition of ‘child’, a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

720 Paragraph (d) of the definition of ‘child’ provides that the Residential Care Subsidy Principles made under subsection 96-1(1) of the Aged Care Act may specify a class of persons. If the person is included in this class of persons, they will be a ‘child’ for the purposes of the Aged Care Act.

Item 31

721 This item amends paragraph (a) of the definition of ‘close relation’ in subsection 44-11(1) of the Aged Care Act to replace the gender-specific terms ‘the father or mother’ with the gender-neutral term ‘a parent’. This allows a person who is a parent of a child within the meaning of the key definition of ‘parent’ inserted by Item 35 of this Schedule to be considered a ‘close relation’ of that person for the purposes of the Aged Care Act.

Item 32

722 This item inserts a note at the end of the definition of ‘close relation’ in subsection 44-11(1) of the Aged Care Act to direct the reader to subsection 44-11(5) inserted by Item 23 of this Schedule.

Items 33 and 34

723 The existing definition of ‘member of a couple’ in subsection 44-11(1) of the Aged Care Act provides that a person is a ‘member of a couple’ if they are legally married to another person and are not living separately and apart from the other person on a permanent basis, or if they are living with another person in a marriage-like relationship although not legally married to the other person. This definition discriminates against same-sex couples because a same-sex couple cannot live in a ‘marriage-like relationship’ as the common meaning of that term is a relationship between a man and a woman which is ‘marriage-like’.

724 Item 33 inserts paragraph (aa) of the definition of ‘member of a couple’ in subsection 44-11(1) of the Aged Care Act which provides that a person is a member of a couple if they

- have a relationship with another person (whether of the same sex or a different sex) that is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act, and
- who is not living separately and apart from the other person on a permanent basis.

This allows persons who are registered on a relationship register prescribed for the purposes of subsection 22B of the Acts Interpretation Act to be recognised as a ‘member of a couple’. A description of the prescription of relationship registers for the purposes of subsection 22B of the Acts Interpretation Act can be found in the

description of the key definition of 'de facto partner' in the Key Concepts and Definitions section of this Explanatory Memorandum.

725 Item 34 amends paragraph (b) of the definition of 'member of a couple' in subsection 44-11(1) of the Aged Care Act by replacing the phrase 'in a marriage-like relationship' with '(whether of the same sex or a different sex) in a de facto relationship'.

726 The effect of these amendments is to ensure that the definition of 'member of a couple' includes a same-sex relationship as well as an opposite-sex relationship for the purposes of determining the value of a person's assets, working out the maximum amount of accommodation bond or accommodation charge the person is eligible to pay, and determining whether a person is eligible to be a 'supported residents', a 'concessional resident' or an 'assisted resident' under the Aged Care Act. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples.

Item 35

727 This item inserts the key definition of 'parent' into subsection 44-11(1) of the Aged Care Act to expand who can be considered a parent for the purposes of the definition of 'close relation' in subsection 44-11(1). The definition of 'close relation' is used for the purposes of determining the value of a person's assets, working out the maximum amount of accommodation bond or accommodation charge a person is eligible to pay, and determining whether a person is eligible to be a 'supported resident', a 'concessional resident' or an 'assisted residents' under the Aged Care Act. A description of the key definition of 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 36 and 37

728 The definition of 'dependent child' in subsection 44-11(2) of the Aged Care Act is used for the purposes of:

- determining the value of a person's assets,
- working out the maximum amount of accommodation bond or accommodation charge the person is eligible to pay, and
- determining whether a person is eligible to be a 'supported resident', a 'concessional resident' or an 'assisted resident' under the Aged Care Act.

729 The definition of 'dependent child' is also used in calculating the amount of income tested fees for a person. The daily income tested reduction is taken to be zero under section 44-22 of the Aged Care Act, as 'approved care recipients, each of whom has a dependent child' is a class of persons specified in paragraph 21.30(1)(d) of the Residential Care Subsidy Principles 1997 for the purposes of paragraph 44-22(1)(c) of the Aged Care Act.

730 The definition of 'dependent child' is also used for calculating the amount of pensioner supplement payable by the Commonwealth under section 44-28 of the Aged Care Act and for calculating the standard resident contribution under sections 58-3 or 58-4 of the Aged Care Act for pre-2008 reform residents not receiving an income support payment. The inclusion of the children of same-sex

relationships within the definition of ‘dependent child’ is not intended to change the treatment of married or opposite-sex de facto couples.

731 Paragraph 44-11(2)(a) of the Aged Care Act provides that a young person is a ‘dependent child’ of an adult if:

- the adult is legally responsible for the day-to-day care, welfare and development of the young person, or
- the adult is under a legal obligation to provide financial support in respect of the young person, and is not included in a class of people specified for the purposes paragraph 44-11(2)(a)(ii) in the Residential Care Subsidy Principles.

732 Paragraph 44-11(2)(b) of the Aged Care Act provides that to be considered a ‘dependent child’, the young person must also not be:

- in full-time employment
- in receipt of a social security pension or a social security benefit (within the meaning of the *Social Security Act 1991*), or
- included in a class of people specified in the Residential Care Subsidy Principles.

733 Item 36 inserts a new subparagraph 44-11(2)(a)(ia) into paragraph 44-11(2)(a) of the Aged Care Act. New subparagraph 44-11(2)(a)(ia) provides that a child can be a ‘dependent child’ of an adult if the adult is covered by new paragraph 44-11(2A)(a) of the Aged Care Act, to be inserted by Item 37 of this Schedule (the child would still need to meet the criteria in paragraph 44-11(2)(b) of the Aged Care Act).

734 Item 37 inserts a new subsection 44-11(2A)(a) into the Aged Care Act to provide that a child can be a ‘dependent child’ of an adult if:

- the young person is the child of the adult as because of paragraph (c) of the new definition of ‘child’ in paragraph 44-11(1) of the Aged Care Act
- the adult is not the biological or adoptive parent of the young person, and
- there is no court order to prevent the adult from being legally responsible for the day-to-day care, welfare and development of the young person.

The restrictions in paragraph 44-11(2)(b) of the Aged Care Act still apply in determining whether the young person is a ‘dependent child’.

735 The effect of these amendments is to ensure that the definition of ‘dependent child’ includes the child of a same-sex relationship as well as a child of an opposite-sex relationship.

Item 38

736 This item inserts new subsection 44-11(5) into the Aged Care Act. Subsection 44-11(5) of the Aged Care Act is a tracing rule that allows relationships because of the definition of ‘child’ in section 44-11 of the Aged Care Act to be traced through a person if that person is the child of another person. For example, in relation a child, the other children of the parent are that child’s siblings. A description of the

tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 39

737 This item amends subparagraph 67A-4(2)(a)(ii) of the Aged Care Act by removing the phrase ‘a next of kin of such a care recipient, or’. The effect of this amendment is to ensure that when deciding when a sanction on an approved provider should take effect, regard will be given by the Secretary to the desirability of allowing sufficient time for any individual who is concerned for the safety, health and well-being of a care recipient, to be informed of the intention to impose the sanction and the consequences under the Aged Care Act of the imposition of the sanction. The amendment is not intended to prevent the Secretary from considering the desirability of informing the next of kin of a care recipient about the sanction.

Schedule 10—Immigration and Citizenship amendments

738 This Schedule contains amendments to the following Acts within the Immigration and Citizenship portfolio to remove differential treatment of same-sex couples and their children:

- *Australian Citizenship Act 2007*
- *Migration Act 1958*
- *Immigration (Education) Act 1971*, and
- *Immigration (Guardianship of Children) Act 1946*.

Part 1

Australian Citizenship Act 2007

739 The purpose of the *Australian Citizenship Act 2007* (the Citizenship Act) is to provide how persons may become Australian citizens and the circumstances in which they may also cease to be Australian citizens. The Citizenship Act provides for the acquisition of Australian citizenship by people born to Australian parents. Currently the Citizenship Act recognises non-biological parents of children born as a result of artificial conception procedures only where they are married. These amendments will enable de facto couples, whether same-sex or opposite-sex, who have children as a result of artificial conception procedures with the use of donor gametes, to be recognised as the parents of their child(ren). Such parents will additionally be recognised as ‘responsible parents’ of their child(ren). Amendments will also provide parity between same-sex and opposite-sex couples in accessing the residence discretion to count time (when applying for citizenship by conferral) spent outside Australia as time spent in Australia.

Item 1

740 This item repeals the definition of ‘child’ in section 3 of the Citizenship Act and replaces it with a new definition. The new definition expands the ordinary meaning of ‘child’. Paragraph (a) includes the classes of children recognised in the previous definition of ‘child’, including adopted children, stepchildren, and ex-nuptial children of a person. Paragraph (b) provides that a child of a person includes someone who is the product of a relationship the person has or had as a couple with another person (whether of the same sex or a different sex). To be a ‘product of a relationship’, the child must be the biological child of one member of the relationship, or born to a woman in the relationship. This definition draws on the key definition of ‘child’. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 2

741 This item amends the definition of ‘commencement day’ in section 3 to make it clear that the date referred to is the date on which sections 2A to 54 as originally enacted commenced, rather than the date of commencement of any amendments to these sections made by Schedule 10 to this Bill.

Item 3

742 This item inserts the key definition of ‘de facto partner’ into section 3 of the Citizenship Act. This definition provides that ‘de facto partner’ includes a de facto partner within the meaning of the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 4

743 This item inserts the key definition of ‘stepchild’ into section 3 of the Citizenship Act. This extends the range of persons who can be considered a ‘stepchild’ to include a person who would be the stepchild of a person who is the de facto partner of a parent of the child except that the person and the parent are not legally married. A description of the definition of ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum. The definition of ‘stepchild’ is relevant to determining who is a ‘child’ for the purposes of the definition of ‘child’ in section 3 of the Citizenship Act.

Item 5

744 This item inserts subsection 6(1A) into the Citizenship Act. Sub-section 6(1A) specifies that the term ‘parental responsibility’ in paragraph 6(1)(a) has the same meaning as in Part VII of the *Family Law Act 1975*.

Item 6

745 This item amends the reference to paragraphs (1)(a) and (b) in sub-section 6(2) of the Citizenship Act to refer only to paragraph (1)(b). The amendment prevents the Family Law Act meanings of ‘parent’ and ‘child’ from overriding the Citizenship Act definitions of these terms in paragraph (1)(a).

Item 7

746 This item repeals section 8 of the Citizenship Act, which relates to children of married couples born as a result of artificial conception procedures, and inserts a new provision relating to children of both de facto and married relationships born as a result of artificial conception procedures.

747 As amended, section 8 provides that where a child is born to a woman as a result of an artificial conception procedure while the woman was either married to a man or had a de facto partner, and the procedure was carried out with the consent of her husband or de facto partner, that child is taken for the purposes of the Citizenship Act to be the child of the woman and her husband or de facto partner, and not to be the child of anyone else. This ensures that gamete donors are not considered to be parents for the purposes of the Citizenship Act. The provision does not require a biological link between either the woman or her husband or de facto partner and the child.

Item 8

748 This item provides that the amendments to the Citizenship Act made by Schedule 10 to this Bill (except the amendments to section 22 of that Act) apply in

relation to the acquisition or cessation of Australian citizenship on or after the commencement of the Part because of circumstances (including relationships) existing before, on or after that commencement.

749 Under Item 8, acquisition of Australian citizenship by descent can occur on the basis of circumstances existing before commencement. That is, a child of a de facto couple who went through artificial conception will now be able to acquire Australian citizenship based on the citizenship status of the de facto couple. This removes marital status discrimination against the children of de facto relationships by providing these children with the ability to acquire citizenship by descent based on the status of these de facto parents.

750 Administratively, these children would likely have been recognised and acquired Australian citizenship based on these parents, as these parents would have been on the birth certificate of these children when assessing who their parents were for the purposes of acquisition of Australian citizenship.

751 Under Item 8, a child's Australian citizenship may cease if the citizenship of a person who is now recognised as a responsible parent ceases, regardless of whether the child was born on or after the date of commencement of Item 8. This gives effect to the policy intention that a child's citizenship status be aligned with that of their responsible parents(s).

752 Section 36 provides discretion to revoke a child's citizenship if a responsible parent ceases to be an Australian citizen. Broadening the definition of 'responsible parent' to include parents in a de facto relationship who had the child through an artificial conception procedure (see Item 7 of this Schedule), will mean that the cessation of Australian citizenship of the new responsible parent may result in the cessation of Australian citizenship of the child, even if the child was born prior to the commencement of this amendment. This new circumstance will provide parity between children of same-sex couples and opposite-sex couples with respect to the potential operation of section 36.

Item 9

753 Section 22(9) of the Citizenship Act provides the Minister with a discretion in relation to the residence requirement. Satisfaction of the residence requirement is one condition of eligibility for Australian citizenship under subsection 21(2) of the Citizenship Act. The provision allows the Minister to treat periods in which a person was outside Australia as being a period during which they were in Australia in certain circumstances. The discretion is only available where the applicant is the spouse, widow or widower of an Australian citizen at the time that they make an application.

754 This item amends subsection 22(9) to replace the phrase 'widow or widower' with the gender-neutral phrase 'de facto partner or surviving spouse or de facto partner'. The phrase 'surviving spouse or de facto partner' is defined by subsection 22(10) which is inserted by Item 11 of this Schedule.

755 As amended, subsection 22(9) applies to a person who is the spouse or de facto partner, or the surviving spouse or surviving de facto partner, of an Australian citizen.

Item 10

756 This item amends paragraph 22(9)(a) to apply both to spouses and de facto partners of Australian citizens.

Item 11

757 This item repeals subsection 22(10), which provides that, for the purposes of subsection (9), the term ‘spouse’ includes de facto spouse, as this is rendered redundant by the amendments in Items 9 and 10 of this Schedule.

758 The item inserts a new subsection 22(10), which defines ‘surviving spouse or de facto partner’ in relation to a person who has died (the deceased citizen) for the purposes of subsection 22(9) to mean a person who was a deceased citizen’s spouse or de facto partner immediately before the deceased citizen died, and who has not later become the spouse or de facto partner of another person. The phrase expands the ordinary meaning of ‘widow’ and ‘widower’ to include de facto relationships.

Item 12

759 This item provides that the amendments to section 22 of the Citizenship Act made by the Bill apply in relation to applications to become an Australian citizen that were made on or after commencement of this part, or that were made before the commencement of the Part and which had not yet been either approved or refused.

760 The application of the amendments to existing undecided applications by virtue of paragraph (b) of Item 12 will not disadvantage any applicants. The amendments to section 22 will have a beneficial effect for those persons to whom the section applies as a result of the amendments.

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Part 2

Division 1—Main amendments

Migration Act 1958

761 The purpose of the *Migration Act 1958* is to regulate, in the national interest, the coming into, and presence in Australia of non-citizens. From the commencement of these amendments, the Migration Act will recognise the partner of a biological parent of a child (at the time of the child’s birth) as a parent of the child regardless of the sex of the partner, or the non-biological birth mother and her partner where neither of them are biologically related to the child and the child is the product of their relationship. Complementary changes will be made to the *Migration Regulations 1994* for the purposes of the grant of visas to children of non-biological parents to reflect this new position in the Migration Act.

762 These amendments to the Migration Act also include the insertion of a definition of ‘de facto partner’ that recognises that this includes persons in either a same-sex or opposite-sex relationship. The amendments to the Migration Act also involve the rationalisation of certain provisions that otherwise dealt with same sex de facto couples separately from opposite-sex de facto couples.

Item 13

763 This item inserts a definition of ‘child’ into subsection 5(1) of the Migration Act which refers to the definition in section 5CA inserted by Item 20 of this Schedule.

Item 14

764 This item inserts a definition of ‘de facto partner’ into subsection 5(1) of the Migration Act which refers to the definition in section 5CB inserted by Item 20 of this Schedule.

Item 15

765 This item omits the words ‘(within the meaning of the regulations)’ from paragraph (a) of the definition of ‘health criterion’ in subsection 5(1) of the Migration Act, as Item 16 of this Schedule inserts a definition of ‘member of the family unit’ in the Migration Act.

Item 16

766 This item inserts a definition of ‘member of the family unit’ into subsection 5(1) of the Migration Act, and provides that the meaning given to the term is provided for in the regulations.

767 There are a number of instances in the Migration Act that provide ‘member of the family unit (within the meaning of the Regulations)’. To improve clarity of the Migration Act, the phrase ‘member of the family unit’ has been located in the definitions provision of the Migration Act.

768 ‘Member of the family unit’ is a phrase that is currently defined in the *Migration Regulations 1994* (the Migration Regulations) for the purposes of determining who can apply for a visa on the basis of being a member of the family unit of a primary visa applicant. This is consistent with the framework of the Migration Act, where there is authority for the regulations to prescribe criteria for most visas of a specified class. There are different criteria for different categories of visas and the criteria are established to meet Australia’s national interests and needs. As changes to the Migration Program often require changes to the Migration Regulations, which can include the creation and abolition of visas and subclasses, the need for flexibility in this definition remains. The amendment reflects the current position whereby the term ‘member of the family unit’ takes its meaning from the Regulations.

Item 17

769 This item inserts a definition of ‘member of the same family unit’ into subsection 5(1) of the Migration Act. A person is a ‘member of the same family unit’ as another person if either is a member of the family unit of the other, or each is a member of the family unit of a third person. This is consistent with the way that phrase is defined in the Migration Regulations.

770 The purpose of this definition is to align the criteria for the grant of a protection visa in the Migration Act with the broader and more beneficial criteria for the grant of a Subclass 866 (Protection) visa prescribed in the Migration Regulations.

The protection visa regime is designed to ensure that family members of refugees can be granted protection visas irrespective of whether the person to whom Australia has protection obligations is the 'head' of the family unit or a child. The Migration Regulations explicitly reflect this arrangement, however, the provisions in the Migration Act are more restrictive by requiring members of the same family unit to be either the spouse or dependent of the person to whom Australia owes protection obligations. This means that if a child is found to be the person to whom Australia has protection obligations, then the child's parents would not be able to satisfy the spouse or dependent requirement in the Migration Act and could not be granted a protection visa, even though they would satisfy the requirements in the Migration Regulations by being a member of the same family unit. This places limitations on the Department's ability to effectively manage family groups of refugees. This amendment removes any inconsistency between the Migration Act and the Migration Regulations, and provides the most beneficial outcome to protection visa applicants.

Item 18

771 This item inserts a definition of 'parent' into subsection 5(1) of the Migration Act to extend the class of persons who can be considered to be a parent of a person to include those people in relation to whom someone is a child within the meaning of the definition of 'child of a person' inserted by Item 20 of this Schedule.

Item 19

772 This item inserts a definition of 'spouse' in subsection 5(1) of the Migration Act which refers to the definition in section 5F inserted by Item 21 of this Schedule.

Item 20

773 This item inserts definitions of 'child of a person' and 'de facto partner' into the Migration Act.

774 Section 5CA extends the range of persons who can be considered as the 'child of a person' for the purposes of the Migration Act. The section is also designed to facilitate a person having no more than two parents. The section incorporates elements of the key definition of 'child'. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

775 Subsection 5CA(1) expands the class of people who can be considered to be the child of a person to include adoptive children, and children who are the product of a relationship the person has or had as a couple with another person (whether of the same sex or a different sex). A person cannot be a product of a relationship unless he or she is the biological child of one member of the couple or was born to a woman in the relationship.

776 There are some situations where a person might be a child of more than two people as a result of the provisions of subsection 5CA(1). One example is where a child is born as a result of an artificial conception procedure using donor gametes. For the purposes of subsection 5CA(1) such a child will be the child of both of its biological parents, as well as of both members of the couple of whose relationship it is

a product. This situation may also arise in relation to whether an adopted child remains the child of his or her biological parents.

777 Subsection 5CA(2) provides that where a person would be the child of more than two persons for the purposes of the Act because of the definition of ‘child’ in the Act, regulations may specify that particular parent–child relationships will not be recognised. This will ensure that a person cannot have more than two parents for the purposes of the Migration Act.

778 Subsection 5CA(3) clarifies that regulations made under subsection (2) may specify any person as not being the child of another person for the purposes of the Migration Act whether the child relationship between the two people came within the ordinary meaning of the word ‘child’ or arose for the purposes of the Act by the operation of subsection 5CA(1).

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779 Section 5CB inserts a new definition of ‘de facto partner’ in the Migration Act. The definition is modelled on the definition of ‘de facto relationship’ in subregulation 1.15A(2) of the Migration Regulations. However, discrimination is removed by allowing de facto partners to be of the same or different sex.

780 Subsection 5CB(1) provides that a person is the de facto partner of another person, whether of the same or a different sex, if the person is in a de facto relationship (as defined in subsection (2)) with the other person.

781 Subsection 5CB(2) provides that a person is in a de facto relationship with another person if they are not in a married relationship with each other (as defined in section 5F) but meet each of four requirements:

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- they have a mutual commitment to a shared life to the exclusion of all others;
- the relationship between them is genuine and continuing;
- they live together, or do not live separately and apart on a permanent basis; and
- they are not related by family (as defined in subsection (4)).

782 Subsection 5CB(3) provides for a regulation-making power in relation to the determination of whether one or more of the conditions imposed by subsection 5CB(2) is satisfied. The regulations may make different provision in relation to this determination for different purposes, such as the assessment of eligibility for different classes of visa. This reflects the current arrangement in the Regulations, which make different provision in relation to this determination for different purposes, such as the assessment of eligibility for different classes of visa.

783 Subsection 5CB(4) sets out the circumstances in which two people are ‘related by family’ for the purposes of paragraph 5CB(2)(d). The circumstances are:

- where one is the child (including an adopted child) of the other
- where one is the descendant of the other (even if the relationship is traced through an adoptive parent)
- where they have a parent in common (who may be an adoptive parent of either or both of them).

784 In determining whether two people are ‘related by family’ for the purposes of subsection 5CB(4) it is not relevant that an adoption has been declared void or has ceased to have effect.

Item 21

785 This item inserts sections 5F and 5G into the Migration Act. Section 5F provides a definition of ‘spouse’ and section 5G provides a tracing rule for certain relationships.

786 Section 5F provides a new definition of ‘spouse’ for the Migration Act. This definition is modelled on the existing requirements for the recognition of a ‘married relationship’ in the subregulation 1.15A(1A) of the Migration Regulations.

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787 Subsection 5F(1) provides that for the purposes of the Migration Act, a person is a ‘spouse’ of another person if the two are in a ‘married relationship’.

788 Subsection 5F(2) provides that two people are in a ‘married relationship’ if they meet four requirements. The couple must:

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- be married to each other under a marriage that is valid for the purposes of the Migration Act
- have a mutual commitment to a shared life as husband and wife to the exclusion of all others
- have a genuine and continuing relationship, and
- live together, or not live separately and apart, on a permanent basis.

789 Subsection 5F(3) provides a regulation-making power in relation to the determination of whether one or more of the conditions imposed by 5F(2) is satisfied. The regulations may make different provision in relation to this determination for different purposes, such as the assessment of eligibility for different classes of visa. This reflects the current arrangement in the Regulations, which make different provision in relation to this determination for different purposes, such as the assessment of eligibility for different classes of visa.

790 A note is also included after subsection 5F(3) which draws the readers attention to the fact that section 12 also affects the determination of whether two people are validly married for the purposes of paragraph 5F(2)(a). Section 12 excludes the operation of section 88E of the *Marriage Act 1961* in the determination of validity of a marriage. Section 88E of the Marriage Act relates to the recognition of certain marriages contracted overseas.

791 Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child of a person’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

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792 Subsection 5G(1) allows relationships referred to in the Migration Act to include relationships that can be traced through relationships arising as a result of the

definition of 'child' in section 5CA. For example, in relation to a child, the other children of the parent are that child's siblings.

793 Subsection 5G(2) provides that the members of a person's family and the relatives of a person include:

- the person's de facto partner
- someone who is the child of the person, or of whom the person is a child, because of the definition of child in section 5CA, and
- anyone else who would be a member of the person's family or a relative of the person if someone mentioned in paragraphs 5G(2)(a) or 5G(2)(b) is taken to be a member of the person's family or a relative of a person.

794 For the avoidance of doubt, subsection 5G(2) also provides that the application of this provision does not limit who is a member of a person's family or relative of a person.

Item 22

795 This item omits reference to 'the spouse or a dependant of' from paragraph 36(2)(b) of the Migration Act and substitutes 'a member of the same family unit as'.

796 The purpose of this definition is to align the criteria for the grant of a protection visa in the Migration Act with the broader and more beneficial criteria for the grant of a subclass 866 (Protection) visa provided for in the Migration Regulations. The protection visa regime is designed to ensure that family members of refugees can be granted protection visas, irrespective of whether the person to whom Australia has protection obligations is the 'head' of the family unit or a child. The Migration Regulations explicitly reflect this arrangement, however, the provisions in the Migration Act are more restrictive by requiring member of the same family unit to be either the spouse or dependent of the person to whom Australia has protection obligations. This means that if a child is found to be the person to whom Australia has protection obligations, then the child's parents would not be able to satisfy the spouse or dependant requirement in the Migration Act and could not be granted a protection visa, even though they would satisfy the requirements in the Migration Regulations by being a member of the same family unit. This places limitations on the Department's ability to effectively manage family groups of refugees. This amendment removes any inconsistency between the Migration Act and the Migration Regulations, and provides the most beneficial outcome to protection visa applicants.

797 The amendments made by this item broaden the criteria for the grant of a protection visa under the Migration Act and ensure consistency with the criteria for the grant of a protection visa provided for in the Migration Regulations.

Item 23

798 This item omits reference to 'the spouse or a dependant of' from paragraph 48A(2)(ab) of the Migration Act and substitutes 'a member of the same family unit as'.

799 The purpose of section 48A of the Migration Act is to prevent, subject to section 48B, a non-citizen who has been refused a protection visa from making a further ‘application for a protection visa’ while they remain in the migration zone.

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800 Subsection 48A(2) of the Migration Act provides what an ‘application for a protection visa’ includes, and refers to the criterion in paragraph 36(2)(b) of the Migration Act which Item 22 of this Schedule broadens.

Item 24

801 This item provides that the amendments to section 36 and 48A of the Migration Act made by Items 22 and 23 apply in relation to applications for visas made on or after the commencement of the Part, and to applications for visas made before that commencement and not decided before that commencement.

802 Item 23 ensures that those who can be granted a protection visa as a result of the broadening of section 36 by Item 22 (for example, a person making a protection visa application on the basis of being the same-sex de facto partner of a person to whom Australia has protection obligations) are also covered by paragraph 48(2)(ab). That is, they are taken to have made an application for a protection visa such that the bar in section 48A will apply to them.

803 Section 48A of the Migration Act prevents certain non-citizens who made a protection visa application that was refused, from making a further application for a protection visa while in the migration zone (subject to section 48B where in certain circumstances the Minister may decide that section 48A does not apply).

804 Item 24(b) has both a beneficial and a detrimental effect. It will mean that the broader section 36 (in conjunction with consequential changes to be made to the Migration Regulations) covering same-sex de facto partners will apply to applications made before commencement of these amendments where a primary decision has not been made on the application.

805 In the same manner, the amendment to section 48A will also apply to applications made before commencement of these provisions but not decided until after commencement. Thus, if a same-sex partner is able to benefit from the application of section 36 (because they have an outstanding protection visa application at the time of commencement) they will also be caught by the application of the amendment made to subsection 48A(2) if that application is ultimately refused.

Item 25

806 Section 83(1) of the Migration Act provides that a person’s spouse is taken to be included in the spouse’s visa in certain circumstances. This item inserts the phrase ‘or de facto partner’ after each occurrence of the term ‘spouse’ in subsection 83(1) to ensure that same-sex de facto couples are covered by section 83.

Item 26

807 This item inserts a note after subsection 83(1) of the Migration Act to provide guidance on the application of the amendments to subsection 83(1) of the Migration Act of the terms ‘de facto partner’ and ‘spouse’ by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008* from 1 July 2009.

Item 27

808 Section 83(2) of the Migration provides that a person's child is taken to be included in their visa in certain circumstances. This item inserts a note after subsection 83(2) of the Migration Act to provide guidance on the application of the amendments to subsection 83(2) of the Migration Act of the terms 'child' and 'parent' by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008* from 1 July 2009.

Item 28

809 This item sets out the application of amendments to section 83 of the Migration Act by the insertion of 'de facto partner' after 'spouse' (wherever occurring) in section 83, and the application of the insertion of definitions of 'spouse' in section 5F and 'de facto partner' in sections 5CB, and 'child' and 'parent' in subsection 5(1) of the Migration Act on the meaning of those terms in section 83. These amendments apply for the purposes of section 83 in relation to visas granted on or after the commencement of Part 2 of Schedule 10 of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008*.

810 The application of the terms 'spouse', 'de facto partner', 'child' and 'parent' for the purposes of section 83 under the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008* do not limit the operation of those definitions in relation to other provision of the Migration Act.

Item 29

811 Section 84 of the Migration Act provides that the Minister may suspend the processing of visas of a certain class until a specified date by notice in the Gazette. Subsection 84(3) provides that such a notice does not have any effect in relation to an application for a visa by a person who is a spouse or dependent child of an Australian citizen, a holder of a permanent visa, or a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation imposed by law.

812 This item inserts the phrase 'or de facto partner' after 'spouse' in subsection 84(3) to ensure that same-sex de facto couples are now covered by subsection 84(3). That is, a section 84 notice to suspend processing of a visa will not have any effect in relation to visas applied for on the basis the person is the spouse, same-sex de facto or opposite-sex de facto partner of a person specified in paragraphs (3)(a)–(c).

Item 30

813 This item repeals paragraph 84(5)(a) of the Migration Act which provides '(a) is unmarried; and', and substitutes '(a) does not have a spouse or de facto partner; and'. This is consistent with the insertion of 'spouse' in section 5F and 'de facto partner' in section 5CB of the Migration Act and removes marital status discrimination. In this case, discrimination against a person who is a 'married' child of a person.

Item 31

814 This item inserts the phrase ‘or de facto partner’ after ‘spouse’ in subsection 87(1) of the Migration Act to ensure that same-sex de facto couples are now covered by subsection 87(1). That is, a section 87 limit on the number of visas that may be granted does not prevent the grant to a person who applied for a visa on the ground that he or she was the spouse, same-sex de facto partner or opposite-sex de facto partner of a person specified in paragraphs (1)(a)–(c).

Item 32

815 This item repeals paragraph 87(2)(a) of the Migration Act which provides ‘(a) is unmarried; and’, and substitutes ‘(a) does not have a spouse or de facto partner; and’. This is consistent with the insertion of ‘spouse’ in section 5F and ‘de facto partner’ in section 5CB of the Migration Act and removes marital status discrimination. In this case, discrimination against a person who is a ‘married’ child of a person.

Item 33

816 This item sets out the application of the amendments made to sections 84 and 87 of the Migration Act and the amendment to the definition of child as it applies to sections 84 and 87.

817 The item applies these amendments to visa applications made on or after commencement of the provisions and to visa applications made but not finally determined (as defined in subsection 5(9) of the Migration Act) before commencement of the provisions.

818 These application provisions have both a beneficial and a detrimental effect as follows:

Beneficial

The amendments made by items 29 and 31 will have a beneficial effect. That is, persons who now fall within the expanded definition of de facto partner (same-sex couples) who lodged a visa application that has not been finally determined before commencement of these provisions, will after commencement be exempt from the potential suspension on visa processing and ban on grant provisions in sections 84 and 87.

The amendment will also be beneficial to children who now fall within the expanded definition of a child in new section 5CA who will after commencement now also fall within the expanded definition of ‘dependent child’. For example, children who are the product of a same-sex relationship will after commencement be able to be treated as dependent children. Those children that lodged applications prior to commencement (which have not been finally determined) who were not dependent children as defined, will now be dependant children such that they may be exempt from the potential suspension on visa processing and ban on grant provisions in sections 84 and 87.

Detrimental

The amendments made by items 30 and 32 may have a detrimental affect on a limited class of applicants. They would be those children who fell within the definition of

dependent child prior to commencement who were not married but were in a de facto relationship either as a same-sex or opposite-sex relationship. A child that was a visa applicant based on being the dependent child of an Australian citizen etc where the application was not finally determined will no longer be a dependent child for the purposes of the exemptions in sections 84 and 87 of the Act if they are in a de facto partnership (either same-sex or opposite-sex). Thus, prior to commencement they may have been exempt from the potential suspension of processing and ban on grant in sections 84 and 87 whereas after commencement they will no longer be exempt.

819 Under Item 33(2), the application of the definition of 'child' in section 5(1) for the purposes of sections 84 and 87 under the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008* does not limit the operation of that definition in relation to other provisions of the Migration Act.

Item 34

820 Section 91S of the Migration Act relates to the determination of whether a person has a well-founded fear of being persecuted because of membership of a particular social group that consists of the person's family.

821 This item inserts a note after section 91S of the Migration Act which provides that the tracing rule in section 5G of the Migration Act (inserted by Item 21) may be relevant for determining family relationships for the purposes of this section. Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of 'child' in section 5CA, and because of the definition of 'de facto partner' in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 35

822 This item repeals the definition of 'member of the family unit' in subsection 134(10) of the Migration Act which states that the phrase has the meaning given by the regulations. This amendment is necessary as Item 16 of this Schedule inserts a new definition of 'member of the family unit' in subsection 5(1) which will apply to all provisions in the Migration Act.

Item 36

823 This item repeals subsection 137T(3) of the Migration Act which provides 'In this section: 'member of the family unit' has the meaning given by the regulations'. This amendment is necessary as Item 16 of this Schedule inserts a new definition of 'member of the family unit' in subsection 5(1) which will apply to all provisions in the Migration Act.

Item 37

824 This item omits '(within the meaning of the regulations)' from subsection 140(1) of the Migration Act. These words are now unnecessary in subsection 140(1) of the Migration Act as a result of the new definition of 'member of the family unit' inserted into subsection 5(1) of the Migration Act by Item 16 of this Schedule.

Item 38

825 Section 192 of the Migration Act relates to detention of visa holders whose visas are liable to cancellation. Subsection 192(5) provides that in certain circumstances a non-citizen detained under subsection (1) must be released from detention within 4 hours after being detained. Paragraph 192(7)(b) provides that any time during which questioning is suspended or delayed in order to allow the non-citizen to communicate with a relative is disregarded for the purposes of subsection 192(5).

826 This item inserts a note after subsection 192(7) of the Migration Act that provides that the tracing rule, in section 5G of the Migration Act (inserted by Item 21) may be relevant for determining family relationships for the purposes of paragraph 192(7)(b) of the Migration Act. Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of 'child' in section 5CA, and because of the definition of 'de facto partner' in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 39

827 This item inserts the phrase 'or de facto partner' after 'spouse' (wherever occurring) in subsections 199(1) and (2) and 205(1) and (2) of the Migration Act. This amendment is necessary to incorporate the new definition of 'de facto partner' in section 5CB that includes persons in same-sex relationships as well as opposite-sex relationships.

Item 40

828 Subsections 211(1) and (2) of the Migration Act relate to the liability of non-citizens for the costs of their detention. Under these provisions, non-citizens are liable for the costs of their detention and that of their spouse within the meaning of the Migration Regulations, and their dependent children.

829 This item omits 'the spouses of each other within the meaning of the regulations' and substitutes 'spouses or de facto partners of each other' in paragraphs 211(1)(a) and (2)(a) of the Migration Act. This amendment is necessary to incorporate the new definition of 'de facto partner' in section 5CB that includes persons in same-sex relationships as well as opposite-sex relationships.

830 Item 40 also includes a note that amends the heading to section 211 by inserting 'de facto partners' after 'spouses'.

Item 41

831 Subsection 211(3) of the Migration Act relates to the liability of non-citizens for the costs of their detention. Under this provision, where a non-citizen does not have a spouse within the meaning of the Migration Regulations, or their spouse is not detained, the detained non-citizen is liable for the costs of their own detention and that of their dependent children.

832 This item omits ‘spouse within the meaning of the regulations’ and substitutes it with ‘spouse or de facto partner’ in subparagraph 211(3)(b)(i) of the Migration Act. This amendment is necessary to incorporate the new definition of ‘spouse’ and of ‘de facto partner’ that have been included in new sections 5F and 5CB respectively, and inserted by Items 20 and 21 of this Schedule.

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Item 42

833 This item omits ‘such a spouse’ and substitutes ‘a spouse, or a de facto partner,’ in subparagraph 211(3)(b)(ii) of the Migration Act. This amendment is necessary to incorporate the new definition of ‘de facto partner’ in section 5CB that includes persons in same-sex relationships as well as opposite-sex relationships.

Item 43

834 This provides that the application of amendments to section 211 of the Migration Act made by Part 2 of Schedule 10 apply in relation to detention starting on or after the commencement of Part 2. That is, liability for detention costs will extend to same-sex de facto partners for detention which commences after the commencement of Part 2 in addition to married and de facto opposite-sex couples.

Item 44

835 Subsections 212(1) and (2) of the Migration Act relate to the liability of non-citizens for the costs of removal or deportation. Under these provisions, non-citizens are liable for the costs of removal or deportation of themselves, their spouse within the meaning of the Migration Regulations, and their dependent children.

836 This item omits ‘the spouses of each other within the meaning of the regulations’ and substitutes ‘spouses or de facto partners of each other’ in paragraphs 212(1)(a) and (2)(a) of the Migration Act. That is, liability for removal and deportation costs will extend to same-sex de facto partners for removal and/or deportation occurring after the commencement of Part 2 in addition to married and de facto opposite-sex couples.

837 Item 44 also includes a note that amends the heading to section 212 by inserting ‘de facto partners’ after ‘spouses’.

Item 45

838 Subsection 212(3) of the Migration Act relates to the liability of non-citizens for the costs of their removal or deportation. Under this provision, where a non-citizen does not have a spouse within the meaning of the Migration Regulations, or their spouse is not removed or deported, the detained non-citizen is liable for the costs of their own removal or deportation and that of their dependent children.

839 This item omits ‘spouse within the meaning of the regulations’ and substitutes it with ‘spouse or de facto partner’ in subparagraph 212(3)(b)(i) of the Migration Act. This amendment is necessary to incorporate the new definition of spouse and of de facto partner that have been included in new sections 5F and 5CB respectively, and inserted by Items 20 and 21 of this Schedule.

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Item 46

840 This item omits ‘such a spouse’ and substitutes it with ‘a spouse, or de facto partner,’ in subparagraph 212(3)(b)(ii) of the Migration Act. This amendment is necessary to incorporate the new definition of ‘de facto partner’ that includes persons in same-sex relationships as well as opposite-sex relationships.

Item 47

841 This item provides that the application of amendments to section 212 of the Migration Act by this Bill apply in relation to removal and deportation on or after the commencement of this Part. Section 212 deals with liability for the cost of removal or deportation.

Item 48

842 Section 237 of the Migration Act describes the reason for the enactment of offence provisions in Subdivision B of Division 12 of the Migration Act relating to the abuse of laws allowing spouses and de facto partners of Australian citizens or of permanent residents to become permanent residents.

843 This item omits ‘married to, or is the de facto spouse of, and has a genuine and continuing marital relationship’ and substitutes ‘the spouse or de facto partner of, and has a genuine and continuing relationship, involving a shared life to the exclusion of all others’ in paragraph 237(a) of the Migration Act. This amendment is necessary to incorporate the new definition of spouse and of de facto partner that have been included in new sections 5F and 5CB inserted by Items 20 and 21 of this Schedule.

Item 49

844 This item repeals paragraph 237(b) of the Migration Act. Paragraph 237(b) refers to criteria in the Regulations relating to interdependent relationships which were used to recognise same-sex relationships. As the Migration Act and Regulations will now recognise same-sex partners as de facto partners, this provision is no longer necessary.

Item 50

845 This item repeals subparagraphs 237(c)(i), (ii) and (iii) of the Migration Act and substitutes: ‘(i) entering into a married relationship that is not intended to be a genuine and continuing relationship involving a shared life to the exclusion of all others; or (ii) pretending to be a de facto partner of another person.’ This provision has been rationalised to pick up language consistent with the definition of spouse in new section 5F, and to pick up the definition of de facto partner in new section 5CB.

Item 51

846 This item repeals the definition of ‘interdependency relationship’ in section 238 of the Migration Act. The definition of ‘interdependency relationship’ applied to people in same-sex relationships, and is no longer relevant with the insertion ‘de facto partner’ in section 5CB of the Migration Act which applies to couples in de facto relationships of the same or opposite sex.

Item 52

847 Section 241 of the Migration Act provides that it is an offence to arrange a pretended de facto relationship to obtain permanent residence. Where a person knows or believes on reasonable grounds that 2 other persons are not de facto spouses of each other for the purposes of the Migration Regulations, the person must not make arrangements that make, or help to make, it look as if those other persons are such spouses with the intention of assisting one of those other persons to get a stay visa by appearing to satisfy a criterion for the visa because of being such spouses.

848 This item omits 'de facto spouses of each other for the purposes of the regulations' and substitutes 'de facto partners of each other' in subsection 241(1) of the Migration Act. This is a consequential amendment flowing from Item 20, which inserts a definition of de facto partner in new section 5CB.

Item 53

849 This item omits 'such spouses' (wherever occurring) and substitutes 'such de facto partners' in subsection 241(1) of the Migration Act. This is a consequential amendment flowing from Item 20, which inserts a definition of de facto partner in new section 5CB.

Item 54

850 This item repeals section 242 of the Migration Act which is redundant with the commencement of Item 53 of Part 2 of Schedule 10. As the Migration Act and Regulations will now recognise same-sex partners as de facto partners, this provision is no longer necessary.

Item 55

851 This item omits 'married to, or being, for the purposes of the regulations, the de facto spouse of,' and substitutes 'the spouse or de facto partner of' in subsection 243(1) of the Migration Act. This is a consequential amendment flowing from the new definitions of 'spouse' and 'de facto partner' that have been included in new sections 5F and 5CB respectively, and inserted by Items 20 and 21 of this Schedule.

Item 56

852 Section 243 of the Migration Act provides for offences relating to an application for permanent residence in Australia because of marriage or de facto relationship. Subsection 243(1) requires that a person must not apply for a stay visa (as defined in section 238) on the basis of satisfying a criterion for the visa because of being married to, or being, for the purposes of the Migration Regulations, the de facto spouse of, another person if, at the time of the application, the applicant does not intend to live permanently with the other person in a genuine and continuing marital relationship. 'Marital relationship' is defined in the Migration Regulations to include de facto relationships. The effect of the provision is that it is an offence to seek a stay visa based on a 'sham' marriage or de facto relationship.

853 This item omits ‘genuine and continuing marital relationship’ and substitutes ‘married relationship (within the meaning of subsection 5F(2)) or de facto relationship (within the meaning of subsection 5CB(2)), as appropriate’ in subsection 243(1) of the Migration Act. The amendment updates the language of subsection 243(1) to reflect the inclusion of definitions of ‘spouse’ and ‘de facto partner’ inserted into the Migration Act as sections 5F and 5CB by Items 20 and 21 of this Schedule.

Item 57

854 This item omits ‘married to, or being, for the purposes of the regulations, the de facto spouse of,’ and substitutes ‘the spouse or de facto partner of’ in subsection 243(3) of the Migration Act as a consequence of the insertion of definitions of ‘spouse’ and ‘de facto partner’ inserted into the Migration Act as sections 5F and 5CB by Items 20 and 21 of this Schedule.

Item 58

855 Section 243 of the Migration Act provides for offences relating to an application for permanent residence in Australia because of marriage or de facto relationship. Subsection 243(3) requires that a person must not nominate an applicant for a stay visa (as defined in section 238) on the basis of the applicant satisfying a criterion for the visa because of being married to, or being, for the purposes of the Migration Regulations, the de facto spouse of, the person if, at the time of the application, the person does not intend to live permanently with the applicant in a genuine and continuing ‘marital relationship’. ‘Marital relationship’ is defined in the Migration Regulations to include de facto relationships.

856 This item omits ‘genuine and continuing marital relationship’ and substitutes ‘married relationship (within the meaning of subsection 5F(2)) or de facto relationship (within the meaning of subsection 5CB(2)), as appropriate’ in subsection 243(3) of the Migration Act. The amendment updates the language of subsection 243(3) to reflect the inclusion of definitions of ‘spouse’ and ‘de facto partner’ inserted into the Migration Act as sections 5F and 5CB by Items 20 and 21 of this Schedule.

Item 59

857 This item repeals subsection 244 of the Migration Act. As the Migration Act and Regulations will now recognise same-sex partners as de facto partners, this provision is no longer necessary.

Item 60

858 Section 245 of the Migration Act provides for offences of making statements or providing information that is false or misleading in a material particular to the effect that a person is in a married, de facto or interdependency relationship. This item omits ‘have a genuine and continuing marital relationship between them’ and substitutes ‘are in a married relationship (within the meaning of subsection 5F(2))’ in paragraph 245(1)(a) of the Migration Act to reflect the definition of ‘spouse’ inserted as section 5F by Item 21 of this Schedule.

Item 61

859 This item repeals paragraphs 245(1)(b) and (c) of the Migration Act, which relate to de facto relationships and interdependency relationships, and substitutes a new paragraph (b) to cover de facto relationships as defined in section 5CB. The paragraph will provide that a person must not make statements or provide information that is false or misleading in a material particular to the effect that other persons are in a de facto relationship (within the meaning of subsection 5CB(2)) with one another.

860 New paragraph 245(1)(b) incorporates the requirements of the new definition of 'de facto partner' in section 5CB inserted by Item 20 of this Schedule. The repeal of paragraph 245(1)(c) is necessary to remove the reference to interdependency relationships, which are now covered by the definition of de facto partner.

Item 62

861 This item omits 'have a genuine and continuing marital relationship between them' and substitutes 'are in a married relationship (within the meaning of subsection 5F(2))' in paragraph 245(3)(a) of the Migration Act to reflect the definition of 'spouse' inserted as section 5F by Item 21 of this Schedule.

Item 63

862 Subsection 245(3) of the Migration Act requires that a person must not make statements or provide information that is false or misleading in a material particular to the effect that a person is in a married, de facto or interdependency relationship. This item repeals paragraphs 245(3)(b) and (c) of the Migration Act, which relate to de facto relationships and interdependency relationships, and substitutes a new paragraph (b) to cover de facto relationships as defined in section 5CB. The paragraph will provide that a person must not make statements or provide information that is false or misleading in a material particular to the effect that other persons are in a de facto relationship (within the meaning of subsection 5CB(2)) with one another.

863 New paragraph 245(3)(b) incorporates the requirements of the new definition of 'de facto partner' in section 5CB inserted by Item 20 of this Schedule. The repeal of paragraph 245(3)(c) is necessary to remove the reference to interdependency relationships, which are now covered by the definition of de facto partner.

Item 64

864 This item is an application provision that provides that the amendments to Subdivision B of Division 12 of Part 2 of the Migration Act made by Items 48–63 of this Schedule apply in relation to visas applied for on or after the commencement of this Part.

Item 65

865 Subsection 338(6) of the Migration Act provides that a decision to refuse a non-citizen a visa is reviewable by the Migration Review Tribunal where a number of conditions are satisfied, including that a parent, spouse, child, brother or sister of the non-citizen is an Australian citizen or an Australian permanent resident. This item inserts 'de facto partner,' after 'spouse' in paragraph 338(6)(c) of the Migration Act.

This amendment is consequential to the inclusion of the new definition of ‘de facto partner’ in section 5CB of the Migration Act made by Item 20 of this Schedule.

Item 66

866 This item inserts a note at the end of subsection 338(6) of the Migration Act that states that section 5G may be relevant for determining family relationships for the purposes of subsection 338(6). Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 67

867 This item inserts ‘de facto partner,’ after ‘spouse,’ in paragraph 338(7)(b) of the Migration Act. This amendment is consequential to the inclusion in the Migration Act (by Item 20) of the new definition of ‘de facto partner’ in section 5CB.

Item 68

868 This item inserts a note at the end of subsection 338(7) of the Migration Act that states that section 5G may be relevant for determining family relationships for the purposes of subsection 338(7). Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 69

869 This item is an application provision that provides that the amendments to section 338 of the Migration Act made by Part 2 of Schedule 2 apply in relation to decisions made on or after the commencement of that Part.

Item 70

870 Paragraph 347(2)(c) of the Migration Act provides that if a decision that is reviewable by the Migration Review Tribunal is covered by subsection 338(6) or 338(7), an application for review of that decision may only be made by the relative referred to in subsection 338(6) or 338(7).

871 This item inserts a note at the end of subsection 347(2) of the Migration Act that states that section 5G may be relevant for determining family relationships for the purposes of subsection 347(2). Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 71

872 Section 431 of the Migration Act provides that the Migration Review Tribunal Registrar must ensure the publication of Migration Review Tribunal decisions (including the decision of the Tribunal, the reasons for its decision, the findings on any material questions of fact, and references to the evidence or any other material on which the findings of fact were based) that the Principal Member thinks are of particular interest. Subsection 431(2) provides that the Tribunal must not publish any such decision which may identify an applicant or any relative or dependent of an applicant.

[873](#) This item inserts a note at the end of subsection 431(2) of the Migration Act that section 5G may be relevant for determining family relationships for the purposes of this subsection. Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

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Item 72

874 This item omits ‘, 243 or 244’ in subsection 492(2) of the Migration Act and substitutes ‘or 243’ and is a consequential amendment as a result of the amendment by Item 59 to repeal section 244 of the Migration Act.

Item 73

875 Subsection 501K(2) of the Migration Act provides that the Administrative Appeals Tribunal must not publish any information which may identify an applicant for a protection visa or a protection-related bridging visa, or a person whose protection visa or protection-related bridging visa has been cancelled. In addition, the Tribunal must not publish any information relating to a relative of the person.

876 This item inserts a note at the end of subsection 501K(2) of the Migration Act that section 5G may be relevant for determining family relationships for the purposes of this subsection. Section 5G extends the meaning of ordinary concepts of family and relatives by allowing these relationships to be traced through relationships which arise because of the extended definition of ‘child’ in section 5CA, and because of the definition of ‘de facto partner’ in section 5CB, in addition to relationships which are already recognised. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 74

877 This item omits ‘married or being the de facto spouse’ and substitutes ‘the spouse or de facto partner’ in subsection 507(1) of the Migration Act. This amendment is necessary to incorporate the new definition of ‘spouse’ and of ‘de facto partner’ that have been included in new sections 5F and 5CB respectively, and inserted by Items 20 and 21 of this Schedule.

Item 75

878 This item omits ‘de facto spouse’ and substitutes ‘de facto partner’ in paragraph 507(1)(a) of the Migration Act. This amendment is consequential to the inclusion in the Migration Act of the new definition of ‘de facto partner’ in new section 5CB inserted by Item 20 of this Schedule.

Division 2–Consequential amendment

Australian Citizenship Act 2007

Item 76

879 This item is a consequential amendment and omits ‘, 243 or 244’ in subparagraph 34(6)(a)(i) in the Citizenship Act 2007 and substitutes ‘or 243, or former section 244 (as in force before its repeal by the *Same-sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008*),’. This maintains the ability of the Minister to revoke a person’s Australian citizenship if the person obtained the Minister’s approval to become an Australian citizen as a result of migration-related fraud by being convicted (at any time) of an offence against current provisions of the Migration Act and former section 244.

Part 3

Immigration (Education) Act 1971

880 The purpose of the *Immigration (Education) Act 1971* is to facilitate in some cases, or require in others, the provision of English courses, English tuition and citizenship courses to certain non-citizens by the Minister for Immigration and Citizenship or the Commonwealth.

881 The Immigration (Education) Act provides for access to English courses and citizenship courses, or teaching and learning materials only to a child under 18 in certain circumstances and dependent on whether the child has a parent who has held or holds a permanent entry permit or a permanent visa. In order to maintain consistency with the Migration Act and to remove discrimination against same-sex de facto couples and their children, amendments provide for the terms ‘child’ and ‘parent’ to take their meaning from the Migration Act.

Item 77

882 This item inserts a definition of ‘child’ into the Immigration (Education) Act referring to the definition in the Migration Act. Item 20 of this Schedule amends the definition in the Migration Act to be non-discriminatory in relation to the children of married, same-sex de facto and opposite-sex de facto couples.

Item 78

883 This item inserts a definition of ‘parent’ into the Immigration (Education) Act referring to the definition in the Migration Act. Item 18 of this Schedule amends the

definition in the Migration Act to be non-discriminatory to cover married parents, opposite sex and same-sex de facto parents.

Part 4

Immigration (Guardianship of Children) Act 1946

884 The purpose of the *Immigration (Guardianship of Children) Act 1946* is to ensure that unaccompanied non-citizen minors have a legal guardian in Australia. The Minister for Immigration and Citizenship is the legal guardian of minors to whom the Immigration (Guardianship of Children) Act applies.

885 The Immigration (Guardianship of Children) Act provides for an unaccompanied minor entering Australia to have a legal guardian in Australia. From the commencement of these amendments the non-biological parent of a minor, or the non-biological birth mother and her partner where neither of them are biologically related to the child and the child is the product of their relationship, will be recognised as the legal guardian of the minor. These amendments also provide for relatives of the minor to include those who would be relatives were they married to the minor's blood relatives but who are instead in a de facto relationship with the minor's blood relative (including a same-sex de facto relationship).

Item 79

886 This item inserts a definition of 'parent' into section 4 of the Immigration (Guardianship of Children) Act. The definition expands the classes of person that may be taken to be a parent of a child. The definition does not limit who can be considered to be a parent of a person for the purposes of the Immigration (Guardianship of Children) Act.

887 The definition provides that a parent includes a person who is a parent of a child where that child is the product of a relationship the person has or had as a couple with another person. The other person making up the couple may be the same sex or the opposite sex of the other person. To be a 'product of the relationship', the child must be the biological child of one of the persons in the relationship or have been born to a woman in the relationship. This definition draws on the key definitions of 'child' and 'parent'. A description of these definitions can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 80

888 This item inserts a new definition of 'relative' in the Immigration (Guardianship of Children) Act. The definition expands the ordinary meaning of 'relative' to include someone within the expanded definition of 'parent' in section 4 of the Immigration (Guardianship of Children) Act, and anyone who is a step-parent of the person or who would be except that he or she is not legally married to his or her de facto partner within the meaning of that term in the Acts Interpretation Act. That definition includes persons in a same-sex or opposite-sex de facto relationship.

889 In addition, paragraph (c) of the definition includes a tracing rule that allows relationships to be traced through the relationships in paragraphs (a) and (b). For example, in relation to a child, the other children of the parent are that child's siblings, and are therefore relatives for the purposes of this definition. A description of the

tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 81

890 This item amends section 6 of the Immigration (Guardianship of Children) Act to replace the gender-specific terms ‘father and mother’ with the gender-neutral term ‘parents’. This also gives recognition to the new definition of parent in section 4 inserted by Item 79 of this Schedule.

Item 82

This item provides that the amendments made by Part 4 of Schedule 10 apply in relation to persons under 18 who enter Australia on or after commencement.

Schedule 11—Infrastructure, Transport, Regional Development and Local Government amendments

891 This Schedule contains amendments to the following Acts within the Infrastructure, Transport, Regional Development and Local Government portfolio to remove differential treatment of same-sex couples and their children:

- *Civil Aviation (Carriers' Liability) Act 1959*
- *Airports Act 1996*, and
- *Navigation Act 1912*.

Part 1—Carriers liability amendments (commencing either on commencement of this Bill or the Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Bill 2008, whichever is later).

Civil Aviation (Carriers' Liability) Act 1959

892 The *Civil Aviation (Carriers' Liability) Act 1959* (the CACL Act) implements various international agreements setting out the liability of an air carrier for the death, injury or delay of a passenger. Damage and delay to baggage and cargo are also covered by the agreements implemented under the Act. Generally the amendments to the CACL Act will allow an air crash victims' same-sex partner and their family to enforce liability against the air carrier in accordance with the provisions of the Act.

893 The Parliament recently passed legislation to amend the CACL Act to implement the 1999 Montreal Convention on carriers' liability, which is the most recent and modern international agreement on carriers' liability, providing for a system of unlimited airline liability. Although the amendments to the CACL Act that are necessary to implement the Montreal Convention have been passed by the Parliament, the Convention has not yet entered into force for Australia internationally, and the operative provisions of the Montreal Convention legislation have therefore not yet commenced operation.

894 In addition to implementing various international agreements on carriers' liability, the CACL Act establishes a separate system of liability to deal with domestic interstate flights, which is complemented by state government legislation for intra-state travel. The CACL Act also creates a non voidable insurance system for passenger liability (also complemented by state government legislation).

Item 1

895 This item replaces the term 'de facto spouse' with 'de facto partner' in the definition of 'family member' at subsection 5(2)(a). It will expand the range of persons to be considered a family member under the CACL Act to include the same-sex partner of a passenger. The definition of 'de facto partner' will be inserted by either Item 4 or 9 of this Schedule, depending on whether Part 2 or 3 of this Schedule commences.

Item 2

896 This item expands the tracing rule at subsection 5(3) in the definition of ‘family member’. It will expand the range of persons to be considered a family member under the CACL Act by allowing the relationships listed at subsection 5(2) to be traced through the definition of ‘parent’ and ‘child’ to be inserted by Items 3 and 5 of this Schedule or Items 8 and 10 of this Schedule (depending on whether Part 2 or 3 of this Schedule commences). A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Part 2—Carriers liability amendments (if the Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008 commences earlier than this Bill)

Item 3

897 This item inserts the key definition of ‘child’ into subsection 5(1) of the CACL Act. This will extend the range of persons who can be considered a ‘family member’ under the CACL Act to include a child who is a product of a relationship a passenger has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 4

898 This item inserts the key definition of ‘de facto partner’ into subsection 5(1) of the CACL Act, the definition provides that ‘de facto partner’ has the meaning given in the Acts Interpretation Act. This will extend the range of persons who can be considered a family member under the Act to include someone who is in a same-sex relationship with a passenger. A description of the key definition of a ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

899 This item inserts the key definition of ‘parent’ into subsection 5(1) of the CACL Act. It extends the range of persons who can be considered a family member in the Act to include someone who is the parent of a child within the meaning of the definition inserted by Item 3. A description of the key definition of a ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

900 This item inserts the key definition of ‘stepchild’ into subsection 5(1) of the CACL Act. It extends the range of persons who can be considered a family member in the Act to include someone who would be considered the stepchild of a passenger but for the fact that the passenger and the other member of a de facto relationship were not married. A description of the key definition of a ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 7

901 This item inserts the key definition of ‘step-parent’ into subsection 5(1) of the CACL Act. It extends the range of persons who can be considered a family member in the Act to include someone who would be considered the step-parent of a passenger but for the fact that the passenger and the other member of a de facto relationship were not married. A description of the key definition of a ‘step-parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Part 3—Carriers liability amendments (if the Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008 commences later than this Bill).

Item 8

902 This item inserts the key definition of ‘child’ into section 5 of the CACL Act. This will extend the range of persons who can be considered a ‘family member’ under the CACL Act to include a child who is a product of a relationship the person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 9

903 This item inserts the key definition of ‘de facto partner’ into section 5 of the CACL Act, the definition provides that ‘de facto partner’ has the meaning given in the Acts Interpretation Act. This will extend the range of persons who can be considered a family member under the Act to include someone who is in a same-sex relationship with a passenger. A description of the key definition of a ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 10

904 This item inserts the key definition of ‘parent’ into section 5 of the CACL Act. It extends the range of persons who can be considered a family member in the Act to include someone who is the parent of a child within the meaning of the definition inserted by item three. A description of the key definition of a ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 11

905 This item inserts the key definition of ‘stepchild’ into subsection 5(1) of the CACL Act. It extends the range of persons who can be considered a family member in the Act to include someone who would be considered the stepchild of a passenger but for the fact that the passenger and the other member of a de facto relationship were not married. A description of the key definition of a ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 12

906 This item inserts the key definition of ‘step-parent’ into subsection 5(1) of the CACL Act. It extends the range of persons who can be considered a family member

in the Act to include someone who would be considered the step-parent of a passenger but for the fact that the passenger and the other member of a de facto relationship were not married. A description of the key definition of a 'step-parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 13

907 This item replaces subsection 12(5) and lists those classes of people to be considered as members of a passenger's family for the purposes of liability in respect of a passenger's death imposed by the Convention. The item also inserts a tracing rule that will allow the passenger's relationship with a family member to be traced through the definition of 'parent' and 'child', ex-nuptial relationships and relationships by adoption as they relate to a passenger. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 14

908 This item replaces subsection 35(5) and lists those classes of people to be considered as members of a passenger's family for the purposes of liability in respect of a passenger's death imposed by the Part IV of the CACL Act. The item also inserts a tracing rule that will allow the passenger's relationship with a family member to be traced through the definition of 'parent and 'child', ex-nuptial relationships and relationships by adoption as they relate to a passenger. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Part 4—Other Amendments

Airports Act 1996

909 The *Airports Act 1996* sets up a system for regulating leased Federal airports. The Airports Act is being amended to change the meaning of 'relative' in clause 2 of the Schedule that relates to ownership definitions. Under the new definition, the term 'relative' will include 'a de facto partner of the person within the meaning of the Acts Interpretation Act. A de facto partnership in the Acts Interpretation Act is gender neutral and applies to both same-sex and opposite-sex couples.

910 In the context of the ownership provisions of the Airports Act, same-sex partners are now explicitly included within the definition of an 'associate'. This amendment removes an ambiguity in the Airports Act where an 'associate' included a partner but did not indicate if a same-sex partner would satisfy the definition. The amendments also insert definitions of 'child' and 'parent'.

Item 15

911 This item amends clause 2 of the Schedule to the Airports Act as a consequence of the insertion of subclause 2(2) by Item 21 of this Schedule.

Item 16

912 This item inserts the key definition of ‘child’ into clause 2 of the Schedule to the Airports Act. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 17

913 This item inserts the key definition of ‘parent’ into clause 2 of the Schedule to the Airports Act. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 18

914 Paragraph (b) of the definition of ‘relative’ in clause 2 of the Schedule to the Airports Act provides that ‘relative’ includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person. This definition extends to married couples and to opposite-sex de facto couples, but does not extend to same-sex de facto couples because of the words ‘as the husband or wife’.

915 This item repeals paragraph (b), and substitutes a paragraph referring to a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 19

916 Paragraph (d) of the definition of ‘relative’ in clause 2 of Schedule 1 of the Airports Act provides that ‘relative’ includes a son, daughter, or remoter issue of a person. The ordinary meaning of the terms ‘son’ and ‘daughter’ does not extend to the children of same-sex couples.

917 In order to recognise the children of same-sex couples, this item omits the words ‘son, daughter’ from paragraph (d) the definition of ‘relative’ and replaces them with the term ‘child’. This amendment makes it clear that the provision applies to children of a person because of the definition of ‘child’ in clause 2 of the Schedule to the Act, inserted by Item 16 of this Schedule.

Item 20

918 This item inserts a note at the end of the definition of ‘relative’ in clause 2 of the Schedule to the Airports Act to alert the reader to the possibility that subclause 2(2), which provides a tracing rule for determining when certain family relationships are recognised, may affect the categories of relationship referred to in this definition.

919 Subclause 2(2) is inserted by Item 21 of this Schedule.

Item 21

920 This item inserts subclause 2(2) into clause 2 of the Schedule to the Airports Act which provides a tracing rule in order to recognise certain family relationships. The subsection provides that if one person is the child of another person because of the definition of ‘child’ in subclause 2(1), that relationships traced to or through that

person are to be determined on the basis that the person is the child of the other person.

921 A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 22

922 This item inserts a transitional provision, which is required because there are criminal sanctions for breach of some of the ownership provisions. A six-month transitional period is included to allow for potential breaches that arise as a result of the amendments to the Airports Act. This will provide time for a person to remedy the situation.

Navigation Act 1912

923 The *Navigation Act 1912* provides the legislative basis for many of the Commonwealth's responsibilities for maritime matters including ship safety, the coasting trade, employment of seafarers. It also regulates a range of administrative measures relating to ships and seafarers.

924 The following provisions of the Navigation Act are being amended to remove discrimination against people in same-sex relationships and their families:

- the allotment of a seaman's wages
- the payment of costs related to the 'hurt or injury' of a seaman, including, in the event of a seaman's death, the costs associated with the transport of the seaman's body to port, if this has been requested by a member of the seaman's 'family'
- the disposal of a seaman's property to members of the seaman's family (including a widow, widower or child) following the death of the seaman, including in the context of claims by creditors, and
- compensation for any public body or institution for the relief of destitute persons in Australia from a seaman's wages for 'any sums properly expended during the seaman's absence in the maintenance of those members of the seaman's family' (including any children or stepchildren).

925 The amendments to the Navigation Act insert new definitions of child, de facto partner, parent, stepchild, as well as clarifying the meaning of 'members of a person's family' and 'next of kin'. The amendments also omit expressions relating to 'widow/widower' and 'related to the testator by blood or marriage' and substitute the expressions 'the deceased's spouse or de facto partner' and 'a relative of the testator' respectively. These amendments ensure that a same-sex partner would satisfy the various definitions.

Item 23

926 This item inserts the key definition of 'child' into subsection 6(1) of the Navigation Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 24

927 This item inserts the key definition of ‘de facto partner’ into subsection 6(1) of the Navigation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 25

928 This item inserts the key definition of ‘parent’ in subsection 6(1) of the Navigation Act. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 26

929 This item inserts the key definition of ‘stepchild’ in subsection 6(1) of the Navigation Act. This term is defined to ensure that a child of an opposite-sex or same-sex de facto relationship is considered the stepchild of a new partner who is in a de facto relationship with a person from the original relationship. This definition seeks to address a situation where a person would be considered a step-child but for the parent of the child being legally married to the partner. A description of the definition of ‘stepchild’ can be found in the Key Definition and Concepts section of this Explanatory Memorandum.

Item 27

930 This item inserts section 6(8) to extend the meaning of the phrase ‘members of a person’s family’ for the purposes of the Navigation Act. The ordinary meaning of ‘family’ may not extend to same-sex de facto partners, children of same-sex relationships, and relationships traced through those relationships. Subclause 6(8) extends the ordinary meaning of ‘members of a person’s family’ to include a de facto partner, a child of the person and anyone else that is considered to fall within this category when the de facto partner or child is recognised as ‘a member of a person’s family’. That is, where a de facto partner is recognised as family his or her relationships are also taken into consideration when further determining the other members of a person’s family.

931 A description of the tracing rule used in subparagraph 6(8)(c) can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 28

932 This item inserts a note at the end of subsection 7(1) of the Navigation Act to alert the reader to the possibility that subclause 6(8), which provides a tracing rule for determining when certain family relationships are recognised, may affect the scope of the meaning ‘member of the family’ in subparagraph 7(1)(d)(i).

933 Subclause 6(8) is inserted by Item 27 of this Schedule.

Item 29

934 Section 70 of the Navigation Act provides that a seaman may make stipulations for the allotment and payment of portion of his or her wages as a seaman to certain persons. Subparagraph 70(1)(a)(i) currently provides that a seaman may make such a

stipulation for his or her grandparent, parent, wife, husband, brother, sister, child or grandchild. However, the provision does not extend to de facto partners of a seaman.

935 This item inserts the term ‘de facto partner’ after ‘husband’ in subparagraph 70(1)(a)(i) in order to remove this marital status discrimination. A definition of ‘de facto partner’ is inserted into subsection 6(1) of the Navigation Act by Item 24 of this Schedule.

Item 30

936 As described at Item 29 above, section 70 of the Navigation Act allows a seaman to make stipulation of the payment of his or her wages to certain persons. A number of family relationships, such as ‘grandparent’ and ‘grandchild’ are listed in subparagraph 70(1)(a)(i) for this purposes. However, the ordinary meanings of these terms do not extend to relationships traced through same-sex relationships.

937 This item inserts a tracing rule into the Navigation Act as subclause 70(5). The subclause provides that for the purposes of subparagraph 70(1)(a)(i), if one person is the child of another person because of the definition of ‘child’ in the Navigation Act, that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

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938 A definition of ‘child’ is inserted by Item 23 of this Schedule.

Item 31

939 Subparagraph 127(1)(f) of the Navigation Act provides that if a seaman dies before reaching port, a ship owner must defray the cost of his or her burial or, if requested by the seaman’s family, the cost of the transport of his or her body to port without deduction from his or her wages. However, the ordinary meaning of ‘member of his or her family’ may not recognise relationships between same-sex couples or their children.

940 This item inserts a note at the end of subsection 127(1) of the Navigation Act to alert the reader to the possibility that subclause 6(8), which provides a tracing rule for determining when certain family relationships are recognised, may affect the scope of the meaning of ‘member of his or her family’ in the subsection. Subclause 6(8) is inserted by Item 27 of this Schedule.

Item 32

941 Subparagraph 156(1)(b)(i) of the Navigation Act provides that in certain circumstances the property of a deceased seaman may be paid or delivered to his or her widow, widower or child. The ordinary meaning of the terms widow or widower does not extend to the de facto partner (of the same or opposite-sex) of a deceased person.

942 This item repeals the phrase ‘be the widow, the widower or’ at subparagraph 156(1)(b)(i) and substitutes the phrase ‘to have been the deceased’s spouse or de facto partner immediately before the deceased’s death, to be...’ The amendment ensures that the de facto partners of deceased sailors receive the same entitlements as married partner of deceased sailors. A definition of ‘de facto partner’ is inserted by Item 24 of this Schedule.

Item 33

943 This item provides that the amendment to section 156 of the Navigation Act made by Item 32 of this Schedule only applies in relation to a seaman who dies on or after the commencement of the amendment.

Item 34

944 Section 157 of the Navigation Act provides that in certain circumstances the Authority (the Australian Maritime Safety Authority) may refuse to pay or deliver the residue of the property of a deceased sailor to a person claiming under a sailor's will, if they are not related 'by blood or marriage'. The ordinary meaning of this phrase may not extend to same or opposite-sex de facto partners of a sailor.

945 This item repeals the phrase 'related to the testator by blood or marriage' and substitutes it with the words 'relative of the testator' in subparagraph 157(1)(b) of the Navigation Act. This amendment expands the types of relationships one may have with the testator as recognised by the Navigation Act to also include relationships not based on blood or marriage.

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946 Subclause 157(3), which is inserted by Item 35 of this Schedule, affects the meaning of 'relative' for the purposes of paragraph 157(1)(b).

Item 35

947 This item provides that certain relationships should be taken into account in determining whether a person is a 'relative of the testator' for the purposes of section 157. A 'relative of the testator' expands the relationship from being one based on 'blood or marriage' to also include:

- the de facto partner of the testator (within the meaning of the Acts Interpretation Act)
- someone who is the child of the testator, or of whom the testator is a child, because of the definition in section 6, and
- anyone else who would be a relative of the person because someone mentioned in paragraph (a) or (b) is taken into account.

948 A description of the tracing rule may be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 36

949 This item provides that the amendments made to section 157 by Items 34 and 35 of this Schedule apply only in relation to wills made on or after the commencement of the amendments.

Item 37

950 Section 158 makes provision in relation to creditors' claims on the property of a deceased seaman. Subsection 158(6) provides that the Authority may delay the investigation of any demand made by a creditor for the payment of his or her debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the property of the deceased is made by any person as widow, widower, next of kin, or legatee, and allowed by the Authority, the Authority may pay

and deliver it to that person. The ordinary meaning of the terms 'widow' and 'widower' does not extend to the de facto partner (of the same or opposite-sex) of a deceased person.

951 This item repeals the phrase 'as widow, widower' in subsection 158(6) of the Navigation Act and substitutes the phrase 'who was the deceased's spouse or de facto partner immediately before the deceased's death, or who is the deceased's'. The amendment ensures that the married partners and de facto partners of deceased sailors receive equal treatment.

952 A definition of 'de facto partner' is inserted by Item 24 of this Schedule.

Item 38

953 Subsection 158(7) of the Navigation Act provides that where a payment is made to a widow, widower, next of kin or legatee under subsection 158(6), that the creditor shall have the same rights and remedies against that person as if he or she had received the property as the legal personal representative of the deceased. The ordinary meaning of the terms 'widow' and 'widower' does not extend to the de facto partner (of the same or opposite-sex) of a deceased person.

954 This item repeals the phrase 'as widow, widower' in subsection 158(7) of the Navigation Act and substitutes the phrase 'who was the deceased's spouse or de facto partner immediately before the deceased's death, or who is the deceased's...'. The amendment ensures that the married partners and de facto partners of deceased sailors receive equal treatment.

955 A definition of 'de facto partner' is inserted by Item 24 of this Schedule.

Item 39

956 This item inserts subclause 158(8) to provide that certain relationships should be taken into account in determining whether a person is next-of-kin as referred to at subsections 158(6) and (7). Subclause 158(8) provides that, in determining whether a person is next of kin to another person, there should also be taken into account anyone who is a child because of the definition of 'child' in the Act (inserted by Item 23 of this Schedule), and anyone else who would be a relative of a person because someone who is a child by virtue of that definition is taken into account. This amendment expands the ordinary meaning of the term 'next of kin'.

Item 40

957 This item provides that the amendments of section 158 made by Items 37, 38 and 39 of this schedule apply only in relation to a seaman who dies on or after the commencement of the amendments.

Item 41

958 Section 161 provides that where a seaman's wife, husband, children or step-children becomes a liable charge on the public or obtains relief from any public body or institution for the relief of destitute persons in Australia, that institution shall be entitled to reimbursement from the seaman's wages. However, the provision does not extend to de facto partners of a seaman.

959 This item inserts the term ‘de facto partner’ after ‘husband’ in subsection 161(1) in order to remove this marital status discrimination. A definition of ‘de facto partner’ is inserted into subsection 6(1) of the Navigation Act by Item 24 of this Schedule.

960 Section 161, as amended, lists wife, husband, de facto partner, children or stepchildren of a seaman and subsequently refers to ‘those members of the seaman’s family’. In this case, the reference is clearly limited to only those members of the family specified at the beginning of subsection 161(1). Accordingly, new subclause 6(8) (inserted by Item 27) does not have any effect in relation to the reference in section 161.

Schedule 12—Innovation, Industry, Science and Research amendments

961 This Schedule contains amendments to the *Pooled Development Funds Act 1992* (within the Innovation, Industry, Science and Research portfolio) to remove differential treatment of same-sex couples and their children:

Pooled Development Funds Act 1992

962 The object of the *Pooled Development Funds Act 1992* (the PDF Act) is to develop, and demonstrate the potential of, the market for providing patient equity capital (including venture capital) to small or medium-sized Australian enterprises that carry on eligible businesses. To achieve this object, the Act establishes a scheme under which companies providing such capital can become pooled development funds (PDFs), which entitles those companies to more competitive tax treatment.

Item 1

963 This item removes subsection 4(1) of the definition of ‘de facto spouse’ which includes only opposite-sex partners. Item 5 inserts a definition of ‘de facto partner’ which will include same-sex partners and opposite-sex partners.

Item 2

964 This item removes from the subsection 31(2) definition of ‘associate’ the phrase ‘(including a person who is such a relation by adoption)’. Adoptive relationships will be included in the insertion of Item 7 of this Schedule.

Item 3

965 This item amends the definition of ‘associate’ in subsection 31(2) by replacing the term ‘de facto spouse’ with ‘de facto partner’. This will extend the range of persons who can be considered an associate of a person who is a shareholder in a PDF to include a person in the definition of ‘de facto partner’ to be inserted at Item 5 of this Schedule.

Item 4

966 This item inserts the key definition of ‘child’ into subsection 31(2) of the PDF Act. This will extend the range of persons who can be considered an ‘associate’ of a person who is a shareholder in a PDF to include a child who is a product of a relationship the person has or had as a couple with another person. A description of the key definition of a ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

967 This item inserts the key definition of ‘de facto partner’ into subsection 31(2) of the PDF Act. The definition provides that ‘de facto partner’ has the meaning given in the Acts Interpretation Act. This will extend the range of persons who can be considered an associate of a person who is a shareholder in a PDF to include someone who is in a same-sex relationship with that shareholder. A description of the key

definition of a 'de facto partner' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

968 This item inserts the key definition of 'parent' in subsection 31(2) of the PDF Act to extend the range of persons who can be considered an associate of a person who is a shareholder in a PDF to include someone who is the parent of a child within the meaning of the definition inserted by Item 4 of this Schedule. A description of the key definition of a 'parent' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 7

969 This item inserts subsection 31(2AA) into the PDF Act. Subsection 31(2AA) is a tracing rule that will allow the relationships listed in subsection 31(2) and are not covered by the insertion of Items 4, 5 and 6 of this Schedule to be traced through the definition of 'parent and 'child'. It will also trace adoptive relationships to replace the phrase removed by Item 2 of this Schedule. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 8

970 This item inserts a transitional provision to ensure that no person's current share holding in a PDF is taken to be in contravention of section 31 only because of these amendments to the PDF Act. However, if a person acquires additional shares that are not bonus shares, their initial shares and their bonus shareholdings will be taken into account in determining if they contravene section 31 of the PDF Act or not.

Schedule 13—Prime Minister and Cabinet amendments

971 This Schedule contains amendments to the *Privacy Act 1988* (within the Prime Minister and Cabinet portfolio) to remove differential treatment of same-sex couples and their children:

Privacy Act 1988

972 The *Privacy Act 1988* regulates the collection, holding, use, disclosure, correction and transfer of personal information of individuals by defined Commonwealth agencies and private sector organisations. The amendments insert and amend definitions to ensure that the Privacy Act applies to individuals who are in a same-sex relationship in the same way as it applies to individuals in an opposite-sex relationship. The amendments also ensure that the Privacy Act applies to individuals who a product of a same-sex relationship or are related as a result of a same-sex relationship, in the same way as if it were an opposite-sex relationship.

Item 1

973 The term ‘family’ is used in a number of places in the Privacy Act. Subsection 6(1) defines ‘credit’ as referring to a loan intended primarily for domestic, family or household purposes. Subsection 6D(5) provides that an individual is not excluded from being a ‘small business operator’ for the purposes of the Privacy Act because of certain things only done for the purposes of his or her personal, family or household affairs. Section 16E provides that nothing in the National Privacy Principles applies to the collection, holding, use, disclosure or transfer of personal information by an individual, or personal information held by an individual where this is only for the purposes of, or in connection with, his or her personal, family or household affairs. However, the ordinary meaning of ‘family’ may not extend to same-sex de facto partners, children of same-sex relationships, and relationships traced through those relationships.

974 This item inserts subsection 6(10) to extend the meaning of the term ‘family’ for the purposes of subsection 6(1), and sections 6D and 16E of the Privacy Act. Subsection 6(10) extends the ordinary meaning of ‘family’ to include a de facto partner, a child of the person and anyone else that is considered to fall within this category when the de facto partner or child is recognised as ‘a member of the family’. That is, where a de facto partner is recognised as family his or her relationships are also taken into consideration when further determining the other members of a person’s family.

975 This item also inserts subsection 6(11) to define ‘child’ for the purposes of the definition of ‘family’ in subsection 6(10) of the Privacy Act. The definition of child seeks to ensure that children who are the product of a same-sex relationship are in the same position as a child who is a product of an opposite-sex relationship. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 2

976 This item replaces the term ‘de facto spouse’ with the term ‘de facto partner’ in paragraph 2.5(c) of Schedule 3 to the Privacy Act (the National Privacy Principles) as a consequence of the insertion of the key definition of ‘de facto partner’ into subclause 2.6 of Schedule 3 by Item 4 of this insert.

Item 3

977 ‘Child’ is currently defined for the purposes of subclause 2.5 of the National Privacy Principles by subclause 2.6. The definition includes an adopted child, a step-child and a foster-child of the individual, but may not extend to the children of same-sex relationships. This item repeals the current definition of ‘child’ in subclause 2.6 of Schedule 3 of the Privacy Act and replaces it with a new definition of ‘child’. The new definition expands the ordinary meaning of ‘child’ to include the categories of children included in the previous definition, and, in addition, children who are the product of a relationship that a person had as a couple with another person (whether of the same sex or a different sex).

978 The objective of extending the definition of ‘child’ is to ensure that a child who is the product of a same-sex relationship is in the same position as a child who is a product of an opposite-sex relationship. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 4

979 This item inserts the key definition of ‘de facto partner’ into subclause 2.6 of Schedule 3 to the Privacy Act. The term ‘de facto partner’ replaces and expands the range of persons currently recognised by the term ‘de facto spouses’ in order to put beyond doubt the application of clause to both same-sex and opposite-sex de facto relationships. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 5

980 This item repeals the current definition of ‘parent’ in subclause 2.6 of Schedule 3 to the Privacy Act and substitutes it with a new definition of ‘parent’. The insertion of this definition aims to ensure that both members of a couple are recognised as parents of the child where that child is the product of the relationship. By referring to the definition of ‘child’ inserted by Item 3 of this Schedule, the definition ensures that all relationships recognised in the previous definition of ‘parent’ in subclause 2.6 are recognised. This definition draws on elements of the key definition of ‘parent’. A description of the definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 6

981 This item inserts the key definition of ‘stepchild’ in subclause 2.6 of Schedule 3 to the Privacy Act. This new term is defined to ensure that a child of a same-sex or opposite-sex de facto relationship is considered the step-child of a new partner who is in a de facto relationship with a person from the original relationship. This definition

seeks to address a situation where a person would be considered a step-child but for the parent of the child being legally married to the partner. A description of the definition of 'step-child' can be found in the Key Definition and Concepts Sections of this Explanatory Memorandum.

Item 7

982 This item inserts a new subclause 2.7 into clause 2 of Schedule 3 to the Privacy Act in order to expand the definition of 'relative' to recognise that, for the purposes of subclause 2.6, a 'relative' relationship may be based upon a connection traced through an individual who is a de facto partner or a child of a partner.

983 This item also inserts a definition of 'sibling' for the purposes of subclause 2.6 in order to establish that such a relationship exists where a relationship can be traced through either or both parents of the children.

Schedule 14—Treasury amendments

984 This Schedule contains amendments to the following legislation within the Treasury portfolio to remove differential treatment of same-sex couples and their children:

- *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999*
- *Corporations Act 2001*
- *Financial Sector (Shareholdings) Act 1998*
- *Foreign Acquisitions and Takeovers Act 1975*
- *Fringe Benefits Tax Assessment Act 1986*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Insurance Acquisitions and Takeovers Act 1991*, and
- *Life Insurance Act 1995*

Part 1—Amendment of tax laws

985 This Part amends some Acts that determine Commonwealth taxes that Australians are subject to. The Acts being amended are:

- *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999* (the Medicare Levy Surcharge Act),
- *Fringe Benefits Tax Assessment Act 1986* (the FBT Assessment Act),
- *Income Tax Assessment Act 1936* (ITAA36), and
- *Income Tax Assessment Act 1997* (ITAA97).

986 The amendments provide for assessing entitlement to tax concessions, and imposing tax obligations, in a manner that does not discriminate on the basis of sexual preference or marital status.

987 The main amendments treat same-sex relationships in the same way for tax purposes as marital relationships. This extends to treating the children of such relationships in the same way as the children of a marriage. It also extends to treating other family relationships in the same way they would be treated if the same-sex relationship were a marriage and the children of the relationship were the natural children of both members of the couple.

988 The current tax law generally treats an opposite-sex de facto relationship in the same way as a marital relationship but there are exceptions (particularly in the treatment of children of such relationships). The amendments remove those exceptions.

989 The amendments apply from the start of the next tax accounting period, so that only one treatment applies to any given period. For the FBT Assessment Act, that

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period is the FBT year starting on 1 April 2009. For the other Acts, it is the 2009-2010 income year, which generally starts on 1 July 2009.

A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999

990 The purpose of this Act is to impose a Medicare levy surcharge of 1 per cent of income on taxpayers where their income exceeds a certain threshold and they do not have private patient hospital insurance. In addition, this Act requires the value of a taxpayer's fringe benefits to be included as income for determining liability for the Medicare levy surcharge. In this way a taxpayer's total income is considered in determining their liability for the Medicare levy surcharge irrespective of whether they receive their remuneration through cash or fringe benefits. This ensures a more equitable treatment between those taxpayers who are remunerated by cash and those who are remunerated through fringe benefits.

Item 1

991 Subsection 7(1) of the Medicare Levy Surcharge Act expands the ordinary meaning of 'married' for the purposes of the Medicare Levy Surcharge Act to include opposite-sex de facto couples who have lived together as husband and wife on a bona fide domestic basis, although not legally married to each other. Division 4 of the Act provides particular rules for couples coming within this definition. However, by referring to a relationship between a 'man and a woman' who have lived together as 'husband and wife' subsection 7(1) currently excludes same-sex de facto couples.

992 To remove discrimination, this item repeals subsection 7(1) of the Medicare Levy Surcharge Act and substitutes a new subsection. New subsection 7(1) will provide that the Act applies to two persons (whether of the same or opposite sex) as if they were married if:

- their relationship is registered for the period under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, or
- they lived together in a relationship as a couple on a genuine domestic basis for the period, although not legally married to each other.

993 The new provision will apply to both same-sex and opposite-sex couples equally. This definition incorporates elements of the key definition of 'de facto partner'. A description of this key definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

994 The item also inserts a new subsection 7(1A) to provide that someone who is legally married or in a registered relationship is treated as not being legally married or in that registered relationship for the purposes of the Medicare Levy Surcharge Act if they are living in a genuine domestic relationship with someone else. This replicates the effect of current paragraph 7(1)(a) and extends it to cover registered relationships. The subsection ensures that only one relationship will be recognised during any period.

Item 2

995 This item provides that the amendment of the Medicare Levy Surcharge Act made by Item 1 will apply from the 2009–2010 year of income and will align with the application date of amendments removing discrimination against same-sex couples and their children in the *Income Tax Assessment Act 1997* and *Income Tax Assessment Act 1936*.

Fringe Benefits Tax Assessment Act 1986

996 This Act provides for the assessment of the amount of tax payable by an employer for benefits provided to its employees and their associates.

Item 3

997 The term ‘relative’ is defined in subsection 136(1) of the FBT Assessment Act to have the meaning given by subsection 995-1(1) of the ITAA97. This item inserts a note at the end of section 58V of the FBT Assessment Act to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘relative’ for the purposes of this subsection.

998 Section 960-255 is inserted by Item 90 of this Schedule.

Item 4

999 This item inserts a note at the end of paragraph (h) of the definition of ‘fringe benefit’ in subsection 136(1) of the FBT Assessment Act to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘relative’ in this definition.

1000 Section 960-255 is inserted by Item 90 of this Schedule.

Item 5

1001 This item inserts a definition of ‘parent’ into subsection 136(1) of the FBT Assessment Act, referring to the definition in subsection 995-1(1) of the ITAA97, which is inserted by Item 92 of this Schedule.

Item 6

1002 This item provides that the amendments to the FBT Assessment Act made by this Schedule will apply in relation to the FBT year starting on 1 April 2009, and to subsequent years.

Income Tax Assessment Act 1936

1003 This Act, together with the ITAA97, provides for the assessment of the amount of income tax taxpayers are liable to pay.

Item 7

1004 This item inserts a definition of ‘parent’ into subsection 6(1) of the ITAA36, referring to the definition in subsection 995-1(1) of the ITAA97, which is inserted by Item 92 of this Schedule.

Items 8–12, 14

1005 These items insert notes to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘family’.

1006 Section 960-255 is inserted by Item 90 of this Schedule.

Item 13

1007 This item amends table item 3 in subsection 73AA(1) of the ITAA36 as a consequence of the amendments made by this Schedule to Subdivision 126-A of the ITAA97.

Item 15

1008 This item repeals the definition of ‘de facto marriage’ in section 102AAB of the ITAA36. The concept of ‘de facto marriage’ extends to opposite-sex couples who have lived together as husband and wife on a bona fide domestic basis, although not legally married to each other. By referring to a relationship between two people who have lived together ‘as husband and wife’ this definition excludes same-sex de facto couples.

1009 The concept of ‘de facto marriage’ in the ITAA36 is replaced by the definition of ‘de facto relationship’, which is inserted by Item 16 of this Schedule.

Item 16

1010 This item inserts a definition of ‘de facto relationship’ in section 102AAB of the ITAA36. It replicates the current definition of ‘de facto marriage’ but applies it equally to same-sex and opposite-sex relationships and extends it to cover relationships registered under prescribed State or Territory laws.

Item 17

1011 This item amends subparagraph 102AAH(1)(a)(i) of the ITAA36 as a consequence of the amendment made by Item 18 of this Schedule.

Item 18

1012 This item replaces the term ‘post-marital family trust’ with the term ‘post-marital or post-relationship family trust’ in subsection 102AAH(2) of the ITAA36 to better reflect the fact that such family trusts may arise on the breakdown of a de facto relationship as well as of a marriage.

Item 19

1013 This item amends subparagraph 102AAH(2)(a)(ii) of the ITAA36 as a consequence of the amendments made by Items 15 and 16 of this Schedule.

Item 20

1014 This item inserts a note at the end of subsection 102AAH(3) of the ITAA36 (which explains when a trust is a family relief trust) to alert the reader to the possibility that section 960-255 of the ITAA97 may affect the meaning of the categories of relationships set out in subsection 102AAH(3). Section 960-255 of the ITAA 97 provides rules for determining when certain family relationships are recognised.

1015 Section 960-255 is inserted by Item 90 of this Schedule.

Item 21

1016 Paragraph 102AGA(2)(a) of the ITAA36 sets out one circumstance that satisfies the requirements of subsection 102AGA(2). At present, this paragraph deals with a person transferring property when their family breaks down because they cease to live with another person as the spouse of that person on a genuine domestic basis (whether or not legally married to that person).

1017 This item amends paragraph 102AGA(2)(a) to remove the words ‘on a genuine domestic basis (whether or not legally married to that person)’ as a consequence of the expansion of the definition of ‘spouse’ in the ITAA97 made by Item 95 of this Schedule.

Item 22

1018 Paragraph 102AGA(2)(b) of the ITAA36 sets out classes of people from or to whom a transfer of property may be made in order to satisfy the requirements of subsection 102AGA(2). Subsection 102AGA(2) is relevant to determining whether a particular property transfer may be considered the result of a family breakdown for the purposes of subparagraphs 102AE(2)(b)(viii) and 102AG(2)(c)(viii) of the ITAA36. Subparagraphs (i)–(iii) provide that these people may include natural parents, adoptive parents, and step-parents.

[1019](#) This item omits the word ‘natural’ before ‘parent’ in subparagraph 102AGA(2)(b)(i). The result is that the definition of ‘parent’ inserted into the ITAA36 by Item 5 of this Schedule will apply in this subparagraph. This definition of ‘parent’ includes natural, adoptive and step-parents, as well as people who are parents because a child was the product of their relationship as a couple with another person. This amendment removes discrimination between biological and recognised non-biological parents.

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Item 23

1020 This item repeals subparagraphs 102AGA(2)(b)(ii) and (iii) of the ITAA36 as they are rendered unnecessary by the broader definition of ‘parent’ which applies in

subparagraph 102AGA(2)(b)(i) as a consequence of the amendment made by Item 22 of this Schedule.

Item 24

1021 This item amends paragraph 102AGA(2)(c) to remove the words ‘on a genuine domestic basis’ as a consequence of the expansion of the definition of ‘spouse’ in the ITAA97 made by Item 95 of this Schedule.

Item 25

1022 Subsection 102AGA(3) of the ITAA36 sets out further circumstances in which a transfer of property may be considered the result of the family breakdown for the purposes of subparagraphs 102AE(2)(b)(viii) and 102AG(2)(c)(viii) of the ITAA36.

1023 This item omits the word ‘natural’ before ‘parent’ in paragraph 102AGA(3)(a). The result is that the definition of ‘parent’ inserted into the ITAA36 by Item 5 of this Schedule will apply in that paragraph. This definition of ‘parent’ includes natural, adoptive and step-parents, as well as people who are parents because a child was the product of their relationship as a couple with another person. This amendment removes discrimination between children with biological parents and those with recognised non-biological parents.

Item 26

1024 This item amends paragraph 102AGA(3)(a) to remove the words ‘on a genuine domestic basis (whether or not legally married)’ as a consequence of the expansion of the definition of ‘spouse’ in the ITAA97 made by Item 95 of this Schedule.

Items 27 and 28

1025 These items omit the word ‘natural’ before ‘parent’ wherever occurring in paragraphs 102AGA(3)(b), and (c). The result is that the definition of ‘parent’ inserted into the ITAA36 by Item 5 of this Schedule will apply in these paragraphs. This definition of ‘parent’ includes natural, adoptive and step-parents, as well as people who are parents because a child was the product of their relationship as a couple with another person. This amendment removes discrimination between children with biological parents and those with recognised non-biological parents.

Item 29

1026 This item omits ‘(c),’ from the definition of ‘family law obligation’ in section 109ZD in the ITAA36 as a consequence of amendments made to the ITAA97 by Item 73 of this Schedule.

Item 30

1027 This item amends table item 3 in subsection 124PA(1) of the ITAA36 as a consequence of the amendments made by this Schedule to Subdivision 126-A of the ITAA97.

Item 31

1028 This item inserts a note at the end of the definition of ‘invalid relative’ in subsection 159J(6) of the ITAA36 to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘brother’ and ‘sister’ in this definition.

1029 Section 960-255 is inserted by Item 90 of this Schedule.

Item 32

1030 This item inserts a note at the end of section 177D of the ITAA36 to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘family’ for the purposes of subparagraphs 177D(b)(vi) and (viii).

1031 Section 960-255 is inserted by Item 90 of this Schedule.

Item 33

1032 Part VIIB of the ITAA36 relates to the Medicare levy and the Medicare levy surcharge. Subsection 251R(2) provides that opposite-sex de facto couples living together on a bona fide domestic basis are treated as though married to each other, and not to any other person for the purposes of the Part, and any Act imposing a levy. This provision is discriminatory, as it excludes same-sex couples. This item will repeal subsection 251R(2) and substitute two new subsections to expand this concept to cover same-sex relationships.

1033 New subsection 251R(2) will provide that Part VIIB and any Act imposing the Medicare levy will apply to two persons (whether of the same or opposite sex) as if they were married if:

- their relationship is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, or
- they lived together in a relationship as a couple on a genuine domestic basis, although not legally married to each other.

1034 The new provision will apply to same-sex and opposite-sex couples equally. This definition incorporates elements of the key definition of ‘de facto partner’. A description of this key definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1035 The item also inserts a new subsection 251R(2A) to provide that someone who is legally married or in a registered relationship is treated as not being legally married or in that registered relationship for the purposes of Part VIIB of the Act (and Medicare levy) if they are living in a genuine domestic relationship with someone else. This ensures that only one relationship will be recognised during any period. It replicates the effect of current subsection 251R(2) and extends it to cover registered relationships.

Item 34

1036 This item inserts a note at the end of subsection 251U(1) of the ITAA36 to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘family’ for the purposes of subparagraph 251U(1)(e)(iii).

1037 Section 960-255 is inserted by Item 90 of this Schedule.

Item 35

1038 Subsection 317(1) provides definitions for the purposes of Part X of the ITAA36, which relates to attribution of income in respect of controlled foreign companies.

1039 This item repeals the definition of ‘de facto marriage’ in subsection 317(1) of the ITAA36 as a consequence of the amendment made by Item 36 of this Schedule.

Item 36

1040 This item inserts a definition of ‘de facto relationship’ into subsection 317(1) to replace the definition of ‘de facto marriage’ repealed by Item 35 of this Schedule.

The definition provides that de facto relationship means:

- a relationship between two persons which is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, or
- a relationship between two persons (whether of the same or opposite sex) who live together in a relationship as a couple on a genuine domestic basis, although not legally married to each other.

1041 The new provision will apply to same-sex and opposite-sex couples equally. This definition incorporates elements of the key definition of ‘de facto partner’. A description of this key definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 37

1042 Subsection 318(7) of the ITAA36 provides that in section 318 and any other provision of the Act insofar as it has effect in that section, a reference to the ‘spouse’ of a person does not include a reference to someone who is legally married to the person, but is living separately and apart from them on a permanent basis. This definition does not deal with situations in which a person’s relationship is recognised under paragraph (a) of the definition of ‘spouse’ in subsection 995-1(1) of the ITAA97 (because the relationship is registered on a prescribed State or Territory relationship register), but has broken down.

1043 This item repeals subsection 318(7) and inserts a new subsection which takes account of registered relationships. The new subsection provides that in section 318 and any other provision of the Act that has effect for the purposes of the section, a reference to a spouse does not include:

- A spouse who is legally married to the person but living separately and apart from the person on a permanent basis, and
- A spouse within the meaning of paragraph (a) of the definition of spouse in subsection 995-1(1) of the ITAA97 who is living separately and apart from the person on a permanent basis.

1044 Therefore, for the purposes of section 318 of the ITAA36, although a couple may be legally married or have a relationship certificate, a couple living separately and apart on a permanent basis are not treated as each other's spouse because of their being legally married or having a relationship certificate.

Item 38

1045 This item amends subparagraph 328(1)(a)(i) of the ITAA36 as a consequence of the amendment made by Item 39 of this Schedule.

Item 39

1046 This item replaces the term 'post-marital family trust' with the term 'post-marital or post-relationship family trust' in subsection 328(2) of the ITAA36 to better reflect the fact that such family trusts may arise on the breakdown of a de facto relationship as well as of a marriage.

Item 40

1047 This item amends subparagraph 328(2)(a)(ii) of the ITAA36 as a consequence of the amendment made by Items 35 and 36 of this Schedule.

Item 41

1048 This item inserts a note at the end of subsection 328(3) of the ITAA36 to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of the categories of relationships set out in subparagraph 328(3)(a)(iii).

1049 Section 960-255 is inserted by Item 90 of this Schedule.

Item 42

1050 Subparagraph 491(2)(a)(i) provides that for the purposes of Part XI of the ITAA36, 'relative' includes a spouse, other than a spouse who is legally married to the person but is living separately and apart from the person and has been doing so for at least 12 months. This means that while married couples will generally be considered to be relatives of each other for the purposes of this Part, married couples who have been separated for more than 12 months are not considered to be relatives of one another.

[1051](#) This item inserts subparagraph 491(2)(a)(ia) into section 491 of the ITAA36 to mirror the effect of subparagraph 491(2)(a)(i) for couples in registered relationships, who are recognised as spouses because of the definition of ‘spouse’ inserted by Item 95 of this Schedule. The subparagraph provides that ‘relative’ includes a spouse of a person, other than a spouse within the meaning of paragraph (a) of the definition of spouse in subsection 995-1(1) of the ITAA97 who has been living separately and apart from the person and has been doing so for at least 12 months.

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1052 Therefore, for the purposes of Part XI of the ITAA36, although a couple may be legally married or have a relationship certificate, a couple living separately and apart on a permanent basis are not treated as each other’s spouse because of their being legally married or because they have a relationship certificate.

Item 43

1053 This item inserts a note at the end of subsection 491(2) of the ITAA36 to alert the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of ‘brother’ and ‘sister’, which are referred to in subsection 491(2).

1054 Section 960-255 is inserted by Item 90 of this Schedule.

Item 44

1055 Subparagraph 491(2)(b)(i) provides that for the purposes of Part XI of the ITAA36, the term ‘relative’ includes a child of a person, but not a step-child (unless it is living with the person). The ordinary meaning of the term ‘step-child’ only extends to the children of a married partner. However, children of both married and de facto partners are included in the definition of ‘child’ inserted by Item 91 of this Schedule. As a result, some children may be treated differently because of the marital status of their parents.

[1056](#) This item repeals subparagraph 491(2)(b)(i) and substitutes a new subparagraph which provides that ‘relative’ includes a child, other than a child excluded under subsection (3) which is inserted by Item 45 of this Schedule. Subsection (3) excludes both step-children, and children who would have been step-children of a person except that the person is not legally married to his or her spouse. Under subparagraph 491(2)(b)(ii), those excluded children will still be treated as children of the person if they are living with him or her.

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Item 45

1057 This item inserts a new subsection 491(3) into the ITAA36 in order to remove discrimination in subparagraph 491(2)(b)(i) of that Act, as described at Item 44 above.

Item 46

1058 This item amends subparagraphs 269-80(1)(c)(i) and (iii) of Schedule 2F to the ITAA36 as a consequence of the amendments made by Items 56 and 57 of this Schedule.

1059 The printer's note to this item indicates that the heading to section 269-80 of Schedule 2F to the ITAA36 is also altered as a consequence of those amendments.

Item 47–51

1060 These items amend paragraphs 269-95(2)(a), 269-95(2)(d), 269-95(2)(e), and 272-90(2A)(a) and sub-paragraphs 269-95(2)(b)(i), (ii), (c)(i) and (ii) and 269-95(3)(c)(ii) of Schedule 2F to the ITAA36 as a consequence of the amendments made by Items 56 and 57 of this Schedule.

Item 52

1061 Subsection 272-90(2A) of Schedule 2F to the ITAA36 provides that certain former family members are members of a person's family group in relation to conferral of a present entitlement to, or a distribution of, income or capital of a company, partnership or trust, upon or to the person. Paragraph 272-90(2A)(b) includes as a 'family member' for this purpose a person who was a widow or a widower of either the person, or a member of the person's family, and who is now a spouse of someone who is not member of the person's family. This paragraph does not extend to someone who was in a de facto relationship at the time of their partner's death, as the ordinary meaning of 'widow' and 'widower' only relates to married relationships.

1062 This item repeals paragraph 272-90(2A)(b) and inserts a new paragraph which includes as members of a person's family a spouse of the person or of a member of the person's family immediately before the death of the person or member of the person's family, and who is now the spouse of someone who is not a member of the person's family. This removes discrimination, as the term 'spouse' is defined by subsection 995-1(1) of the ITAA97 to include both married and de facto same-sex and opposite-sex relationships.

Item 53

1063 Paragraph 272-90(2A)(c) of Schedule 2F to the ITAA36 includes as a person's 'family member' for the purposes of subsection 272-90(2A) someone who was a step-child of the person or of a member of the person's family before a breakdown in the marriage of the person or the member of the person's family. As outlined in the Key Concepts and Definitions section of this EM, the ordinary meaning of 'step-child' only includes the children of a married partner.

1064 This item replaces the term 'step-child' with the term 'a child of the spouse of' in order to remove this discrimination between children on the basis of the marital status of their parents.

Item 54

1065 This item amends paragraph 272-90(2A)(c) of Schedule 2F to the ITAA36 as a consequence of the amendments made by Items 56 and 57 of this Schedule.

Item 55

1066 This item repeals the existing note to subsection 272-95(1) of Schedule 2F to the ITAA36 and inserts two new notes.

1067 The first note alerts the reader to the definitions of ‘child’, ‘parent’, and ‘spouse’ in subsection 6(1).

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1068 The second note also alerts the reader to the possibility that section 960-255 of the ITAA97, which provides rules for determining when certain family relationships are recognised, may affect the meaning of the categories of relationships referred to in paragraph 272-95(1)(a). The second note is premised on the previous enactment of amendments to subsection 272-95(1) proposed by item 5 of Schedule 2 to Tax Laws Amendment (2008 Measures No. 4) Bill 2008. Section 960-255 is inserted by Item 90 of this Schedule.

Item 56

1069 This item repeals the definition of ‘breakdown in the marriage’ in subsection 272-140(1) of Schedule 2F to the ITAA36. This definition is replaced by a new definition of ‘breakdown in the relationship’ by Item 57 of this Schedule, to better reflect the fact that the definition applies equally to married couples and to de facto same-sex and opposite-sex couples.

Item 57

1070 This item inserts a definition of ‘breakdown in the marriage or relationship’ into subsection 272-140(1) of Schedule 2F to the ITAA36. The definition provides that there is a breakdown in the marriage or relationship of an individual if the individual is living with another individual in a genuine domestic relationship as a couple (whether the individuals are of the same or opposite sex, and whether legally married or not) and ceases to do so.

1071 For example, if a married couple separate, but do not divorce, the requirements of this definition will be satisfied notwithstanding the fact that they remain legally married. If a couple in a registered relationship cease to be in that relationship, but do not revoke their relationship registration, their relationship will also be considered to have broken down. However, if a couple continue to live together on a genuine domestic basis in a relationship as a couple, divorce or termination of relationship registration will not constitute a breakdown in the relationship. In such circumstances, the couple’s relationship still exists, despite the change in the formal recognition of the relationship.

1072 This definition mirrors the requirements of the current definition of ‘breakdown in the marriage’ which is repealed by Item 56 of this Schedule, but removes discrimination against same-sex couples.

Item 58

1073 This item provides that the amendments to the ITAA36 made by this Schedule apply in relation to the 2009-2010 year of income (generally starting on 1 July 2009), and later years of income. This ensures that the amendments take effect in between

the 2008-09 and 2009-10 income years, so that the provisions apply consistently throughout each separate income year.

Income Tax Assessment Act 1997

1074 This Act, together with the ITAA36, provides for the assessment of the amount of income tax taxpayers are liable to pay.

Item 59

1075 This item amends table item 3 in subsection 40-340(1) of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 60

1076 This item amends paragraph 52-105(1)(a) of the ITAA97 to replace 'parent' with '*parent'. The asterisk marks the word as a defined term and its insertion in this case reflects the fact that Item 92 of this Schedule is adding a definition of 'parent'.

Item 61

1077 This item inserts a note at the end of subsection 70-100(10) of the ITAA97 to alert the reader to the possibility that section 960-255 of that Act, which provides rules for determining when certain family relationships are recognised, may affect the meaning of 'family' for the purposes of paragraph 70-100(10)(a).

1078 Section 960-255 is inserted by Item 90 of this Schedule.

Item 62

1079 This item amends subsection 100-10(3) of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 63

1080 This item amends subsection 100-33(1) of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 64

1081 This item amends table items 1, 2 and 7 of section 112-150 of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 65

1082 This item amends the heading of section 118-75 of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 66

1083 This item amends subsection 118-75 of the ITAA97 to replace ‘marriage or de facto marriage’ with ‘relationship between *spouses’ to reflect the change in the definition of ‘spouse’ made by Item 95 of this Schedule. This definition of spouse extends to married couples, and to same-sex and opposite-sex de facto couples.

Item 67

1084 This item amends subparagraph 118-75(1)(b)(i) of the ITAA97 to remove the asterisk before the term ‘spouse’ because it is the second occurrence of the term in the subsection. An asterisk is used to mark defined terms in the ITAA97 but a defined term is only marked the first time it appears in a sub-section.

Item 68

1085 This item amends paragraph 118-178(1)(c) of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 69

1086 This item amends the heading to section 118-180 of the ITAA97 as a consequence of the amendments made by this Schedule to Subdivision 126-A of that Act.

Item 70

1087 This item amends the heading to Subdivision 126-A of the ITAA97 as a consequence of the amendments made by this Schedule to that Subdivision.

Item 71

1088 Section 126-5 of the ITAA97 provides a capital gains tax (CGT) roll-over in certain circumstances where assets are transferred from an individual to his or her spouse or former spouse under a court order relating to the breakdown of their relationship.

1089 Under the existing law, a CGT roll-over is available if there is a court order relating to the breakdown of a marriage or a de facto marriage (which only applies to relationships between a man and a woman).

1090 This item amends paragraph 126-5(1)(a) of the ITAA97 to cover transfers of assets because of a court order under the *Family Law Act 1975* or under a State law, Territory law or foreign law relating to breakdowns in a relationship between spouses. That extends the provision to cover breakdowns in relationships — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

1091 The item also extends the provision to cover State laws or Territory laws relating to marriage breakdowns. Under the existing law, only court orders under a State law or Territory law relating to de facto marriages give rise to a CGT roll-over.

Item 72

1092 This item is a drafting change to clarify that the reference to ‘that Act’ in paragraph 126-5(1)(b) of the ITAA97 is to the Family Law Act as a result of the change to paragraph 126-5(1)(a) made by Item 71 of this Schedule.

Item 73

1093 This item repeals paragraph 126-5(1)(c) of the ITAA97, which is no longer necessary because of the change to paragraph 126-5(1)(a) made by Item 71 of this Schedule.

Item 74

1094 Section 126-5 of the ITAA97 provides a CGT roll-over in certain circumstances where assets are transferred from an individual to his or her spouse or former spouse as a result of the breakdown of their relationship.

1095 Under the existing law, a CGT roll-over is available if assets were transferred because of a written agreement that was binding because of a State law, Territory law or foreign law relating to de facto marriage breakdowns (but only of relationships between a man and a woman).

1096 This item amends subparagraph 126-5(1)(f)(i) of the ITAA97 to cover transfers of assets because of a written agreement that is binding under State law, Territory law or foreign law relating to breakdowns of relationships between spouses. That extends the provision to cover breakdowns in relationships — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

Item 75

1097 Section 126-15 of the ITAA97 provides a CGT roll-over if assets are transferred from a company or trustee under a court order relating to the breakdown of a marriage or a de facto marriage between a man and a woman.

1098 This item amends paragraph 126-15(1)(a) of the ITAA97 to cover transfers of assets because of a court order under the Family Law Act or under a State law, Territory or foreign law relating to breakdowns in a relationship between spouses. That extends the provision to cover breakdowns in relationships — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

1099 The item also extends the provision to cover State laws or Territory laws relating to marriage breakdowns. Under the existing law, only court orders under a State law or Territory law relating to de facto relationships give rise to a CGT roll-over.

Item 76

1100 This item is a drafting change to clarify that the reference to ‘that Act’ in paragraph 126-15(1)(b) of the ITAA97 is to the Family Law Act as a result of the change to paragraph 126-15(1)(a) made by Item 75 of this Schedule.

Item 77

1101 This item repeals paragraph 126-15(1)(c) of the ITAA97, which is no longer necessary because of the change to paragraph 126-15(1)(a) made by Item 75 of this Schedule.

Item 78

1102 Section 126-15 of the ITAA97 provides a CGT roll-over in certain circumstances where assets are transferred from a company or trustee as a result of the breakdown of a relationship.

1103 Under the existing law, a CGT roll-over is available if assets are transferred because of a written agreement that is binding because of a State law, Territory law or foreign law relating to de facto marriage breakdowns (but only of relationships between a man and a woman).

1104 This item amends subparagraph 126-15(1)(f)(i) of the ITAA97 to cover transfers of assets because of a written agreement that is binding under State law, Territory law or foreign law relating to breakdowns of relationships between spouses — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

Item 79

1105 This item amends paragraph 126-25(1)(b) of the ITAA97 to replace ‘marriage or de facto marriage’ with ‘relationships between spouses or former spouses’ to reflect the changes to subparagraphs 126-5(1)(f)(i) and 126-15(1)(f)(i) made by Items 74 and 78 of this Schedule.

Item 80

1106 This item repeals the words ‘or a corresponding foreign law’ in paragraph 126-140(2B)(b) of the ITAA97, which are no longer necessary because of the amendment to paragraph 126-140(2B)(c) made by Item 81.

Item 81

1107 Subsection 126-140(2A) of the ITAA97 provides a CGT roll-over in certain circumstances involving the transfer of an interest in a small superannuation fund under a court order relating to the breakdown of a relationship.

1108 Under the existing law, a CGT roll-over is available if the interest is transferred because of a court order made under a State law, Territory law or foreign law relating to de facto marriage breakdowns that corresponds to an order made under section 79,

or subsections 90AE(2) or 90AF(2) of the Family Law Act. This only applies to relationships between a man and a woman.

1109 This item amends paragraph 126-140(2B)(c) of the ITAA97 to cover transfers of interests in small superannuation funds because of court orders made under a State law, Territory law or foreign law relating to breakdowns of relationships between spouses — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

Item 82

1110 Under the existing law, a CGT roll-over is also available under subsection 126-140(2A) of the ITAA97 if the interest is transferred because of a written agreement that is binding because of a State law, Territory law or foreign law relating to de facto marriage breakdowns (but only of relationships between a man and a woman).

1111 This item amends subparagraph 126-140(2B)(e)(i) of the ITAA97 to cover transfers of interests in small superannuation funds because of a written agreement that is binding under State law, Territory law or foreign law relating to breakdowns of relationships between spouses — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

Item 83

1112 Subsection 126-140(2C) of the ITAA97 provides conditions under which CGT events involving small superannuation funds are eligible for a roll-over because of a breakdown of a relationship. Under the existing law, the subsection applies to breakdowns of marriages and de facto marriages between a man and a woman.

[1113](#) This item amends paragraph 126-140(2C)(b) of the ITAA97 to include transfers of assets directly connected with the breakdown of a relationship between spouses — whether a marriage, or a same-sex or opposite-sex de facto relationship — because of the definition of ‘spouse’ inserted by Item 95 of this Schedule.

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Item 84

1114 This item amends table item 1 in subsection 149-30(3), and table item 1 in subsection 149-60(4), of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 85

1115 This item replaces the heading to subsection 152-45(2) of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 86

1116 This amends Note 2 to subsection 152-45(2) of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 87

1117 This item amends section 152-100 of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 88

1118 This item replaces the heading to subsection 152-45(2) of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 89

1119 This item amends the note to subsection 152-115(2) of the ITAA97 as a consequence of the amendments made to Subdivision 126-A by this Schedule.

Item 90

1120 This item inserts Subdivision 960-J into the ITAA97 to define certain family relationships for the purposes of the tax legislation. The Subdivision ensures that all children within the definition of 'child' in subsection 995-1(1) of the ITAA97 are treated equally, regardless of the marital status of their parents or how they came into their parents' relationship.

1121 Section 960-252 sets out that the two objects of the Subdivision are:

- to ensure that, where the Subdivision applies, the same consequences flow from the relationship two people have as an unmarried couple as from a marriage, if their relationship is registered in a State or Territory relationship register or if they live together on a genuine domestic basis, and
- to ensure that where the Subdivision applies anyone who is defined to be an individual's child by section 995-1(1) is treated in the same way as if he or she were the individual's natural child.

1122 Section 960-255 makes provision for the recognition of the family relationships alluded to in section 960-252.

1123 Subsection 960-255(1) provides recognition to relationships traced through relationships between couples. If one individual is the spouse of another individual (as defined in subsection 995-1(1)), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were legally married to the other individual. For example, a couple living in a de facto relationship will be considered to be members of each other's family.

1124 Subsection 960-255(2) provides recognition to relationships involving children. If one individual is the child of another individual because of the definition in subsection 995-1(1), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were a natural child of the other individual. Subsection (2) thus recognises as relatives of a child the relatives of a person who is the parent of a child as a result of adoption, a step-relationship, or because the child is the product of a relationship the person had as a couple with another person.

1125 Subsection 960-255(3) provides that subsections (1) and (2) apply for the purposes of the Act, and for the purposes of a provision of any other Act if one or more of the following definitions in subsection 995-1(1) of the ITAA97 applies for the purposes of that provision (or would apply if it were used in the provision):

- The definition of ‘child’
- The definition of ‘parent’, or
- The definition of ‘relative’.

1126 The effect of the subsection is that the provisions of Subdivision 960-J will apply in certain other tax laws, including the ITAA36 and the FBT Assessment Act. It is not necessary for the provision in the other Act to actually mention ‘child’, ‘parent’ or ‘relative’. It is enough that, had it mentioned that term, it would have taken the meaning given it by the ITAA97.

Item 91

1127 ‘Child’ of a person is currently defined in subsection 995-1(1) of the ITAA97 to expand the person’s adopted child, step-child, or ex-nuptial child. However, this definition does not necessarily recognise the children of the person’s same-sex relationships. It also does not recognise the children of a person’s de facto partner (because a person’s ‘step-children’ only include the children of the person’s spouse by marriage).

1128 To ensure that children are not treated differently because of their parents’ marital status, this item repeals the existing definition of ‘child’ in subsection 995-1(1) and replaces it with a new definition. The new definition preserves the existing categories of recognised children in paragraph (a).

1129 Paragraph (b) provides that ‘child’ includes a child of an individual’s spouse. This ensures that the children of a person’s married or de facto partner are recognised equally.

1130 Paragraph (c) provides recognition to children of same-sex relationships by providing that someone who is the product of a relationship a person has or had as a couple with another individual (whether of the same or a different sex) is a person’s child. A person cannot be a product of a relationship unless they are biologically related to at least one of the people in that relationship, or are born to a woman in the relationship. This definition draws on elements of the key definition of ‘child’. A description of this key definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 92

1131 This item inserts a definition of ‘parent’ into subsection 995-1(1) of the ITAA97. The definition provides that someone is the parent of anyone who is their ‘child’ (as amended by Item 91 of this Schedule). This definition draws on the general approach to the definition of ‘parent’ in this Bill, a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 93

1132 The asterisk marks the word as a defined term and its insertion in this case reflects the fact that Item 92 of this Schedule is adding a definition of ‘parent’.

Item 94

1133 This item inserts a note at the end of the definition of ‘relative’ in subsection 995-1(1) of the ITAA97 to alert the reader to the possibility that section 960-255 of that Act, which provides rules for determining when certain family relationships are recognised, may affect the meaning of the categories of relationships referred to in paragraph (b) of the definition.

1134 Section 960-255 is inserted by Item 90 of this Schedule.

Item 95

1135 Spouse is currently defined in subsection 995-1(1) of the ITAA97 to include a person who, although not legally married to the person, lives with the person on a genuine domestic basis as the person’s husband or wife. This definition extends to both married couples and opposite-sex de facto couples, but does not extend to same-sex de facto couples.

1136 This item repeals the definition of ‘spouse’ and inserts a new definition. The definition expands the ordinary meaning of ‘spouse’ to include:

- another individual (whether of the same or opposite sex) with whom the individual is in a relationship that is registered under a State or Territory law prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, and
- another individual who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

1137 This definition extends to married couples, and to same-sex and opposite-sex de facto couples. The definition incorporates elements of the definition of ‘de facto partner’, which is described in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 96

1138 This item provides that the amendments to the ITAA97 made by this Schedule apply in relation to the 2009-2010 income year (generally starting on 1 July 2009) and later income years.

[1139](#) To the extent to which amendments affect the FBT Assessment Act, the amendments in the Schedule apply in relation to the FBT year starting on 1 April 2009 and later FBT years.

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Part 2—Amendment of market regulation laws

1140 This Part contains amendments to the *Financial Sector (Shareholdings) Act 1998*, the *Foreign Acquisitions and Takeovers Act 1975*, the *Insurance Acquisitions and Takeovers Act 1991* and the *Life Insurance Act 1995*.

1141 The amendments to the Financial Sector (Shareholdings) Act, Foreign Acquisitions and Takeovers Act and Insurance Acquisitions and Takeovers Act will result in a broadened definition of ‘associate’ in each of these Acts. As a result, same-sex partners and their children will be subject to the same statutory limits as opposite-sex partners, their children and other relatives.

1142 The amendments to the Life Insurance Act will enable life insurers to make payments under certain types of life policies to the de facto partners and children of deceased persons, and protect the life policies of de facto partners of bankrupt individuals.

Financial Sector (Shareholdings) Act 1998

1143 The Financial Sector (Shareholdings) Act Act enables the government to regulate merger and acquisition activities concerning financial sector companies to ensure the financial health of the companies is not adversely affected as a result of these activities, and to encourage widespread ownership in the financial sector.

[1144](#) Under the Financial Sector (Shareholdings) Act, a person needs the Minister’s consent to hold a stake of more than 15 per cent in a financial sector company or to have ‘practical control’ of the company. Consent will only be given if the proposed transaction satisfies a ‘national interest’ test.

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1145 Under Part 2 of the Financial Sector (Shareholdings) Act, the term ‘associate’ is used to determine a person’s stake in a financial sector company (which includes shareholdings of the person’s associates), or whether a person has practical control of a financial sector company (which includes the control or influence of the person’s associates).

1146 Under the current clause 4 of Schedule 1 of the Act, the term ‘associate’ includes a ‘relative’ of the person. Under the current clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act, the term ‘relative’ is defined to include the person’s spouse, parent, son or daughter.

Item 97

1147 This item amends clause 2 of Schedule 1 to the Financial Sector (Shareholdings) Act as a consequence of the insertion of subclause (2) by Item 103 of this Schedule.

Item 98

1148 This item inserts the key definition of ‘child’ into clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 99

1149 This item inserts the key definition of ‘parent’ into clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 100

1150 Paragraph (b) of the definition of ‘relative’ in clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act provides that a ‘relative’ includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person. This definition extends to married couples, and to opposite-sex de facto couples, but does not extend to same-sex de facto couples because of the words ‘as the husband or wife’.

1151 This item repeals paragraph (b), and substitutes a paragraph referring to a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 101

1152 Paragraph (d) of the definition of ‘relative’ in clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act provides that ‘relative’ includes a son, daughter, or remoter issue of a person. The ordinary meaning of the terms ‘son’ and ‘daughter’ extend only to natural children.

1153 In order to recognise the children of same-sex couples, this item omits the words ‘son, daughter’ from paragraph (d) the definition of ‘relative’ and replaces them with the term ‘child’. This amendment makes it clear that the provision applies to children of a person because of the definition of ‘child’ in section 4 of the Act, inserted by Item 98 of this Schedule.

Item 102

1154 This item inserts a note at the end of the definition of ‘relative’ in clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act to alert the reader to the possibility that subclause 2(2), which provides a tracing rule for determining when certain family relationships are recognised, may affect the categories of relationship referred to in this definition. Subclause 2(2) is inserted by Item 103 of this Schedule.

Item 103

1155 This item inserts subclause 2(2) into clause 2 of Schedule 1 of the Financial Sector (Shareholdings) Act which provides a tracing rule in order to recognise certain family relationships. The subsection provides that if one person is the child of another person because of the definition of ‘child’ in subclause 2(1), that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

1156 A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 104

1157 This item provides a transitional period of 6 months from when the amendments commence before the statutory limits affected by these amendments apply. Individuals who are affected by the amended definition of ‘associate’ may rearrange their affairs during this period or obtain the Minister’s consent to continue to have specific levels of shareholding in financial sector companies. The item also removes any associated declaration-making powers of the Treasurer under the Financial Sector (Shareholdings) Act in relation to such persons in such circumstances for the same period of time.

Foreign Acquisitions and Takeovers Act 1975

1158 The Foreign Acquisitions and Takeovers Act and the *Foreign Acquisitions and Takeovers Regulations 1989* (the Regulations) provide legislative support for the Government’s foreign investment policy. The Foreign Acquisitions and Takeovers Act empowers the Treasurer to examine proposals by foreign persons to acquire a substantial or controlling interest in the business assets of a prescribed Australian corporation valued above a specified threshold or to acquire an interest in Australian urban land. The Foreign Acquisitions and Takeovers Act empowers the Treasurer to prohibit a proposal that he or she decides to be contrary to the national interest.

1159 Under the terms of the Foreign Acquisitions and Takeovers Act if a foreign person alone or together with any associate or associates is in a position to control not less than 15 per cent of the voting power or issued shares of a corporation they are subject to the Foreign Acquisitions and Takeovers Act and required to seek approval from the Treasurer for any acquisition beyond this level.

Item 105

1160 This item inserts a definition of ‘child’ into subsection 5(1) of the Foreign Acquisitions and Takeovers Act which refers to the definition inserted into subsection 6(2) of that Act by Item 110 of this Schedule.

Item 106

1161 This item inserts a definition of ‘parent’ into subsection 5(1) of the Foreign Acquisitions and Takeovers Act which refers to the definition inserted into subsection 6(2) of that Act by Item 110 of this Schedule.

Item 107

1162 This item amends section 6 of the Foreign Acquisitions and Takeovers Act as a consequence of the insertion of subsection 6(2) by Item 110 of this Schedule.

Item 108

1163 Section 6 of the Foreign Acquisitions and Takeovers Act provides for the categories of person who are taken to be the associates of a person for the purposes of

the Foreign Acquisitions and Takeovers Act. Paragraph (a) of the definition currently refers to a 'spouse' of the person. 'Spouse' is undefined in the Foreign Acquisitions and Takeovers Act, and therefore takes its ordinary meaning, which does not extend to same and opposite-sex de facto couples.

1164 This item amends paragraph 6(a) to apply to de facto partners (within the meaning of the Acts Interpretation Act) as well as spouses. This removes marital status discrimination against opposite-sex partners, as well as recognising same-sex relationships.

Item 109

1165 Paragraph 6(a) of the definition of 'associate' in the Foreign Acquisitions and Takeovers Act provides that 'associate' includes a son or daughter of a person. The ordinary meaning of the terms 'son' and 'daughter' do not extend to the children of same-sex couples.

1166 In order to recognise the children of same-sex couples, this item omits the words 'son, daughter' from paragraph (a) of the definition of 'relative' and replaces them with the term 'child'. This amendment makes it clear that the provision applies to children of a person within the definition of 'child' in subsection 6(2) of the Foreign Acquisitions and Takeovers Act, inserted by Item 110 of this Schedule.

Item 110

1167 This item inserts definitions of 'child' and 'parent' into subsection 6(2) of the Foreign Acquisitions and Takeovers Act, and inserts a tracing rule as subsection 6(3) in order to recognise certain family relationships.

1168 Subsection 6(2) applies the key definitions of 'child' and 'parent' in the Foreign Acquisitions and Takeovers Act.

1169 Subsection 6(3) provides a 'tracing rule' to allow certain relationships traced through same-sex relationships to be recognised. The subsection provides that if one person is the child of another person because of the definition of 'child' in subsection 6(2), that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

1170 A description of the key definitions of 'child' and 'parent', and of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 111

1171 This item provides a transitional period of six months from the commencement of the amendments before the new statutory limits come into effect. People who were not previously determined to be associates under section 6, but who will become associates as a result of the amendments to the Foreign Acquisitions and Takeovers Act by this Schedule, will not be subject to the proposed changes for a period of six months from commencement. The item also removes any associated order making powers of the Treasurer under the Foreign Acquisitions and Takeovers Act in relation to such persons in such circumstances for the same period of time.

Insurance Acquisitions and Takeovers Act 1991

1172 The Insurance Acquisitions and Takeovers Act enables the Government to regulate merger and acquisition activities concerning insurance companies to ensure that the financial health of these companies is not adversely affected as a result of such activities and to encourage widespread ownership in the sector.

1173 Under the Insurance Acquisitions and Takeovers Act, a person needs the Minister's consent to acquire or lease assets, liabilities and other rights and interests in a registered insurance company, or enter agreements relating to directors of a registered insurance company. Consent will only be given if the proposed transaction is not contrary to the public interest.

[1174](#) The term 'associate' is used in the Insurance Acquisitions and Takeovers Act to determine the level of a person's acquisition in relation to an insurance company (which includes the acquisitions of the person's associates), or a person's influence over directors of an insurance company (which includes the influence or control of the person's associates).

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1175 Under the Insurance Acquisitions and Takeovers Act, the term 'associate' is defined in section 7 as including a person's 'relative'. Currently, the term 'relative' is defined in section 4 as including the person's spouse, parent, son or daughter.

Item 112

1176 This item amends section 4 of the Insurance Acquisitions and Takeovers Act as a consequence of the insertion of subsection (2) by Item 118 of this Schedule.

Item 113

1177 This item inserts the key definition of 'child' into section 4 of the Insurance Acquisitions and Takeovers Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 114

1178 This item inserts the key definition of 'parent' into section 4 of the Insurance Acquisitions and Takeovers Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 115

1179 Paragraph (b) of the definition of 'relative' in section 4 of the Insurance Acquisitions and Takeovers Act provides that a 'relative' includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person. This definition extends to married couples, and to opposite-sex de facto couples, but does not extend to same-sex de facto couples because of the words 'as the husband or wife'.

1180 This item repeals paragraph (b), and substitutes a paragraph referring to a de facto partner within the meaning of the key definition of 'de facto partner' in the

Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 116

1181 Paragraph (d) of the definition of ‘relative’ in the Insurance Acquisitions and Takeovers Act provides that ‘relative’ includes a son, daughter, or remoter issue of a person. The ordinary meaning of the terms ‘son’ and ‘daughter’ do not extend to the children of same-sex couples.

1182 In order to recognise the children of same-sex couples, this item omits the words ‘son, daughter’ from paragraph (d) of the definition of ‘relative’ and replaces them with the term ‘child’. This amendment makes it clear that the provision applies to children of a person within the definition of ‘child’ in section 4 of the Insurance Acquisitions and Takeovers Act, inserted by Item 113 of this Schedule.

Item 117

1183 This item inserts a note at the end of the definition of ‘relative’ in section 4 of the Insurance Acquisitions and Takeovers Act to alert the reader to the possibility that subsection 4(2), which provides a tracing rule for determining when certain family relationships are recognised, may affect the categories of relationship referred to in this definition. Subsection 4(2) is inserted by Item 118 of this Schedule.

Item 118

1184 This item inserts subsection 4(2) into the Insurance Acquisitions and Takeovers Act to provide a tracing rule in order to recognise certain family relationships. The subsection provides that if one person is the child of another person because of the definition of ‘child’ in subsection 4(1), that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

1185 A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 119

1186 This item provides a transitional period of six months from the commencement of the amendments before the new statutory limits come into effect. People who were not previously determined to be associates under section 6, but who will become associates as a result of the amendments to the Insurance Acquisitions and Takeovers Act by this Schedule, will not be subject to the proposed changes for a period of six months from commencement. At the end of this period, affected individuals would be required to obtain the Minister’s go-ahead decision before entering a ‘trigger proposal’.

Life Insurance Act 1995

1187 The Life Insurance Act protects the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry. It also

protects the interests of persons entitled to other kinds of benefits provided in the course of carrying on life insurance business.

Item 120

1188 Section 204 of the Life Insurance Act provides that the rights or interests of a person under his or her life policy, or a life insurance policy of his or her spouse, is not liable to be used in discharging a debt owed by the person. This provision is subject to the *Bankruptcy Act 1966*.

1189 Paragraph 204(1)(b) presently refers only to a person's 'spouse'. Spouse is defined in the Schedule to the Life Insurance Act to include another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person. The reference to living as a 'husband or wife' of the person in this definition means that same-sex de facto couples are not covered by the definition.

1190 This item inserts the words 'or de facto partner' after 'spouse' in paragraph 204(1)(b) in order to allow same-sex couples to enjoy the protection afforded by this provision. A definition of 'de facto partner' is inserted by Item 126 of this Schedule.

Item 121

1191 Section 211 of the Life Insurance Act currently allows an insurance company to make payment under a single life policy to the spouse, father, mother or other relatives of the deceased, without requiring a letter of probate or administration, where the amount payable under the life policy is under \$50,000.

1192 Paragraph 211(1)(c) presently refers only to a person's 'spouse'. Spouse is defined in the Schedule to the Act to include another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person. The reference to living as a 'husband or wife' of the person in this definition means that same-sex de facto couples are not covered by the definition.

1193 In addition, the reference to 'father' and 'mother' may not extend to people who are parents because of the definition of 'parent' inserted into the Schedule to the Life Insurance Act by Item 127 of this Schedule.

1194 This item inserts the words 'or de facto partner' after 'spouse' in paragraph 211(1)(c) in order to allow same-sex couples equal treatment. A definition of 'de facto partner' is inserted by Item 126 of this Schedule. The item replaces the terms 'father, mother' with 'parent' in order to make it clear that the provision extends to people who are parents because of the definition of 'parent' inserted by Item 127 of this Schedule.

Item 122

1195 This item inserts subsection 211(1A) into the Life Insurance Act which provides a tracing rule in order to recognise certain family relationships referred to in paragraph 211(1)(c). The subsection provides that if one person is the child of

another person because of the definition of ‘child’ in the Life Insurance Act, that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

1196 A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1197 Under the amendments made by Items 121 and 122 of this Schedule, life insurance companies would be permitted to make payments to the same-sex partner of a deceased person or their children where the total amount payable is under \$50,000.

Item 123

1198 Section 212 of the Life Insurance Act currently allows an insurance company to make payment under two or more life policies to the spouse, father, mother or other relatives of the deceased, without requiring a letter of probate or administration, where the amount payable under the life policies is under \$50,000.

1199 Paragraph 212(1)(c) presently refers only to a person’s ‘spouse’. Spouse is defined in the Schedule to the Life Insurance Act to include another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person. The reference to living as a ‘husband or wife’ of the person in this definition means that same-sex de facto couples are not covered by the definition.

1200 In addition, the reference to ‘father’ and ‘mother’ may not extend to people who are parents because of the definition of ‘parent’ inserted into the Schedule to the Life Insurance Act by Item 127 of this Schedule.

1201 This item inserts the words ‘or de facto partner’ after ‘spouse’ in paragraph 212(1)(c) in order to allow same-sex couples equal treatment. A definition of ‘de facto partner’ is inserted by Item 126 of this Schedule. The item replaces the terms ‘father, mother’ with ‘parent’ in order to make it clear that the provision extends to people who are parents because of the definition of ‘parent’ inserted by Item 127 of this Schedule.

Item 124

1202 This item inserts subsection 212(1A) into the Life Insurance Act which provides a tracing rule in order to recognise certain family relationships referred to in paragraph 212(1)(c). The subsection provides that if one person is the child of another person because of the definition of ‘child’ in the Act, that relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

1203 A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1204 Under the amendments made by Items 123 and 124 of this Schedule, life insurance companies would be permitted to make payment under two or more life policies to the same-sex partner of a deceased person or their children where the total amount payable is under \$50,000.

Item 125

1205 This item inserts the key definition of ‘child’ into the Schedule to the Life Insurance Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 126

1206 This item inserts a definition of ‘de facto partner’ into the Schedule to the Life Insurance Act, which provides that a ‘de facto partner’ includes a de facto partner within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 127

1207 This item inserts the key definition of ‘parent’ into the Schedule to the Life Insurance Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 128

1208 ‘Spouse’ is defined in the Schedule to the Life Insurance Act in relation to an individual as including another person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the husband or wife of the person. This definition extends to married couples, and to opposite-sex de facto couples, but does not extend to same-sex de facto couples because of the words ‘as the husband or wife’.

1209 Item 126 of this Schedule inserts a definition of ‘de facto partner’ which extends to both same and opposite-sex de facto couples. As a consequence, the definition of ‘spouse’ is no longer necessary, and is repealed by this item.

Item 129

1210 This item would specify that the amendments to sections 211 and 212 of the Life Insurance Act would only apply to the life policies of individuals who die on or after the date of royal assent. It clarifies whether the life insurance companies would be permitted to make payment under certain life policies to the same-sex partner of a deceased person or their children.

Part 3—Amendment of the Corporations Act 2001

1211 This Part contains proposed amendments to the *Corporations Act 2001*. The amendments will remove differential treatment of same-sex couples from the Corporations Act.

1212 In general, the amendments will place further restrictions on the range of people who can receive benefits from companies. They will also expand the group of people from whom such benefits, or assets, can be clawed back in an insolvency. The Bill will also impact on when a financial services or market licence may be granted

and the obligations of licensees. The most notable amendment to the Corporations Act is to the definition of 'spouse'. That definition will be amended to include a de facto partner within the meaning of the Acts Interpretation Act, and as such, will include same-sex partners. As a consequence of this amendment, the definitions of 'child' and 'parent' will also be altered and a new provision will be inserted to clarify what is to be considered a relationship.

Corporations Act 2001

1213 This Act forms part of a national regulatory framework for corporations and the securities and futures sectors in Australia. Specifically, it provides regulation for bodies including companies incorporated in Australia, foreign bodies corporate carrying on business in Australia, securities exchanges, and, in some instances, unincorporated bodies, cooperative societies and incorporated associations. It also regulates people including auditors, liquidators, receivers and managers, promoters of companies, company officers, and people dealing with securities or corporations.

Item 130

1214 This item inserts the key definition of 'child' into section 9 of the Corporations Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 131, 132, 134, 136–141

1215 These items amend the following definitions in section 9 of the Corporations Act as a consequence of the insertion of a definition of 'spouse' in section 9 by Item 143 of this Schedule:

- 'close associate'
- 'immediate family member', and
- 'related entity'.

Item 133

1216 This item repeals the definition of 'de facto spouse' in section 9 of the Corporations Act as a consequence of the definition of 'spouse' in section 9 inserted by Item 143 of this Schedule.

Item 135

1217 This item inserts the key definition of 'parent' into section 9 of the Corporations Act. A description of this definition can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 142

1218 This item omits the words 'son, daughter' from the definition of 'relative' in section 9 of the Corporations Act and replaces them with the term 'child'. This amendment makes it clear that the provision applies to children of a person because of

the definition of ‘child’ in section 9 of the Corporations Act, inserted by Item 130 of this Schedule.

Item 143

1219 This item inserts a definition of ‘spouse’ into section 9 of the Corporations Act. The definition provides that a ‘spouse’ includes a de facto partner of the person within the meaning of the key definition of ‘de facto partner’ in the Acts Interpretation Act. A description of the definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 144

1220 This item inserts section 9AA into the Corporations Act which provides a tracing rule in order to recognise certain family relationships. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1221 Section 9AA provides that, for the purposes of the Corporations Act, relationships include:

- relationships between de facto partners (within the meaning of the Acts Interpretation Act)
- relationships of child and parent that arise if someone is an exnuptial or adoptive child of a person, or if someone is the child of a person because of the definition of ‘child’ in section 9 of the Corporations Act, and
- relationships traced through these two types of relationships.

Item 145

1222 Section 228 of the Corporations Act provides a definition of ‘related parties’ in relation to public companies. This item amends paragraph 228(2)(d) of this definition to omit the words ‘and de facto spouses’ as a consequence of the insertion of a definition of ‘spouse’ in section 9 of the Corporations Act which includes de facto partners.

Item 146

1223 Subsection 440J(1) provides that during the administration of a company a guarantee of liability cannot be enforced as against a director of a company, or a spouse, de facto spouse or relative of such a director, except with the leave of the Court and according to such terms as the Court imposes.

1224 This item amends subparagraph 440J(1)(a)(ii) of the Corporations Act to omit the words ‘and de facto spouses’ as a consequence of the insertion of a definition of ‘spouse’ in section 9 of the Corporations Act which includes de facto partners.

Item 147

1225 This item amends paragraph 440J(1)(b) of the Corporations Act to omit the words ‘and de facto spouses’ as a consequence of the insertion of a definition of ‘spouse’ in section 9 of the Corporations Act which includes de facto partners.

Item 148

1226 This item repeals the definition of ‘spouse’ in subsection 556(2) of the Corporations Act as a consequence of the insertion of a definition of ‘spouse’ into section 9 of the Corporations Act by Item 143 of this Schedule.

Item 149

1227 This item amends paragraph 601JA(2)(f) of the Corporations Act to omit the words ‘and de facto spouses’ as a consequence of the insertion of a definition of ‘spouse’ in section 9 of the Corporations Act which includes de facto partners.

Item 150

1228 This item amends paragraph 601JB(2)(e) of the Corporations Act to omit the words ‘and de facto spouses’ as a consequence of the insertion of a definition of ‘spouse’ in section 9 of the Corporations Act which includes de facto partners.

Schedule 15—Veteran’s Affairs amendments

1229 This Schedule contains amendments to the following legislation within the Veterans’ Affairs portfolio to remove differential treatment of same-sex couples and their children:

- *Defence Service Homes Act 1918*
- *Military Rehabilitation and Compensation Act 2004*, and
- *Veterans’ Entitlements Act 1986*.

1230 The amendments will impact upon entitlements such as eligibility for Defence housing subsidies, income support payments, compensation payments and treatment.

Defence Service Homes Act 1918

1231 The *Defence Service Homes Act 1918* (the DSH Act) provides housing benefits to eligible veterans and their dependants including subsidised loans and insurance.

Item 1

1232 This item inserts a definition of ‘de facto partner’ into the subsection 4(1) of the DSH Act which provides that ‘de facto partner’ for the purposes for the DSH Act means a de facto partner within the meaning of the Acts Interpretation Act. A description of the key definition of ‘de facto partner’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 2

1233 This item inserts ‘and did not have a de facto partner’ after the word ‘married’ in subparagraph (a)(ii) of the definition of ‘dependent parent’ in subsection 4(1) of the DSH Act. This means that a person cannot be a ‘dependent parent’ of a person if that person was legally married or had a de facto partner.

Item 3

1234 This item amends subparagraph (b)(ii) of the definition of ‘dependent parent’ in subsection 4(1) of the DSH Act by replacing ‘husband or wife’ with ‘spouse or de facto partner’. This extends the range of persons who can be considered to be the ‘dependent parent’ of a person for the purposes of the DSH Act.

Item 4

1235 A ‘further advance’ may be made under the DSH Act to a person who has been a purchaser or borrower, as defined in subsection 4(1), other than a person who is a purchaser or borrower merely because the person is or was:

- the personal representative of a deceased purchaser or borrower, or
- a joint purchaser or borrower with the person’s spouse who was the eligible person.

1236 This item amends subparagraph (a)(ii) of the definition of ‘further advance’ in subsection 4(1) of the DSH Act by inserting after ‘spouse’ (wherever occurring), the words ‘or de facto partner’. This extends the range of persons that are not to be taken to have been a purchaser or borrower for the purposes of the definition of ‘further advance’ by including persons within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

Item 5

1237 An ‘initial advance’ may be made under the DSH Act to a person referred to in subsection 18(1) who is not, and has not previously been, a purchaser or borrower, as defined in subsection 4(1), other than a person who is or was a purchaser or borrower merely because the person is or was:

- the personal representative of a deceased purchaser or borrower, or
- a joint purchaser or borrower with the person’s spouse who was the eligible person.

1238 This item amends paragraph (b) of the definition of ‘initial advance’ in subsection 4(1) of the DSH Act by inserting after ‘spouse’ the words ‘or de facto partner’. This extends the range of persons that are not to be taken to have been a purchaser or borrower for the purposes of the definition of ‘initial advance’ by including persons within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

Item 6

1239 This item inserts a definition of ‘parent’ into subsection 4(1) of the DSH Act. The definition expands the classes of person that may be taken to be a parent of a child by applying the key definitions of ‘parent’ and ‘child’. The definition does not limit who can be considered to be a parent of a person for the purposes of the DSH Act. A description of the key definitions of ‘child’ and ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 7 and 8

1240 These items replace the current definition of ‘Widow’ in subsection 4(1) of the DSH Act and substitute a new definition of ‘widow’. The new definition of ‘widow’ provides that, a ‘widow’ of an eligible person includes a woman who was a de facto partner, within the meaning of the Acts Interpretation Act, of the eligible person immediately before the death of the eligible person. This extends the range of persons that are taken to be a ‘widow’ for the purposes of the DSH Act by including a person within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

Item 9 and 11

1241 These items provides that amendments to the definitions of ‘widow’ or ‘widower’ in the DSH Act made by Schedule 15 to the Bill only apply in respect of an eligible person who dies on or after the commencement of the amendments.

Item 10

1242 This item repeals the definition of ‘widower’ in subsection 4(1) of the DSH Act and substitutes a new definition. The new definition of ‘widower’ provides that a ‘widower’ of an eligible person includes a man who was a de facto partner, within the meaning of the Acts Interpretation Act, of the eligible person immediately before the death of the eligible person. This extends the range of persons that are taken to be a ‘widower’ for the purposes of the DSH Act by including a person within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

Item 12

1243 Subsection 4(2AB) of the DSH Act provides that a person referred to in subsection (2AA) is not taken to have been a purchaser or borrower, merely because the person previously became a purchaser or borrower on the basis that:

- the person’s husband is or was an eligible person, and as a result they were treated together as an eligible person for the purposes of DSH Act
- the person’s husband was an eligible person, and the person became an eligible person because her husband died, or
- the person is an eligible person because she is a dependent parent.

1244 This item amends paragraphs 4(2AB)(a) and 4(2AB)(b) of the DSH Act by replacing ‘husband’ with ‘spouse or de facto partner’. This extends the range of persons that are not to be taken to have been a purchaser or borrower for the purposes of subsection 4(2AB) by replacing the term ‘husband’ with ‘spouse’ and including a person within the within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

Items 13, 14 and 15

1245 Subsection 4(2AC) of the DSH Act provides that a man who is an eligible person in his own right and is the widower of a person referred to in subsection 4(2AA) is not to be taken to have been a purchaser or borrower, merely because he previously became a purchaser or borrower on the basis that:

- he was an eligible person in his own right
- his wife was an eligible person and he and she were treated together as an eligible person for the purposes of the DSH Act
- his wife was an eligible person, and he became an eligible person because his wife died, or
- he was an eligible person because was a dependent parent.

1246 Items 13 and 15 amend paragraphs 4(2AC)(d) and 4(2AC)(e) of the DSH Act by replacing ‘wife’ with ‘spouse or de facto partner’. This extends the range of persons that are not to be taken to have been a purchaser or borrower for the purposes of subsection 4(2AC) by replacing the term ‘wife’ with ‘spouse’ and including a person within the meaning of the definition of ‘de facto partner’ inserted by Item 1 of this Schedule.

1247 Item 14 amends paragraph 4(2AC)(d) of the DSH Act to replace the gender-specific terms 'he and she' with the gender-neutral term 'they'.

Item 16

1248 This item repeals subsections 4(3A), 4(3B) and 4(3C) of the DSH Act as they are made redundant as a consequence of the insertion of the definition of 'de facto partner' by Item 1 of this Schedule.

Item 17

1249 This item inserts into subsection 4(8) of the DSH Act a reference to the definition of 'de facto partner' in section 4 of the DSH Act. This extends the meaning of a person's 'retirement village accommodation', being part of a retirement village in which the person has, or the person and the person's spouse or de facto partner have, obtained a right of residence.

Item 18

1250 This item inserts into paragraph 4(13)(b) of the DSH Act a reference to the key definition of 'de facto partner' inserted by Item 1 of this Schedule. This extends the meaning of this paragraph to provide that a person who has been an assignor is taken to have been a borrower unless the person was an assignor merely because

- the person is or was an assignor together with the person's spouse or de facto partner, and
- became such an assignor on the basis that the person's spouse or de facto partner was an eligible person.

Item 19

1251 Subsection 4A(1) of the DSH Act provides that the Secretary may, in his or her discretion, treat an eligible person and the wife or husband of that eligible person together as an eligible person for the purposes of the DSH Act. It also provides that any reference in the DSH Act to an eligible person shall be read as including a reference to a wife or husband of that eligible person who is so treated by the Secretary's discretion. Subsection 4A(3) of the DSH Act restricts the Secretary's discretion by providing that subsection 4A(1) shall not apply in relation to any land, or land and dwelling-house, if they are owned or proposed to be owned by the eligible person and his or her wife or husband otherwise than as joint tenants.

1252 This item amends paragraphs 4A(1) and 4A(3) of the DSH Act by replacing 'wife or husband' with 'spouse or de facto partner'. This extends the range of persons that the Secretary's discretion applies to under subsection 4A(1) of the DSH Act by replacing the term 'wife' with 'spouse' and including a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 20

1253 This item amends paragraphs 17A(1)(a) and 17A(1)(b) of the DSH Act by replacing 'wife or husband' with 'spouse or de facto partner'. This extends the range

of persons who may be issued a certificate of entitlement as joint tenants to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 21

1254 Section 18 sets out the criteria that must be met before the Secretary may issue a certificate of entitlement in relation to a subsidy or an advance other than a widow or widower advance, an advance for essential repairs or a home support advance.

1255 This item amends paragraphs 18(1)(a) and paragraph 18(1)(e) of the DSH Act by replacing 'husband or wife' wherever they occur with 'spouse or de facto partner'. This extends the range of persons whose circumstances must be considered before the Secretary may issue a certificate of entitlement under section 18 of the DSH Act to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 22 and 24

1256 These items amend subparagraphs 20(1)(a)(i) and 23(1)(a)(ii) of the DSH Act to replace the gender-specific term 'widowed mother or widowed father' with the gender-neutral term 'widowed parent'.

Item 23

1257 Subparagraph 20(1)(a)(ii) of the DSH Act provides that the Secretary shall not issue a certificate of entitlement in relation to subsidy on a widow or widower advance that a person may seek from a credit provider unless satisfied that the person is the wife or husband of an eligible person who is temporarily or permanently insane.

1258 This item amends subparagraph 20(1)(a)(ii) of the DSH Act by replacing 'wife or husband' with 'spouse or de facto partner'. This extends the range of persons who can be considered an applicant for a certificate of entitlement under section 20 of the DSH Act to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 25

1259 This item amends subparagraph 23(1)(a)(iii) of the DSH Act by replacing 'the wife or husband' with 'a spouse or de facto partner'. This amendment extends the range of persons who can be considered an applicant for instalment relief to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 26

1260 This item amends subsection 26(4) of the DSH Act by replacing 'the husband or wife' with 'a spouse or de facto partner'. This amendment extends the range of persons in respect of whom a subsidy may be cancelled to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 27

1261 This item amends paragraphs 27A(1)(c) and 27(2)(c) of the DSH Act by replacing 'wife of husband' with 'spouse of de facto partner'. This amendment extends the range of persons to whom a certificate of entitlement could be issued under section 22 following the death of the eligible person to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Items 28, 29 and 30

1262 These items make amendments to subsection 27A(3) of the DSH Act as a consequence of amendments made by Item 27 of this Schedule.

Item 31

1263 This item amends paragraph 38C(1)(gb) of the DSH Act by replacing 'wife or husband' with 'spouse of de facto partner'. This amendment extends the range of persons to whom the Commonwealth may undertake insurance to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Item 32

1264 This item amends subsection 45A(2) of the DSH Act by replacing 'a husband and wife' with '2 persons who are spouses or de facto partners of each other'. This amendment extends the range of persons to whom the Secretary may give an approval under subsection 45A(1) in relation to bankruptcy or a judgment debt, to include a person within the meaning of the definition of 'de facto partner' inserted by Item 1 of this Schedule.

Military Rehabilitation and Compensation Act 2004

1265 The *Military Rehabilitation and Compensation Act 2004* (the MRC Act) provides for compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease. The MRC Act also provides for compensation and other benefits to be provided for the dependants of certain deceased members.

Item 33

1266 This item inserts into section 5 of the MRC Act a '(1)' before the words 'In this Act' as a consequence of amendments made by Item 41 of this Schedule.

Item 34

1267 This item inserts the key definition of 'child' into section 5 of the MRC Act to extend the range of persons who can be considered as the child of a person for the purposes of the MRC Act. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 35

1268 This item inserts the key definition of ‘parent’ into section 5 of the MRC Act to extend the range of persons who can be considered to be parent of a ‘child’ within the meaning of the key definition of ‘child’ inserted by Item 34 of this Schedule. A description of the key definition of ‘parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 36, 37 and 38

1269 ‘Partner’ is currently defined in section 5 of the MRC Act to mean a person of the opposite sex to the member who:

- is recognised as the member’s husband or wife by the custom prevailing in the tribe or group to which the member belongs if the member is an Aboriginal or Torres Strait Islander
- is legally married to the member, or
- lives with the member as his or her partner on a bona fide domestic basis although not legally married to the member.

1270 This definition extends to both married couples and opposite-sex de facto couples, but does not extend to same-sex de facto couples. These items amend the definition of ‘partner’ in section 5 of the MRC Act to extend the ordinary meaning of ‘partner’ to include:

- another individual (whether of the same or a different sex) with whom the member is in a relationship that is registered under a State or Territory law prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, and
- another individual who is, in the Commission’s opinion in a de facto relationship with the member and is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member.

1271 The effect of these amendments is that the same-sex partner of a member is recognised for the purposes of the MRC Act. This definition extends to married couples, and to opposite and same-sex de facto couples. The Commission, in determining whether one is in a defined relationship, will need to have regard to section 5(2) as amended by Item 41 of this Schedule.

Item 39

1272 This item inserts the key definition of ‘stepchild’ into section 5 of the MRC Act. This extends the range of persons who can be considered to be the ‘step-child’ to include a person who would be the step-child of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of ‘stepchild’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 40

1273 This item inserts the key definition of ‘step-parent’ in section 5 of the MRC Act. This extends the range of persons who can be considered to be the ‘step-parent’ to include a person who would be the step-parent of someone who is child of the de facto partner of the person, except that the person and the parent are not legally married. A description of the definition of ‘step-parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 41

1274 This item inserts new subsections 5(2) and 5(3) into section 5 of the MRC Act. New subsection 5(2) provides that, for the purposes of the subparagraph (c)(i) of the definition of ‘partner’ in subsection 5(1), section 11A of the *Veterans’ Entitlements Act 1986* applies to the forming of the Commission’s opinion about whether a person and a member are in a de facto relationship. This will provide criteria for the Commission to have regard to when forming an opinion whether two people are living together in a de facto relationship.

[1275](#) New subsection 5(3) of the MRC Act provides that, for the purposes of subparagraph (c)(ii) of the definition of ‘partner’, a child who is, or ever has been, an adopted child of a person is taken to be a natural child of the person. This also operates to the effect that the adoptive parent of a child is taken to be the natural parent of a person. This amendment ensures that the adopted child of a member or adoptive parent of a member cannot be in a de facto relationship with a member because they would be considered an ancestor, brother or sister of a member.

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Item 42

1276 This item amends several subparagraphs of paragraph 15(2)(a) of the definition of ‘dependant’ in section 15 of the MRC Act to replace gender-specific language with gender-neutral language (such as replacing ‘son’ and ‘daughter’ with ‘child’). This allows a person who is a child of a person within the meaning of the key definition of ‘child’ inserted by Item 70 of this Schedule to be considered a ‘dependant’ of that person for the purposes of the MRC Act.

Item 43

1277 Section 16 of the MRC Act is a tracing rule providing that relationships referred to in paragraph 15(2)(a) of the definition of ‘dependant’ in the MRC Act include relationships by adoption and ‘relationships that are traced through relationships by adoption.’ This means if a parent adopts a child, the parent of the adoptive parent would be the adopted child’s grandparent. This item replaces subsection 16 of the MRC Act with a new subsection 16 to expand the number of persons who can be taken to be in certain relationships for the purposes of various provisions of the MRC Act.

[1278](#) New subsection 16(1) of the MRC Act is a tracing rule that expands relationships referred to in paragraph 15(2)(a) of the definition of ‘dependant’ to include relationships by adoption and relationships that arise because of the definition of ‘child’. For example, in relation to a child, the other children of the parent are that

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child's siblings. The effect is the same for adopted children, where the other children of the adoptive parent are that adopted child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1279 Paragraphs 215(f) and 218(g) of the MRC Act provide that in determining whether household services or attendant care services are reasonably required for a person, the Commission must have regard to the extent that a relative might reasonably be expected to provide household services for themselves and for the person or provide attendant care services. New subsection 16(2) of the MRC Act expands who may be considered to be a person's relative for the purposes of paragraphs 215(f) and 218(g) of the MRC Act.

1280 Paragraphs 16(2)(a) to 16(2)(c) provide that, for the purposes of paragraphs 215(f) and 218(g) of the MRC Act, members of a person's family are taken to include:

- a partner of a person
- a stepchild or an adopted child of a person, or someone of whom the person is a stepchild or adopted child, and
- someone who is a child of a person, or someone of whom the person is a child, because of the definition of 'child' in section 5 of the MRC Act.

The effect of these provisions is that where the above persons are present, they are taken to be relatives of the persons for the purposes of the extent that a relative might reasonably be expected to provide household services for themselves and for the person or provide attendant care services for the purposes of paragraphs 215(f) and 218(g) of the MRC Act.

1281 Paragraph 16(2)(d) is a tracing rule that provides that anyone else who would be a relative of a person because the persons in paragraphs 16(2)(a) to 16(2)(c) are taken into account is taken to be a relative of a person. For example, the child of a de facto partner of a person would be considered to be a relative of the person for the purposes of paragraphs 215(f) and 218(g) of the MRC Act because of the definition of 'child'. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Items 44 and 45

1282 These items amend subsection 18(1) and subsection 80(3) of the MRC Act to replace the gender-specific term 'son or daughter' with the gender-neutral term 'child'. This allows a person who is a child of a person within the meaning of the key definition of 'child' inserted by Item 70 of this Schedule to be considered a 'dependant' of that person for the purposes of the MRC Act.

Item 46

1283 Paragraph 433(3)(a) of the MRC Act allows the trustee of the trust funds to apply funds for the benefit of the person who is entitled to the compensation, a member of that person's family, or a dependant of that person, as the trustee sees fit. This item inserts subsection 433(4) into the MRC Act to expand who is taken to be a

member of the person's family for the purposes of determining for whose benefit the trustee can apply funds.

1284 Paragraphs 433(4)(a) to 433(4)(c) provide that for the purposes of paragraph 433(3)(a) of the MRC Act, members of a person's family are taken to include:

- a partner of a person
- a stepchild or an adopted child of a person, or someone of whom the person is a stepchild or adopted child, and
- someone who is a child of a person, or someone of whom the person is a child, because of the definition of 'child' in section 5 of the MRC Act.

The effect of these provisions is that these persons are taken to be members of the person's family for the purposes of determining for whose benefit the trustee can apply funds.

1285 Paragraph 433(4)(d) is a tracing rule that provides that anyone else who would be a relative of a person because the persons in paragraphs 433(4)(a) to 433(4)(c) are taken into account is taken to be a member of the person's family. For example, the child of a de facto partner of a person would be considered a member of the person's family for the purposes of paragraph 433(3)(a) of the MRC Act because of the definition of 'child'. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Veterans' Entitlements Act 1986

1286 The *Veterans' Entitlements Act 1986* provides pensions, benefits and allowances to eligible veterans and members and their dependants.

Item 47

1287 This item repeals the reference in section 5 of the *Veterans' Entitlements Act* relating to the definition of 'parent' in subsection 5F(1) and replaces it with references to subsection 5F(1) and section 10A as a consequence of amendments made by Item 73 of this Schedule.

Items 48 to 50

1288 These items insert references in section 5 of the *Veterans' Entitlements Act* to definitions located elsewhere in the *Veterans' Entitlements Act* as a consequence of amendments made by Items 59, 61 and 62 of this Schedule.

Item 51

1289 This item inserts into subsection 5E(1) of the *Veterans' Entitlements Act* a signpost to the definition of 'prohibited relationship' in subsections 5E(6) and 5E(7) of the *Veterans' Entitlements Act*.

Item 52

1290 The existing definition of 'widow' in the *Veterans' Entitlements Act* means:

- a woman who was the partner of a man immediately before he died, or
- a woman who was legally married to a man, but living separately and apart from him on a permanent basis, immediately before he died.

This means that currently only a married or opposite-sex partner of a deceased male can be considered to be the widow of that man and therefore be recognised as a widow for the purposes of the Veterans' Entitlements Act.

1291 This item removes the references to gender at the end of paragraph (a) of the definition of widow in subsection 5E(1) of the Veterans' Entitlements Act to provide that a woman who was the partner of a person (whether male or female) immediately before they died is considered to be the widow of that person.

Item 53

1292 The existing definition of widower in the Veterans' Entitlements Act means:

- a man who was the partner of a woman immediately before she died, or
- a man who was legally married to a woman, but living separately and apart from her on a permanent basis, immediately before she died.

This means that currently only a married or opposite-sex partner of a deceased woman can be considered to be the widower of that woman and therefore be recognised as a widower for the purposes of the Veterans' Entitlements Act.

1293 This item removes the references to gender at the end of paragraph (a) of the definition of widower in subsection 5E(1) of the Veterans' Entitlements Act to provide that a man who was the partner of a person (whether male or female) immediately before they died is considered to be the widower of that person.

Items 54 to 56

1294 The existing definition of 'member of a couple' in subsection 5E(2) of the Veterans' Entitlements Act provides that a person is a 'member of a couple' if they are legally married to another person and are not living separately and apart from the other person on a permanent basis, or if they are:

- living with a person of the opposite sex
- not legally married to that person
- in a marriage-like relationship with that person (in the Commission's opinion which is formed as mentioned in section 11A of the Veterans' Entitlements Act), and
- not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

This means that currently only persons who are married or in an opposite-sex de facto relationship are considered to be a 'member of a couple' for the purposes of the Veterans' Entitlements Act.

1295 Item 54 inserts new paragraph 5E(2)(aa) into the Veterans' Entitlements Act which provides for a person who is in a registered relationship—opposite-sex or same-sex—to be considered a 'member of a couple'. This means that registration of a

relationship is presumptive evidence as to whether a person is a member of a couple with another person, providing the couple are not living separately and apart from each other on a permanent basis. New paragraph 5E(2)(aa) of the Veterans' Entitlements Act will provide that a person is a 'member of a couple' if:

- the person is in a relationship with another person, whether the partner is of the same sex or different sex
- the relationship between the person and the partner is registered under a law of a State or Territory prescribed for the purposes of subsection 22B of the Acts Interpretation Act as a kind of relationship prescribed for the purposes of that subsection, and
- the person is not living separately and apart from the partner on a permanent basis.

1296 Item 55 amends subparagraph 5E(2)(b)(i) by replacing the phrase 'of the opposite sex' with 'whether of the same sex or a different sex'.

[1297](#) Item 56 amends subparagraph 5E(2)(b)(iii) by replacing the term 'marriage-like' with 'de facto'.

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1298 The effect of these amendments is to ensure that the definition of 'member of a couple', for the purposes of the Veterans' Entitlements Act, includes a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples.

Items 57 to 59

1299 Subparagraph 5E(2)(b)(iv) of the Veterans' Entitlements Act currently refers to a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*. To allow for easy interpretation of what a 'prohibited relationship' is, these items amend subsection 5E(2) of the Veterans' Entitlements Act to clearly specify what a prohibited relationship is for the purposes of section 23B of the *Marriage Act 1961*.

1300 Item 57 amends subparagraph 5E(2)(b)(iv) by removing the phrase 'for the purposes of section 23B of the *Marriage Act 1961*'.

1301 Item 58 repeals note 2 in subsection 5E(2) of the Veterans' Entitlements Act.

1302 Item 59 inserts a new subsection 5E(6) in the Veterans' Entitlements Act that specifies what is a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*, specifically a relationship between a person and

- an ancestor or a descendant, or
- a brother, sister, half-brother or half-sister.

1303 Item 59 also inserts a new subsection 5E(7) in the Veterans' Entitlement Act to provide that a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child. This new subsection adopts the same approach as the clarification in subsection 23B(5) of the *Marriage Act 1961*.

Items 60

1304 This item removes the current definition of ‘parent’ in subsection 5F(1) of the Veterans’ Entitlements Act and replaces it with a signpost to indicate that the term ‘parent’ has the meaning affected by new section 10A of the Veterans’ Entitlements Act which is inserted by Item 73 of this Schedule.

Item 61

1305 This item inserts the key definition of ‘step-child’ in subsection 5F(1) of the Veterans’ Entitlements Act. This extends the range of persons who can be considered to be the ‘step-child’ to include a person who would be the step-child of a person who is the de facto partner of a parent of the child, except that the person and the parent are not legally married. A description of the definition of ‘step-child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 62

1306 This item inserts the key definition of ‘step-parent’ in subsection 5F(1) of the Veterans’ Entitlements Act. This extends the range of persons who can be considered to be the ‘step-parent’ to include a person who would be the step-parent of someone who is the child of the de facto partner of the person, except that the person and the parent are not legally married. A description of the definition of ‘step-parent’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 63

1307 Paragraph 5G(1A)(b) of the Veterans’ Entitlements Act provides that in deciding for the purposes of the Veterans’ Entitlements Act whether or not a person resides in Australia, regard must be had to the nature and extent of the family relationships the person has in Australia. This item inserts subsection 5G(1AB) into the Veterans’ Entitlements Act to expand the nature and extent of family relationships a person has in Australia for the purposes of the Veterans’ Entitlements Act.

1308 Paragraphs 5G(1AB)(a) and 5G(1AB)(b) provide that, for the purposes of paragraph 5G(1A)(b) of the Veterans’ Entitlements Act, family relationships are taken to include:

- relationships between partners, and
- relationships of child and parent that are present if someone is the parent of a person under new section 10A of the Veterans’ Entitlements Act.

The effect of these provisions is that relationships between partners and relationships of child and parent that are present if someone is the parent of a person under new section 10A of the Veterans’ Entitlements Act are taken to be family relationships for the purposes of paragraph 5G(1A)(b) of the Veterans’ Entitlements Act.

1309 Paragraph 5G(1A)(c) is a tracing rule that provides that any relationship that would be a family relationship is a family relationship for the purposes of paragraph 5G(1A)(b) of the Veterans’ Entitlements Act because of

- the relationship between partners

- relationships of child and parent that are present if someone is the parent of a person under new section 10A of the Veterans' Entitlements Act.

For example, the sibling of a de facto partner of a person could be considered a family relationship member of the person's family for the purposes of paragraph 5G(1A)(b) of the Veterans' Entitlements Act. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 64

1310 This item amends paragraph 5H(8)(zd) of the Veterans' Entitlements Act to replace gender-specific language with gender-neutral language (such as replacing 'son' and 'daughter' with 'child'). This allows a person who is a child of a person within the meaning of the key definition of 'child' inserted by Item 70 of this Schedule to be considered a 'dependant' of that person for the purposes of the Veterans' Entitlements Act.

Item 65

1311 This item amends paragraph (a) of the definition of 'family member' in subsection 5L(1) of the Veterans' Entitlements Act to replace the gender-specific terms 'mother' and 'father' with the gender-neutral term 'parent'. This allows a person who is a parent of a person within the meaning of the key definition of 'parent' inserted by Item 73 to be considered a 'family member' of that person for the purposes of the Veterans' Entitlement Act.

Item 66

1312 This item corrects a grammatical error in paragraph (a) of the definition of 'immediate family member' in subsection 5Q(1) of the Veterans' Entitlements Act by replacing 'step child' with 'step-child'.

Item 67

1313 This item inserts new paragraph (ab) into the definition of 'immediate family member' in subsection 5Q(1) of the Veterans' Entitlements Act to include a reference to a person who is a person's parent because of new subsection 10A(1) as a consequence of amendments made by Item 73 of this Schedule. This extends the range of persons who can be considered to be an 'immediate family member' of a person for the purposes of the Veterans' Entitlements Act.

Item 68

1314 This item inserts new subsections 5Q(5) and 5Q(6) at the end of section 5Q of the Veterans' Entitlements Act.

1315 New subsection 5Q(5) provides a tracing rule for a person who is a child of another person because they are the product of that relationship the other person has or had as a couple with a third person (whether the same sex or different sexes). This allows relationships for the purposes of the Veterans' Entitlements Act to be traced through or to the person so that through those relationships the person is the child of the third person. For example, in relation to the person who is a child of the third

person, the other children of the third person are the child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1316 New subsection 5Q(6) provides that new subsection 5Q(5) does not apply for the purposes of determining when a person and his or her partner are within a prohibited relationship under subsection 5E(6). This maintains the prohibited relationship provisions in the Veterans' Entitlements Act which are a reproduction of the prohibited relationship rules in the *Marriage Act 1961*.

1317 This item also inserts a note at the end of subsection 5Q(5) that provides that paragraph 10(1)(b) of the Veterans' Entitlements Act and paragraph (b) of the definition of 'child' in section 52ZO are examples of provisions that define whether a person is the product of a relationship. Both provisions qualify who can be the product of a relationship by providing that for a person to be the product of a relationship, the person must be the biological child of at least one person in the relationship, or born to a woman in the relationship.

Item 69

1318 This item amends paragraph 5R(5)(b) of the Veterans' Entitlements Act to replace the words 'a matrimonial' with 'their' to remove marital status discrimination from determining whether two people are members of an 'illness separated couple' for the purposes of the Veterans' Entitlements Act.

Item 70

1319 This item replaces subsections 10(1) and (2) of the Veterans' Entitlements Act with new subsections 10(1) and (2) to extend who can be considered a child of a veteran for the purposes the Veterans' Entitlements Act. This provision also removes sex discrimination from current subsections 10(1) and (2) of the Veterans' Entitlements Act by removing gender-specific terms 'such as 'woman' and 'mother'. The definition does not limit who can be considered to be a parent of a person for the purposes of the Veterans' Entitlements Act.

1320 New subsection 10(1) provides that a reference to a child of a veteran or a deceased veteran is a reference to:

- a child or adopted child of the veteran
- a child who is the product of the relationship the veteran has or had as a couple with another person, or
- any other child who is, or was, wholly or substantially dependent on the veteran immediately before the veteran's death.

1321 New subsection 10(2) requires that for the purposes of paragraph 10(1)(b) of the Veterans' Entitlements Act, the child must be:

- the biological child of at least one person in the relationship, or
- born to a woman in the relationship.

This is relevant to the other elements of the key definition of 'child', inserted in subsection 10(1). A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 71 and 72

1322 These items amend subsections 10(3) and 10(5) of the Veterans' Entitlements Act as a consequence of amendments made by Item 70 of this Schedule.

Item 73

1323 This item inserts new section 10A into the Veterans' Entitlements Act. New section 10A is a definition of 'parent' that expands the classes of person that may be taken to be a parent of a child for the purposes of the Veterans' Entitlements Act. The definition does not limit who can be considered to be a parent of a person for the purposes of the Veterans' Entitlements Act.

1324 New subsection 10A(1) of the Veterans' Entitlements Act provides that a parent includes a parent of a person who is the product of a relationship the person has or had as a couple with a third person. Subsection 10A(1) qualifies who can be the product of a relationship by providing that for a person to be the product of a relationship, the person must be the biological child of at least one person in the relationship, or born to a woman in the relationship. These are elements of the key definition of 'child', a description of which can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1325 New subsection 10A(2) of the Veterans' Entitlements Act clarifies that a parent of a person who is an adopted person means the adoptive parent of that person. This means that the adoptive parent of an adopted person is considered to be the parent of that person.

Items 74 to 76

1326 Section 11A of the Veterans' Entitlements Act contains criteria that a person is to have regard to when forming an opinion whether two people are living together in a marriage-like relationship for the purposes of the Veterans' Entitlements Act. The effect of this provision and subsection 5E(2) of the Veterans' Entitlements Act means that currently only persons who are in an opposite-sex de facto relationship are considered to be in a 'marriage-like relationship'. These amendments will enable same-sex and opposite-sex de facto couples to be considered as being in a de facto relationship for the purposes of the Veterans' Entitlements Act.

1327 Item 74 amends section 11A of the Veterans' Entitlements Act by replacing the first occurrence of 'marriage-like' with 'de facto'.

1328 Items 75 and 76 make amendments to criteria that a person is to have regard to by inserting non-discriminatory language in subparagraph 11A(c)(i) and subparagraph 11A(e)(iv) of the Veterans' Entitlements Act to extend the meaning of the criteria, so it is relevant:

- whether the people hold themselves out in a de facto relationship with each other, and
- whether the people see their relationship as a de facto relationship.

The insertion of non-discriminatory language in subparagraph 11A(c)(i) and subparagraph 11A(e)(iv) of the Veterans' Entitlements Act is not intended to change the treatment of married or opposite-sex de facto couples.

Item 77

1329 This item amends paragraph 30C(12)(b) of the Veterans' Entitlements Act by replacing 'the spouse' with 'a partner or non-illness separated spouse'. This amendment ensures that the provision applies to persons who are either married or in a same-sex or opposite-sex de facto relationship. This amendment extends the range of persons whose pension may be reduced before the pension of a widow or widower or dependant child is reduced.

Item 78

1330 This item amends paragraph 30D(8)(b) of the Veterans' Entitlements Act by replacing 'the spouse' with 'a partner or non-illness separated spouse'. This amendment ensures that the provision applies to persons who are either married or in a same-sex or opposite-sex de facto relationship. This amendment extends the range of persons whose pension may be reduced before the pension of a widow or widower or dependant child is reduced.

Items 79 and 80

1331 These items amend subparagraphs 38(1)(d)(iii) and 38(1)(i)(iii) of the Veterans' Entitlements Act by inserting before 'spouse' the words 'non-illness separated'. This amendment clarifies that the reference to a 'spouse' is a reference to 'a non-illness separated spouse'. This term is defined in subsection 5E(1) of the Veterans' Entitlements Act.

Items 81 to 84

1332 Subsection 38(2A) of the Veterans' Entitlements Act currently provides that a person's eligibility for a partner service pension under paragraphs (1)(b) or (g) of the Veterans' Entitlements Act ceases if, in the Commission's opinion, the non-illness separated spouse of a veteran:

- was in a marriage-like relationship with another person when subsection 38(2A) of the Veterans' Entitlements Act commenced, or
- enters into a relationship with another person after subsection 38(3A) of the Veterans' Entitlements Act commenced and, in the Commission's opinion, the relationship was a marriage-like relationship

1333 This means that a non-illness separated spouse of a veteran is not eligible for a partner service pension under paragraphs (1)(b) or (g) of the Veterans' Entitlements Act if they are in or enter into a marriage-like relationship with another person.

1334 The effect of section 11A and subsection 5E(2) of the Veterans' Entitlements Act means that currently only persons who are in an opposite-sex de facto relationship are considered to be in a 'marriage-like relationship' for the purposes of this restriction. As section 11A and subsection 5E(2) of the Veterans' Entitlements Act are being amended by this Schedule, this subsection needs to be amended to ensure

that the restriction applies equally to same-sex de facto couples as it does to opposite-sex de facto couples.

1335 Items 81 and 84 amend paragraphs 38(2A)(a) and 38(2A)(b) of the Veterans' Entitlements Act by replacing 'marriage-like' with 'de facto'. The insertion of non-discriminatory language in paragraphs 38(2A)(a) and 38(2A)(b) of the Veterans' Entitlements Act is not intended to change the treatment of opposite-sex de facto couples who fall within this provision.

1336 Items 82 and 83 make amendments to paragraphs 38(2A)(a) and 38(2A)(b) to allow subsection 38(2A) to apply to non-illness separated spouses who enter into a de facto relationship with another person after 1 July 2009. This ensures this provision only applies after the commencement of this Schedule.

Item 85

1337 This item amends note 2 at the end of subsection 38(2A) of the Veterans' Entitlements Act by inserting after 'veteran', the words 'non-illness separated'. This amendment clarifies that the reference to a 'spouse' is a reference to 'a non-illness separated spouse'.

Items 86 to 89

1338 Subsection 38(3A) of the Veterans' Entitlements Act currently provides that a person's eligibility for a partner service pension under paragraphs 38 (1)(c), (d), (e), (h) or (i) of the Veterans' Entitlements Act ceases if, in the Commission's opinion, the widow or widower of a veteran:

- entered into a marriage-like relationship with a person after the death of the veteran, and was in that marriage-like relationship when subsection 38(3A) of the Veterans' Entitlements Act commenced, or
- enters into a relationship with another person after the death of the veteran after subsection 38(3A) of the Veterans' Entitlements Act commenced and, in the Commission's opinion, the relationship was a marriage-like relationship.

1339 This means that a widow or widower of a veteran is not eligible for a partner service pension under paragraphs (1)(c), (d), (e), (h) or (i) of the Veterans' Entitlements Act if they entered into a marriage-like relationship after the death of the veteran.

1340 The effect of section 11A and subsection 5E(2) of the Veterans' Entitlements Act means that currently only persons who are in an opposite-sex de facto relationship are considered to be in a 'marriage-like relationship' for the purposes of this restriction. As section 11A and subsection 5E(2) of the Veterans' Entitlements Act are being amended by this Schedule, this subsection needs to be amended to ensure that the restriction applies equally to same-sex de facto couples as it does to opposite-sex de facto couples.

1341 Items 86 and 89 amend subparagraphs 38(3A)(a)(i) and 38(3A)(b)(i) of the Veterans' Entitlements Act by replacing 'marriage-like' with 'de facto'. The insertion of non-discriminatory language in subparagraphs 38(3A)(a)(i) and 38(3A)(b)(i) of the

Veterans' Entitlements Act is not intended to change the treatment of opposite-sex de facto couples who fall within this provision.

1342 Items 87 and 88 make amendments to subparagraphs 38(3A)(ii) and 38(3A)(b)(i) to allow subsection 38(3A) to apply to widows or widowers who are in, or enter into a de facto relationship on or after 1 July 2009. This ensures this provision only applies after the commencement of this Schedule.

Item 90

1343 This item replaces the definition of 'child' in section 52ZO of the Veterans' Entitlements Act with a new section 52ZO. This amendment inserts a new definition which incorporates elements of the key definition of 'child' to extend who can be considered a child for the purposes of Division 11A of the Veterans' Entitlements Act. The new definition of 'child' in section 52ZO of the Veterans' Entitlements Act does not limit the definition of 'child' for the purposes of Division 11A of the Veterans' Entitlements Act.

1344 New paragraph (a) of the definition of 'child' provides that a 'child' in relation to a person includes an adopted child, a step-child or a foster-child of the person. This provision replicates the existing provision. New paragraph (b) of the definition of 'child' extends the definition to include a child who is the product of a relationship. Paragraph (b) is qualified by providing that for a 'child' to be the product of a relationship, the child must be, the biological child of at least one person in the relationship, or born to a woman in the relationship. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 91

1345 Subsection 52ZP(2) of the Veterans' Entitlements Act provides that for the purposes of section 52ZP, in determining who is a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of a person, the following relationships are to be treated as if they were biological child-parent relationships:

- the relationship between an adopted child and his or her adoptive parent
- the relationship between a step-child and his or her step-parent, and
- the relationship between a foster-child and his or her foster-parent.

1346 This item replaces subsection 52ZP(2) of the Veterans' Entitlements Act with a new subsection 52ZP(2). New subsection 52ZP(2) is a tracing rule that provides that if one person is the child of a person because of the key definition of 'child' in section 52ZO, relationships traced through or to the person are to be determined on the basis that that child is the child of the other person. For example, in relation to a child, the other children of the parents are that child's siblings. A description of the tracing rule can be found in the Key Concepts and Definitions Section of this Explanatory Memorandum.

Item 92

1347 This item replaces the definition of ‘child’ of a principal beneficiary in subsection 52ZZZWE(5) of the Veterans’ Entitlements Act with a new definition of ‘child’. This amendment extends who can be considered a child of a principal beneficiary for the purposes of section 52ZZZWE of the Veterans’ Entitlements Act. The new definition of ‘child’ in subsection 52ZZZWE(5) of the Veterans’ Entitlements Act does not limit the definition of ‘child’ of a principal beneficiary for the purposes of section 52ZZZWE of the Veterans’ Entitlements Act.

1348 New paragraph (a) of the definition of ‘child’ provides that a ‘child’ in relation to a person includes a natural child, an adopted child, or a step-child of the beneficiary. This provision replicates the existing provision.

1349 New paragraph (b) of the definition of ‘child’ extends the definition to include a child who is the product of a relationship the beneficiary has or had as a couple with another person. This paragraph incorporates elements of the key definition of ‘child’. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1350 Paragraph (b) is qualified by providing that for a ‘child’ to be the product of a relationship, the child must be the biological child of at least one person in the relationship, or born to a woman in the relationship.

Item 93

1351 This item amends the definition of ‘child’ in subsection 123(1) of the Veterans’ Entitlements Act by repealing paragraph (b) and inserting new paragraphs (b) and (ba). This amendment extends who can be considered a child for the purposes of sections 123A to 123E of the Veterans’ Entitlements Act (inclusive) which deal with payment and distribution of pensions on the death of a person. The amended definition of ‘child’ in subsection 123(1) of the Veterans’ Entitlements Act does not limit the definition of ‘child’ for the purposes of sections 123A to 123E of the Veterans’ Entitlements Act (inclusive).

1352 New paragraph (b) of the definition of ‘child’ provides that ‘child’ in relation to a deceased person includes a natural child of the deceased person. New paragraph (ba) of the definition of ‘child’ extends the definition of ‘child’ for the purposes of sections 123A to 123E of the Veterans’ Entitlements Act (inclusive) to include a child who is the product of a relationship the deceased had as a couple with another person (whether of the same sex or a different sex). This paragraph incorporates elements of the key definition of ‘child’. A description of the key definition of ‘child’ can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

1353 New paragraph (ba) is qualified by new subsection 123(2) of the Veterans’ Entitlements Act which provides that for a ‘child’ to be the product of a relationship, the child must be the biological child of at least one person in the relationship, or born to a woman in the relationship.

Item 94

1354 This item inserts a note to provide that subsection 123(2A) of the Veterans' Entitlements Act (inserted by Item 95 of this Schedule) is relevant to working out if someone is the product of the relationship.

Item 95

1355 This item inserts subsection 123(2A) into the Veterans' Entitlements Act. New subsection 123(2A) provides that someone cannot be considered to be the product of a relationship for the purposes paragraph (ba) of the definition of 'child' in subsection 123(1) of the Veterans' Entitlements Act, unless they:

- are the biological child of at least one person in the relationship, or
- are born to a woman in the relationship.

1356 This insertion is relevant to the elements of the key definition of 'child', inserted by Item 93. A description of the key definition of 'child' can be found in the Key Concepts and Definitions section of this Explanatory Memorandum.

Item 96

1357 This item is a saving provision providing that the amendments to subsections 38(2A) and 38(3A) of the Veterans' Entitlements Act made by Schedule 15 to the Bill will not affect the operation of subsections 38(2A) and 38(3A) as in force before 1 July 2009. This is relevant to eligibility of a person for the partner service pension. Subsection 38(2A) ceases a person's eligibility for partner service pension if the person, in the Commission's opinion, was in a marriage-like relationship with another person at the time subsection 38(2A) commenced or if the person, in the Commission's opinion, entered into a marriage-like relationship after the commencement of the provision. The cessation of eligibility resulting from subsection 38(2A) prior to 1 July 2009 is not affected by the amendments made by this Schedule.

1358 Subsection 38(3A) ceases a person's eligibility for partner service pension if, after the veteran's death, the person, in the Commission's opinion, was in a marriage-like relationship with another person at the time subsection 38(3A) commenced or if, after the veteran's death, the person, in the Commission's opinion, entered into a marriage like relationship after the commencement of the provision. The cessation of eligibility resulting from subsection 38(3A) prior to 1 July 2009 is not affected by the amendments made by this Schedule.