

**SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—GENERAL LAW REFORM) (VETERANS’ AFFAIRS) REGULATIONS 2019**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform Act 2008)* (the Same-Sex Act) addresses discrimination against same-sex couples and their children in Commonwealth laws.

Item 86 of Schedule 2 to the Same-Sex Act provides that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to amendments and repeals made by Schedule 2 of the Same-Sex Act or any other Schedule to the Same-Sex Act. The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans’ Affairs) Regulations 2019* (the proposed Regulations) are transitional in nature as they would only have effect while there are surviving partners, or children, of military personnel who were in a same-sex relationship, who died before 1 July 2009.

The Military Rehabilitation and Compensation Act 2004 (the MRCA) provides rehabilitation and compensation coverage for Australian Defence Force (ADF) members and the Veterans’ Entitlements Act 1986 (the VEA) provides entitlements to veterans. Under the MRCA and VEA, the dependants of deceased ADF members and veterans may also be entitled to compensation.

Schedule 15 to the Same-Sex Act addresses discrimination against same-sex couples and their children in the MRCA and VEA by amending a number of different definitions. These amendments included changing the definition of ‘de facto partner’ to apply equally to same and opposite-sex de facto couples and changing the definition of ‘child’ and ‘parent’ to include children of same-sex couples. As a result, the commencement of Schedule 15 to the Same-Sex Act on 1 July 2009 meant that all dependants of ADF members and veterans were able to receive benefits under the MRCA and VEA, regardless of their sexual orientation or the sexual orientation of their family members.

However, as the amendments made by the Same-Sex Act only commenced on 1 July 2009, they did not include people who were dependants of ADF members or veterans who died before 1 July 2009.

The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans’ Affairs) Regulations 2009* (the current Regulations) rectified this by applying the

Same-Sex Act to people who would have been classified as a dependant of an ADF member or veteran if the ADF member or veteran had died after the commencement of the Same-Sex Act on 1 July 2009.

The current Regulations sunset on 1 October 2019. The purpose of the proposed Regulations is to remake the current Regulations without amendments and to ensure these dependants continue receiving benefits under the MRCA and VEA. If the current Regulations are not remade, the people to whom these regulations apply could cease to be eligible for the benefits they are receiving.

Details of the proposed Regulations are set out in the Attachment.

The Same-Sex Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence on the day after they are registered on the Federal Register of Legislation.

The Minute recommends that the Regulations be made in the form proposed.

## **CONSULTATION**

Consistent with section 17 of the *Legislation Act 2003*, the Attorney-General's Department consulted the Department of Veterans' Affairs (DVA) in September 2018 and May 2019 to confirm whether the current Regulations should remain in force. In May 2018, DVA confirmed that the current Regulations are still necessary, fit-for-purpose and should be remade without amendments.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation (OBPR) issued a Guidance Note on *Sunsetting Legislative Arrangements* which stipulates that agencies are allowed to self-assess the performance of the instrument. The Attorney-General's Department assessed that the current Regulations were operating effectively and efficiently and that a Regulation Impact Statement was not required for the Regulations to be remade.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans’ Affairs) Regulations 2019***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

This Disallowable Legislative Instrument remakes the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans’ Affairs) Regulations 2009 (the current Regulations) to allow dependants of Australian Defence Force (ADF) members and veterans who died after 1 July 2009 to continue receiving benefits under the *Military Rehabilitation and Compensation Act 2004* (MRCA) and the *Veterans’ Entitlements Act 1986* (VEA).

Schedule 15 of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform Act 2008* (the Same-Sex Act) addressed discrimination against same-sex couples and their children in the MRCA and VEA by amending definitions, such as ‘de facto partner’ to apply equally to same and opposite-sex de facto couples and changing the definition of ‘child’ and ‘parent’ to include children of same-sex couples. As a result, the commencement of Schedule 15 to the Same-Sex Act on 1 July 2009 meant that all dependants of ADF members and veterans were able to receive benefits under the MRCA and VEA, regardless of their sexual orientation or the sexual orientation of their family members.

However, as the amendments made by the Same-Sex Act only commenced on 1 July 2009, they did not include people who were dependent on ADF members or veterans who died before 1 July 2009.

The current Regulations apply the Same-Sex Act to people who would have been classified as dependants of ADF members or veterans if the ADF members or veterans had died after the commencement of the Same-Sex Act on 1 July 2009. As the Disallowable Legislative Instrument remakes the current Regulations, the Disallowable Legislative Instrument would allow the current Regulations to continue and for these dependants to continue receiving benefits under the MRCA and VEA.

## **Human rights implications**

This Disallowable Legislative Instrument engages and promotes the right of equality and non-discrimination.

### **The right to equality and non-discrimination**

The right to equality and non-discrimination can be found in the following articles of the International Covenant on Civil and Political Rights:

- Article 2: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- Article 16: Everyone shall have the right to recognition everywhere as a person before the law
- Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

This right is engaged because the Disallowable Legislative Instrument entitles anyone who was a dependant of an ADF member or veteran who died after 1 July 2009 to receive benefits under the MRCA and VEA, regardless of their sexual orientation or the sexual orientation of their family members. This ensures that all dependants and ADF Members and veterans are treated equally and are not discriminated against on the basis of their sexual orientation.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because it promotes the right to equality and non-discrimination.

## **NOTES ON SECTIONS**

### **Part 1 – Preliminary**

#### **Regulation 1 – Name**

Regulation 1 states that the name of the Regulations is the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans' Affairs) Regulations 2019*.

#### **Regulation 2 – Commencement**

Regulation 2 provides that the Regulations are taken to have commenced on 1 July 2009.

#### **Regulation 3 – Authority**

Regulation 3 provides that the instrument is made under item 86 of Schedule 2 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008*.

#### **Regulation 4 – Schedules**

Regulation 4 provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### **Regulation 5 – Definitions**

Regulation 5 defines a term for the purposes of the Regulations.

### **Part 2 – Matters of a transitional nature**

#### **Regulation 6 – Transitional provision (MRCA, ss 233, 234)**

For the purposes of sections 233 and 234 of the MRCA (compensation for member's death for wholly dependent partners), regulation 6 applies the Same-Sex Act (MRCA amendments) to a person (the person) who was not the wholly dependent partner (as defined by the MRCA) of a member at the time of the member's pre-1 July 2009 death but who would have been the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at that time.

The effect of regulation 6 is that under sections 233 and 234 of the MRCA the person is taken to have been the wholly dependent partner of a deceased member and entitled to some of the compensation payable to a wholly dependent partner of a deceased member, measured from 1 July 2009.

Conditions would need to be satisfied, namely:

- member died before 1 July 2009
- at the time of the member's death the person was not recognised under the MRCA as the wholly dependent partner of the member
- at the time of the member's death the person would have been recognised under MRCA as the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied for sections 233 and 234 of the MRCA, the person is taken to have been the wholly dependent partner of the deceased member and the date of the member's death is taken to be 1 July 2009 with benefits payable on and from that date.

#### **Regulation 7 – Application provision (MRCA, s 239)**

For the purposes of section 239 of the MRCA (compensation for cost of financial advice for wholly dependent partner), regulation 7 applies the Same-Sex Act (MRCA amendments) to a person who was not the wholly dependent partner of a member at the time of the member's pre-1 July 2009 death but who would have been the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at that time.

The effect of regulation 7 is that under section 239 of the MRCA the person is taken to have been the wholly dependent partner of a deceased member and entitled to compensation for the cost of financial advice obtained by the person on or after 1 July 2009.

Conditions would need to be satisfied, namely:

- member died before 1 July 2009
- at the time of the member's death the person was not recognised under the MRCA as the wholly dependent partner of the member
- at the time of the member's death the person would have been recognised under MRCA as the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for section 239 of the MRCA the person is taken to have been the wholly dependent partner of the deceased member and entitled to compensation for the cost of financial advice obtained on or after 1 July 2009.

### **Regulation 8 – Application provision (MRCA, s 242)**

Regulation 8 clarifies that although the Same-Sex Act (MRCA amendments) applies, in respect of certain benefits, to a person:

- who was not the wholly dependent partner of a member at the time of the member's pre-1 July 2009 death but who would have been the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at that time

the Commonwealth is not liable to pay compensation to the person under section 242 of the MRCA (compensation for wholly dependent partner of (formerly incapacitated) deceased member).

This regulation applies where:

- member died before 1 July 2009
- at the time of the member's death the person was not recognised under the MRCA as the wholly dependent partner of the member
- at the time of the member's death the person would have been recognised under MRCA as the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

In these circumstances, the Commonwealth is not liable to pay compensation to the person for section 242 of the MRCA.

### **Regulation 9 – Transitional provision (MRCA, s 245)**

For the purposes of section 245 of the MRCA (telephone allowance), regulation 9 applies the Same-Sex Act (MRCA amendments) to a person who was not the wholly dependent partner of a member at the time of the member's pre-1 July 2009 death but who would have been the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at that time.

The effect of regulation 9 is that under section 245 of the MRCA the person is taken to have been the wholly dependent partner of a deceased member.

Conditions need to be satisfied, namely:

- member died before 1 July 2009
- at the time of the member's death the person was not recognised under the MRCA as the wholly dependent partner of the member

- at the time of the member's death the person would have been recognised under MRCA as the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for section 245 of the MRCA the person is taken to have been the wholly dependent partner of the deceased member.

**Regulation 10 – Application provision (MRCA, s 251)**

Regulation 10 clarifies that although the Same-Sex Act (MRCA amendments) applies, in respect of certain benefits, to a person:

- who was not the dependant of a member at the time of the member's pre-1 July 2009 death
- who is an eligible young person (under 16 or 16-25 and receiving education) and
- who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death

the Commonwealth is not liable to pay compensation to the person under section 251 of the MRCA (lump sum for certain eligible young persons on member's death).

This regulation applies where:

- member died before 1 July 2009
- person is an eligible young person
- before 1 July 2009 the person was not a dependant of the member the person would have been recognised under MRCA as a dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

In these circumstances, for section 251 of the MRCA the Commonwealth is not liable to pay compensation to the person.

**Regulation 11 – Transitional provision (MRCA, s 253)**

For the purposes of subsection 253(1) of the MRCA (weekly compensation for certain eligible young persons), regulation 11 applies the Same-Sex Act (MRCA amendments) to a person:

- who is an eligible young person (under 16 or 16-25 and receiving education)
- who was not the dependant of a member at the time of the member's pre-1 July 2009 death



- who was wholly or mainly dependent on the member immediately before the member's death and
- who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

The effect of regulation 11 is that subsection 253(1) of the MRCA applies to the person and compensation is payable to the person for a week, or part of a week, occurring after 30 June 2009 as if the member had died on 1 July 2009.

Conditions need to be satisfied, namely:

- member died before 1 July 2009
- person is an eligible young person
- before 1 July 2009 the person was not a dependant of the member
- immediately before the member's death the person was wholly or mainly dependent on the member
- at the time of the member's death the person would have been recognised under MRCA as the dependant of the member, wholly or mainly dependent on the member, if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for subsection 253(1) of the MRCA, compensation is payable to the person for a week, or part of a week, occurring after 30 June 2009 as if the member had died on 1 July 2009.

### **Regulation 12 – Application provision (MRCA, s 255)**

Regulation 12 clarifies that although the Same-Sex Act (MRCA amendments) applies, in respect of certain benefits, to a person:

- who is an eligible young person (under 16 or 16-25 and receiving education)
- who was not the dependant of a member at that time of the member's pre-1 July 2009 death
- who was wholly or mainly dependent on the member immediately before the member's death and
- who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death

the Commonwealth is not liable to pay compensation to the person under section 255 of the MRCA (continuing permanent impairment and incapacity etc. compensation for certain eligible young persons).

This regulation applies where:

- member died before 1 July 2009
- person is an eligible young person
- before 1 July 2009 the person was not a dependant of the member
- immediately before the member's death the person was wholly or mainly dependent on the member
- at the time of the member's death the person would have been recognised under MRCA as the dependant of the member, wholly or mainly dependent on the member, if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for section 255 of the MRCA the Commonwealth is not liable to pay compensation to the person.

**Regulation 13 – Transitional provision (MRCA, s 258)**

For the purposes of subsection 258(1) of the MRCA (Education scheme for certain eligible young persons), regulation 13 applies the Same-Sex Act (MRCA amendments) to a person:

- who is an eligible young person (under 16 or 16-25 and receiving education)
- who was not the dependant of a member at the time of the member's pre-1 July 2009 death and
- who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

The effect of regulation 13 is that under subsection 258(1) of the MRCA:

- The Military Rehabilitation and Compensation Commission (MRCC) may determine an education and training scheme (MRCAETS) for such a person. Where this is the case, the power of the MRCC to determine a MRCAETS is taken to have been exercised in respect of the MRCAETS in force when the attached regulations would commence.
- Benefits under the MRCAETS are payable only on or after 1 July 2009 and not before.

Conditions need to be satisfied, namely:

- member died before 1 July 2009
- person is an eligible young person
- immediately before the member's death the person was not a dependant of the member
- at the time of the member's death the person would have been recognised under MRCA as the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for subsection 258(1) of the MRCA the MRCC is taken to have the power to determine a MRCAETS in respect of the person and that power is taken to have been exercised for the MRCAETS in force at the time the attached regulations would commence but with benefits under the MRCAETS being payable only on or after 1 July 2009 and not before.

**Regulation 14 – Application provision (MRCA, s 262)**

Regulation 14 clarifies that although the Same-Sex Act (MRCA amendments) applies, in respect of certain benefits, to a person:

- who was not the dependant of a member immediately before the member's pre-1 July 2009 death and
- who would have been a dependant of the member if that Act had been in force at that time but who would not, under that Act, have been the wholly dependent partner of the member or an eligible young person (under 16 or 16-25 and receiving education) who was a dependant of the member

the Commonwealth is not liable to pay compensation to the person under section 262 of the MRCA (compensation for dependants other than wholly dependent partners and eligible young persons).

This regulation applies where:

- member died before 1 July 2009
- immediately before the member's death the person was not recognised under the MRCA as a dependant of the member
- at the time of the member's death, if the Same-Sex Act (MRCA amendments) had been in force, the person would have been recognised under MRCA as a dependant of the member

but not as the wholly dependent partner of the member or as an eligible young person who was a dependant of the member.

In these circumstances for section 262 of the MRCA the Commonwealth is not liable to pay compensation to the person.

**Regulation 15 – Application provision (MRCA, s 266)**

Regulation 15 clarifies that although the Same-Sex Act (MRCA amendments) applies to a person who:

- was not a dependant of a member immediately before the member’s pre-1 July 2009 death but who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at that time

the Commonwealth is not liable to pay compensation to the person for the cost of the deceased member’s funeral under section 266 of the MRCA.

This regulation applies where:

- member died before 1 July 2009
- immediately before the member’s death the person was not recognised under the MRCA as a dependant of the member
- at the time of the member’s death the person would have been recognised under MRCA as a dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member’s death.

In these circumstances, for section 266 of the MRCA the Commonwealth is not liable to pay compensation to the person for the cost of the deceased member’s funeral.

**Regulation 16 – Transitional provision (MRCA, s 284(1))**

For the purposes of subsection 284(1) of the MRCA (treatment for certain wholly dependent partners), regulation 16 applies the Same-Sex Act (MRCA amendments) to a person who was not the wholly dependent partner of a member at the time of the member’s pre-1 July 2009 death but who would have been the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at that time.

The effect of regulation 16 is that under subsection 284(1) of the MRCA the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the MRCA for any injury or disease of the person and the date of the member's death taken to be 1 July 2009.

Conditions need to be satisfied, namely:

- member died before 1 July 2009
- at the time of the member's death the person was not recognised under the MRCA as the wholly dependent partner of the member
- at the time of the member's death the person would have been recognised under MRCA as the wholly dependent partner of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for subsection 284(1) of the MRCA the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the MRCA for any injury or disease of the person and the date of the member's death taken to be 1 July 2009 with the result that the person is only entitled to treatment on and after 1 July 2009.

#### **Regulation 17 – Transitional provision (MRCA, s 284(2))**

For the purposes of subsection 284(2) of the MRCA (treatment for certain eligible young persons), regulation 17 applies the Same-Sex Act (MRCA amendments) to a person who is an eligible young person (under 16 or 16-25 and receiving education), who was not a dependant of a member at the time of the member's pre-1 July 2009 death but who was wholly or mainly dependent on a member, and who would have been the dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at that time.

The effect of regulation 17 is that under subsection 284(2) of the MRCA the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the MRCA for any injury or disease of the person and the date of the member's death taken to be 1 July 2009.

Conditions need to be satisfied, namely:

- member died before 1 July 2009
- person is an eligible young person
- immediately before the member's death the person was not recognised under the MRCA as a dependant of the member

- immediately before the member's death the person was wholly or mainly dependent on the member
- at the time of the member's death the person would have been recognised under MRCA as a dependant of the member if the Same-Sex Act (MRCA amendments) had been in force at the time of the member's death.

If the conditions are satisfied then for subsection 284(2) of the MRCA the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the MRCA for any injury or disease of the person and the date of the member's death taken to be 1 July 2009 with the result that the person is only entitled to treatment on and after 1 July 2009.

**Regulation 18 – Transitional provision (MRCA, s 300)**

Regulation 18 provides that if, under regulations 16 or 17, a person would be entitled to treatment, then for section 300 of the MRCA (pharmaceutical allowance) the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the MRCA. This means that the person is entitled to a pharmaceutical allowance.

**Regulation 19 – Transitional provision (VEA, s 13A)**

For the purposes of section 13A of the VEA (dependants of certain classes of deceased veteran eligible for pension), applies the Same-Sex Act (VEA amendments) to a person who was not a dependant of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

The effect of regulation 19 is that, on or after 1 July 2009, section 13A of the VEA applies to the person as if the person is a dependant of the veteran.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as a dependant of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then on or after 1 July 2009 section 13A of the VEA applies to the person as if the person is a dependant of the veteran.

**Regulation 20 – Transitional provision (VEA, ss 20 (2A), (2B))**

For the purposes of subsection 20(2A) or (2B) of the VEA (claim for pension lodged less than 6 months after veteran's death), regulation 20 applies the Same-Sex Act (VEA amendments) to a person:

- who was not a dependant of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death, and in respect of whom subsection 20(2A) or (2B) of the VEA applies,

so that the veteran's death is taken to be 1 July 2009.

In short, under subsection 20(2A) or (2B) a dependant's pension could be backdated to a date within 6 months after 1 July 2009 if the claim for pension is lodged within 6 months after 1 July 2009.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as a dependant of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death
- subsection 20(2A) or (2B) applies to the person.

If the conditions are satisfied then for paragraph 20(2A)(b) or (2B)(b) of the VEA, the date of the veteran's death is taken to be 1 July 2009 and if a claim for pension is lodged within 6 months after this date the pension may be payable (depending on the Repatriation Commission's discretion) on and from a date within 6 months after 1 July 2009.

### **Regulation 21 – Transitional provision (VEA, s 20)**

For the purposes of section 20 of the VEA (date of effect for pension), regulation 21 applies the Same-Sex Act (VEA amendments) to a person:

- who was not a dependant of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death, and who claims a pension under section 14 of the VEA

to provide that a determination of the claim under subsection 19(3) of the VEA must not take effect before 1 July 2009.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as a dependant of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death
- the person makes a claim for a pension under section 14 of the VEA.

If the conditions are satisfied then a determination of the claim for pension under subsection 19(3) of the VEA must not take effect before 1 July 2009.

### **Regulation 22 – Transitional provision (VEA, Part III)**

For the purposes of Part III of the VEA (Service Pensions), regulation 22 applies the Same-Sex Act (VEA amendments) to a person who was not the partner of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been the widow or widower of the veteran for section 38 of the VEA (eligibility for partner service pension) if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

The effect of this is that Part III of the VEA applies to the person as if the veteran had died on 1 July 2009.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009



- immediately before the veteran's death the person was not recognised under the VEA as the partner of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as the widow or widower of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then Part III of the VEA would apply to the person as if the veteran had died on 1 July 2009.

**Regulation 23 – Transitional provision (VEA, s 86(2))**

For the purposes of subsection 86(2) of the VEA (eligibility for treatment of dependants of certain classes of deceased veteran), regulation 23 applies the Same-Sex Act (VEA amendments) to a person who was not a dependant of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

The effect of regulation 23 is that for subsection 86(2) of the VEA the veteran is taken to have died on 30 June 2009 with the result that on and after 1 July 2009 the person is eligible to be provided with treatment under Part V of the VEA for any injury or disease of the person.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as a dependant of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as a dependant of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then for the purposes of subsection 86(2) of the VEA the veteran is taken to have died on 30 June 2009 with the result that on and after 1 July 2009 the person is eligible to be provided with treatment under Part V of the VEA for any injury or disease of the person.

**Regulation 24 – Transitional provision (VEA, s 86 (4) (a))**

For the purposes of paragraph 86(4)(a) of the VEA (eligibility for treatment of a child of certain classes of deceased veteran), regulation 24 applies the Same-Sex Act (VEA amendments) to a person who was not a child of a veteran immediately before the veteran's pre-1 July 2009 death but who

would have been a child of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

Accordingly, for paragraph 86(4)(a) of the VEA the veteran is taken to have died on 30 June 2009 with the result that on and after 1 July 2009 the person is eligible to be provided with treatment under Part V of the VEA for any injury or disease of the person.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as a child of the veteran
- at the time of the veteran's death the person would have been recognised under the VEA as a child of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then for the purposes of paragraph 86(4)(a) of the VEA the veteran is taken to have died on 30 June 2009 so that on and after 1 July 2009 the person is eligible to be provided with treatment under Part V of the VEA for any injury or disease of the person.

#### **Regulation 25 – Transitional provision (VEA, Part VII)**

For the purposes of Part VII of the VEA (the Veterans' Children Education Scheme), regulation 25 applies the Same-Sex Act (VEA amendments) to a person who was not an eligible child of a veteran immediately before the veteran's pre-1 July 2009 death but who would have been an eligible child of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death. The effect of this is that, on and after 1 July 2009, the person is eligible for education or training benefits under the Scheme made by the Repatriation Commission under Part VII of the VEA i.e. the Veterans' Children Education Scheme.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009
- immediately before the veteran's death the person was not recognised under the VEA as an eligible child of the veteran for the purposes of section 116 of the VEA
- at the time of the veteran's death the person would have been recognised under the VEA as an eligible child of the veteran for the purposes of section 116 of the VEA if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then on and after 1 July 2009, but not before 1 July 2009, benefits under the Veterans' Children Education Scheme are payable to the person.

### **Regulation 26 – Transitional provision (VEA, Part VIIC)**

For the purposes of Part VIIC of the VEA (eligibility for and entitlement to Seniors Health Card), regulation 26 applies the Same-Sex Act (VEA amendments) to a person:

- who was not the partner of a veteran immediately before the veteran's pre-1 July 2009 death but who, for subsection 118V(1A) of the VEA would have been a war widow or war widower of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death or
- who would, for subparagraph 118V(3)(a)(iii) of the VEA, have been the widow or widower of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

The effect of regulation 26 is that Part VIIC of the VEA applies to the person as if the veteran had died on 1 July 2009.

Conditions need to be satisfied, namely:

- veteran died before 1 July 2009 and
- immediately before the veteran's death the person was not recognised under the VEA as the partner of the veteran and
- at the time of the veteran's death the person would have been recognised under subsection 118V(1A) of the VEA as a war widow or war widower of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death or
- the person would have been recognised under subparagraph 118V(3)(a)(iii) of the VEA as the widow or widower of the veteran if the Same-Sex Act (VEA amendments) had been in force at the time of the veteran's death.

If the conditions are satisfied then Part VIIC of the VEA applies to the person as if the veteran had died on 1 July 2009 with the result that, on and after 1 July 2009, the person is eligible for a Seniors Health Card.