



New South Wales

Superannuation Legislation Amendment (Same Sex Partners) Act 2000 No 114

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New South Wales

Superannuation Legislation Amendment (Same Sex Partners) Act 2000 No 114

Act No 114, 2000

An Act to amend various public sector superannuation Acts with respect to extending rights and entitlements of spouses under those Acts to same sex partners; enabling arrangements to be made conferring a limited right to return to the Police Superannuation Scheme and the State Superannuation Scheme; and for other purposes. [Assented to 20 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendments

The Acts set out in Schedule 1 are amended as set out in that Schedule.

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

1.1 Parliamentary Contributory Superannuation Act 1971 No 53

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

de facto partner of a member, or former member, who has died means, if the member or former member was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

[2] Section 3 (1)

Omit the definition of *spouse*. Insert instead:

spouse of a member, or former member, who has died means the widow or widower, as the case may be, of the member or former member.

[3] The whole Act (except section 3 and Schedule 1)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except section 3 and Schedule 1)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[5] The whole Act (except section 3 and Schedule 1)

Insert “or de facto partners” after “spouses” wherever occurring.

[6] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[7] Schedule 1, clause 4

Insert after clause 3:

4 Spouse entitlements

The definition of *spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* applies only to or in respect of members or former members who die on or after the commencement of the amendment inserting the definition.

Explanatory note

Item [1] extends the definition of *spouse* for the purposes of the Parliamentary Contributory Superannuation Scheme to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a member or former member of the Scheme. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits are now to be dealt with as spouses and will be entitled to the benefits payable to spouses on the death of a member or former member.

Item [2] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [3] makes it clear that the extended definition of *spouse* applies only to members or former members who die after the extended definition commences.

1.2 Police Association Employees (Superannuation) Act 1969 No 33

[1] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

de facto partner of a prescribed person (within the meaning of section 3) who has died means, if the prescribed person was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

[2] Section 2 (1)

Omit the definition of *spouse*. Insert instead:

spouse of a prescribed person (within the meaning of section 3) who has died means the widow or widower, as the case may be, of the prescribed person.

[3] The whole Act (except section 2 and Schedule 1)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except section 2 and Schedule 1)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[5] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[6] Schedule 1, Part 3

Insert after Part 2:

**Part 3 Superannuation Legislation Amendment
(Same Sex Partners) Act 2000**

3 Definitions

In this Part:

amending Act means the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

conversion election by a prescribed person means an election made under Part 3B of the *Police Regulation (Superannuation) Act 1906*, as applied by section 3 (14) of this Act.

prescribed person means a prescribed person within the meaning of section 3 in respect of whom the requirements of section 3 (2AA) are met.

4 Spouse or de facto partner entitlements

- (1) The definitions of *de facto partner* and *spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of prescribed persons who

die on or after the commencement of the amendment substituting the definition of *spouse*.

- (2) The definition of *spouse*, as in force immediately before its substitution by that Act, applies to or in respect of prescribed persons who die before the commencement of the amendment substituting the definition of *spouse*.

5 Revocation of conversion elections

- (1) Clauses 12 and 14–18 of Schedule 6 to the *Police Regulation (Superannuation) Act 1906*, and any arrangement entered into under that Part, apply, with any necessary modifications, to or in relation to a person who has made a conversion election under this Act in the same way as they apply to or in relation to a former contributor who has made a conversion election under that Act.
- (2) Without limiting subclause (1), an arrangement entered into under that Part may contain provisions modifying the arrangement for the purpose of its application to a prescribed person.
- (3) Clauses 19 and 20 of that Schedule apply in respect of STC, FTC, the STC Board, the FTC Board and other persons referred to in those clauses in relation to the applied clauses of that Schedule, and anything done or omitted to be done under the applied clauses or an arrangement, or proposed arrangement, under the applied clauses, in the same way as they apply to STC, FTC, the STC Board, the FTC Board and other persons in respect of anything done or omitted to be done as referred to in clauses 19 and 20 of that Schedule.

Explanatory note

Item [1] extends the definition of *spouse* for the purposes of the *Police Association Employees (Superannuation) Act 1969* to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984* with a prescribed person. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits under the Police Superannuation Scheme as employees of the Police Association are now to be dealt with as spouses of such persons and will be entitled to the benefits payable to spouses on their death.

Item [2] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [3] makes it clear that the extended definition of spouse applies only to members or former members who die after the extended definition commences.

Item [3] also applies, to Police Association employees who have made conversion elections, provisions (being inserted in the *Police Regulation (Superannuation) Act 1906*) enabling the Minister to enter into arrangements providing for persons who have made conversion elections to move out of the Police Superannuation Scheme to rejoin that Scheme.

1.3 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 1 Name of Act, commencement and definitions

Insert in alphabetical order in section 1 (2):

de facto partner of a member or former member of the police force, who has died means, if the member or former member was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

[2] Section 1 (2)

Omit the definition of *spouse*. Insert instead:

spouse of a member or former member of the police force who has died means the widow or widower, as the case may be, of the member or former member.

[3] The whole Act (except section 1 and Schedule 6)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except section 1 and Schedule 6)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[5] The whole Act (except section 1 and Schedule 6)

Insert “or de facto partners” after “spouses” wherever occurring.

[6] Section 12A Allowance in respect of certain children

Omit “widow” wherever occurring in section 12A (2).

Insert instead “spouse or de facto partner”.

[7] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[8] Schedule 6, Part 6

Insert after Part 5:

**Part 6 Superannuation Legislation Amendment
(Same Sex Partners) Act 2000**

12 Definitions

In this Part:

amending Act means the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

conversion benefit means the benefit provided under section 5H.

conversion election means an election under Part 3B.

exercise a function includes perform a duty.

former contributor means a member of the police force who has made a conversion election that has taken effect.

function includes a power, authority or duty.

Police Superannuation Scheme means the superannuation scheme established under this Act.

revocation election—see clause 16 (2).

superannuation scheme means a scheme, fund or arrangement (whether established by or under an Act or not) under which any superannuation or retirement benefits are provided.

13 Spouse or de facto partner entitlements

- (1) The definitions of *de facto partner* and *spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of members or former

members who die on or after the commencement of the amendment substituting the definition of *spouse*.

- (2) The definition of *spouse*, as in force immediately before its substitution by that Act, applies to or in respect of members or former members who die before the commencement of the amendment substituting the definition of *spouse*.

14 Arrangements for revocation of conversion elections

- (1) The Minister may enter into a written arrangement with STC, FTC, a trustee of a superannuation scheme or any other person, for or with respect to the revocation of a conversion election made by a former contributor, or class of former contributors, and the reinstatement of that former contributor, or class of former contributors, as a contributor or contributors under this Act.
- (2) An arrangement may be entered into by the Minister with one or more of the persons referred to in subclause (1).
- (3) For the purposes of this Part, STC, FTC, the trustee of a superannuation scheme or any other person may enter into an arrangement under this Part.
- (4) STC or FTC must, if required by the Minister, enter into an arrangement under this Part.
- (5) The Minister or any person with whom the Minister enters into an arrangement under this Part may not give effect to any such arrangement with respect to a former contributor except with the written consent of the former contributor affected by the arrangement.
- (6) A former contributor who makes a revocation election is taken to have given consent for the purposes of subclause (5).
- (7) An arrangement under this Part may be amended in the manner provided by the arrangement.

15 Matters to be covered by arrangement

An arrangement under this Part may be made for or with respect to the following matters:

- (a) the notice, and information, to be given to a former contributor about the right to make a revocation election and the effect of making such an election,
- (b) the manner in which a revocation election may be made, amended or revoked,
- (c) the period within which a revocation election is required to be made,
- (d) the date on which a revocation election by a former contributor takes effect,
- (e) the reinstatement of a former contributor as a contributor under this Act and as an employee under the *State Authorities Non-contributory Superannuation Act 1987* to the same position that the former contributor would have been in if the conversion election made by the former contributor had not taken effect,
- (f) the rights and obligations of a reinstated contributor under the Police Superannuation Scheme and the *State Authorities Non-contributory Superannuation Act 1987*,
- (g) the effect of reinstatement on the contributor's rights or obligations under, benefits under, or membership of, another superannuation scheme,
- (h) the effect of reinstatement on the liability for payment of employer contributions or other amounts to the Police Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987* or any other superannuation scheme,
- (i) the transfer of benefits, or other amounts, (whether or not currently payable) under another superannuation scheme by the trustee of that superannuation scheme to STC for payment in respect of the former contributor to the Police Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*,
- (j) the adjustment of reserves or funds of superannuation schemes for the purposes of the arrangement, whether the schemes are established by or under this or any other Act or in any other manner,

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- (k) the contributions, and other amounts, payable by a former contributor in respect of the period during which a conversion election had effect in respect of the former contributor,
 - (l) workers compensation benefits paid to, or payable in respect of, a former contributor during the period in which a conversion election had effect in respect of the former contributor,
 - (m) the adjustment or reduction of benefits payable to contributors under this Act or any other superannuation scheme,
 - (n) the payment of interest on outstanding amounts required to be paid under the arrangement,
 - (o) the transfer of assets by a trustee of a superannuation scheme to meet a requirement to pay an amount under the arrangement,
 - (p) the obtaining of actuarial advice by the Minister or a trustee of a superannuation scheme or other person for the purposes of the arrangement or a related matter,
 - (q) the amendment of the arrangement,
 - (r) any other matter that is ancillary to, or consequential on, a matter referred to in paragraphs (a)–(q),
 - (s) any other matter prescribed by the regulations for the purposes of this clause.

16 Right to revoke conversion election

- (1) A former contributor who is covered by an arrangement under this Part may, in the manner specified by the arrangement, make a revocation election.
- (2) A *revocation election* is an election by a former contributor to give effect to an arrangement under this Part in relation to the former contributor.
- (3) If a former contributor fails to make a revocation election on or before the last date for making an election specified under the arrangement or purports to make an election after that date, the former contributor is taken to have elected not to make a revocation election.

- (4) A revocation election made by a former contributor takes effect on the date specified under the arrangement.
- (5) Despite subclause (3), an arrangement may provide for the acceptance of an election after the last date for making it in specified circumstances.

17 Circumstances in which a revocation election may not be made or is revoked

If a benefit is paid or becomes payable or is deferred or preserved in respect of a former contributor under the *First State Superannuation Act 1992* or another superannuation scheme before the date on which a revocation election made by the former contributor takes effect:

- (a) the former contributor is not eligible to make a revocation election, and
- (b) if the former contributor has made a revocation election, the election has no effect.

18 Effect of arrangement

- (1) An arrangement entered into by the Minister and the trustee of a superannuation scheme for the purposes of this Part has effect according to its tenor.
- (2) Despite subclause (1), any such arrangement does not have effect in respect of a former contributor unless written consent is given as required by clause 14 (5).
- (3) The Minister, STC, FTC, a trustee of a superannuation scheme or any other person has, and may exercise, any function conferred by or under this Part or by or under an arrangement entered into under this Part.
- (4) This Part has effect despite any other provision of this Act or any other Act or regulation or other law or the rules of any superannuation scheme affected by an arrangement.
- (5) For the purposes of section 25 of the *Privacy and Personal Information Protection Act 1998*, STC and FTC are not required to comply with section 9, 10, 14, 17, 18 or 19 of that Act in respect of the provision of information for the purposes of an arrangement, or proposed arrangement, under this Part.

- (6) This Part, and any arrangement entered into under this Part, have effect so far as the legislative power of the Parliament of New South Wales permits.

19 Validation

Any act, matter or thing done or omitted to be done by the Minister, STC, FTC or any trustee of a superannuation scheme or other person under or for the purposes of an arrangement under this Part before the arrangement takes effect, or takes effect in relation to a former contributor, that could have been done or omitted to be done if the arrangement had effect, or had effect in relation to the former contributor, is, if the arrangement takes effect, or takes effect in relation to the former contributor, validated.

20 Liability for actions taken under Part

- (1) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:
- (a) in connection with obtaining or making a revocation election, or
 - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
 - (c) in connection with the provision of information in relation to clauses 14–19 or an arrangement, or proposed arrangement, under this Part, or
 - (d) for the purpose of executing clauses 14–19,
- subject STC, a member of the Board or a person so acting to any action, liability, claim or demand.
- (2) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:
- (a) in connection with obtaining or making a revocation election, or
 - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
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- (c) in connection with the provision of information in relation to clauses 14–19 or an arrangement, or proposed arrangement, under this Part, or
 - (d) for the purpose of executing clauses 14–19,
- subject FTC, a member of the Board or a person so acting to any action, liability, claim or demand.

Explanatory note

Item [1] extends the definition of *spouse* for the purposes of the Police Superannuation Scheme to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a contributor or former contributor to the Scheme. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits are now to be dealt with as spouses and will be entitled to the benefits payable to spouses on the death of a contributor or former contributor.

Item [2] makes a consequential amendment.

Item [3] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [4] inserts proposed Part 6 of Schedule 6 (proposed clauses 12–20), containing savings and transitional provisions. Proposed clause 12 contains definitions. Proposed clause 13 makes it clear that the extended definition of *spouse* applies only to members or former members who die after the extended definition commences.

Proposed clauses 14–20 enable the Minister to enter into arrangements with the FSS Trustee Corporation (*FTC*), the SAS Trustee Corporation (*STC*), other trustees of superannuation schemes and other persons for the purpose of giving persons who have previously elected to take a conversion benefit and transfer to the First State Superannuation Fund or other superannuation schemes the right to elect to revoke that election. An arrangement may not take effect with respect to a former contributor except with the former contributor's consent. An arrangement may cover the election by former contributors to give effect to the arrangement, the reinstatement of the former contributors in the Police Superannuation Scheme, the rights and obligations of a reinstated contributor, obligations with respect to employer contributions, the payment of benefits or other amounts from other superannuation schemes to *STC*, workers compensation benefits, the adjustment and reduction of benefits and other related matters. A former contributor covered by an arrangement has the right to elect to give effect to the arrangement (that is, to be reinstated as a contributor). An election may not be made, or is revoked, if a benefit becomes payable to the person before the election takes effect. An arrangement is to have effect according to its tenor and has effect despite any other provision of the Principal Act or any other Act or regulation or other law or the rules of any affected superannuation scheme. Any action taken by the Minister, *STC*, *FTC* or any trustee or other person in accordance with, and for the purposes of, an arrangement before it takes effect is validated if the arrangement takes effect. *STC*, the *STC* Board, *FTC*, the *FTC* Board and persons acting under their direction are not subject to any action, liability, claim or demand for things done or omitted to be done in connection with revocation elections or an arrangement, or proposed arrangement, or in connection with the provision of information for the purposes of proposed clauses 14–19 or an arrangement, or proposed arrangement, or for the purpose of executing the proposed clauses.

**1.4 State Authorities Non-contributory Superannuation Act 1987
No 212**

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

de facto partner of a deceased employee or deceased former employee means, if the employee or former employee was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

[2] Section 3 (1)

Omit the definition of *spouse*. Insert instead:

spouse of a deceased employee or deceased former employee means the widow or widower, as the case may be, of the employee or former employee.

[3] The whole Act (except section 3 and Schedule 5)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except section 3 and Schedule 5)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[5] Section 26BA

Insert after section 26B:

26BA Effect of revocation of conversion election

- (1) This section applies to a person in respect of whom a revocation election has taken effect under Part 6 of Schedule 6 to the *Police Regulation (Superannuation) Act 1906* or Part 9 of Schedule 25 to the *Superannuation Act 1916*.
- (2) A person to whom this section applies is taken to have been an employee during the period a conversion election referred to in section 26B had effect in respect of the person.

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No 114

Schedule 1 Amendments

- (3) Section 26B (2) does not apply to a person to whom this section applies, or any other person who, but for that section, would be eligible as a beneficiary of a person to whom this section applies to be paid, or to defer or preserve, a benefit under this Act.

[6] Schedule 2 Excluded persons

Insert “, other than a person in respect of whom a revocation election has taken effect under Part 6 of Schedule 6 to the *Police Regulation (Superannuation) Act 1906* or Part 9 of Schedule 25 to the *Superannuation Act 1916*” after “1916” in paragraph (e).

[7] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[8] Schedule 5, Part 4

Insert after Part 3:

**Part 4 Superannuation Legislation Amendment
(Same Sex Partners) Act 2000**

4 Spouse or de facto partner entitlements

- (1) The definitions of *de facto partner* and *spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of employees or former employees who die on or after the commencement of the amendment substituting the definition of *spouse*.

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- (2) The definition of *spouse*, as in force before its substitution by that Act, applies to or in respect of employees or former employees who die before the commencement of the amendment substituting the definition of *spouse*.

Explanatory note

Item [1] extends the definition of *spouse* for the purposes of the *State Authorities Non-contributory Superannuation Act 1987* to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits under that Act are now to be dealt with as spouses of such persons and will be entitled to the benefits payable to spouses on their death.

Items [2] and [3] restore the rights of persons who revoke conversion elections (as permitted by amendments to the *Police Regulation (Superannuation) Act 1906* and the *Superannuation Act 1916* made by the proposed Act) to receive, preserve or defer benefits under the *State Authorities Non-contributory Superannuation Act 1987*. Those rights were removed when the conversion elections took effect.

Item [4] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [5] makes it clear that the extended definition of *spouse* applies only to employees or former employees who die after the extended definition commences.

1.5 State Authorities Superannuation Act 1987 No 211

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

de facto partner of a deceased contributor or deceased former contributor means, if the contributor or former contributor was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

[2] Section 3 (1)

Omit the definition of *spouse*. Insert instead:

spouse of a deceased contributor or deceased former contributor means the widow or widower, as the case may be, of the contributor or former contributor.

[3] The whole Act (except section 3 and Schedule 6)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except section 3 and Schedule 6)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[5] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[6] Schedule 6, Part 6

Insert after Part 5:

**Part 6 Superannuation Legislation Amendment
(Same Sex Partners) Act 2000**

8 Spouse or de facto partner entitlements

- (1) The definitions of *de facto partner* and *spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of contributors or former contributors who die on or after the commencement of the amendment substituting the definition of *spouse*.
- (2) The definition of *spouse*, as in force immediately before its substitution by that Act, applies to or in respect of contributors or former contributors who die before the commencement of the amendment substituting the definition of *spouse*.

Explanatory note

Item [1] extends the definition of *spouse* for the purposes of the State Authorities Superannuation Scheme to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits are now to be dealt with as spouses of such persons and will be entitled to the benefits payable to spouses on their death.

Item [2] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [3] makes it clear that the extended definition of *spouse* applies only to contributors or former contributors who die after the extended definition commences.

1.6 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Omit the definitions of *De facto relationship*, *De facto spouse* and *Spouse* from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order in section 3 (1):

De facto partner of a deceased contributor or deceased pensioner means, if the contributor or pensioner was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

De facto relationship is a de facto relationship within the meaning of the *Property (Relationships) Act 1984* between a contributor or pensioner and a de facto partner.

Spouse of a contributor or pensioner who has died means the widow or widower, as the case may be, of the contributor or pensioner.

[3] The whole Act (except the definition of “Spouse” in section 3 (1) and Schedule 25)

Insert “or de facto partner” after “spouse” wherever occurring.

[4] The whole Act (except the definition of “Spouse” in section 3 (1) and Schedule 25)

Insert “or de facto partner’s” after “spouse’s” wherever occurring.

[5] The whole Act (except the definition of “Spouse” in section 3 (1) and Schedule 25)

Insert “or de facto partners’ “ after “spouses’ “ wherever occurring.

[6] The whole Act (except the definition of “Spouse” in section 3 (1) and Schedule 25)

Insert “or de facto partners” after “spouses” wherever occurring.

[7] The whole Act (except section 3 (1) and Schedule 25)

Omit “de facto spouse” wherever occurring. Insert instead “de facto partner”.

[8] Section 32AA Extension of sec 32A to certain cases where spouses or de facto partners die contemporaneously

Omit section 32AA (1) (c). Insert instead:

- (c) his spouse or de facto partner died before a pension became payable to the spouse or de facto partner under this Act consequent on his death,

[9] Section 32AA (2) (c)

Omit the paragraph. Insert instead:

- (c) her spouse or de facto partner died before a pension became payable to the spouse or de facto partner under this Act consequent on her death,

[10] Section 40 Male pensioner sentenced to imprisonment

Omit “herself” wherever occurring in section 40 (1) (a).
Insert instead “the spouse or de facto partner”.

[11] Section 46A Miscellaneous provisions as to spouses’ or de facto partners’ pensions

Omit “his” from section 46A (4) (c). Insert instead “the spouse’s or de facto partner’s”.

[12] Section 46A (4) (d)

Omit “her”. Insert instead “the spouse’s or de facto partner’s”.

[13] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Same Sex Partners)
Act 2000*

[14] Schedule 25, Part 9

Insert after Part 8:

**Part 9 Superannuation Legislation Amendment
(Same Sex Partners) Act 2000**

27 Definitions

In this Part:

amending Act means the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

conversion benefit means the benefit provided under section 20K.

conversion election means an election under Part 3B.

exercise a function includes perform a duty.

former contributor means an employee who has made a conversion election that has taken effect.

function includes a power, authority or duty.

revocation election—see clause 31 (2).

State Superannuation Scheme means the superannuation scheme established under this Act.

superannuation scheme means a scheme, fund or arrangement (whether established by or under an Act or not) under which any superannuation or retirement benefits are provided.

28 Spouse or defacto partner entitlements

- (1) The definitions of *De facto partner*, *De facto relationship* and *Spouse* inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of contributors or former contributors who die on or after the commencement of the amendment substituting the definition of *Spouse*.
- (2) The definitions of *De facto spouse*, *De facto relationship* and *Spouse*, as in force immediately before their amendment by that Act, apply to or in respect of contributors or former contributors who die before the commencement of the amendment substituting the definition of *Spouse*.

29 Arrangements for revocation of conversion elections

- (1) The Minister may enter into a written arrangement with STC, FTC, a trustee of a superannuation scheme or any other person, for or with respect to the revocation of a conversion election made by a former contributor, or class of former contributors, and the reinstatement of that former contributor, or class of former contributors, as a contributor or contributors under this Act.
- (2) An arrangement may be entered into by the Minister with one or more of the persons referred to in subclause (1).
- (3) For the purposes of this Part, STC, FTC, the trustee of a superannuation scheme or any other person may enter into an arrangement under this Part.
- (4) STC or FTC must, if required by the Minister, enter into an arrangement under this Part.
- (5) The Minister or any person with whom the Minister enters into an arrangement under this Part may not give effect to any such arrangement with respect to a former contributor except with the written consent of the former contributor affected by the arrangement.
- (6) A former contributor who makes a revocation election is taken to have given consent for the purposes of subclause (5).
- (7) An arrangement under this Part may be amended in the manner provided by the arrangement.

30 Matters to be covered by arrangement

An arrangement under this Part may be made for or with respect to the following matters:

- (a) the notice, and information, to be given to a former contributor about the right to make a revocation election and the effect of making such an election,
- (b) the manner in which a revocation election may be made, amended or revoked,
- (c) the period within which a revocation election is required to be made,
- (d) the date on which a revocation election by a former contributor takes effect,
- (e) the reinstatement of a former contributor as a contributor under this Act and as an employee under the *State Authorities Non-contributory Superannuation Act 1987* to the same position that the former contributor would have been in if the conversion election made by the former contributor had not taken effect,
- (f) the rights and obligations of a reinstated contributor under the State Superannuation Scheme and the *State Authorities Non-contributory Superannuation Act 1987*,
- (g) the effect of reinstatement on the contributor's rights or obligations under, benefits under, or membership of, another superannuation scheme,
- (h) the effect of reinstatement on the liability for payment of employer contributions or other amounts to the State Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987* or any other superannuation scheme,
- (i) the transfer of benefits, or other amounts, (whether or not currently payable) under another superannuation scheme by the trustee of that superannuation scheme to STC for payment in respect of the former contributor to the State Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*,

- (j) the adjustment of reserves or funds of superannuation schemes for the purposes of the arrangement, whether the schemes are established by or under this or any other Act or in any other manner,
- (k) the contributions, and other amounts, payable by a former contributor in respect of the period during which a conversion election had effect in respect of the former contributor,
- (l) the adjustment or reduction of benefits payable to contributors under this Act or any other superannuation scheme,
- (m) the payment of interest on outstanding amounts required to be paid under the arrangement,
- (n) the transfer of assets by a trustee of a superannuation scheme to meet a requirement to pay an amount under the arrangement,
- (o) the obtaining of actuarial advice by the Minister or a trustee of a superannuation scheme or other person for the purposes of the arrangement or a related matter,
- (p) the amendment of the arrangement,
- (q) any other matter that is ancillary to, or consequential on, a matter referred to in paragraphs (a)–(p),
- (r) any other matter prescribed by the regulations for the purposes of this clause.

31 Right to revoke conversion election

- (1) A former contributor who is covered by an arrangement under this Part may, in the manner specified by the arrangement, make a revocation election.
- (2) A *revocation election* is an election by a former contributor to give effect to an arrangement under this Part in relation to the former contributor.

- (3) If a former contributor fails to make a revocation election on or before the last date for making an election specified under the arrangement or purports to make an election after that date, the former contributor is taken to have elected not to make a revocation election.
- (4) A revocation election made by a former contributor takes effect on the date specified under the arrangement.
- (5) Despite subclause (3), an arrangement may provide for the acceptance of an election after the last date for making it in specified circumstances.

32 Circumstances in which a revocation election may not be made or is revoked

If a benefit is paid or becomes payable or is deferred or preserved in respect of a former contributor under the *First State Superannuation Act 1992* or another superannuation scheme before the date on which a revocation election made by the former contributor takes effect:

- (a) the former contributor is not eligible to make a revocation election, and
- (b) if the former contributor has made a revocation election, the election has no effect.

33 Effect of arrangement

- (1) An arrangement entered into by the Minister and the trustee of a superannuation scheme for the purposes of this Part has effect according to its tenor.
- (2) Despite subclause (1), any such arrangement does not have effect in respect of a former contributor unless written consent is given as required by clause 29 (5).
- (3) The Minister, STC, FTC, a trustee of a superannuation scheme or any other person has, and may exercise, any function conferred by or under this Part or by or under an arrangement entered into under this Part.
- (4) This Part has effect despite any other provision of this Act or any other Act or regulation or other law or the rules of any superannuation scheme affected by an arrangement.

- (5) For the purposes of section 25 of the *Privacy and Personal Information Protection Act 1998*, STC and FTC are not required to comply with section 9, 10, 14, 17, 18 or 19 of that Act in respect of the provision of information for the purposes of an arrangement, or proposed arrangement, under this Part.
- (6) This Part, and any arrangement entered into under this Part, have effect so far as the legislative power of the Parliament of New South Wales permits.

34 Validation

Any act, matter or thing done or omitted to be done by the Minister, STC, FTC or any trustee of a superannuation scheme or other person under or for the purposes of an arrangement under this Part before the arrangement takes effect, or takes effect in relation to a former contributor, that could have been done or omitted to be done if the arrangement had effect, or had effect in relation to the former contributor, is, if the arrangement takes effect, or takes effect in relation to the former contributor, validated.

35 Liability for actions taken under Part

- (1) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:
 - (a) in connection with obtaining or making a revocation election, or
 - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
 - (c) in connection with the provision of information in relation to clauses 29–34 or an arrangement, or proposed arrangement, under this Part, or
 - (d) for the purpose of executing clauses 29–34,subject STC, a member of the Board or a person so acting to any action, liability, claim or demand.

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- (2) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:
- (a) in connection with obtaining or making a revocation election, or
 - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
 - (c) in connection with the provision of information in relation to clauses 29–34 or an arrangement, or proposed arrangement, under this Part, or
 - (d) for the purpose of executing clauses 29–34,
- subject FTC, a member of the Board or a person so acting to any action, liability, claim or demand.

Explanatory note

Item [3] extends the definition of **spouse** for the purposes of the State Superannuation Scheme to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a contributor or former contributor to the Scheme. The effect of this is that same sex partners of persons who are entitled to, or who are receiving, benefits are now to be dealt with as spouses and will be entitled to the benefits payable to spouses on the death of a contributor or former contributor.

Items [1], [2] and [4]–[8] make consequential amendments.

Item [9] enables savings and transitional regulations to be made as a consequence of the amendments to be made by the proposed Act.

Item [10] inserts proposed Part 9 of Schedule 25 (proposed clauses 27–35), containing savings and transitional provisions. Proposed clause 27 contains definitions. Proposed clause 28 makes it clear that the extended definition of **spouse** applies only to contributors or former contributors who die after the extended definition commences.

Proposed clauses 29–35 enable the Minister to enter into arrangements with the FSS Trustee Corporation (**FTC**), the SAS Trustee Corporation (**STC**), other trustees of superannuation schemes and other persons for the purpose of giving persons who have previously elected to take a conversion benefit and transfer to the First State Superannuation Fund or other superannuation schemes the right to elect to revoke that election. An arrangement may not take effect with respect to a former contributor except with the former contributor's consent. An arrangement may cover the election by former contributors to give effect to the arrangement, the reinstatement of the former contributors in the State Superannuation Scheme, the rights and obligations of a reinstated contributor, obligations with respect to employer contributions, the payment of benefits or other amounts from other superannuation schemes to STC, the adjustment and reduction of benefits and other related matters. A former contributor covered by an arrangement has the right to elect to give effect to the arrangement (that is, to be reinstated as a contributor). An election may not be made, or is revoked, if a benefit becomes payable to the person before the election takes effect. An arrangement is to have effect according to its tenor and has effect despite any other provision of the Principal Act or any other Act or regulation or other law or the rules of any affected superannuation scheme. Any action taken by the Minister, STC, FTC or any trustee or

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other person in accordance with, and for the purposes of, an arrangement before it takes effect is validated if the arrangement takes effect. STC, the STC Board, FTC, the FTC Board and persons acting under their direction are not subject to any action, liability, claim or demand for things done or omitted to be done in connection with revocation elections or an arrangement, or proposed arrangement, or in connection with the provision of information for the purposes of proposed clauses 29–35 or an arrangement, or proposed arrangement, or for the purpose of executing the proposed clauses.

[Minister's second reading speech made in—
Legislative Assembly on 1 November 2000
Legislative Council on 23 November 2000]

BY AUTHORITY