

Superannuation Legislation Amendment Act 2010

No. 40 of 2010

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	3
PART 2—EMERGENCY SERVICES SUPERANNUATION ACT 1986	4
3 Definitions of <i>employee</i> and <i>operational staff member</i>	4
4 Definition of <i>partner</i>	4
5 Definition of <i>employee</i>	5
6 Membership	5
7 Restriction of death and disability benefits	6
8 Optional contributions during leave of absence	6
9 New section 20NA inserted	6
20NA Registration of names of dependants	6
10 Payment of benefits in case of multiple claimants	6
11 Disability and death cover under ESSPLAN	7
12 Optional additional disability and death cover under ESSPLAN	8
13 Optional disability and death cover for eligible spouses	8
14 New section 25 inserted	8
25 Disclosure of contents of medical reports	8
15 Section 28A substituted	9
28A Payment of benefits if person is incapable of managing financial affairs	9
PART 3—PARLIAMENTARY SALARIES AND SUPERANNUATION ACT 1968	10
Division 1—Preliminary	10
16 Definitions	10
17 Definition of <i>partner</i>	10
18 New sections 10A and 10B inserted	11
10A Registration of names of adult children	11
10B Payment of children's and adult children's allowances	12

<i>Section</i>	<i>Page</i>
Division 2—Existing benefits scheme	12
19 Members' superannuation benefit	12
20 Entitlements on death of member	13
21 Repeal of section 18(8)	13
22 Exercise of Parliamentary Trustee's discretion	13
23 New section 18AA inserted	13
18AA Parliamentary Trustee's discretion to determine qualifying partners	13
Division 3—New benefits scheme	14
24 Benefits	14
25 New section 24F inserted	15
24F Disclosure of contents of medical reports	15
PART 4—POLICE REGULATION ACT 1958	16
Division 1—Preliminary	16
26 Definitions	16
Division 2—Gratuities, pensions, allowances and funds	17
27 Definitions of <i>adult child</i> and <i>dependant</i>	17
28 Entitlement of spouse to pension or gratuity	18
29 Repeal of section 44(5)	18
30 Exercise of Board's discretion	18
31 Allowances and gratuities to children and dependants	19
32 New sections 45A and 45B inserted	20
45A Registration of names of adult children	20
45B Registration of names of dependants	21
33 Election to increase pension entitlement	22
34 New section 46C inserted	22
46C Disclosure of contents of medical reports	22
35 Repeal of section 49	23
36 Section 51 substituted	23
51 Payment of benefits if person is incapable of managing financial affairs	23
37 Dismissal etc. for misconduct	24
38 Pensions payable to partner	24
39 Commutation	24
40 Reinstatement of certain discharged etc. members of force	24
Division 3—Amendments to Fourth Schedule	25
41 Part II of Fourth Schedule	25
42 Part III of Fourth Schedule	27
43 Gender neutral language	28

<i>Section</i>	<i>Page</i>
Division 4—Statute law revision	29
44 Statute law revision amendments	29
PART 5—STATE EMPLOYEES RETIREMENT BENEFITS ACT 1979	30
Division 1—Preliminary	30
45 Definition of <i>adult child</i>	30
46 Definition of <i>partner</i>	30
Division 2—Contributions	31
47 Permanent employees to be members and contributors	31
48 Circumstances in which a member will cease to be a contributor	31
49 Rate of contributions	31
50 Contributions deducted from salary	32
Division 3—Pensions and benefits	32
51 Repeal of sections 28 to 31	32
52 Submission of information and medical examination	32
53 New section 43B inserted	33
43B Registration of names of adult children	33
54 Benefits for partner and children on death of member before retirement	34
55 Repeal of section 44(2)	34
56 Benefits for partner and children on death of pensioner	34
57 Repeal of section 45(7)	34
58 New section 46 inserted	35
46 Board's discretion to determine qualifying partners	35
59 Pension to child if no surviving partner	36
60 Payments for children where partner dies	36
61 Pensions payable for life	36
62 Board to make determination as to entitlement to disability benefits	37
63 Disability benefit entitlements	37
64 Discontinuance of benefits	37
65 New section 63A inserted	37
63A Disclosure of contents of medical reports	37
66 Repeal of section 64	38
67 Minimum benefits	38
Division 4—General	38
68 Power of Board to acquire information	38
69 New section 69A inserted	38
69A Continued application of member classification provisions	38

<i>Section</i>	<i>Page</i>
70 Repeal of section 70	39
71 Section 70B substituted	39
70B Payment of benefits if person is incapable of managing financial affairs	39
PART 6—STATE SUPERANNUATION ACT 1988	40
Division 1—Preliminary	40
72 Definitions	40
73 Definition of partner	40
Division 2—Revised scheme members	41
74 Contribution rates	41
75 Pension entitlement on retirement through disability	41
76 Retirement or death after return from leave of absence	41
77 New section 35A inserted	42
35A Registration of names of adult children	42
78 Pension to partner or children on death of revised scheme member	43
79 Pension to partner or children on death of revised scheme member who is a pensioner	43
80 Exercise of Board's discretion	44
81 Repeal of section 37(4)	45
82 Partner of pensioner aged 60 years or over entitled to convert part of pension to a lump sum	45
83 Payments to children	45
Division 3—New scheme members	46
84 Contribution rates	46
85 Benefit on death of new scheme member before retirement	46
86 New sections 53A and 53B inserted	47
53A Board to consider nominations of dependants	47
53B Board to consider nominations of adult children	48
Division 4—General provisions	48
87 Transfer from revised scheme to new scheme	48
88 Repeal of sections 62 to 65	48
89 Members of approved superannuation schemes	48
90 Provisions relating to children's pensions	49
91 Pensions payable for life except in case of children	49
92 Section 80 substituted	49
80 Payment of benefits if person is incapable of managing financial affairs	49
93 Contributors transferring from recognised superannuation schemes	50
94 New section 83B inserted	50
83B Disclosure of contents of medical reports	50

<i>Section</i>	<i>Page</i>
95 Repeal of sections 84 and 87	51
96 New section 102 inserted	51
102 Continued application of medical classification provisions	51
PART 7—SUPERANNUATION (PORTABILITY) ACT 1989	52
97 Definition of <i>partner</i>	52
PART 8—TRANSPORT SUPERANNUATION ACT 1988	53
98 Definition of <i>partner</i>	53
99 Contributions by members	53
100 Benefit on death before retirement	54
101 New section 30A inserted	54
30A Board to consider nominations of dependants	54
102 New section 40A inserted	55
40A Disclosure of contents of medical reports	55
103 Section 48 substituted	55
48 Payment of benefits if person is incapable of managing financial affairs	55
PART 9—AMENDMENTS RELATING TO REVERSIONARY PENSIONS AND SAME-SEX PARTNERS	57
104 Definitions relating to pensions— Constitution Act 1975	57
105 Definitions— Supreme Court Act 1986	58
106 Pension entitlements of Associate Judges, their partners and children	58
107 Definitions relating to pensions— County Court Act 1958	59
108 Pension entitlements of County Court judges and their partners	59
109 Pension of Chief Magistrate— Magistrates' Court Act 1989	60
110 Pensions— Attorney-General and Solicitor-General Act 1972	60
PART 10—REPEAL OF AMENDING ACT	62
111 Repeal of amending Act	62
ENDNOTES	63



Victoria

Superannuation Legislation Amendment Act 2010[†]

No. 40 of 2010

[Assented to 30 June 2010]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to—

- (a) amend the following Acts to achieve consistency with the principles of the **Charter of Human Rights and Responsibilities Act 2006**—

-
- (i) the **Emergency Services Superannuation Act 1986**;
 - (ii) the **Parliamentary Salaries and Superannuation Act 1968**;
 - (iii) the **Police Regulation Act 1958**;
 - (iv) the **State Employees Retirement Benefits Act 1979**;
 - (v) the **State Superannuation Act 1988**;
 - (vi) the **Superannuation (Portability) Act 1989**;
 - (vii) the **Transport Superannuation Act 1988**; and
- (b) provide for the ongoing membership in the Emergency Services Superannuation Scheme of certain employees of Ambulance Service—Victoria who are transferred to the Emergency Services Telecommunications Authority; and
- (c) make consequential amendments to the following Acts to achieve consistency with the reversionary pension entitlement provisions of the Acts listed in paragraph (a)—
- (i) the **Attorney-General and Solicitor-General Act 1972**;
 - (ii) the **Constitution Act 1975**;
 - (iii) the **County Court Act 1958**;
 - (iv) the **Magistrates' Court Act 1989**;
 - (v) the **Supreme Court Act 1986**.
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Superannuation Legislation Amendment Act 2010
No. 40 of 2010

Part 1—Preliminary

s. 2

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision of this Act does not come into operation before 1 December 2010, it comes into operation on that day.
-

**PART 2—EMERGENCY SERVICES SUPERANNUATION
ACT 1986**

3 Definitions of *employee* and *operational staff member*

See:
Act No.
94/1986.
Reprint No. 6
as at
1 December
2005
and
amending
Act Nos
97/2005,
41/2006,
37/2007,
12/2008,
43/2008,
65/2008,
4/2009,
38/2009 and
13/2010.
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In section 3(1) of the **Emergency Services
Superannuation Act 1986**—

- (a) in paragraph (e) of the definition of *employee*, for "Department of Natural Resources and Environment" **substitute** "Department of Sustainability and Environment or Department of Primary Industries";
- (b) in paragraph (b) of the definition of *operational staff member*, for "Department of Natural Resources and Environment" **substitute** "Department of Sustainability and Environment or Department of Primary Industries".

4 Definition of *partner*

- (1) In section 3(1) of the **Emergency Services
Superannuation Act 1986** for the definition of *partner* **substitute**—

"partner of a person means the person's spouse or domestic partner;"

- (2) After section 3(2) of the **Emergency Services
Superannuation Act 1986** **insert**—

"(2A) The definition of *partner* as substituted by section 4(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act on or after the commencement of the substituting section."

5 Definition of *employee*

- (1) In section 4(1B) of the **Emergency Services Superannuation Act 1986** for "Department of Natural Resources and Environment" **substitute** "Department of Sustainability and Environment or Department of Primary Industries".
- (2) After section 4(1D) of the **Emergency Services Superannuation Act 1986** insert—

"(1DA) For the purposes of paragraph (f) of the definition of *employee*, a person continues to be an employee within the meaning of that paragraph if the person—

 - (a) is an employee of Ambulance Service—Victoria within the meaning of the **Ambulance Services Act 1986** on 1 July 2010; and
 - (b) transfers to an office of employment with the Emergency Services Telecommunications Authority within the meaning of the **Emergency Services Telecommunications Authority Act 2004**."

6 Membership

In section 20B of the **Emergency Services Superannuation Act 1986**—

- (a) in subsection (1) for "65 years" **substitute** "75 years or as otherwise permitted by Commonwealth superannuation law";
- (b) after subsection (3)(b) **insert**—

"(ba) any leave of absence without pay on account of parental leave for a period of up to 12 months for each confinement; and";

- (c) in subsection (4)(e), after "practitioner"
insert "or parental leave for a period of up to
12 months for each confinement".

7 Restriction of death and disability benefits

In section 20L(2)(b) of the **Emergency Services
Superannuation Act 1986** for "expedient."
substitute—

"expedient—
for the purposes of this section."

8 Optional contributions during leave of absence

In section 20M(1) of the **Emergency Services
Superannuation Act 1986** after "practitioner"
insert "or parental leave for a period of up to
12 months for each confinement".

9 New section 20NA inserted

After section 20N of the **Emergency Services
Superannuation Act 1986** **insert—**

"20NA Registration of names of dependants

- (1) A contributor may register the names of
persons whom he or she considers to be his
or her dependants (other than a partner or
child) with the Board for the purposes of this
Part.
- (2) A person who has not been registered under
subsection (1) may lodge a claim in a form
approved by the Board as a dependant of a
deceased contributor or former contributor."

10 Payment of benefits in case of multiple claimants

- (1) In section 20P of the **Emergency Services
Superannuation Act 1986** for "in its absolute
discretion determine" **substitute** "determine in
accordance with this section".
-

(2) At the end of section 20P of the **Emergency Services Superannuation Act 1986** insert—

- "(2) Before apportioning benefits under this Part, the Board must consider whether any registered person or claimant under section 20NA was a dependant of the deceased contributor or former contributor.
- (3) The Board must provide a reasonable opportunity for any registered person or claimant to make written submissions in a form approved by the Board as to the degree of his or her dependency.
- (4) In making a determination under this section the Board must consider—
- (a) the degree of financial dependency of that person on the contributor or former contributor at the date of death; and
 - (b) any other factor that the Board considers relevant.
- (5) Nothing in this section limits the Board's discretion to determine what proportions (if any) of the deceased contributor's or former contributor's benefits each dependant is to receive."

11 Disability and death cover under ESSPLAN

In section 21F(7) of the **Emergency Services Superannuation Act 1986** for "appropriate." substitute—

"necessary or expedient to determine the appropriate level and cost of disability and death benefits cover for the member or contributor."

12 Optional additional disability and death cover under ESSPLAN

In section 21FA(4) of the **Emergency Services Superannuation Act 1986** for "appropriate." **substitute—**

"necessary or expedient to determine the appropriate level and cost of optional additional disability and death cover for the member.".

13 Optional disability and death cover for eligible spouses

In section 21JB(4) of the **Emergency Services Superannuation Act 1986** for "appropriate." **substitute—**

"necessary or expedient to determine the appropriate level and cost of optional disability and death cover for the eligible spouse.".

14 New section 25 inserted

After section 24 of the **Emergency Services Superannuation Act 1986** insert—

"25 Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Act, the Board must provide access to the contents of the medical report to the person to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.
- (2) Despite subsection (1), the Board is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."

15 Section 28A substituted

For section 28A of the **Emergency Services Superannuation Act 1986** substitute—

"28A Payment of benefits if person is incapable of managing financial affairs

- (1) The Board may determine that a person who would ordinarily be entitled to receive benefits is incapable of managing his or her financial affairs.
- (2) A determination under subsection (1) may be made by reason of any restriction or lack of capability of the person resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.
- (3) If the Board makes a determination under subsection (1), the Board may cause that person's benefits or any part of that person's benefits to be paid to—
 - (a) the person's guardian or administrator;
or
 - (b) if there is no guardian or administrator, a person nominated by the Board for the benefit of that person and any or all of his or her dependants—

until the Board determines that the person is capable of managing his or her financial affairs."

**PART 3—PARLIAMENTARY SALARIES AND
SUPERANNUATION ACT 1968**

Division 1—Preliminary

16 Definitions

See:
Act No.
7723.
Reprint No. 10
as at
10 September
2009 and
amending
Act Nos
41/2007,
4/2009 and
13/2010.
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- (1) In section 10(1) of the **Parliamentary Salaries and Superannuation Act 1968** insert the following definition—

"adult child has the same meaning as in section 10A;"

- (2) In section 10(2) of the **Parliamentary Salaries and Superannuation Act 1968** after "children" insert "and adult children".

17 Definition of *partner*

- (1) In section 10(1) of the **Parliamentary Salaries and Superannuation Act 1968** for the definition of *partner substitute*—

"partner of a person means the person's spouse or domestic partner;"

- (2) After section 10(4) of the **Parliamentary Salaries and Superannuation Act 1968** insert—

"(5) The definition of *partner* as substituted by section 17(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Parliamentary Trustee of an entitlement arising under this Act on or after the commencement of the substituting section."

18 New sections 10A and 10B inserted

After section 10 of the **Parliamentary Salaries and Superannuation Act 1968** insert—

"10A Registration of names of adult children

- (1) For the purposes of this Part, a member or former member may register with the Parliamentary Trustee the name of a child (an *adult child*) of himself or herself or of his or her partner who—
 - (a) has attained the age of 18 years; and
 - (b) is a person with a disability as described in section 8(1) of the Disability Services Act 1986 of the Commonwealth; and
 - (c) wholly or partially relies on the member or former member for financial support.
 - (2) A person who is not registered under this section may lodge a claim in a form approved by the Parliamentary Trustee to be considered an adult child—
 - (a) on the death of the member or former member; or
 - (b) if the person is a child of the member or former member, on the expiration of his or her child pension.
 - (3) In determining whether a registered person or claimant is an adult child, the Parliamentary Trustee must consider reports from at least 2 registered medical practitioners appointed by the Parliamentary Trustee as medical officers for the purposes of this Act.
-

- (4) A determination under this section may be subject to regular reviews by the Parliamentary Trustee.

10B Payment of children's and adult children's allowances

- (1) An allowance under Division 2 or benefit under Division 3 in respect of a child is payable until—
- (a) he or she attains the age of 18 years; or
 - (b) in the case of a student, he or she attains the age of 25 years or the Parliamentary Trustee ceases to be satisfied that he or she is a full-time student; or
 - (c) he or she dies—
- whichever is the earlier.
- (2) An allowance under Division 2 or benefit under Division 3 in respect of an adult child is payable until—
- (a) the Parliamentary Trustee ceases to be satisfied that he or she is an adult child; or
 - (b) he or she dies—
- whichever is the earlier."

Division 2—Existing benefits scheme

19 Members' superannuation benefit

In section 15(3) of the **Parliamentary Salaries and Superannuation Act 1968** after "children" insert "or adult children".

20 Entitlements on death of member

In section 18(6) of the **Parliamentary Salaries and Superannuation Act 1968**—

- (a) after "child" (wherever occurring) **insert** "or adult child";
- (b) after "children" **insert** "or adult children".

21 Repeal of section 18(8)

Section 18(8) of the **Parliamentary Salaries and Superannuation Act 1968** is **repealed**.

22 Exercise of Parliamentary Trustee's discretion

In section 18(10)(b) of the **Parliamentary Salaries and Superannuation Act 1968** for "in its absolute discretion determine" **substitute** "determine in accordance with section 18AA".

23 New section 18AA inserted

After section 18 of the **Parliamentary Salaries and Superannuation Act 1968** **insert**—

"18AA Parliamentary Trustee's discretion to determine qualifying partners

- (1) In making a determination under section 18(10)(b), the Parliamentary Trustee must consider all of the circumstances of the relationship between the deceased member or former member and each person who may qualify for a pension as a partner or former partner of the deceased member or former member, including, if applicable—
 - (a) the period of time for which that person was in a relationship with the member or former member;
 - (b) the period of time since the relationship between that person and the member or former member ended;

- (c) the financial dependency of that person on the member or former member at the date of death of the member or former member;
 - (d) whether that person has any dependent children from his or her relationship with the member or former member;
 - (e) any submissions made by that person to the Parliamentary Trustee under subsection (2);
 - (f) any other factor that the Parliamentary Trustee considers relevant.
- (2) A person who was the partner of the deceased member or former member may make written submissions to the Parliamentary Trustee as to his or her eligibility for a pension as a partner or former partner of the deceased member or former member."

Division 3—New benefits scheme

24 Benefits

After section 21C(2)(h) of the **Parliamentary Salaries and Superannuation Act 1968** insert—

- '(ha) as if in section 19AA(2A) "and after the date on which the deceased person attained the age of 60 years" were omitted;
- (hb) as if in section 19AA(5) in the definition of *eligible child* after paragraph (b) there were inserted—
- "; or
- (c) an adult child."';

25 New section 24F inserted

After section 24E of the **Parliamentary Salaries and Superannuation Act 1968** insert—

"24F Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Act, the Parliamentary Trustee must provide access to the contents of the medical report to the person to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.
 - (2) Despite subsection (1), the Parliamentary Trustee is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."
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PART 4—POLICE REGULATION ACT 1958

Division 1—Preliminary

26 Definitions

See:
Act No.
6338.
Reprint No. 12
as at
14 July 2008
and
amending
Act Nos
30/2007,
4/2008,
34/2008,
52/2008,
60/2008,
68/2008,
77/2008,
25/2009,
55/2009,
68/2009,
69/2009,
1/2010 and
13/2010.
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(1) In section 3(1) of the **Police Regulation Act 1958**—

(a) **insert** the following definitions—

"domestic partner of a person means—

(a) a person who is, or was at the time of the person's death, in a registered domestic relationship with the person; or

(b) a person to whom the person is not married but with whom, in the opinion of the ESS Board, the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

partner of a person means the person's spouse or domestic partner;"

(b) for the definition of *spouse substitute*—

"spouse of a person means the person to whom the person is, or was at the time of the person's death, married."

(2) In section 3(3) of the **Police Regulation Act 1958** for "spouse" **substitute** "partner".

(3) After section 3(4) of the **Police Regulation Act 1958** insert—

"(5) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not or were not in a registered domestic relationship are or were domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case."

Division 2—Gratuities, pensions, allowances and funds

27 Definitions of *adult child* and *dependant*

In section 39(1) of the **Police Regulation Act 1958** insert the following definitions—

"*adult child* has the same meaning as in section 45A(1);

dependant, in relation to a deceased person, means—

- (a) his or her partner; or
- (b) a child of the person; or
- (c) any other person who in the opinion of the Board was at the date of the death of the person wholly or partially dependent on the person or who at that date had a legal right to look to him or her for financial support;"

28 Entitlement of spouse to pension or gratuity

- (1) **Insert** the following heading to section 44 of the **Police Regulation Act 1958**—
"Entitlement of partner to pension or gratuity".
- (2) In sections 44(1), (2), (3), (4) and (7) of the **Police Regulation Act 1958** for "spouse" (wherever occurring) **substitute** "partner".
- (3) In sections 44(1) and (2) of the **Police Regulation Act 1958** for "spouse's" (wherever occurring) **substitute** "partner's".

29 Repeal of section 44(5)

Section 44(5) of the **Police Regulation Act 1958** is **repealed**.

30 Exercise of Board's discretion

- (1) In section 44(7)(b) of the **Police Regulation Act 1958** for "in its absolute discretion determine" **substitute** "determine in accordance with subsection (8)".
- (2) After section 44(7) of the **Police Regulation Act 1958 insert**—
"(8) In making a determination under subsection (7), the ESS Board must consider all of the circumstances of the relationship between the deceased member or retired member of the force and each person who may qualify for a pension as a partner or former partner of the deceased member or retired member of the force, including, if applicable—
 - (a) the period of time for which that person was in a relationship with the member or retired member;
 - (b) the period of time since the relationship between that person and the member or retired member ended;

- (c) the financial dependency of that person on the member or retired member at the date of death of the member or retired member;
 - (d) whether that person has any dependent children from his or her relationship with the member or retired member;
 - (e) any submissions made by that person to the ESS Board under subsection (9);
 - (f) any other factor that the ESS Board considers relevant.
- (9) A person who was the partner of the deceased member or retired member of the force may make written submissions to the ESS Board as to his or her eligibility for a pension as a partner or former partner of the deceased member or retired member."

31 Allowances and gratuities to children and dependants

- (1) In section 45(a) of the **Police Regulation Act 1958** after "students—" **insert** "and any adult children".
- (2) In section 45(b) of the **Police Regulation Act 1958**—
 - (a) after "child" (where twice occurring) **insert** "or adult child";
 - (b) for "spouse" (where twice occurring) **substitute** "partner".
- (3) In section 45(c) of the **Police Regulation Act 1958** for "his duty without his own default, and the said Board recommends the grant of a gratuity to any relative who has been wholly or mainly dependent upon such member the Governor in Council may grant such a gratuity." **substitute** "his or her duty without his or her own default, the

Board may grant a gratuity to any dependant who has been wholly or mainly dependent upon the member or, if there is more than one such dependant, apportion the gratuity between those dependants in accordance with section 45B."

32 New sections 45A and 45B inserted

After section 45 of the **Police Regulation Act 1958** insert—

"45A Registration of names of adult children

- (1) For the purposes of section 45, a member or retired member of the force may register with the ESS Board the name of a child (an *adult child*) of himself or herself or of his or her partner who—
 - (a) has attained the age of 18 years; and
 - (b) is a person with a disability as described in section 8(1) of the Disability Services Act 1986 of the Commonwealth; and
 - (c) wholly or partially relies on the member or retired member for financial support.
- (2) A person who is not registered under this section may lodge a claim in a form approved by the ESS Board to be considered an adult child—
 - (a) on the death of a member or retired member of the force; or
 - (b) if the person is a child of a deceased member or retired member of the force, on the expiration of his or her child pension.

-
- (3) In determining whether a registered person or claimant is an adult child, the ESS Board must consider reports from at least 2 registered medical practitioners appointed by the ESS Board as medical officers for the purposes of this Act.
 - (4) A determination under this section may be subject to regular reviews by the ESS Board.

45B Registration of names of dependants

- (1) For the purposes of section 45, a member or retired member of the force may register the names of persons whom he or she considers to be his or her dependants (other than a partner or child) with the ESS Board.
 - (2) A person who has not been registered under subsection (1) may lodge a claim in a form approved by the ESS Board as a dependant of a deceased member or retired member.
 - (3) Before apportioning benefits under section 45, the ESS Board must consider whether any registered person or claimant under that section was a dependant of the deceased member or retired member.
 - (4) The ESS Board must provide a reasonable opportunity for any registered person or claimant to make written submissions in a form approved by the Board as to the degree of his or her dependency.
 - (5) In making a determination under this section the ESS Board must consider—
 - (a) the degree of financial dependency of that person on the member or retired member at the date of death; and
 - (b) any other factor that the ESS Board considers relevant.
-

- (6) Nothing in this section limits the ESS Board's discretion to determine what proportions (if any) of the deceased member's or retired member's benefits each dependant is to receive."

33 Election to increase pension entitlement

- (1) **Insert** the following heading to section 46A of the **Police Regulation Act 1958**—

"Member may elect to increase partner's pension entitlement in certain circumstances".

- (2) In sections 46A(1) and (2) of the **Police Regulation Act 1958** for "spouse" (wherever occurring) **substitute** "partner".
- (3) In sections 46A(2), (3), (5) and (7) of the **Police Regulation Act 1958** for "spouse's" (wherever occurring) **substitute** "partner's".

34 New section 46C inserted

After section 46B of the **Police Regulation Act 1958** **insert**—

"46C Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Part, the ESS Board must provide access to the contents of the medical report to the member of the force to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.
- (2) Despite subsection (1), the ESS Board is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."

35 Repeal of section 49

Section 49 of the **Police Regulation Act 1958** is **repealed**.

36 Section 51 substituted

For section 51 of the **Police Regulation Act 1958** **substitute—**

"51 Payment of benefits if person is incapable of managing financial affairs

- (1) The ESS Board may determine that a person who would ordinarily be entitled to receive benefits is incapable of managing his or her financial affairs.
- (2) A determination under subsection (1) may be made by reason of any restriction or lack of capability of the person resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.
- (3) If the ESS Board makes a determination under subsection (1), the ESS Board may cause that person's benefits or any part of that person's benefits to be paid to—
 - (a) the person's guardian or administrator;
or
 - (b) if there is no guardian or administrator, a person nominated by the ESS Board for the benefit of that person and any or all of his or her dependants—

until the ESS Board determines that the person is capable of managing his or her financial affairs."

37 Dismissal etc. for misconduct

- (1) In the proviso to section 54(2) of the **Police Regulation Act 1958** for "his spouse or children" **substitute** "the member's partner, children or adult children".
- (2) In section 54(3) of the **Police Regulation Act 1958**—
 - (a) for "spouse" **substitute** "partner";
 - (b) for "or any relative" **substitute** "or adult children or any other dependant".

38 Pensions payable to partner

- (1) In sections 64A(1), 64C(5) and 67C of the **Police Regulation Act 1958** for "spouse" (wherever occurring) **substitute** "partner".
- (2) In sections 67D(3) of the **Police Regulation Act 1958**—
 - (a) for "spouse" **substitute** "partner";
 - (b) for "spouse's" **substitute** "partner's".

39 Commutation

In section 67E(3) of the **Police Regulation Act 1958** for "spouse" **substitute** "partner".

40 Reinstatement of certain discharged etc. members of force

- (1) In section 92 of the **Police Regulation Act 1958** for "his" (where twice occurring) **substitute** "the member's".
- (2) In the proviso to section 92 of the **Police Regulation Act 1958** for "his wife or children such member shall before he" **substitute** "the member's partner or children or adult children such member shall before he or she".

Division 3—Amendments to Fourth Schedule

41 Part II of Fourth Schedule

- (1) For the headings preceding clause 5 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** substitute—

"Partners, Children and Adult Children

(a) Partners' Pensions".

- (2) In clause 5 of Part II of the Fourth Schedule to the **Police Regulation Act 1958**—

(a) for "*Spouse's*" substitute "*Partner's*";

(b) for "spouse" (wherever occurring) substitute "partner".

- (3) In clause 6 of Part II of the Fourth Schedule to the **Police Regulation Act 1958**—

(a) for "*Spouse's*" substitute "*Partner's*";

(b) for "spouse" substitute "partner".

- (4) For the heading preceding clause 7 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** substitute—

"(b) Partners' Gratuities".

- (5) In clause 7 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** for "spouse" (wherever occurring) substitute "partner".

- (6) For the heading preceding clause 8 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** substitute—

"(c) Children's and Adult Children's Allowances".

- (7) In clause 8 of Part II of the Fourth Schedule to the **Police Regulation Act 1958**—
- (a) after "child" (where first occurring) **insert** "or adult child";
 - (b) in subclauses (1) and (2), for "spouse" (wherever occurring) **substitute** "partner";
 - (c) in subclauses (1)(a) and (b), (2)(b), (c) and (d), after "children" (where first occurring) **insert** "or adult children";
 - (d) in subclauses (1)(b) and (2)(d), after "children" (where secondly occurring) **insert** "and adult children";
 - (e) in subclauses (2) and (4), after "child" (wherever occurring) **insert** "or adult child".
- (8) In clause 9 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** for "students." **substitute** "students—
and to adult children."
- (9) After clause 9B of Part II of the Fourth Schedule to the **Police Regulation Act 1958** **insert**—
- "9C An allowance in respect of an adult child is payable until the end of the fortnightly pay period in which—
- (a) the Board ceases to be satisfied that he or she is an adult child; or
 - (b) he or she dies—
- whichever is the earlier."
- (10) For the heading preceding clause 10 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** **substitute**—
- "(d) Children's and Adult Children's
Gratuities".**
-

- (11) In clause 10 of Part II of the Fourth Schedule to the **Police Regulation Act 1958** after "children" (wherever occurring) **insert** "and adult children".

42 Part III of Fourth Schedule

- (1) In clause 13 of Part III of the Fourth Schedule to the **Police Regulation Act 1958**—
- (a) for "spouse or child" **substitute** "partner, child or adult child";
 - (b) after "child's" **insert** "or adult child's";
 - (c) after "child" **insert** ", adult child".
- (2) For clause 14 of Part III of the Fourth Schedule to the **Police Regulation Act 1958** **substitute**—
- "14 (1) If the partner of a member of the force was at the time of the member's death living apart from the member (not having been deserted by the member), a pension or gratuity is to be paid to the partner only if the ESS Board is satisfied that the member regularly contributed to the partner's support.
- (2) The amount of a pension under subclause (1) must not exceed the amount that the member contributed."
- (3) For clause 15(1) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** **substitute**—
- "(1) If a person becomes the partner of a pensioner after the pensioner's retirement, a pension is not payable to the partner on the death of the pensioner unless—
- (a) the pensioner was in receipt of a pension under section 43 at the time the person became the pensioner's partner; or

- (b) the person became the pensioner's partner three years or more before the death of the pensioner."
- (4) Clause 15(2) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** is **repealed**.
- (5) For clause 15(3) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** substitute—
 - "(3) A partner of a pensioner who became the pensioner's partner after the pensioner's retirement is not entitled to receive at the same time a pension as a surviving partner and as a former member but is entitled to whichever of those pensions is greater."
- (6) In clauses 16 and 18 of Part III of the Fourth Schedule to the **Police Regulation Act 1958** for "spouse" (wherever occurring) **substitute** "partner".

43 Gender neutral language

- (1) In clauses 5, 6, 8(3)(a) and (b) and 11 of Part II and clauses 16 and 19(a)(i) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** after "his" (wherever occurring) **insert** "or her".
 - (2) In clauses 8(3)(a), 9A(a) and (b) and 10 of Part II and clause 19(a)(i) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** after "he" (wherever occurring) **insert** "or she".
 - (3) In clause 4 of Part I, clause 8(3)(b) of Part II and clause 19(a)(i) of Part III of the Fourth Schedule to the **Police Regulation Act 1958** after "him" (wherever occurring) **insert** "or her".
 - (4) In clause 10 of Part III of the Fourth Schedule to the **Police Regulation Act 1958** after "widow" **insert** "or widower".
-

Division 4—Statute law revision

44 Statute law revision amendments

- (1) In section 85F of the **Police Regulation Act 1958** for "this section" **substitute** "this Division".
 - (2) In section 127A(1F) of the **Police Regulation Act 1958** for "Act," **substitute** "Act,".
-

**PART 5—STATE EMPLOYEES RETIREMENT BENEFITS
ACT 1979**

Division 1—Preliminary

45 Definition of *adult child*

See:
Act No.
9363.
Reprint No. 7
as at
10 September
2009
and
amending
Act Nos
4/2009 and
13/2010.
LawToday:
www.
legislation.
vic.gov.au

In section 2(1) of the **State Employees Retirement Benefits Act 1979** insert the following definition—

"*adult child*" has the same meaning as in section 43B(1);".

46 Definition of *partner*

- (1) In section 2(1) of the **State Employees Retirement Benefits Act 1979** for the definition of ***partner substitute***—

"*partner*" of a person means the person's spouse or domestic partner;".

- (2) After section 2(6) of the **State Employees Retirement Benefits Act 1979** insert—

"(7) The definition of ***partner*** as substituted by section 46(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986** on or after the commencement of the substituting section."

Division 2—Contributions

47 Permanent employees to be members and contributors

- (1) Section 21(1B) of the **State Employees Retirement Benefits Act 1979** is repealed.
- (2) In section 21(2) of the **State Employees Retirement Benefits Act 1979** for "65 years" substitute "75 years, unless otherwise permitted by Commonwealth superannuation law".

48 Circumstances in which a member will cease to be a contributor

- (1) In section 22(1)(b) of the **State Employees Retirement Benefits Act 1979** for "65 years" substitute "75 years".
- (2) After section 22(1) of the **State Employees Retirement Benefits Act 1979** insert—
 - "(1A) Despite subsection (1)(b), a member may continue to be a contributor after he or she attains the age of 75 years if he or she is permitted to do so under Commonwealth superannuation law."

49 Rate of contributions

- (1) In section 23(4) of the **State Employees Retirement Benefits Act 1979** for "65 years" substitute "75 years".
- (2) After section 23(4) of the **State Employees Retirement Benefits Act 1979** insert—
 - "(4A) Despite subsection (4), a member may make contributions after he or she attains the age of 75 years if he or she is permitted to do so under Commonwealth superannuation law."

50 Contributions deducted from salary

(1) After section 24(5) of the State Employees Retirement Benefits Act 1979 insert—

"(5A) A member who is absent without pay on account of parental leave for a period of up to 12 months for each confinement is not required to pay contributions during or in respect of that period of leave."

(2) In section 24(6) of the State Employees Retirement Benefits Act 1979 after "Board" insert "or parental leave for a period of up to 12 months for each confinement".

(3) In section 24(6C) of the State Employees Retirement Benefits Act 1979 after "ill-health" insert "or parental leave for a period of up to 12 months for each confinement".

Division 3—Pensions and benefits

51 Repeal of sections 28 to 31

Sections 28, 29, 30 and 31 of the **State Employees Retirement Benefits Act 1979** are repealed.

52 Submission of information and medical examination

In section 32 of the **State Employees Retirement Benefits Act 1979** omit "and, after receiving such further information, the Board may at any time and from time to time re-assign the member to a medical classification providing increased benefits".

53 New section 43B inserted

After section 43A of the **State Employees Retirement Benefits Act 1979** insert—

"43B Registration of names of adult children

- "(1) For the purposes of this Part, a member may register with the Board the name of a child (an *adult child*) of himself or herself or of his or her partner who—
- (a) has attained the age of 18 years; and
 - (b) is a person with a disability as described in section 8(1) of the Disability Services Act 1986 of the Commonwealth; and
 - (c) wholly or partially relies on the member for financial support.
- (2) A person who is not registered under this section may lodge a claim in a form approved by the Board to be considered an adult child—
- (a) on the death of a member; or
 - (b) if the person is a child of a deceased member, on the expiration of his or her child pension.
- (3) In determining whether a registered person or claimant is an adult child, the Board must consider reports from at least 2 registered medical practitioners appointed by the Board as medical officers for the purposes of this Act.
- (4) A determination under this section may be subject to regular reviews by the Board."

54 Benefits for partner and children on death of member before retirement

- (1) In the heading to section 44 of the **State Employees Retirement Benefits Act 1979** for "and children" substitute ", children and adult children".
- (2) In section 44(1)(c) of the **State Employees Retirement Benefits Act 1979** after "children" insert "and adult children".

55 Repeal of section 44(2)

Section 44(2) of the **State Employees Retirement Benefits Act 1979** is repealed.

56 Benefits for partner and children on death of pensioner

- (1) In the heading to section 45 of the **State Employees Retirement Benefits Act 1979** for "and children" substitute ", children and adult children".
- (2) In section 45(1)(b) of the **State Employees Retirement Benefits Act 1979** after "children" insert "and adult children".
- (3) In section 45(3)(b) of the **State Employees Retirement Benefits Act 1979** for "in its absolute discretion determine" substitute "determine in accordance with section 46".
- (4) In section 45(6)(a) of the **State Employees Retirement Benefits Act 1979** omit "and had not attained the age of 60 years".

57 Repeal of section 45(7)

Section 45(7) of the **State Employees Retirement Benefits Act 1979** is repealed.

58 New section 46 inserted

After section 45 of the **State Employees Retirement Benefits Act 1979** insert—

"46 Board's discretion to determine qualifying partners

- (1) In making a determination under section 45(3)(b), the Board must consider all of the circumstances of the relationship between the deceased member or pensioner and each person who may qualify for a pension as a partner or former partner of the deceased member or pensioner, including, if applicable—
- (a) the period of time for which that person was in a relationship with the member or pensioner;
 - (b) the period of time since the relationship between that person and the member or pensioner ended;
 - (c) the financial dependency of that person on the member or pensioner at the date of death of the member or pensioner;
 - (d) whether that person has any dependent children from his or her relationship with the member or pensioner;
 - (e) any submissions made by that person to the Board under subsection (2);
 - (f) any other factor that the Board considers relevant.
- (2) A person who was the partner of the deceased member or pensioner may make written submissions to the Board as to his or her eligibility for a pension as a partner or former partner of the deceased member or pensioner."
-

59 Pension to child if no surviving partner

- (1) In the heading to section 47 of the **State Employees Retirement Benefits Act 1979** after "child" insert "or adult child".
- (2) In section 47 of the **State Employees Retirement Benefits Act 1979** after "child" (where twice occurring) insert "or adult child".

60 Payments for children where partner dies

- (1) In the heading to section 48 of the **State Employees Retirement Benefits Act 1979** after "children" insert "and adult children".
- (2) In section 48 of the **State Employees Retirement Benefits Act 1979** after "children" (where twice occurring) insert "or adult children".

61 Pensions payable for life

- (1) Insert the following heading to section 49 of the **State Employees Retirement Benefits Act 1979**—

"Pension payable for life except in certain cases".
 - (2) After section 49(3) of the **State Employees Retirement Benefits Act 1979** insert—

"(3A) A pension in respect of an adult child is payable until the end of the fortnightly pay period in which—
 - (a) the Board ceases to be satisfied that he or she is an adult child; or
 - (b) he or she dies—whichever is the earlier."
 - (3) In section 49(4) of the **State Employees Retirement Benefits Act 1979** after "child" (wherever occurring) insert "or adult child".
-

62 Board to make determination as to entitlement to disability benefits

In section 54(1)(c) of the **State Employees Retirement Benefits Act 1979** omit "in accordance with the medical classification of the member".

63 Disability benefit entitlements

In section 55(3) of the **State Employees Retirement Benefits Act 1979** for "65 years" substitute "60 years".

64 Discontinuance of benefits

In section 59(3) of the **State Employees Retirement Benefits Act 1979** for "and his medical classification shall be the same as his classification just prior to the date his benefits began" substitute "and the medical classification of the member, if any, is disregarded".

65 New section 63A inserted

After section 63 of the **State Employees Retirement Benefits Act 1979** insert—

"63A Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Part, the Board must provide access to the contents of the medical report to the member to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.
- (2) Despite subsection (1), the Board is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."

66 Repeal of section 64

Section 64 of the **State Employees Retirement Benefits Act 1979** is repealed.

67 Minimum benefits

In section 65(1) of the **State Employees Retirement Benefits Act 1979** after "children" insert "or adult children".

Division 4—General

68 Power of Board to acquire information

- (1) In section 69(1)(a) of the **State Employees Retirement Benefits Act 1979** for "this Act" (where secondly occurring) substitute "the administration of the Fund".
- (2) In section 69(1)(b) of the **State Employees Retirement Benefits Act 1979** for "this Act" substitute "the administration of the Fund".

69 New section 69A inserted

After section 69 of the **State Employees Retirement Benefits Act 1979** insert—

"69A Continued application of member classification provisions

Despite the repeal of sections 28, 29, 30, 31, 44(2), 64 and 70 by sections 51, 55, 66 and 70 of the **Superannuation Legislation Amendment Act 2010**, and the amendment of section 32 by section 52 of the **Superannuation Legislation Amendment Act 2010**, those sections, as in force immediately before the commencement of those repeals and that amendment, continue to apply to any person who was a pensioner immediately before the commencement of those repeals and that amendment."

70 Repeal of section 70

Section 70 of the **State Employees Retirement Benefits Act 1979** is **repealed**.

71 Section 70B substituted

For section 70B of the **State Employees Retirement Benefits Act 1979** substitute—

"70B Payment of benefits if person is incapable of managing financial affairs

- (1) The Board may determine that a person who would ordinarily be entitled to receive benefits is incapable of managing his or her financial affairs.
- (2) A determination under subsection (1) may be made by reason of any restriction or lack of capability of the person resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.
- (3) If the Board makes a determination under subsection (1), the Board may cause that person's benefits or any part of that person's benefits to be paid to—
 - (a) the person's guardian or administrator;
or
 - (b) if there is no guardian or administrator, a person nominated by the Board for the benefit of that person and any or all of his or her dependants—

until the Board determines that the person is capable of managing his or her financial affairs."

PART 6—STATE SUPERANNUATION ACT 1988

Division 1—Preliminary

72 Definitions

See:
Act No.
50/1988.
Reprint No. 7
as at
10 September
2009
and
amending
Act Nos
4/2009 and
13/2010.
LawToday:
www.
legislation.
vic.gov.au

In section 3(1) of the **State Superannuation Act 1988**—

(a) **insert** the following definition—

"**adult child** has the same meaning as in sections 35A(1) and 53(2A);";

(b) in the definition of **recognised service**, for "65 years" **substitute** "75 years, or as otherwise permitted by Commonwealth superannuation law,".

73 Definition of partner

(1) In section 3(1) of the **State Superannuation Act 1988** for the definition of **partner** **substitute**—

"**partner** of a person means the person's spouse or domestic partner;".

(2) After section 3(8) of the **State Superannuation Act 1988** **insert**—

"(9) The definition of **partner** as substituted by section 73(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986** on or after the commencement of the substituting section.".

Division 2—Revised scheme members

74 Contribution rates

- (1) In section 28(5) of the **State Superannuation Act 1988** for "65 years" **substitute** "75 years".
- (2) After section 28(5) of the **State Superannuation Act 1988** **insert**—
 - "(6) Despite subsection (5), a revised scheme member may make contributions after he or she attains the age of 75 years if he or she is permitted to do so under Commonwealth superannuation law."

75 Pension entitlement on retirement through disability

- (1) For sections 34(1) and (2) of the **State Superannuation Act 1988** **substitute**—
 - "(1) A revised scheme member who retires on the ground of disability is entitled to his or her revised scheme member's pension."
- (2) In section 34(3) of the **State Superannuation Act 1988** **omit** "or (2)".

76 Retirement or death after return from leave of absence

- (1) For section 35(1) of the **State Superannuation Act 1988** **substitute**—
 - "(1) This section applies to a revised scheme member who on or after the commencement of section 76 of the **Superannuation Legislation Amendment Act 2010**—
 - (a) returns to duty after being on leave of absence without pay; and
 - (b) retires on the ground of disability or dies.

- (1A) The revised scheme member is entitled to benefits in accordance with this Act."
- (2) In sections 35(2) and (3) of the **State Superannuation Act 1988** for "Unless subsection (4) applies, if" **substitute** "If".
- (3) Section 35(4) of the **State Superannuation Act 1988** is **repealed**.

77 New section 35A inserted

After section 35 of the **State Superannuation Act 1988** insert—

"35A Registration of names of adult children

- (1) For the purposes of sections 36 and 37, a revised scheme member may register with the Board the name of a child (an **adult child**) of himself or herself or of his or her partner who—
 - (a) has attained the age of 18 years; and
 - (b) is a person with a disability as described in section 8(1) of the Disability Services Act 1986 of the Commonwealth; and
 - (c) wholly or partially relies on the revised scheme member for financial support.
- (2) A person who is not registered under this section may lodge a claim in a form approved by the Board to be considered an adult child—
 - (a) on the death of a revised scheme member; or
 - (b) if the person is a child of a deceased revised scheme member, on the expiration of his or her child pension.

- (3) In determining whether a registered person or claimant is an adult child, the Board must consider reports from at least 2 registered medical practitioners appointed by the Board as medical officers for the purposes of this Act.
- (4) A determination under this section may be subject to regular reviews by the Board."

78 Pension to partner or children on death of revised scheme member

- (1) In the heading to section 36 of the **State Superannuation Act 1988** for "**or children**" substitute "**, children or adult children**".
- (2) In section 36(1)(b) of the **State Superannuation Act 1988** after "each child" insert "or adult child".
- (3) In section 36(3) of the **State Superannuation Act 1988**—
 - (a) after "child" insert "or adult child";
 - (b) in paragraph (a), after "children" insert "and eligible adult children";
 - (c) in paragraph (b), after "children" (where twice occurring) insert "and eligible adult children".
- (4) In section 36(5)(a) of the **State Superannuation Act 1988** omit "not due to his or her own fault".

79 Pension to partner or children on death of revised scheme member who is a pensioner

- (1) In the heading to section 37 of the **State Superannuation Act 1988** for "**or children**" substitute "**, children or adult children**".
- (2) In section 37(1)(b) of the **State Superannuation Act 1988** after "child" insert "or adult child".

- (3) In section 37(3)(a) of the **State Superannuation Act 1988** omit "and had not attained the age of 60 years".

80 Exercise of Board's discretion

- (1) In section 37(2A)(b) of the **State Superannuation Act 1988** for "in its absolute discretion determine" substitute "determine in accordance with subsection (2B)".
- (2) After section 37(2A) of the **State Superannuation Act 1988** insert—
- "(2B) In making a determination under subsection (2A)(b), the Board must consider all of the circumstances of the relationship between the deceased member or pensioner and each person who may qualify for a pension as a partner or former partner of the deceased member or pensioner, including, if applicable—
- (a) the period of time for which that person was in a relationship with the member or pensioner;
 - (b) the period of time since the relationship between that person and the member or pensioner has ended;
 - (c) the financial dependency of that person on the member or pensioner at the date of death of the member or pensioner;
 - (d) whether that person has any dependent children from his or her relationship with the member or pensioner;
 - (e) any submissions made by that person to the Board under subsection (2C);
 - (f) any other factor that the Board considers relevant.
-

- (2C) A person who was the partner of the deceased member or pensioner may make written submissions to the Board as to his or her eligibility for a pension as a partner or former partner of the deceased member or pensioner."

81 Repeal of section 37(4)

Section 37(4) of the **State Superannuation Act 1988** is **repealed**.

82 Partner of pensioner aged 60 years or over entitled to convert part of pension to a lump sum

In section 40(1) of the **State Superannuation Act 1988** after "Board" **insert** "in accordance with actuarial advice".

83 Payments to children

- (1) **Insert** the following heading to section 48 of the **State Superannuation Act 1988**—
"**Payments to children and adult children**".
- (2) In section 48(1) of the **State Superannuation Act 1988** after "child" **insert** "or adult child".
- (3) In section 48(2) of the **State Superannuation Act 1988**—
- (a) after "each child" **insert** "or adult child";
 - (b) in paragraph (a), after "child" **insert** "or eligible adult child";
 - (c) in paragraph (b), after "children" **insert** "or eligible adult children or both an eligible child and an eligible adult child";
 - (d) in paragraph (c), after "children" (where twice occurring) **insert** "and eligible adult children".

Division 3—New scheme members

84 Contribution rates

- (1) In section 50(9) of the **State Superannuation Act 1988** for "65 years" **substitute** "75 years".
- (2) After section 50(9) of the **State Superannuation Act 1988** **insert**—
 - "(10) Despite subsection (9), a new scheme member may make contributions after he or she attains the age of 75 years if he or she is permitted to do so under Commonwealth superannuation law."

85 Benefit on death of new scheme member before retirement

- (1) After section 53(2) of the **State Superannuation Act 1988** **insert**—
 - "(2A) Without limiting subsection (2), a new scheme member may register the name of a child (an *adult child*) of himself or herself or of his or her partner who—
 - (a) has attained the age of 18 years; and
 - (b) is a person with a disability as described in section 8(1) of the Disability Services Act 1986 of the Commonwealth; and
 - (c) wholly or partially relies on the new scheme member for financial support.
 - (2B) A person who has not been registered under this section may lodge a claim in a form approved by the Board—
 - (a) as a dependant of a deceased new scheme member; or

-
- (b) to be considered an adult child—
- (i) on the death of a new scheme member; or
 - (ii) if the person is a child of a deceased new scheme member, on the expiration of his or her child pension."
- (2) In section 53(6) of the **State Superannuation Act 1988**—
- (a) after "pay to each child" **insert** "or adult child";
 - (b) in paragraph (a), after "child" **insert** "or eligible adult child";
 - (c) in paragraph (b)—
 - (i) after "children" **insert** "and eligible adult children";
 - (ii) after "child" **insert** "or eligible adult child".

86 New sections 53A and 53B inserted

After section 53 of the **State Superannuation Act 1988 insert**—

"53A Board to consider nominations of dependants

- (1) Before apportioning benefits under section 53, the Board must consider whether any registered person or claimant under that section was a dependant of the deceased new scheme member.
 - (2) The Board must provide a reasonable opportunity for any registered person or claimant to make written submissions in a form approved by the Board as to the degree of his or her dependency.
-

- (3) In making a determination under this section the Board must consider—
- (a) the degree of financial dependency of that person on the new scheme member at the date of death; and
 - (b) any other factor that the Board considers relevant.
- (4) Nothing in this section limits the Board's discretion to determine what proportions (if any) of the deceased new scheme member's benefits each dependant is to receive.

53B Board to consider nominations of adult children

- (1) In determining whether a registered person or claimant under section 53 is an adult child, the Board must consider reports from at least 2 registered medical practitioners appointed by the Board as medical officers for the purposes of this Act.
- (2) A determination under this section may be subject to regular reviews by the Board."

Division 4—General provisions

87 Transfer from revised scheme to new scheme

In section 61(6)(c) of the **State Superannuation Act 1988** after "child" **insert** ", adult child".

88 Repeal of sections 62 to 65

Sections 62, 63, 64 and 65 of the **State Superannuation Act 1988** are **repealed**.

89 Members of approved superannuation schemes

In section 69(1) of the **State Superannuation Act 1988** after "children," **insert** "adult children,".

90 Provisions relating to children's pensions

- (1) **Insert** the following heading to section 72 of the **State Superannuation Act 1988**—

"Provisions relating to children's and adult children's pensions".

- (2) In sections 72(1), (2) and (3) of the **State Superannuation Act 1988** after "child" (wherever occurring) **insert** "or adult child".

91 Pensions payable for life except in case of children

- (1) **Insert** the following heading to section 73 of the **State Superannuation Act 1988**—

"Pensions payable for life except in certain cases".

- (2) After section 73(3) of the **State Superannuation Act 1988** **insert**—

"(4) A pension in respect of an adult child is payable until the end of the fortnightly pay period in which—

(a) the Board ceases to be satisfied that he or she is an adult child; or

(b) he or she dies—

whichever is the earlier."

92 Section 80 substituted

For section 80 of the **State Superannuation Act 1988** **substitute**—

"80 Payment of benefits if person is incapable of managing financial affairs

- (1) The Board may determine that a person who would ordinarily be entitled to receive benefits is incapable of managing his or her financial affairs.

- (2) A determination under subsection (1) may be made by reason of any restriction or lack of capability of the person resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.
- (3) If the Board makes a determination under subsection (1), the Board may cause that person's benefits or any part of that person's benefits to be paid to—
 - (a) the person's guardian or administrator; or
 - (b) if there is no guardian or administrator, a person nominated by the Board for the benefit of that person and any or all of his or her dependants—until the Board determines that the person is capable of managing his or her financial affairs."

93 Contributors transferring from recognised superannuation schemes

Sections 82(3) and (4) of the **State Superannuation Act 1988** are repealed.

94 New section 83B inserted

After section 83A of the **State Superannuation Act 1988** insert—

"83B Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Act, the Board must provide access to the contents of the medical report to the contributor to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.

- (2) Despite subsection (1), the Board is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."

95 Repeal of sections 84 and 87

Sections 84 and 87 of the **State Superannuation Act 1988** are repealed.

96 New section 102 inserted

After section 101 of the **State Superannuation Act 1988** insert—

"102 Continued application of medical classification provisions

Despite the repeal of sections 62, 63, 64, 65, 84 and 87 by sections 88 and 95 of the **Superannuation Legislation Amendment Act 2010**, those sections, as in force immediately before the commencement of those repeals, continue to apply to any person who was a pensioner immediately before the commencement of those repeals."

PART 7—SUPERANNUATION (PORTABILITY) ACT 1989

97 Definition of *partner*

See:
Act No.
14/1989.
Reprint No. 6
as at
10 September
2009
and
amending
Act No.
4/2009.
LawToday:
www.
legislation.
vic.gov.au

- (1) In section 3(1) of the **Superannuation (Portability) Act 1989** for the definition of *partner substitute*—
"*partner* of a person means the person's spouse or domestic partner;"
 - (2) After section 3(6) of the **Superannuation (Portability) Act 1989** insert—
"(7) The definition of *partner* as substituted by section 97(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986** on or after the commencement of the substituting section."
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PART 8—TRANSPORT SUPERANNUATION ACT 1988

98 Definition of *partner*

- (1) In section 3(1) of the **Transport Superannuation Act 1988** for the definition of *partner* substitute—

"partner of a person means the person's spouse or domestic partner;"

- (2) After section 3(5) of the **Transport Superannuation Act 1988** insert—

"(6) The definition of *partner* as substituted by section 98(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986** on or after the commencement of the substituting section."

See:
Act No.
33/1988.
Reprint No. 6
as at
10 September
2009
and
amending
Act Nos
4/2009 and
13/2010.
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legislation.
vic.gov.au

99 Contributions by members

- (1) In section 28(7) of the **Transport Superannuation Act 1988** for "65 years" substitute "75 years".

- (2) After section 28(7) of the **Transport Superannuation Act 1988** insert—

"(8) Despite subsection (7), a member may make contributions after he or she attains the age of 75 years if he or she is permitted to do so under Commonwealth superannuation law."

100 Benefit on death before retirement

After section 30(4) of the **Transport Superannuation Act 1988** insert—

"(4A) A person who has not been registered under subsection (4) may lodge a claim in a form approved by the Board as a dependant of a deceased member."

101 New section 30A inserted

After section 30 of the **Transport Superannuation Act 1988** insert—

"30A Board to consider nominations of dependants

- (1) Before apportioning benefits under section 30, the Board must consider whether any registered person or claimant under that section was a dependant of the deceased member or former member.
 - (2) The Board must provide a reasonable opportunity for any registered person or claimant to make written submissions in a form approved by the Board as to the degree of his or her dependency.
 - (3) In making a determination under this section the Board must consider—
 - (a) the degree of financial dependency of that person on the member or former member at the date of death of the member or former member; and
 - (b) any other factor that the Board considers relevant.
-

-
- (4) Nothing in this section limits the Board's discretion to determine what proportions (if any) of the deceased member's or former member's benefits each dependant is to receive."

102 New section 40A inserted

After section 40 of the **Transport Superannuation Act 1988** insert—

"40A Disclosure of contents of medical reports

- (1) Within 28 days of the receipt of a medical report under this Act, the Board must provide access to the contents of the medical report to the member to whom it relates in a way described in section 28(1) of the **Health Records Act 2001**.
- (2) Despite subsection (1), the Board is not required to disclose the contents of a medical report if the disclosure of that information is prohibited under section 26 or 27 of the **Health Records Act 2001**."

103 Section 48 substituted

For section 48 of the **Transport Superannuation Act 1988** substitute—

"48 Payment of benefits if person is incapable of managing financial affairs

- (1) The Board may determine that a person who would ordinarily be entitled to receive benefits is incapable of managing his or her financial affairs.
- (2) A determination under subsection (1) may be made by reason of any restriction or lack of capability of the person resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.
-

- (3) If the Board makes a determination under subsection (1), the Board may cause that person's benefits or any part of that person's benefits to be paid to—
- (a) the person's guardian or administrator;
or
 - (b) if there is no guardian or administrator, a person nominated by the Board for the benefit of that person and any or all of his or her dependants—
- until the Board determines that the person is capable of managing his or her financial affairs."
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**PART 9—AMENDMENTS RELATING TO REVERSIONARY
PENSIONS AND SAME-SEX PARTNERS**

**104 Definitions relating to pensions—Constitution
Act 1975**

- (1) In section 5A(1) of the **Constitution Act 1975** for the definition of *partner substitute*—

"partner of a person means the person's spouse or domestic partner;"

- (2) After section 5A(2) of the **Constitution Act 1975** insert—

"(2A) For the purposes of section 83(2), the definition of *partner* as substituted by section 104(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the entitlement to a pension of a Judge of the Court or a former Judge of the Court only if the death of the Judge of the Court or former Judge of the Court occurs on or after the commencement of the substituting section."

See:
Act No.
8750.
Reprint No. 19
as at
15 January
2009
and
amending
Act Nos
4/2009,
38/2009,
68/2009,
69/2009,
70/2009 and
6/2010.
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legislation.
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See:
Act No.
110/1986.
Reprint No. 6
as at
28 April 2006
and
amending
Act Nos
48/2006,
24/2007,
8/2008, 9/2008,
23/2008,
24/2008,
78/2008,
4/2009, 9/2009,
50/2009,
68/2009,
69/2009 and
11/2010.
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105 Definitions—Supreme Court Act 1986

In section 3(1) of the **Supreme Court Act 1986**
for the definition of *partner substitute*—

"partner of a person means the person's spouse or
domestic partner;"

106 Pension entitlements of Associate Judges, their partners and children

After section 104A(13) of the **Supreme Court
Act 1986** insert—

"(14) For the purposes of subsection (2), the
definition of *partner* as substituted by
section 105 of the **Superannuation
Legislation Amendment Act 2010** applies
in respect of the entitlement to a pension of a
partner of an Associate Judge, a former
Associate Judge or a former Master only if
the death of the Associate Judge, former
Associate Judge or former Master occurs on
or after the commencement of the
substituting section."

**107 Definitions relating to pensions—County Court
Act 1958**

In section 3AA(1) of the **County Court Act 1958**
for the definition of *partner substitute*—

"*partner* of a person means the person's spouse or
domestic partner;"

See:
Act No.
6230.
Reprint No. 13
as at
15 January
2009
and
amending
Act Nos
8/2008,
78/2008,
4/2009, 9/2009,
38/2009,
50/2009,
68/2009,
69/2009 and
1/2010.
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**108 Pension entitlements of County Court judges and
their partners**

After section 14(21) of the **County Court Act
1958 insert—**

"(22) For the purposes of subsection (3), the
definition of *partner* as substituted by
section 107 of the **Superannuation
Legislation Amendment Act 2010** applies
in respect of the entitlement to a pension of a
partner of a judge or former judge only if the
death of the judge or former judge occurs on
or after the commencement of the
substituting section."

See:
Act No.
51/1989.
Reprint No. 15
as at
5 April 2010
and
amending
Act Nos
51/2006,
52/2008,
9/2010 and
12/2010.
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legislation.
vic.gov.au

109 Pension of Chief Magistrate—Magistrates' Court Act 1989

- (1) In section 10A(5) of the **Magistrates' Court Act 1989** for the definition of *partner substitute*—
"*partner* of a person means the person's spouse or domestic partner;"
- (2) After section 10A(6) of the **Magistrates' Court Act 1989** insert—
"(7) For the purposes of subsection (1), the definition of *partner* as substituted by section 109(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the entitlement to a pension of a partner of a Chief Magistrate or former Chief Magistrate only if the death of the Chief Magistrate or former Chief Magistrate occurs on or after the commencement of the substituting section."

See:
Act No.
8305.
Reprint No. 2
as at
17 June 2003
and
amending
Act Nos
79/2006,
23/2008,
83/2008 and
4/2009.
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legislation.
vic.gov.au

110 Pensions—Attorney-General and Solicitor-General Act 1972

- (1) In section 6(5) of the **Attorney-General and Solicitor-General Act 1972** for the definition of *partner substitute*—
"*partner* of a person means the person's spouse or domestic partner;"
- (2) After section 6(6) of the **Attorney-General and Solicitor-General Act 1972** insert—
"(7) For the purposes of subsection (1), the definition of *partner* as substituted by section 110(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the entitlement to a pension of a partner of a Solicitor-General or former Solicitor-General only if the death of the Solicitor-General or former Solicitor-General

Superannuation Legislation Amendment Act 2010
No. 40 of 2010

Part 9—Amendments Relating to Reversionary Pensions and Same-Sex
Partners

s. 110

occurs on or after the commencement of the
substituting section."

PART 10—REPEAL OF AMENDING ACT

111 Repeal of amending Act

This Act is **repealed** on 1 December 2011.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 26 May 2010

Legislative Council: 10 June 2010

The long title for the Bill for this Act was "A Bill for an Act to amend the **Attorney-General and Solicitor-General Act 1972**, the **Constitution Act 1975**, the **County Court Act 1958**, the **Emergency Services Superannuation Act 1986**, the **Magistrates' Court Act 1989**, the **Parliamentary Salaries and Superannuation Act 1968**, the **Police Regulation Act 1958**, the **State Employees Retirement Benefits Act 1979**, the **State Superannuation Act 1988**, the **Superannuation (Portability) Act 1989**, the **Supreme Court Act 1986** and the **Transport Superannuation Act 1988** and for other purposes."

Constitution Act 1975:

Absolute majorities:

Legislative Assembly: 10 June 2010

Legislative Council: 22 June 2010