

In 2008 the Federal Government changed 85 different laws so that same-sex couples would be recognised as having many of the same rights and obligations as different-sex defacto couples.

These new reforms mean that a range of new rights have been introduced for anyone who works for the Australian Federal Government. This includes members of the Australian Defence Force, Australian Federal Police, public servants of all federal government departments and federal government authorities, members of Federal Parliament and members of the federal judiciary.

This factsheet outlines changes to benefits for people employed by the Federal Government. You should also look at the other factsheets on this website in other general areas where you might be affected (e.g. financial, workplace, social security).

Actions you can take

- Have a look over your departments / agency enterprise agreement or contact the Australian Public Service Commission and see what your new rights are as a Commonwealth public servant.
- If you or your same-sex partner was in the Australian Defence Force, contact the Department of Veterans' Affairs to see what veteran's benefits available. Serving members of the Defence Force may find their pay and conditions [online](http://www.defence.gov.au/dpe/pac) [http://www.defence.gov.au/dpe/pac] and individuals can ask about their benefits by calling 1800 DEFENCE.
- If you have a complaint about your treatment by a government office, you should first see whether the Agency you are dealing with has a complaint resolution process. If this does not help, you can contact the Commonwealth Ombudsman.
- If you have a question about public sector superannuation scheme, contact ComSuper.

Please note: This factsheet provides general information only. It does not constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Community Legal Centre.

Last updated: January 2010

Things you should know

- If you are a member of the Australian Defence Force, your same-sex partner may now be recognised by the Department of Veterans' Affairs and the Defence Department.
- If your partner passes away and was a member of the Australian Defence Force, you and your children may be able to receive a benefit under the Defence Force Retirement Benefits Fund, the Defence Force Retirement and Death Benefits Scheme or the Military Superannuation and Benefits Scheme. You may also be able to access housing benefits, such as having home loan subsidies transferred to you.
- If your partner is a member of the Defence Force and they are injured during service, you and any members of your family, including 'stepchildren' and 'step-parents', may now be considered when calculating compensation and benefit amounts.
- If you are a member of the Defence Force, your same-sex partner may now be eligible for accommodation assistance,
- If you work in the public sector and are injured while working, your same-sex partner and their family may be recognised when determining compensation that your family may be eligible for.
- If you and your same-sex partner work for a national system employer, you and your partner may be able to apply for an extended period of parental leave if you have children.

Need more information?

Department of Veteran Affairs **133 254**
(From regional Australia call 1800 555 254)

Australian Public Service Commission
(02) 6202 3500

Community & Public Sector Union
1300 137 636

AFP Gay & Lesbian Liaison Officer (GLLO)
(02) 6256 7777

Defence Gay & Lesbian Information Service (DEFGLIS)
(reference agency/support group)

Gay and Lesbian Counselling and Community Services of Australia
1800 18 45 27

- If someone who is employed as a Federal Magistrate, a Family Court Justice, a Federal Court Justice, Governor General, Solicitor General or High Court Justice passes away, their same-sex partner and children may now receive death benefit payments. The same applies to Presidential Members of the Administrative Appeals Tribunal and the Australian Industrial Relations Commission, and to the President of Fair Work Australia.
- If your same-sex partner passes away while they are working as a Federal judge, you may now be able to receive any long leave payments they have earned.
- When a Justice of the High Court, or certain other Justices of federal courts, has to travel for work, their same-sex partner is now taken into account when deciding travel allowances.
- Some people who have held public offices are 'Life Gold Pass Holders' (e.g. former Prime Ministers, Senators or Members of Parliament). If your same-sex partner is one of them, you may now be able to receive benefits such as domestic travel remunerations.

Frequently asked Questions

▼ **I'm in a same-sex de facto relationship with an Australian Defence Force (ADF) veteran can I apply for a pension?**

Yes, you can. If your same-sex partner is a veteran and already receives a service pension, you apply for a 'partner service pension'. There are some rules such as minimum age. If you are eligible, this pension will most likely continue if your partner passes away, unless you are granted a war widow or widower's pension.

▼ **My partner was a veteran and died before the changes to law came in on 1 July 2009. Can I receive their veteran's pension?**

Unfortunately, no. however you may be able to access other benefits such as compensation. Be sure to contact the Department of Veterans' Affairs to check what benefits you may be entitled to.

▼ **What is a national system employer?**

National system employers include the following:

- constitutional corporations (these are corporations that are trading or financial, usually Pty Ltd or Ltd companies);
- the Commonwealth and its authorities (for example Australia Post or Telstra); and
- employers who employ flight crews, maritime employees or waterside workers in connection with interstate or overseas trade and commerce;
- all employers in Victoria, the Northern Territory and the Australian Capital Territory;
- private sector employers in New South Wales, Queensland, South Australia and Tasmania; and
- local government employers in Tasmania;

but only to the extent that they employ, or usually employ, an individual.

Collectively these employers are referred to as 'national system employers' in this fact sheet. All national system employers are bound by the Fair Work Act and must follow the NES.

▼ **Are there any workplaces that are exempt from National Employment Standards?**

It is mandatory for all workplaces that are under the Commonwealth workplace relations system to follow the NES (i.e. those within the new national system). Most State government public sector employers and local government employers, Western Australian corporations whose main activity is not trading or financial; and Western Australian sole traders, partnerships, or other unincorporated entities are generally exempt.

However, regardless of the Fair Work Act, if your employer treats you differently because of your sexual orientation you may have recourse to relevant state anti-discrimination legislation [<http://antidiscrimination.gov.au/>].

▼ **In some documents there is mention of an 'employee couple'. What is an 'employee couple'?**

An 'employee couple' is two people that are both employed by a national system employer and who are in a de facto or registered relationship together. They don't

need to work for the same employer, so long as both employers are within the national system.

▼ **My partner is a public servant and has a public superannuation pension. Where can I find out if I am eligible to be recognised as their partner?**

We have much more information about superannuation for public servants in our “Financials” factsheet. But same-sex couples are now treated the same as different-sex defacto couples by public service superannuation schemes.

The Public Office laws that have changed

- #2 Federal Magistrates Act 1999
- #3 Defence (Parliamentary Candidates) Act 1969
- #4 Defence Force (Home Loans Assistance) Act 1990
- #5 Defence Force Retirement and Death Benefits Act 1973
- #6 Defence Forces Retirement Benefits Act 1948
- #7 Defence Service Homes Act 1918
- #8 Governor-General Act 1974
- #9 High Court Justices (Long Leave Payments) Act 1979
- #10 Judges (Long Leave Payments) Act 1979
- #11 Judges’ Pensions Act 1968
- #12 Judicial and Statutory Officers (Remuneration and Allowances) Act 1984
- #13 Members of Parliament (Life Gold Pass) Act 2002
- #14 Military Rehabilitation and Compensation Act 2004
- #15 Parliamentary Contributory Superannuation Act 1948
- #16 Parliamentary Entitlements Act 1990
- #17 Passenger Movement Charge Collection Act 1978
- #18 Royal Australian Air Force Veterans’ Residences Act 1953

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