



Superannuation

The Same-Sex Relationships (Equal Treatment in Commonwealth Laws Superannuation) Bill 2008 passed through parliament and received Royal Assent on 4 December 2008. The result of this law being passed is that it allows same-sex couples to leave entitlements to their partner or children upon death.

The Act also amends the Superannuation Industry (Supervision) Act 1993, making it easier for regulated superannuation funds to recognise same-sex relationships. The Australian Institute of Superannuation recently carried out a survey involving the Trustees of its members. The results found that a considerable number of funds already recognised same-sex relationships as interdependent couples. Most, not-for-profit super funds were already able to pay death benefits to same-sex partners and about 50% of the funds had indeed done this.

"We encourage all superannuation funds across Australia to make provision for same-sex couples and their children so that this discrimination is completely removed from the superannuation industry," Senator Nick Sherry said. Of course, the final decision on whether to pay superannuation death benefits to a deceased member's same-sex spouse or dependent children still rests with the fund's trustee, subject to the fund's governing rules.

A number of Commonwealth civilian and military superannuation schemes, including the judicial pension schemes, will be amended, making death benefits available to same-sex de facto partners and any children of a same-sex relationship.

It is expected that from 1 January 2009 same-sex de facto couples will be treated the same as heterosexual de facto couples for the purposes of these super schemes. The Senate also agreed to a bill to extend the meaning of de-facto to include same-sex relationships.

The legislation brings long-awaited equality to same sex-couples in areas including tax, social security, health, aged care and employment. They are part of an election commitment to act on the recommendations of a 2007 landmark report by the Human Rights and Equal Opportunity Commission. Labor senator Penny Wong said "They (bills) deliver on a very important election commitment on an important day for us". She told parliament "They will deliver the sort of equality before the law that same-sex couples have never previously experienced."

The full list of superannuation and pension laws that are amended by this legislation are as follows:

Defence Force Retirement and Death Benefits Act 1973

Defence Forces Retirement Benefits Act 1948

Federal Magistrates Act 1999

Governor-General Act 1974

Income Tax (Transitional Provisions) Act 1997

Judges' Pensions Act 1968

Law Officers Act 1964

Parliamentary Contributory Superannuation Act 1948

Retirement Savings Accounts Act 1997

Small Superannuation Accounts Act 1995

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

Superannuation Act 1922

Superannuation Act 1976

Superannuation Industry (Supervision) Act 1993

These are far reaching reforms. The reforms also have a significant impact in the following areas:

Tax

Superannuation

Defined Benefits Superannuation

Social Security and Family Assistance

PBS Safety Net and the Medicare Safety Net

Aged Care

Child Support

Immigration

Citizenship

Veterans' Affairs

To find out how they may affect you, download the free overview of the Australian Government's Same-Sex Law Reforms.

DISCLAIMER: The information provided in this article is intended for general information purposes only. It does not constitute legal advice of any sort. Pink Investments accept no liability whatsoever for any loss or detriment suffered by any person who relies or acts upon this information. The circumstances of each person's case are unique and you should seek legal advice from a lawyer, before you take any action.