

South Australia

Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003

An Act to amend the *Parliamentary Superannuation Act 1974*, the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994* and the *Superannuation Act 1988*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

Part 2—Amendment of *Parliamentary Superannuation Act 1974*

4—Amendment of s. 5—Interpretation

Section 5 of the principal Act is amended by inserting after the definition of *prescribed office* in subsection (1) the following definition:

putative spouse means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 7A of this Act;

5—Insertion of new sections

The following sections are inserted in Part 1 of the principal Act after section 7:

7A—Putative spouses

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and that they—
 - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or
 - (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.

- (2) A person whose rights depend on whether—
 - (a) he or she and another person; or
 - (b) two other persons,were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
 - (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
 - (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

7B—Restriction on publication of court proceedings

- (1) ***Protected information*** is information relating to an application under section 7A (including images) that identifies, or may lead to the identification of—
 - (a) an applicant; or
 - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
 - (c) a witness in the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
 - (a) the publication or disclosure of material—
 - (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
 - (ii) for purposes associated with the administration of this Act; or

- (b) the publication in printed or electronic form of material that—
 - (i) consists solely or primarily of the reported judgements or decisions of the Court; or
 - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—

newspaper means a newspaper, journal, magazine or other publication that is published at periodic intervals;

publish means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

Part 3—Amendment of *Police Superannuation Act 1990*

6—Amendment of s.4—Interpretation

Section 4 of the principal Act is amended by inserting after the definition of *police cadet* in subsection (1) the following definition:

putative spouse means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 4A of this Act;

7—Insertion of new sections

The following sections are inserted in Part 1 of the principal Act after section 4:

4A—Putative spouses

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and that they—
 - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or
 - (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.
- (2) A person whose rights depend on whether—
 - (a) he or she and another person; or

- (b) two other persons,
were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
- (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
- (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

4B—Restriction on publication of court proceedings

- (1) *Protected information* is information relating to an application under section 4A (including images) that identifies, or may lead to the identification of—
- (a) an applicant; or
- (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
- (c) a witness in the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
- (a) the publication or disclosure of material—
- (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
- (ii) for purposes associated with the administration of this Act; or
- (b) the publication in printed or electronic form of material that—

- (i) consists solely or primarily of the reported judgements or decisions of the Court; or
 - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—

newspaper means a newspaper, journal, magazine or other publication that is published at periodic intervals;

publish means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

8—Amendment of s. 32—Benefits payable on contributor's death

Section 32 of the principal Act is amended by inserting after paragraph (b) of subsection (1a) the following paragraph:

- (c) a person who was cohabiting with the contributor at the time of his or her death as the putative spouse of the contributor.

Part 4—Amendment of *Southern State Superannuation Act 1994*

9—Amendment of s. 3—Interpretation

Section 3 of the principal Act is amended by inserting after the definition of *the PSESS Scheme* in subsection (1) the following definition:

putative spouse means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 3A of this Act;.

10—Insertion of new sections

The following sections are inserted in Part 1 of the principal Act after section 3:

3A—Putative spouses

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and that they—
 - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or

- (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.
- (2) A person whose rights depend on whether—
 - (a) he or she and another person; or
 - (b) two other persons,were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
 - (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
 - (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

3B—Restriction on publication of court proceedings

- (1) *Protected information* is information relating to an application under section 3A (including images) that identifies, or may lead to the identification of—
 - (a) an applicant; or
 - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
 - (c) a witness to the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
 - (a) the publication or disclosure of material—

- (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
 - (ii) for purposes associated with the administration of this Act; or
 - (b) the publication in printed or electronic form of material that—
 - (i) consists solely or primarily of the reported judgements or decisions of the Court; or
 - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—

newspaper means a newspaper, journal, magazine or other publication that is published at periodic intervals;

publish means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

Part 5—Amendment of *Superannuation Act 1988*

11—Amendment of s. 4—Interpretation

Section 4 of the principal Act is amended by inserting after the definition of *Public Sector Employees Superannuation Scheme* in subsection (1) the following definition:

putative spouse means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 4A of this Act;.

12—Insertion of new sections

The following sections are inserted in the principal Act after section 4:

4A—Putative spouses

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and that they—
 - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or
 - (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.
- (2) A person whose rights depend on whether—
 - (a) he or she and another person; or
 - (b) two other persons,were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
 - (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
 - (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

4B—Restriction on publication of court proceedings

- (1) *Protected information* is information relating to an application under section 4A (including images) that identifies, or may lead to the identification of—
 - (a) an applicant; or
 - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the proceedings relate; or

- (c) a witness to the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
 - (a) the publication or disclosure of material—
 - (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
 - (ii) for purposes associated with the administration of this Act; or
 - (b) the publication in printed or electronic form of material that—
 - (i) consists solely or primarily of the reported judgements or decisions of the Court; or
 - (ii) is of a technical nature designed primarily for use by legal practitioners.

- (5) In this section—

newspaper means a newspaper, journal, magazine or other publication that is published at periodic intervals;

publish means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

13—Amendment of s. 38—Death of contributor

Section 38 of the principal Act is amended by inserting after paragraph (b) of subsection (1a) the following paragraph:

- (c) a person who was cohabiting with the contributor at the time of his or her death as the putative spouse of the contributor.