

# Queensland



## Subordinate Legislation 2003 No. 50

### *Superannuation (State Public Sector) Act 1990*

# **SUPERANNUATION (STATE PUBLIC SECTOR) AMENDMENT OF DEED REGULATION (No. 1) 2003**

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*Superannuation (State Public Sector) Amendment of  
Deed Regulation (No. 1) 2003*

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**1 Short title**

This regulation may be cited as the *Superannuation (State Public Sector) Amendment of Deed Regulation (No. 1) 2003*.

**2 Commencement**

This regulation commences on the day the *Discrimination Law Amendment Act 2002*, part 2 commences.

**3 Approval of amendments of deed**

This regulation approves the amendments of the *Superannuation (State Public Sector) Deed 1990* stated in the schedule.

## **SCHEDULE**

### **AMENDMENTS OF SUPERANNUATION (STATE PUBLIC SECTOR) DEED 1990**

section 3

#### **1 Amendment of s 4 (Definitions)**

Section 4—

*insert—*

‘ **“discrimination law commencement”** means the commencement of the *Discrimination Law Amendment Act 2002*, part 2.

**“previous spouse”**, of a person, means—

- (a) a deceased spouse of the person; or
- (b) a divorced husband or wife of the person; or
- (c) a de facto partner of the person who has separated from the person.’.

#### **2 Amendment of s 32 (Definitions for ch 2)**

Section 32, definition “spouse”—

*omit.*

#### **3 Amendment of s 68 (Definitions for ch 3)**

Section 68, definition “spouse”—

*omit.*

SCHEDULE (continued)

**4 Amendment of ch 3, pt 3, div 3 hdg**

Chapter 3, part 3, division 3, heading, after *'and'*—  
*insert—*  
*'eligible'*.

**5 Amendment of s 76 (Acceptance of personal and spouse contributions)**

Section 76, heading, after *'and'*  
*insert—*  
*'eligible'*.

**6 Insertion of new s 92A**

After section 92—  
*insert—*

**'92A Meaning of "widow" for ch 4—before discrimination law commencement**

*'In this chapter—'*.

**7 Amendment of s 92 (Definitions for ch 4)**

(1) Section 92(1), definition "widow", after *'died'*—  
*insert—*  
*'before the discrimination law commencement'*.

(2) Section 92(1), definition "widow", as amended—  
*relocate* to new section 92A.

**8 Insertion of new s 92B**

After new section 92A—  
*insert—*

SCHEDULE (continued)

**‘92B Meaning of “widow” for ch 4—from discrimination law commencement**

‘(1) This section applies for this chapter if a contributor or a person in receipt of benefit dies on or after the discrimination law commencement.

‘(2) A person is the “**widow**” of a contributor if the person was the contributor’s spouse on the day the contributor died.

‘(3) A person is the “**widow**” of a person in receipt of benefit if the person was the spouse of the person in receipt of benefit—

- (a) on the day the person in receipt of benefit died; and
- (b) on whichever of the following days is relevant—
  - (i) if the person in receipt of benefit retired before reaching the age for retirement—the day the person in receipt of benefit retired;
  - (ii) if the person in receipt of benefit did not retire before reaching the age for retirement—the day the person in receipt of benefit reached the age for retirement.

‘(4) For this section, the gender of the person is not relevant.

‘(5) For this section, the spouse of a person on the day the person died includes a de facto partner of the person on the day of the death only if the person and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA<sup>1</sup>—

- (a) for a continuous period of at least 2 years ending on the day of the death; or
- (b) for a shorter period ending on the day of the death, if the circumstances of the de facto relationship of the person and the de facto partner evidenced a clear intention that the relationship be a long-term, committed relationship.

‘(6) Subsection (5) applies despite the *Acts Interpretation Act 1954*, section 32DA(6).’

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<sup>1</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

SCHEDULE (continued)

**9 Amendment of s 115 (Entitlement to assurance benefit)**

(1) Section 115(2), ‘applies to’—

*omit, insert—*

‘applies to the following persons’.

(2) Section 115(2)(b), from ‘her marriage’—

*omit, insert—*

‘the person—

- (i) had reached the age for retirement; or
- (ii) had retired before reaching the age for retirement because of incapacity or an election to retire under section 110(2)(d);’.

(3) Section 115(2)(c)—

*omit, insert—*

‘(c) the widow of a person who—

- (i) before the passing of the *Superannuation Acts Amendment Act 1984*—
  - (A) had reached the age for retirement; or
  - (B) had retired before reaching the age for retirement because of incapacity or an election to retire under section 110(2)(d); and
- (ii) has commuted for a lump sum the whole of the annuity benefit to which the person was entitled under this chapter;’.

(4) Section 115(2)(d), from ‘, if her marriage’ to ‘retirement’—

*omit.*

**10 Amendment of s 116 (Units of assurance benefit)**

(1) Section 116(c), definition “B”, from ‘the widow’—

*omit, insert—*



SCHEDULE (continued)

‘the person’s widow at the widow’s nearest birthday as at the day of the person’s death.’.

(2) Section 116(d), definition “B”, from ‘the widow’—

*omit, insert—*

‘the person’s widow at the widow’s nearest birthday as at the day of the person’s death.’.

**11 Amendment of s 119 (Entitlement of widow of person on staff of agent-general)**

Section 119(1), ‘she’—

*omit, insert—*

‘the widow’.

**12 Amendment of s 120 (Children entitled to additional assurance benefit)**

(1) Section 120(2)(b), after ‘paragraph (a)’—

*insert—*

‘who has died before the discrimination law commencement.’.

(2) Section 120(2)—

*insert—*

‘(d) a previous spouse of a person mentioned in paragraph (a), who has died on or after the discrimination law commencement, other than—

(i) a child of a divorced wife who is not the issue of the person;  
or

(ii) a child of a de facto partner who has separated from the person, who is not the issue of the person.’.

**13 Insertion of new s 165AA**

Before section 165A—

SCHEDULE (continued)

*insert—*

**‘165AA Meaning of “relict” for ch 5—before discrimination law commencement**

‘In this chapter—’.

**14 Amendment of s 165 (Interpretation)**

(1) Section 165(1), definition “spouse”—

*omit, insert—*

‘ “spouse”—

(a) for part 3, division 3—see section 184A; or

(b) for part 3, division 4—see section 187A.’.

(2) Section 165(1), definition “child to whom this chapter does not apply”, paragraph (b), ‘spouse’—

*omit, insert—*

‘husband or wife’.

(3) Section 165(1), definition “child to whom this chapter does not apply”—

*insert—*

‘(c) a child—

(i) of a de facto partner of a member who has separated from the member; and

(ii) who is not the issue of the member.’.

(4) Section 165(1), definition “relict”, after ‘died’—

*insert—*

‘before the discrimination law commencement’.

(5) Section 165(1), definition “relict”, as amended—

*relocate* to new section 165AA.

SCHEDULE (continued)

**15 Insertion of new s 165AB**

After new section 165AA—

*insert—*

**‘165AB Meaning of “relict” for ch 5—from discrimination law commencement**

‘(1) This section applies for this chapter if a contributor or a pensioner dies on or after the discrimination law commencement.

‘(2) The “**relict**” of a contributor who has died means a person who was the contributor’s spouse on the day the contributor died.

‘(3) The “**relict**” of a pensioner who has died means a person who was the pensioner’s spouse—

- (a) on the day the pensioner died; and
- (b) on whichever of the following days is relevant—
  - (i) if the pensioner retired before reaching the age for retirement—the day the pensioner retired;
  - (ii) if the pensioner did not retire before reaching the age for retirement—the day the pensioner reached the age for retirement.

‘(4) For this section, the gender of the contributor, pensioner or relict is not relevant.

‘(5) For this section, the spouse of a person on the day the person died includes a de facto partner of the person on the day of the death only if the person and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA<sup>2</sup>—

- (a) for a continuous period of at least 2 years ending on the day of the death; or
- (b) for a shorter period ending on the day of the death, if the circumstances of the de facto relationship of the person and the

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<sup>2</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

SCHEDULE (continued)

de facto partner evidenced a clear intention that the relationship be a long-term, committed relationship.

‘(6) Subsection (5) applies despite the *Acts Interpretation Act 1954*, section 32DA(6).’.

**16 Insertion of new s 184A**

Before section 185—

*insert—*

**‘184A Meaning of “spouse” for div 3**

‘In this division—

“**spouse**”, of a person who is a relict, means the contributor or pensioner as a result of whose death the person became a relict.’.

**17 Insertion of new s 187A**

Before section 188—

*insert—*

**‘187A Meaning of “spouse” for div 4**

‘(1) In this division—

“**spouse**” of a contributor or pensioner who has died before the discrimination law commencement—

(a) means a person who—

- (i) was the contributor’s or pensioner’s husband or wife; or
- (ii) although not married to the contributor or pensioner, lived with the contributor or pensioner on a genuine domestic basis as the contributor’s or pensioner’s husband or wife; but

(b) does not include a person who permanently lived separately and apart from the contributor or pensioner.

‘(2) This section applies despite the *Acts Interpretation Act 1954*, section 32DA(6).<sup>3</sup>’.

SCHEDULE (continued)

**18 Amendment of s 188 (Child’s pension—when payable)**

(1) Section 188(2), ‘applies to’—

*omit, insert—*

‘applies to the following children’.

(2) Section 188(2)(i), after ‘who’—

*insert—*

‘has died before the discrimination law commencement, and’.

(3) Section 188(2)—

*insert—*

‘(ia) every child, other than a child to whom this chapter does not apply, of a previous spouse of a person who—

- (i) died on or after the discrimination law commencement; and
- (ii) when the person died, was a contributor or a pensioner mentioned in paragraph (a), (c), (d), (e), (f) or (g);’.

**19 Amendment of s 215 (Interpretation)**

Section 215(1)—

*insert—*

‘**“person in receipt of benefit”** means—

- (a) a person who receives an annuity benefit or incapacity benefit under this chapter; or
- (b) a person who would have been entitled to receive an annuity benefit if the benefit had not been commuted under part 3, division 7.<sup>4</sup>

**“spouse”**, for part 3, division 5—see section 242A.

**“widow”** for parts 2 and 3—see section 215A.’.

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<sup>3</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

<sup>4</sup> Part 3 (Benefits and payments), division 7 (Commutation of annuity benefit)

SCHEDULE (continued)

**20 Insertion of new s 215A**

After section 215—

*insert—*

**‘215A Meaning of “widow” of certain persons for pts 2 and 3**

‘(1) This section applies to parts 2 and 3.

‘(2) The “**widow**”, of a contributor who has died on or after the discrimination law commencement, means a person who was the contributor’s spouse on the day the contributor died.

‘(3) The “**widow**”, of a person in receipt of benefit who has died on or after the discrimination law commencement, means a person who was the spouse of the person in receipt of benefit—

- (a) on the day the person in receipt of benefit died; and
- (b) on whichever of the following days is relevant—
  - (i) if the person in receipt of benefit retired before reaching the age for retirement—the day the person in receipt of benefit retired;
  - (ii) if the person in receipt of benefit did not retire before reaching the age for retirement—the day the person in receipt of benefit reached the age for retirement.

‘(4) For this section, the gender of the contributor, person in receipt of benefit or widow is not relevant.

‘(5) For this section, the spouse of a person on the day the person died includes a de facto partner of the person on the day of the death only if the person and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA<sup>5</sup>—

- (a) for a continuous period of at least 2 years ending on the day of the death; or
- (b) for a shorter period ending on the day of the death, if the circumstances of the de facto relationship of the person and the

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<sup>5</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

SCHEDULE (continued)

de facto partner evidenced a clear intention that the relationship be a long-term, committed relationship.

‘(6) Subsection (5) applies despite the *Acts Interpretation Act 1954*, section 32DA(6).’.

**21 Amendment of s 239 (Entitlement to assurance benefit)**

(1) Section 239(1), ‘this section’—

*omit, insert—*

‘subsection (2) or (2B)’.

(2) Section 239—

*insert—*

‘(1A) Subsection (2) applies to the widow of a person only if the person has died before the discrimination law commencement.’.

(3) Section 239(2), ‘This section applies to’—

*omit, insert—*

‘This subsection applies to the following persons’.

(4) Section 239—

*insert—*

‘(2A) Subsection (2B) applies to the widow of a person only if the person dies on or after the discrimination law commencement.

‘(2B) This subsection applies to the following persons—

- (a) the widow of a contributor who dies before attaining the age for retirement or, unless section 244(1)(b) applies, if there is no widow, the legal personal representative of the contributor or other person approved by the board;
- (b) the widow of a person who was in receipt of annuity benefit under this chapter immediately before the person’s death, if the person—
  - (i) had reached the age for retirement; or

SCHEDULE (continued)

- (ii) had retired before reaching the age for retirement because of incapacity or an election to retire under section 234(2)(d);
  - (c) the widow of a person who—
    - (i) before the passing of the *Superannuation Acts Amendment Act 1984*—
      - (A) had reached the age for retirement; or
      - (B) had retired before reaching the age for retirement because of incapacity or an election to retire under section 234(2)(d); and
    - (ii) has commuted for a lump sum the whole of the annuity benefit to which the person was entitled under this chapter;
  - (d) the widow of a person—
    - (i) who retired because of incapacity from employment as a member; and
    - (ii) who at the date of death—
      - (A) was entitled to an incapacity benefit under this chapter; or
      - (B) would have been entitled to an incapacity benefit under this chapter if the benefit had not been suspended under section 260(4);<sup>6</sup> and
    - (iii) who dies before attaining the age for retirement.’.
- (5) Section 239(4), ‘subsection (2)(a)’—  
*omit, insert—*  
‘subsections (2)(a) and (2B)(a)’.

## 22 Insertion of new s 242A

Before section 243—

*insert—*

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<sup>6</sup> Section 260 (Incapacity beneficiary restored to health may be recalled to service)



SCHEDULE (continued)

**‘242A Meaning of “spouse” for div 5**

‘(1) In this division—

“spouse” of a contributor or person in receipt of benefit who has died before the discrimination law commencement—

(a) means a person who—

- (i) was the husband or wife of the contributor or the person in receipt of benefit; or
- (ii) although not married to the contributor or person in receipt of benefit, lived with the contributor or person in receipt of benefit on a genuine domestic basis as the husband or wife of the contributor or person in receipt of benefit; but

(b) does not include a person who permanently lived separately and apart from the contributor or person in receipt of benefit.

‘(2) This section applies despite the *Acts Interpretation Act 1954*, section 32DA(6).<sup>7</sup>’.

**23 Amendment of s 243 (Children entitled to additional assurance benefit)**

(1) Section 243(2)(b), after ‘paragraph (a)’—

*insert—*

‘who has died before the discrimination law commencement,’.

(2) Section 243(2)—

*insert—*

‘(d) a previous spouse of a person mentioned in paragraph (a) who dies on or after the discrimination law commencement, other than—

- (i) a child of a divorced spouse who is not the issue of the person; or

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<sup>7</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

SCHEDULE (continued)

- (ii) a child of a de facto partner who has separated from the person, who is not the issue of the person.’.

**24 Insertion of new ss 280AA and 280AC**

Before section 280A—

*insert—*

**‘280AA Meaning of “child” for ch 7—before discrimination law commencement**

‘(1) This section applies if a contributor or pensioner dies before the discrimination law commencement.

‘(2) In this chapter—’.

**‘280AC Meaning of “relict” for ch 7—before discrimination law commencement**

‘In this chapter—’.

**25 Amendment of s 280 (Interpretation)**

(1) Section 280(1)—

*insert—*

‘“spouse”—

(a) for part 3, division 3—see section 293A; or

(b) for part 3, division 4—see section 295A.’.

(2) Section 280(1), definition “child”—

*relocate* to new section 280AA(2).

(3) Section 280(1), definition “child to whom this chapter does not apply”, paragraph (b), ‘spouse’—

*omit, insert—*

‘husband or wife’.

SCHEDULE (continued)

(4) Section 280(1), definition “child to whom this chapter does not apply”—

*insert—*

‘(c) a child—

- (i) of a de facto partner of a member who has separated from the member; and
- (ii) who is not the issue of the member.’.

(5) Section 280(1), definition “relict”, after ‘died’—

*insert—*

‘before the discrimination law commencement’.

(6) Section 280(1), definition “relict”, as amended—

*relocate* to new section 280AC.

## 26 Insertion of new s 280AB

After new section 280AA—

*insert—*

### **“280AB Meaning of “child” for ch 7—from discrimination law commencement**

‘(1) This section applies if a contributor or pensioner dies on or after the discrimination law commencement.

‘(2) In this chapter—

“**child**”, in relation to the contributor or pensioner, a relict of the contributor or pensioner, or a previous spouse of the contributor or pensioner, means—

- (a) a person who is 16 years or under; or
- (b) a person over 16 years and under 25 years, who, in the opinion of the board, is receiving full-time education at a school, college or university.’.

SCHEDULE (continued)

**27 Insertion of new s 280AD**

After new section 280AC—

*insert—*

**‘280AD Meaning of “relict” for ch 7—from discrimination law commencement**

‘(1) This section applies for this chapter if a contributor or a pensioner dies on or after the discrimination law commencement.

‘(2) The “**relict**” of a contributor who has died means a person who was the contributor’s spouse on the day the contributor died.

‘(3) The “**relict**” of a pensioner who has died means a person who was the pensioner’s spouse—

- (a) on the day the pensioner died; and
- (b) on whichever of the following days is relevant—
  - (i) if the pensioner retired before reaching the age for retirement—the day the pensioner retired;
  - (ii) if the pensioner did not retire before reaching the age for retirement—the day the pensioner reached the age for retirement.

‘(4) For this section, the gender of the contributor, pensioner or relict is not relevant.

‘(5) For this section, the spouse of a person on the day the person died includes a de facto partner of the person on the day of the death only if the person and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA<sup>8</sup>—

- (a) for a continuous period of at least 2 years ending on the day of the death; or
- (b) for a shorter period ending on the day of the death, if the circumstances of the de facto relationship of the person and the

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<sup>8</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

SCHEDULE (continued)

de facto partner evidenced a clear intention that the relationship be a long-term, committed relationship.

‘(6) Subsection (5) applies despite the *Acts Interpretation Act 1954*, section 32DA(6).’.

**28 Insertion of new s 293A**

Before section 294—

*insert—*

**‘293A Meaning of “spouse” for div 3**

‘In this division—

“**spouse**”, of a person who is a relict, means the contributor or pensioner as a result of whose death the person became a relict.’.

**29 Insertion of new s 295A**

Before section 296—

*insert—*

**‘295A Meaning of “spouse” for div 4**

‘(1) In this division—

“**spouse**” of a contributor or pensioner who has died before the discrimination law commencement—

(a) means a person who—

- (i) was the contributor’s or pensioner’s husband or wife; or
- (ii) although not married to the contributor or pensioner, lived with the contributor or pensioner on a genuine domestic basis as the contributor’s or pensioner’s husband or wife; but

(b) does not include a person who permanently lived separately and apart from the contributor or pensioner.

‘(2) This section applies despite the *Acts Interpretation Act 1954*, section 32DA(6).’.

SCHEDULE (continued)

**30 Amendment of s 296 (Child’s pension—when payable)**

(1) Section 296(2), ‘applies to’—

*omit, insert—*

‘applies to the following children’.

(2) Section 296(2)(i), after ‘who’—

*insert—*

‘has died before the discrimination law commencement, and’.

(3) Section 296(2)—

*insert—*

‘(ia) every child, other than a child to whom this chapter does not apply, of a previous spouse of a person who—

(i) died on or after the discrimination law commencement; and

(ii) when the person died, was a contributor or a pensioner mentioned in paragraph (a), (c), (d), (e), (f) or (g);’.

**31 Amendment of s 308 (Incapacity pensioner restored to health may be recalled to service)**

Section 308(3), ‘widow’s pension’—

*omit, insert—*

‘relict’s pension’.

**32 Amendment of sch 13 (Factors for relicts of pensioners)**

Schedule 13, first column heading, ‘**spouse**’—

*omit, insert—*

**‘pensioner’.**

## ENDNOTES

1. Approved by the Governor in Council on 27 March 2003.
2. The amendments approved by this regulation were made by the Board of Trustees of the State Public Sector Superannuation Scheme on 19 March 2003.
3. Notified in the gazette on 28 March 2003.
4. Laid before the Legislative Assembly on . . .
5. The administering agency is the Treasury Department.