

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

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 08 August 2019

David Hurley

Governor‑General

By His Excellency’s Command

Christian Porter

Attorney‑General

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Part 1—Preliminary

1 Name

This instrument is the *Same‑Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) (Veterans’ Affairs) Regulations 2019*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | 22 August 2019 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

In this instrument:

***Act*** means the *Same‑Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008*.

Part 2—Matters of a transitional nature

6 Transitional provision—sections 233 and 234 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) at the time of the member’s death, a person was not the wholly dependent partner of the member; and

(c) the person would have been the wholly dependent partner of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of section 233 of the *Military Rehabilitation and Compensation Act 2004*, the person is taken to have been the wholly dependent partner of the member.

(3) For the purposes of section 234 of the *Military Rehabilitation and Compensation Act 2004*, the date of the member’s death is taken to be 1 July 2009.

7 Application provision—section 239 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) at the time of the member’s death, a person was not the wholly dependent partner of the member; and

(c) the person would have been the wholly dependent partner of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of section 239 of the *Military Rehabilitation and Compensation Act 2004*, the person is taken to have been the wholly dependent partner of the member.

(3) Compensation for the cost of obtaining financial advice, under section 239 of the *Military Rehabilitation and Compensation Act 2004*, is not payable for financial advice received by the person before 1 July 2009.

8 Application provision—section 242 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) at the time of the member’s death, a person was not the wholly dependent partner of the member; and

(c) the person would have been the wholly dependent partner of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of section 242 of the *Military Rehabilitation and Compensation Act 2004*, the Commonwealth is not liable to pay compensation to the person.

9 Transitional provision—section 245 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) at the time of the member’s death, a person was not the wholly dependent partner of the member; and

(c) the person would have been the wholly dependent partner of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of section 245 of the *Military Rehabilitation and Compensation Act 2004*, the person is taken to have been the wholly dependent partner of the member.

10 Application provision—section 251 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) a person is an eligible young person; and

(c) before 1 July 2009, the person was not a dependant of the member; and

(d) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) The Commonwealth is not liable to pay compensation to the person under section 251 of the *Military Rehabilitation and Compensation Act 2004*.

11 Transitional provision—section 253 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) a person is an eligible young person; and

(c) before 1 July 2009, the person was not a dependant of the member; and

(d) immediately before the member’s death, the person was wholly or mainly dependent on the member; and

(e) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of subsection 253(1) of the *Military Rehabilitation and Compensation Act 2004*, 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.

12 Application provision—section 255 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) a person is an eligible young person; and

(c) before 1 July 2009, the person was not a dependant of the member; and

(d) immediately before the member’s death, the person was wholly or mainly dependent on the member; and

(e) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) The Commonwealth is not liable to pay compensation to the person under section 255 of the *Military Rehabilitation and Compensation Act 2004*.

13 Transitional provision—section 258 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) a person is an eligible young person; and

(c) immediately before the member’s death, the person was not a dependant of the member; and

(d) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of subsection 258(1) of the *Military Rehabilitation and Compensation Act 2004*:

(a) the power to determine a scheme to provide education and training is taken to include the power to determine a scheme to provide education and training to the person; and

(b) benefits under a scheme determined under subsection 258(1) of the *Military Rehabilitation and Compensation Act 2004* are not payable to the person before 1 July 2009.

14 Application provision—section 262 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) immediately before the member’s death, a person was not a dependant of the member; and

(c) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death; and

(d) the person would not have been:

(i) the wholly dependent partner of the member; or

(ii) an eligible young person who was a dependant of the member;

if the Act had been in force at the time of the member’s death.

(2) The Commonwealth is not liable to pay compensation to the person under section 262 of the *Military Rehabilitation and Compensation Act 2004*.

15 Application provision—section 266 of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) immediately before the member’s death, a person was not a dependant of the member; and

(c) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) 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 *Military Rehabilitation and Compensation Act 2004*.

16 Transitional provision—subsection 284(1) of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) at the time of the member’s death, a person was not the wholly dependent partner of the member; and

(c) the person would have been the wholly dependent partner of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of subsection 284(1) of the *Military Rehabilitation and Compensation Act 2004*:

(a) the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the *Military Rehabilitation and Compensation Act 2004* for any injury or disease of the person; and

(b) the date of the member’s death is taken to be 1 July 2009.

17 Transitional provision—subsection 284(2) of the *Military Rehabilitation and Compensation Act 2004*

(1) This section applies if:

(a) a member died before 1 July 2009; and

(b) a person is an eligible young person; and

(c) immediately before the member’s death:

(i) the person was not a dependant of the member; and

(ii) the person was wholly or mainly dependent on the member; and

(d) the person would have been a dependant of the member if the Act had been in force at the time of the member’s death.

(2) For the purposes of subsection 284(2) of the *Military Rehabilitation and Compensation Act 2004*:

(a) the person is taken to be entitled to treatment under Part 3 of Chapter 6 of the *Military Rehabilitation and Compensation Act 2004* for any injury or disease of the person; and

(b) the date of the member’s death is taken to be 1 July 2009.

18 Transitional provision—section 300 of the *Military Rehabilitation and Compensation Act 2004*

For the purposes of section 300 of the *Military Rehabilitation and Compensation Act 2004*, a person to whom section 16 or 17 of this instrument applies is taken to be entitled to treatment under Part 3 of Chapter 6 of the *Military Rehabilitation and Compensation Act 2004* from 30 June 2009.

Note: Section 300 of the *Military Rehabilitation and Compensation Act 2004* provides that a person who is eligible for treatment under Part 3 of Chapter 6 of that Act is eligible for pharmaceutical allowance*.*

19 Transitional provision—section 13A of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not a dependant of the veteran; and

(c) the person would have been a dependant of the veteran if the Act had been in force at the time of the veteran’s death.

(2) On or after 1 July 2009, section 13A of the *Veterans’ Entitlements Act 1986* applies to the person as if the person is a dependant of the veteran.

20 Transitional provision—subsections 20(2A) and (2B) of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not a dependant of the veteran; and

(c) the person would have been a dependant of the veteran if the Act had been in force at the time of the veteran’s death; and

(d) subsection 20(2A) or (2B) of the *Veterans’ Entitlements Act 1986* applies to the person.

(2) For the purposes of paragraph 20(2A)(b) or (2B)(b) of the *Veterans’ Entitlements Act 1986*, the date of the veteran’s death is taken to be 1 July 2009.

21 Transitional provision—section 20 of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not a dependant of the veteran; and

(c) the person would have been a dependant of the veteran if the Act had been in force at the time of the veteran’s death; and

(d) the person makes a claim for a pension under section 14 of the *Veterans’ Entitlements Act 1986*.

(2) For the purposes of section 20 of the *Veterans’ Entitlements Act 1986*, the date of effect of a determination of a claim under subsection 19(3) of the *Veterans’ Entitlements Act 1986* must not be before 1 July 2009.

22 Transitional provision—Part III of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not the partner of the veteran; and

(c) the person would have been the widow or widower of the veteran, for the purposes of section 38 of the *Veterans’ Entitlements Act 1986*, if the Act had been in force at the time of the veteran’s death.

(2) Part III of the *Veterans’ Entitlements Act 1986* applies to the person as if:

(a) the veteran had died on 1 July 2009; and

(b) the person was receiving a partner service pension immediately before the veteran’s death.

23 Transitional provision—subsection 86(2) of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not a dependant of the veteran; and

(c) the person would have been a dependant of the veteran if the Act had been in force at the time of the veteran’s death.

(2) For the purposes of subsection 86(2) of the *Veterans’ Entitlements Act 1986*, the veteran is taken to have died on 30 June 2009.

24 Transitional provision—paragraph 86(4)(a) of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not the child of the veteran; and

(c) the person would have been a child of the veteran if the Act had been in force at the time of the veteran’s death.

(2) For the purposes of paragraph 86(4)(a) of the *Veterans’ Entitlements Act 1986*, the veteran is taken to have died on 30 June 2009.

25 Transitional provision—Part VII of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not an eligible child of the veteran; and

(c) the person would have been an eligible child of the veteran if the Act had been in force at the time of the veteran’s death.

(2) Benefits under the Scheme prepared by the Commission under Part VII of the *Veterans’ Entitlements Act 1986* are not payable to the person before 1 July 2009.

26 Transitional provision—Part VIIC of the *Veterans’ Entitlements Act 1986*

(1) This section applies if:

(a) a veteran died before 1 July 2009; and

(b) immediately before the veteran’s death, a person was not the partner of the veteran; and

(c) the person would have been:

(i) a war widow or war widower of the veteran, for the purposes of subsection 118V(1A) of the *Veterans’ Entitlements Act 1986*; or

(ii) the widow or widower of a veteran, for the purposes of subparagraph 118V(3)(a)(iii) of the *Veterans’ Entitlements Act 1986*;

if the Act had been in force at the time of the veteran’s death.

(2) Part VIIC of the *Veterans’ Entitlements Act 1986* applies to the person as if the veteran had died on 1 July 2009.

Schedule 1—Repeals

Same‑Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) (Veterans’ Affairs) Regulations 2009

1 The whole of the instrument

Repeal the instrument.