Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019

No. 75, 2019

An Act to amend the law relating to veterans’ affairs, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)
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Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019

No. 75, 2019

An Act to amend the law relating to veterans’ affairs, and for related purposes

[Assented to 20 September 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019.
2 Commencement

(1) Each provision of this Act 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.

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>20 September 2019</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Extended eligibility for partner service pension

Veterans’ Entitlements Act 1986

1 Paragraph 38(1)(b)
   After “is a person”, insert “in relation to whom the following apply”.

2 Subparagraph 38(1)(b)(i)
   Repeal the subparagraph, substitute:
   (i) subsection (1AA) applies to the person;

3 Subparagraph 38(1)(b)(ii)
   Omit “whose non-illness separated spouse”, substitute “the veteran”.

4 Paragraph 38(1)(c)
   After “is a person”, insert “in relation to whom the following apply”.

5 Subparagraph 38(1)(c)(i)
   Repeal the subparagraph, substitute:
   (i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

6 Subparagraph 38(1)(c)(ia)
   Omit “whose partner or non-illness separated spouse”, substitute “the veteran”.

7 Subparagraph 38(1)(c)(ia)
   Omit “and”.

8 Subparagraph 38(1)(c)(ii)
   Omit “who”, substitute “the person”.

9 Paragraph 38(1)(d)
   After “is a person”, insert “in relation to whom the following apply”.

No. 75, 2019 Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019
10 **Subparagraph 38(1)(d)(i)**
Repeal the subparagraph, substitute:
(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

11 **Subparagraph 38(1)(d)(ii)**
Omit “who”, substitute “the person”.

12 **Subparagraph 38(1)(d)(ii)**
Omit “and”.

13 **Subparagraph 38(1)(d)(iii)**
Omit “whose partner or non-illness separated spouse”, substitute “the veteran”.

14 **Paragraph 38(1)(e)**
After “is a person”, insert “in relation to whom the following apply”.

15 **Subparagraph 38(1)(e)(i)**
Repeal the subparagraph, substitute:
(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB)) and who has rendered qualifying service;

16 **Subparagraph 38(1)(e)(ii)**
Omit “who”, substitute “the person”.

17 **Paragraph 38(1)(g)**
After “is a person”, insert “in relation to whom the following apply”.

18 **Subparagraph 38(1)(g)(i)**
Repeal the subparagraph, substitute:
(i) subsection (1AA) applies to the person;

19 **Subparagraph 38(1)(g)(ii)**
Omit “whose non-illness separated spouse”, substitute “the veteran”.
20 **Paragraph 38(1)(h)**
   After “is a person”, insert “in relation to whom the following apply”.

21 **Subparagraph 38(1)(h)(i)**
   Repeal the subparagraph, substitute:
   
   (i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

22 **Subparagraph 38(1)(h)(ii)**
   Omit “whose partner or non-illness separated spouse”, substitute “the veteran”.

23 **Subparagraph 38(1)(h)(ii)**
   Omit “and”.

24 **Subparagraph 38(1)(h)(iii)**
   Omit “who”, substitute “the person”.

25 **Paragraph 38(1)(i)**
   After “is a person”, insert “in relation to whom the following apply”.

26 **Subparagraph 38(1)(i)(i)**
   Repeal the subparagraph, substitute:
   
   (i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

27 **Subparagraph 38(1)(i)(ii)**
   Omit “who”, substitute “the person”.

28 **Subparagraph 38(1)(i)(ii)**
   Omit “and”.

29 **Subparagraph 38(1)(i)(iii)**
   Omit “whose partner or non-illness separated spouse”, substitute “the veteran”.

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No. 75, 2019  Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019

Authorised Version C2019A00075
30 After subsection 38(1)

Insert:

(1AA) This subsection applies to a person if:

(a) the person is the non-illness separated spouse of a veteran; or

(b) the following apply:

(i) a relationship between the person and a veteran
    (whether of the same sex or a different sex) is registered
    under a 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;

(ii) the person and the veteran have separated and the
    person is living separately and apart from the veteran on
    a permanent basis;

(iii) the separation has not resulted in a determination under
    subsection 5R(5); or

(c) the following apply:

(i) the person and a veteran were, in the Commission’s
    opinion (formed as mentioned in section 11A), in a de
    facto relationship;

(ii) the person and the veteran have separated and the
    person is living separately and apart from the veteran on
    a permanent basis;

(iii) the separation has not resulted in a determination under
    subsection 5R(5);

(iv) the person and the veteran are not within a prohibited
    relationship; or

(d) the following apply:

(i) the person becomes divorced from a veteran;

(ii) immediately before the divorce, paragraph (a) applied in
    relation to the person and the veteran; or

(e) the following apply:

(i) a relationship, described in subparagraph (b)(i), between
    the person and a veteran ceases to be registered under a
    law of the State or Territory concerned;

(ii) immediately before the cessation, paragraph (b) applied
    in relation to the person and the veteran.
(1AB) For the purposes of this section, a person is an eligible person in relation to a veteran who has died if:

(a) the person is the widow or widower of the veteran; or

(b) the following apply:

(i) immediately before the veteran died, a relationship between the person and the veteran (whether of the same sex or a different sex) was registered under a 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;

(ii) immediately before the veteran died, the person was living separately and apart from the veteran on a permanent basis;

(iii) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran’s death; or

(c) the following apply:

(i) at any time before the veteran’s death, the person and the veteran were, in the Commission’s opinion (formed as mentioned in section 11A), in a de facto relationship;

(ii) immediately before the veteran died, the person was living separately and apart from the veteran on a permanent basis;

(iii) immediately before the veteran died, the person and the veteran were not within a prohibited relationship;

(iv) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran’s death; or

(d) the following apply:

(i) at any time before the veteran’s death, the person became divorced from the veteran;

(ii) immediately before the divorce, paragraph (1AA)(a) applied in relation to the person and the veteran;

(iii) the person has not been a member of a couple at any time on or after the first day on which the person was
living separately and apart from the veteran on a permanent basis and before the veteran’s death; or

(e) the following apply:

(i) at any time before the veteran’s death, a relationship, described in subparagraph (b)(i), between the person and the veteran ceased to be registered under a law of the State or Territory concerned;

(ii) immediately before the cessation, paragraph (1AA)(b) applied in relation to the person and the veteran;

(iii) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran’s death.

31 Subsection 38(2A)

Repeal the subsection, substitute:

(2A) A person’s eligibility under paragraph (1)(b), (c), (d), (e), (g), (h) or (i) ceases if the person becomes a member of a couple.

Note: The person may become eligible for partner service pension under paragraph (1)(a), (aa) or (f).

32 Subsections 38(2B), (3) and (3A)

Repeal the subsections.

33 Application provisions

(1) The amendments made by this Schedule apply in relation to working out eligibility for partner service pension for days on or after the commencement of this item.

(2) For the purposes of subitem (1), paragraph 38(1AA)(b) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) a relationship registered before, on or after the commencement of this item; and

(b) a separation occurring on or after the commencement of this item.
(3) For the purposes of subitem (1), paragraph 38(1AA)(c) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) a de facto relationship entered into before, on or after the commencement of this item; and

(b) a separation occurring on or after the commencement of this item.

(4) For the purposes of subitem (1), paragraph 38(1AA)(d) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) a divorce occurring on or after the commencement of this item; and

(b) a separation occurring before, on or after the commencement of this item.

(5) For the purposes of subitem (1), paragraph 38(1AA)(e) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) a relationship ceasing to be registered on or after the commencement of this item; and

(b) a separation occurring on or after the commencement of this item.

(6) For the purposes of subitem (1), paragraph 38(1AB)(b) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) the death of a veteran occurring on or after the commencement of this item; and

(b) a relationship registered before, on or after the commencement of this item; and

(c) a separation occurring on or after the commencement of this item.

(7) For the purposes of subitem (1), paragraph 38(1AB)(c) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:

(a) the death of a veteran occurring on or after the commencement of this item; and
Schedule 1  Extended eligibility for partner service pension

(b) a de facto relationship entered into before, on or after the commencement of this item; and
(c) a separation occurring on or after the commencement of this item.

(8) For the purposes of subitem (1), paragraph 38(1AB)(d) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:
(a) the death of a veteran occurring on or after the commencement of this item; and
(b) a divorce occurring on or after the commencement of this item; and
(c) a separation occurring before, on or after the commencement of this item.

(9) For the purposes of subitem (1), paragraph 38(1AB)(e) of the Veterans’ Entitlements Act 1986, as inserted by this Schedule, applies in relation to:
(a) the death of a veteran occurring on or after the commencement of this item; and
(b) a relationship ceasing to be registered on or after the commencement of this item; and
(c) a separation occurring on or after the commencement of this item.
Schedule 2—Extended service on submarine special operations

Veterans’ Entitlements Act 1986

1 Section 6 (table item 4B)
   Omit “from 1978 to 1992”.

2 Section 6DB (heading)
   Omit “from 1978 to 1992”.

3 Paragraphs 6DB(a) and (b)

4 Subparagraphs 7A(1)(a)(v) and (vi)

No. 75, 2019 Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019
Schedule 3—Other amendments

Defence Service Homes Act 1918

1 Subsection 4(1) (definition of widow)
   Omit “includes a woman who was a de facto partner of”, substitute
   “means a woman who was legally married to, or a de facto partner of.”.

2 Subsection 4(1) (definition of widower)
   Omit “includes a man who was a de facto partner of”, substitute “means
   a man who was legally married to, or a de facto partner of.”.

3 At the end of subsections 20(1) and 23(1)
   Add:
   Note: Paragraph (a)—see the definitions of widow and widower in
   subsection 4(1). Widowed parent has a corresponding meaning: see
   section 18A (parts of speech and grammatical forms) of the Acts
   Interpretation Act 1901.

Veterans’ Entitlements Act 1986

4 Subsection 5E(1) (paragraph (b) of the definition of non-illness separated spouse)
   Omit “direction”, substitute “determination”.

5 Subsection 5E(1) (paragraph (b) of the definition of widow)
   Repeal the paragraph, substitute:
   (b) a woman who was legally married to a person, but living
   separately and apart from the person on a permanent basis,
   immediately before the person died.

6 Subsection 5E(1) (paragraph (b) of the definition of widower)
   Repeal the paragraph, substitute:
   (b) a man who was legally married to a person, but living
   separately and apart from the person on a permanent basis,
   immediately before the person died.
Minister’s second reading speech made in—
House of Representatives on 1 August 2019
Senate on 12 September 2019