

EXPLANATORY STATEMENT

Veterans' Entitlements (Partner Service Pension – Retention of Eligibility) Determination 2019

Instrument 2019 No. R24

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (Instrument 2019 No. R24) made under subsection 38(2AD) of the Act sets out the circumstances in which the married or non-married former partner of a veteran will not lose their partner service pension despite being separated from the veteran for 12 months or more for a reason other than illness.

The *Veterans' Entitlements (Partner Service Pension – Retention of Eligibility for Non-illness Separated Spouse) Determination R25/2009* (the current instrument) which was made under subsection 38(2AD) of the Act will “sunset” (expire) on 1 October 2019 unless re-made. The current instrument applies only to the married spouse of a veteran (a non-illness separated spouse) and sets out the special domestic circumstances, such as domestic violence, where the spouse will not lose the partner service pension despite being separated from the veteran for 12 months or more for a reason other than illness. The current instrument ceases to apply if the couple divorce. The Department of Veterans' Affairs (DVA) reviewed the current instrument to determine whether it can be allowed to sunset and concluded that it is still required.

Section 38 of the Act was subsequently amended by the *Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019* (the Amending Act). The amendments made to the *Veterans' Entitlements Act 1986* by Schedule 1 of the Amending Act streamlined eligibility for partner service pension by removing the inequities which currently exist between married and non-married former partners of a veteran. Those amendments commence, or are taken to have commenced, on 20 September 2019.

The current instrument is being re-made to reflect the amendments made by the Amending Act. Accordingly, the attached instrument is being expanded so that it applies not only to the spouse of a veteran but also to the de facto partner of a veteran and the member of a registered relationship with a veteran, where they have separated from the veteran for 12 months or more for a reason other than illness. A registered relationship refers to a relationship registered under the law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section. Further, the attached instrument will continue to apply to the separated partner of a veteran (married or non-married) even if they divorce or the relationship ceases to be registered. The changes to the attached instrument are beneficial in nature in terms of their impact on clients.

However, the special domestic circumstances specified under the attached instrument remain the same as the special domestic circumstances specified under the current instrument. On reviewing the current instrument, DVA concluded the special domestic circumstances were satisfactory and an extension of those circumstances was not required. The special domestic circumstances are that the veteran's behaviour, arising from a mental condition, was such that it forced the married or unmarried partner of the veteran to leave their domestic environment because it was unsafe or abusive for the partner or any child of the partner.

CONSULTATION

The changes to this instrument stem from the 2019-20 Budget measure, *Partner Service Pension – eligibility alignment*. Consultation with veteran and community groups was not undertaken prior to the announcement of the measure, however, feedback received since that time has been positive.

The Department of Human Services (DHS) has been consulted in the context of planning and delivering Information and Communication Technology (ICT) changes necessary to implement the Budget measure. DHS provides ICT services to DVA through a shared services arrangement. With the exception of normal consultation with the Department of Finance as part of the Budget process, consultation with other agencies has not been undertaken as Partner Service Pension is a DVA-specific payment.

RETROSPECTIVITY

The attached legislative instrument commences, or is taken to have commenced, on 20 September 2019.

However, any retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

The attached instrument extends eligibility of partner service pension to former de facto partners of veterans and persons who were formerly in a registered relationship with a veteran in special domestic circumstances. Non-illness separated spouses of veterans in special domestic circumstances continue to be covered by the attached instrument.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The instrument engages the Right to Social Security under Article 9 and the Right to an Adequate Standard of Living under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to Social Security

Article 9 of the ICESCR states “States Parties ... recognize the right of everyone to social security, including social insurance”. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education”.

Right to an Adequate Standard of Living

Article 11 of the ICESCR states “The States Parties... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.

Overview

Subsection 38(2AD) of the Act enables the Repatriation Commission to make a legislative instrument setting out the circumstances in which the married or non-married former partner 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. The circumstances are that the veteran’s behaviour, arising from a mental condition, was such that it forced the partner to leave their domestic environment.

The continued payment of a partner service pension to a person after having been forced to leave their domestic environment will impact positively on the person’s living standards.

Conclusion

The attached instrument engages positively with the Right to Social Security and the Right to an Adequate Standard of Living.

Accordingly, the attached instrument is considered to be “human rights compatible”.

Repatriation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Attachment A

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the instrument is the *Veterans' Entitlements (Partner Service Pension — Retention of Eligibility) Determination 2019*.

Section 2

This section provides that the instrument is to commence, or is taken to have commenced, on 20 September 2019.

Section 3

This section provides the authority for making the instrument is subsection 38(2AD) of the *Veterans' Entitlements Act 1986* (the Act). Subsection 38(2AD) of the Act was in force when the instrument was made.

Schedule 1 of the *Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019* amended paragraphs 38(1)(b) and (g) of the Act to include non-married former partners of a veteran. Previously, paragraphs 38(1)(b) and (g) of the Act applied only to the married former partner of a veteran. The instrument applies to both married and non-married former partners of a veteran in reliance on paragraphs 38(1)(b) and (g) of the Act. However, at the time of making the instrument, those amendments to paragraphs 38(1)(b) and (g) of the Act had not commenced. Schedule 1 commences, or is taken to have commenced, on 20 September 2019.

Accordingly, the instrument is made in reliance on section 4 of the *Acts Interpretation Act 1901* which provides for the exercise of the instrument-making power as if the relevant commencement had occurred. The relevant commencement in this instance is the commencement of Schedule 1 of the *Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019* which amended paragraphs 38(1)(b) and (g) of the Act.

Section 4

This section is a purpose provision. The purpose of this instrument is to set out the circumstances in which the married or non-married former partner of a veteran retains eligibility for a partner service pension, despite being separated from the veteran for more than 12 months.

Section 5

This is the definitions section.

The term 'former partner of a veteran' is defined as a person to whom paragraph 38(1AA)(a), (b) or (c) of the *Act* applies. It refers to the married or non-married partner of a veteran who

has separated from the veteran, and is living separately and apart from the veteran on a permanent basis for a reason other than illness.

Section 6

This section sets out the circumstances where the former partner of a veteran remains eligible for a partner service pension despite being separated from the veteran for more than 12 months.

The circumstances are that on the first day the former partner of a veteran ceased residing in the same residence as the veteran (the first separate residence day), 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 or pulmonary tuberculosis, 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*.

In addition, the Repatriation Commission must be satisfied that, before the first separate residence day, the domestic environment shared by the veteran and his or her former partner was, because of the veteran's behaviour, unsafe or abusive for the former partner or any child of the former partner.

Section 7

This section repeals the *Veterans' Entitlements (Partner Service Pension — Retention of Eligibility for Non-illness Separated Spouse) Determination R25/2009*.

Section 8

This section is a transitional provision. It provides that the *Veterans' Entitlements (Partner Service Pension — Retention of Eligibility for Non-illness Separated Spouse) Determination R25/2009* continues to apply to the non-illness separated spouse of a veteran, despite its repeal.