

EXPLANATORY STATEMENT

Veterans' Entitlements (Partner Service Pension – Retention of Eligibility for Non-illness Separated Spouse) Determination R25/2009

EMPOWERING PROVISION

Section 38(2AD) of the *Veterans' Entitlements Act 1986* (the Act).

Section 38(2AD) will commence on 1 July 2009. The attached legislative instrument is able to be made (but not able to commence) before 1 July 2009 by virtue of section 4 of the *Acts Interpretation Act 1901*. Under section 4, where a provision of an Act contains an instrument-making power, but the provision has not commenced, an instrument may be made under the provision in readiness for when the provision commences.

PURPOSE

To set out the circumstances in which a spouse of a veteran will not lose the partner-service pension despite being separated from the veteran for 12 months or more for a reason other than illness.

Generally speaking a spouse of a veteran will lose the partner-service pension after being separated from the veteran for 12 months for a reason other than illness (non-illness separated spouse), however subsection 38(2AD) of the Act allows for an exception to this rule.

Subsection 38(2AD) enables the Repatriation Commission to make a legislative instrument setting out the circumstances where a non-illness separated spouse of a veteran who has not reached pension age and who has been separated from the veteran for at least 12 months, will not lose the partner-service pension.

The Repatriation Commission made the attached instrument (R25/2009) under s.38(2AD) and, generally speaking, it has the effect that a spouse in the relevant circumstances will not lose the partner-service pension if the veteran's behaviour, arising from a mental condition, was such that it forced the spouse to leave the relevant domestic environment.

RETROSPECTIVE

No.

CONSULTATION

Yes. The following interested parties (Ex-Service Organisations) were consulted. Consultation was by way of letter and respondents were given approximately two weeks to respond by e-mail or telephone. A number of responses were received:

- Australian Federation of Totally and Permanently Incapacitated Ex-Servicemen and Women
- Australian Peacekeeper & Peacemaker Veterans' Association
- Australian Veterans and Defence Services Council Inc
- Defence Force Welfare Association
- Partners of Veterans Association of Australia Inc
- Returned & Services League of Australia Ltd
- Vietnam Veterans' Association of Australia
- Vietnam Veterans Federation of Australia

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

FURTHER EXPLANATION

Attachment A.

Attachment A

Items	Explanation
1.	sets out the name of the instrument.
2.	provides that the instrument commences on 1 July 2009 – the date of commencement of Part 2 of Schedule 2 of the <i>Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008</i> No.143 (the Act that contained the provision enabling the making of the attached instrument).
3.	states that the purpose of the attached instrument is to set out the circumstances where a non-illness separated spouse of a veteran remains eligible for the partner service pension despite being separated from the veteran for more than 12 months.
4.	is a definition section.
5.	sets out the circumstances where a non-illness separated spouse of a veteran remains eligible for the partner service pension despite being separated from the veteran for more than 12 months.

Those circumstances are that on the first day the spouse ceased residing in the same residence as the veteran, the veteran had a psychological or other mental health incapacity caused by:

- a war-caused injury or war-caused disease and the Repatriation Commission has determined that the veteran is entitled to a pension for the injury or disease; or
- a defence-caused injury or defence-caused disease and the Repatriation Commission has determined that the veteran, as a member of the Defence Force or of a Peacekeeping Force is entitled to a pension for the injury or disease; or
- a service injury or service disease, as defined in the *Military Rehabilitation and Compensation Act 2004*, and the Military Rehabilitation and Compensation Commission has accepted liability for the injury or disease; or
- a disease or disorder in subsection 85(2) of the *Veterans' Entitlements Act 1986* namely malignant neoplasia, pulmonary tuberculosis or post-traumatic stress disorder, and for which the veteran receives treatment under that Act; or
- a condition described in a determination under paragraph 88A(1)(a) of the *Veterans' Entitlements Act 1986*. These

determinations are legislative instruments and may be found on COMLAW under “V” (for Veterans’ Entitlements ...):

<http://www.frli.gov.au/> ;

and the Repatriation Commission is satisfied that before the day the spouse ceased residing with the veteran, the domestic environment shared by the veteran and spouse was, because of the veteran’s behaviour, unsafe or abusive for the spouse or any child of the spouse.