EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 6
Issued by the Authority of the Attorney-General

Subject - Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform)(Veterans’ Affairs) Amendment Regulations 2010 (No. 1)

Item 86 of Schedule 2 to the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 (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 that Act.

The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform)(Veterans’ Affairs) Regulations 2009 (the Principal Regulations) cover people who were not covered by the Same Sex Act but who would have been if the veteran or member of the Defence Force with whom they had a relationship had died on/after the Same Sex Act commenced on 1 July 2009 instead of before that date. The Principal Regulations ensure that on/from 1 July 2009 these people receive certain benefits under the Veterans’ Entitlements Act 1986 (VEA) and the Military Rehabilitation and Compensation Act 2004.

One benefit the Principal Regulations sought to make available to partners of deceased veterans in the circumstances in question is the partner service pension under the VEA. However a criterion of eligibility for this pension is that the widow(er) of the deceased veteran was receiving the partner service pension immediately before the veteran’s death. The widows(ers) in question could not have received the partner service pension before the veteran’s death because the law did not recognise them as partners.

The Regulations rectify this situation by deeming the relevant widows(ers) to have been receiving the partner service pension immediately before the veteran’s death thereby making them eligible for the partner service pension on/after 1 July 2009.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003 and are registered on the Federal Register of Legislative Instruments.

The Regulations are taken to have commenced immediately after the Principal Regulations commenced on 1 July 2009 (before registration). Under the
Legislative Instruments Act 2003, a legislative instrument that takes effect before it is registered and which negatively affects a person (other than the Commonwealth) is of no effect.

However, the Regulations will not affect any person (other than the Commonwealth) so as to disadvantage them or impose any liability on them. The Regulations give an entitlement where none previously existed.

No consultation with interested parties was undertaken in respect of the Regulations. The Rule-Maker was satisfied that consultation was unnecessary because the Regulations were beneficial and interested parties could be expected to agree to them.

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