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

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Date introduced: 1 August 2019
House: House of Representatives
Portfolio: Veterans' Affairs
Commencement: Schedule 1 on 20 September 2019; Schedule 2 on 1 July 2019 and Schedule 3 on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at September 2019.
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Purpose of the Bill
The purpose of the Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Bill 2019 (the Bill) is to amend the Veterans’ Entitlements Act 1986 (the VEA) and the Defence Service Homes Act 1918 to:

• allow former partners of veterans, irrespective of marital status, to continue to receive Partner Service Pension for 12 months on separation from the veteran or indefinitely following the death of the former veteran partner or in specified other circumstances. Currently, only those who were married to the veteran prior to separation or the veteran’s death are eligible to continue to receive Partner Service Pension. Separated spouses currently also lose eligibility for Partner Service Pension when they divorce

• classify service on submarine special operations by members of the Australian Defence Force during the period 1 January 1993 to 12 May 1997 as operational and qualifying service for the purposes of the VEA and

• make technical amendments relating to the definitions of ‘widow’ and ‘widower’ in the Defence Service Homes Act 1918 to reflect the 2017 changes to the Marriage Act 1961 allowing for any two people to marry, regardless of their sex or gender.

The Partner Service Pension measure was announced in the 2019–20 Budget.1 The remaining measures were not previously announced.

The Partner Service Pension measure is expected to commence on 20 September 2019. The classification of service on submarine special operations is expected to have retrospective effect from 1 July 2019. The remaining technical amendments are to have effect from the day after Royal Assent.

Structure of the Bill and Bills Digest
The Bill contains three schedules containing discreet measures. This Bills Digest will provide background and analysis of the three schedules in separate sections.

Committee consideration

Senate Standing Committee for the Selection of Bills
In its report on 12 September 2019, the Senate Standing Committee for the Selection of Bills deferred consideration of the Bill until its next meeting.2

Senate Standing Committee for the Scrutiny of Bills
The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.3

Policy position of non-government parties/independents
At the time of writing, non-government parties and independents had not stated a position on the Bill.

Position of major interest groups
At the time of writing, major interest groups had not stated a position on the Bill.

2. Senate Standing Committee for the Selection of Bills, Report, 5, 2019, The Senate, Canberra, 2019, [p. 4].
Financial implications
According to the Explanatory Memorandum, extending eligibility for the Partner Service Pension will cost $6.2 million over the forward estimates and around $1.4 million per year ongoing.\(^4\)

Reclassifying certain service on submarine special operations will cost $3.2 million over the forward estimates and around $2.1 million per year by 2041–42.\(^5\)

The financial impact of the other proposed amendments is expected to be negligible.

Statement of Compatibility with Human Rights
As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^6\)

*Parliamentary Joint Committee on Human Rights*

The Parliamentary Joint Committee on Human Rights had no comment on the Bill.\(^7\)

Schedule 1—Extended eligibility for partner service pension
Schedule 1 proposes amendments to the *VEA* to allow former partners of veterans, irrespective of marital status, to continue to receive Partner Service Pension for 12 months on separation from the veteran or indefinitely following the death of the former veteran partner or in specified other circumstances. Currently, only those who were married to the veteran prior to separation or the veteran’s death are eligible to continue to receive Partner Service Pension. Separated spouses also lose eligibility for Partner Service Pension when they divorce.

*Service Pension*
The Service Pension is a means tested income support payment provided to veterans on the ground of age or disability, and to eligible partners, widows and widowers.

The Service Pension is paid at the same rate as the social security Age Pension and Disability Support Pension—currently a maximum of $926.20 a fortnight for single recipients and $698.10 per fortnight for each member of a couple.\(^8\) The Service Pension is also subject to similar income and assets tests as social security pensions. However, the Service Pension paid in respect of age can be paid earlier than the social security Age Pension: from age 60 rather than 67 for the Age Pension. According to the Department of Veterans’ Affairs (DVA), this is ‘in recognition of the intangible effects of war that may result in premature ageing of the veteran and/or loss of earning power’.\(^9\)

Eligible veterans are those with qualifying service under the *VEA*—this generally means those that have served in operations against the enemy while in danger from hostile forces of the enemy—

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4. Explanatory Memorandum, Veterans’ Affairs Legislation Amendment (Partner Service Pension and Other Measures) Bill 2019, p. ii.
5. Ibid.
8. These rates include the Pension Supplement and Energy Supplement. Department of Veterans’ Affairs (DVA), ‘*Factsheet IS30 – Pension rates, limits and allowances summary*’, DVA, Canberra, last updated 1 July 2019.
9. DVA, ‘*Factsheet IS01 – Service Pension Overview*’, DVA, Canberra, last updated 1 July 2019.
and who meet the residency requirements.\textsuperscript{10} The residency requirements are that a person be present in and a resident of Australia at the time of claiming the Service Pension. Veterans who have qualifying service from their service in the defence force of another Commonwealth country or an allied country, or as an allied mariner, must have been an Australian resident for at least ten years in order to meet the residency requirements.\textsuperscript{11}

**Partner Service Pension**

Partner Service Pension is the Service Pension payment made to eligible partners, former partners and widows/widowers of veterans. It is paid at the same rates as Service Pension.

As at March 2019, there were 45,890 partners or widows in receipt of the Partner Service Pension. The average age of recipients was 75.7 years.\textsuperscript{12}

**Eligibility**

To be eligible for Partner Service Pension, an individual must be a:

- partner of a veteran with qualifying service
- former partner of a veteran with qualifying service or
- a widow or widower of a veteran who had qualifying service.

**Current partners**

Current partners must be legally married to and living with a veteran, or living in a de facto relationship. In situations where one partner needs to live separately due to frailty or illness (such as where one partner needs to live in residential aged care), and the separation is likely to be indefinite, then the individual is still considered to be a current partner.\textsuperscript{13}

A current partner can be eligible for Partner Service Pension if their veteran partner is receiving or is eligible to receive a Service Pension or is/was registered for the pension bonus scheme with DVA.\textsuperscript{14} A partner who has reached pension age (67) can also qualify for Partner Service Pension even if the veteran is not 60 years old (so long as they have qualifying service).\textsuperscript{15}

A couple’s de facto status can be determined by reference to a relationship register (provided for under certain state and territory laws) or by considering the nature of the relationship such as shared financial and household responsibilities, whether the couple undertakes joint social and leisure activities, and if they appear as a couple in the general community.\textsuperscript{16}

Current partners need to meet the age requirements or exemptions set out in Table 1:

\begin{itemize}
  \item \textsuperscript{10} Ibid.
  \item \textsuperscript{11} DVA, ‘\textit{Required periods of residency}’, Compensation and support policy library, DVA website, last amended 31 July 2013.
  \item \textsuperscript{12} DVA, \textit{DVA Pensioner Summary: March 2019}, DVA, Canberra, 2019, table 07.
  \item \textsuperscript{13} DVA, ‘\textit{Factsheet IS45 – Partner Service Pension}’, DVA, Canberra, last updated 27 March 2019.
  \item \textsuperscript{14} The Pension Bonus Scheme has been closed to new registrations from 1 July 2014. The scheme allowed people to remain in the workforce and defer receipt of an income support pension in exchange for a lump-sum payment upon retirement. DVA, ‘5.6.1 Overview of the Pension Bonus Scheme’, Compensation and support policy library, DVA website, last amended 22 April 2014.
  \item \textsuperscript{15} DVA, ‘Factsheet IS45 – Partner Service Pension’, op. cit.
  \item \textsuperscript{16} Ibid.
\end{itemize}
### Table 1: Partner Service Pension age requirements and exemptions

<table>
<thead>
<tr>
<th>Age requirement or exemption</th>
<th>Conditions</th>
</tr>
</thead>
</table>
| No age requirement          | • has a dependent child or children when the claim for partner service pension is made or  
                                • veteran partner receives the Totally and Permanently Incapacitated (Special Rate)  
                                  of Disability Pension under the VEA  
                                • veteran partner receives or is eligible to receive a Special Rate Disability Pension  
                                  (SRDP) under the Military Rehabilitation  
                                  and Compensation Act 2004 (MRCA). |
| 50 years of age or over     | veteran partner receives an above general rate Disability Pension under the VEA or MRCA |
| Qualifying age (60 years) or over | if the other categories do not apply                                          |


### Former partners

Former partners of a veteran who remain legally married (that is, separated but still married) can be paid Partner Service Pension if they meet the age requirements set out in Table 1. Payment may continue for up to 12 months following the date of separation unless the partner has reached age pension age before the period of 12 months is reached, or ‘special domestic circumstances’ apply. The term *special domestic circumstances* refers to situations where ‘the veteran has a psychological or mental health condition recognised by DVA and there was an unsafe or abusive domestic environment in respect of the partner or the partner’s family prior to separation’.

Eligibility for a Partner Service Pension ceases when the individual divorces or commences a de facto relationship with another person.

De facto partners lose eligibility for Partner Service Pension immediately if their relationship with the veteran ceases.

### Widows and widowers

Recipients of a Partner Service Pension can continue to be eligible for the payment if the veteran dies (the partner must have been in receipt of the pension immediately before the death). The partner of a deceased veteran who had qualifying service is eligible for the Partner Service Pension when they become eligible for the social security Age Pension (that is, they can receive the Partner Service Pension instead of the Age Pension).

A partner who meets the age requirements set out in Table 1 is eligible for the Partner Service Pension as a widowed partner where:

- the veteran was receiving or was eligible for Service Pension

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17. Ibid.
18. DVA, ‘Eligibility for Partner Service Pension when separated from veteran’, Compensation and support policy library, DVA website, last amended 19 August 2011.
19. DVA, ‘Eligibility for Partner Service Pension’, Compensation and support policy library, DVA website, last amended 12 August 2011.
• the veteran was registered for the Pension Bonus Scheme or
• the veteran had made a claim for Service Pension which would have been granted had they not died.20

Widows or widowers who receive the War Widow’s/Widower’s Pension—a compensation payment paid where a veteran’s death is linked to their service—are not eligible to receive Partner Service Pension. War Widow’s/Widower’s Pension recipients may receive the means tested Income Support Supplement.21

Widows or widowers who were receiving Partner Service Pension at the time of the veteran’s death, but who had separated prior to the death (while remaining married), lose eligibility for Partner Service Pension 12 months from the date of separation unless special domestic circumstances arise or they have reached Age Pension age.22

Key issues and provisions

Inequitable treatment between married and de facto couples
The current provisions for post-separation Partner Service Pension eligibility provide for beneficial treatment for married couples compared to de facto couples. Currently, partners in de facto and registered relationships lose eligibility for Partner Service Pension immediately upon separation. Married partners can remain eligible for 12 months or more (in special circumstances) despite being separated from the veteran. There is no valid reason to discriminate against non-married former partners in such situations.

Amendments address inequity and ensure temporary financial support for former partners
In his second reading speech on the Bill, Minister for Veterans’ Affairs Darren Chester stated the amendments proposed by Schedule 1 ‘will ensure a modern legislative provision that recognises the differences in relationship types and removes any discrimination’.23 The Minister also noted:

... where special domestic circumstances apply, including domestic abuse, legislative instrument amendments will allow all former partners to remain eligible to receive partner service pension until they enter into a new relationship. This preventative measure, part of the government’s fourth National Action Plan to Reduce Violence against Women and their Children, will assist partners to leave a violent relationship by providing them with financial support.24

These measures will ensure that the current differences in treatment between married and non-married couples will be removed.

Key provisions
Section 38 of the VEA sets out the eligibility criteria for Partner Service Pension. Items 1–29 make amendments to various parts of subsection 38(1) to remove some of the existing criteria applying to former partners and widows and insert references to proposed subsections 38(1AA) and 38(1AB) (inserted by item 30) which will set out the specific criteria for former partners and for former partner/widows of deceased veterans, respectively.

20. Ibid.
22. DVA, ‘Eligibility for Partner Service Pension when separated from veteran’, op. cit.
24. Ibid.
Proposed subsection 38(1AA) provides eligibility for Partner Service Pension for the following categories of former partners:

- non-illness separated spouses of a veteran
- persons in a relationship with a veteran (whether of the same sex or different sex) registered under a state or territory law who have separated and are living separately from the veteran on a permanent basis (but are not considered an illness separated couple)
- persons who were in a de facto relationship (in the opinion of the Repatriation Commission) who have separated and are living separately from the veteran on a permanent basis (but are not considered an illness separated couple)
- persons who have become divorced from a veteran but were previously non-illness separated spouses of a veteran
- persons whose registered relationship has ceased but who were previously, while the relationship was still registered, living separately from the veteran on a permanent basis.

Current subsection 38(2AB) of the VEA limits the eligibility for all of these categories of former partners to a period of 12 months beginning on the first day on which the person was living separately and apart from the veteran on a permanent basis.

Subsection 38(2AC) of the VEA provides for exceptions to this 12 month limit in cases where the former partner has reached Age Pension age or circumstances specified in a legislative instrument made under subsection 38(2AD) exist. Currently, this instrument provides for circumstances where the veteran has service-related psychological or other mental health incapacity and that the domestic environment shared with the veteran was unsafe or abusive because of the veteran’s behaviour.  

Proposed subsection 38(1AB) of the VEA sets out the eligibility criteria for the former partners of veterans who have died. It applies in situations where:

- immediately before the veteran’s death, the veteran was in receipt of, or eligible for, a Service Pension and the partner was in receipt of a Partner Service Pension or social security pension
- the partner had made a claim for Partner Service Pension before the death of a veteran who was in receipt of or eligible for a Service Pension, or had made a claim for Service Pension that would have been granted had they not died
- the veteran had rendered qualifying service and the partner was qualified for a social security Age Pension
- the veteran was registered as a member of the Pension Bonus Scheme or was receiving or was eligible for a Service Pension and immediately before the veteran’s death, the partner was registered as a member of the Pension Bonus Scheme or was receiving Partner Service Pension or social security pension or
- the partner had made a claim for Partner Service Pension which had not been determined before the veteran’s death, and immediately before their death, the veteran registered as a member of the Pension Bonus Scheme.

The criteria for former partners of veterans who have died are that they:

- are the widow or widower of the veteran

• immediately before the veteran died, were in a relationship with the veteran that was registered under a state or territory law; were separated and living separately from the veteran on a permanent basis; had not been a member of couple (with another person) during the period between separation and the death of the veteran

• had previously been in a relationship that the Repatriation Commission considered a de facto relationship and immediately before the veteran died, were living separately from the veteran on a permanent basis, were not within a prohibited relationship with the veteran (that is, incestuous), and had not been a member of couple (with another person) during the period between separation and the death of the veteran

• became divorced from the veteran before the veteran’s death, but before the divorce were considered a non-illness separated spouse of the veteran, and had not been a member of couple (with another person) during the period between separation and the death of the veteran or

• had ceased to be in a registered relationship with the veteran before the veteran’s death, but while the relationship was still registered were separated and living apart from the veteran on a permanent basis, and had not been a member of couple (with another person) during the period between separation and the death of the veteran.

Former partners subject to the provision in proposed subsection 38(1AB) can remain eligible for Partner Service Pension indefinitely and are not subject to the 12 month limit.

Item 31 substitutes proposed subsection 38(2A) which provides for all former partners (including those where the veteran has died) to cease being eligible for Partner Service Pension when they become a member of a new couple. A note included under proposed subsection 38(2A) provides that the person may become eligible for Partner Service Pension if their new partner is also a veteran and they again meet the qualification requirements for the payment.

Item 32 repeals existing subsections 38(2B), (3) and (3A) of the VEA which are made redundant by proposed subsection 38(2A).

Schedule 2—Extended service on submarine special operations

Schedule 2 proposes amendments to the VEA to classify service on submarine special operations by members of the Defence Force during the period 1 January 1993 to 12 May 1997 as operational and qualifying service. Currently, only service on these operations during the period 1 January 1978 to 31 December 1992 is classified as operational and qualifying service.

Background

Qualifying and operational service

Recognition of a particular period or kind of defence service as operational or qualifying service under the VEA provides access to certain entitlements. Recognition of the service as operational service provides access to the Disability Pension compensation payment and medical treatment for any illness or incapacity that was linked to this service. Recognition as qualifying service provides access to the Service Pension (including the age Service Pension from age 60), and, from age 70, automatic qualification for a DVA Gold Health Treatment Card, which provides access to treatments for any medical condition at DVA’s expense, regardless of whether the condition was
linked to service. Partners, former partners and widows of those with qualifying service may also be eligible for a Partner Service Pension (see Schedule 1 above). 27

Submarine special operations
Submarine special operations refer to the deployment of Royal Australian Navy submarines with special intelligence equipment during peacetime. The operations are covert and details are classified. 28 An article in The Australian in 2013 suggested there were around 20 such operations during the period 1977 to 1992 which included surveillance of the Soviet and Chinese navies. 29

Clarke Review
Prior to 2010, service on submarine special operations was classified as peacetime service. The 2003 Review of Veterans’ Entitlements (the Clarke Review) examined the classification of these operations and received a number of submissions which argued that they should be classified as ‘warlike service’ as they were authorised and acknowledged as ‘warlike’: “Submissions added that special operations were conducted in a threat environment where overwhelming force could have been expected if the submarine had been detected”. 30

The Clarke Review found that due to the classified nature of the operations, the classification of this service could only be made by the Department of Defence. Advice from Defence indicated that ‘there is no evidence to suggest that warlike service status would be, or should have been, applied to submarine special operations’. 31 The Clarke Review recommended that these operations not be considered warlike service for the purposes of the VEA, but be deemed ‘non-warlike hazardous’ operational service. 32 Classification as warlike service would have seen these operations considered to be qualifying service. Classification as hazardous non-warlike service would have provided access to Disability Pensions and health treatments for conditions arising from that service. 33

The Howard Government did not adopt these recommendations and, in announcing the Government’s response to the Clarke Review, the then Minister for Veterans’ Affairs Danna Vale emphasised a desire to limit the definition of qualifying service to those who were at risk of injury or death from an armed enemy:

I say, quite clearly, this Government will protect the integrity of Qualifying Service to continue to give special recognition - and benefits - to those who serve their country at risk of personal injury or death from an armed enemy.

So we endorse and accept the Committee’s recommendation that there be no change in the statutory test for Qualifying Service.

However, we reject the Committee’s view that the ‘incurred danger test’ has been interpreted too narrowly by the courts and administrators.

27. DVA, ‘Factsheet IS65—Service on certain submarine special operations, 1978 to 1992’, DVA, Canberra, last updated 29 October 2018; DVA, ‘Factsheet HSV60—Using the DVA Health Card – All Conditions (Gold) or DVA Health Card Totally & Permanently Incapacitated (Gold)’, DVA, Canberra, last updated 17 July 2019.
31. Ibid.
32. Ibid., pp. 343–344.
33. DVA, ‘Non-warlike service’, Service eligibility assistant, DVA website, n.d.
Public support and confidence in the generosity of our Repatriation System depends on the ‘incurred danger test’ remaining objective. We would create anomalies if we were to confuse a state of readiness, or presence in a former enemy’s territory, with the real and tangible risks of facing an armed and hostile enemy.34

2010 recognition as operational and qualifying service

In 2010, the Labor Government announced a response to the recommendations of the Clarke Review that the Howard Government had not accepted or implemented. This included the decision to reclassify certain submarine special operations service between 1978 and 1992 as operational and qualifying service. The then Minister for Veterans’ Affairs and Defence Personnel Alan Griffin noted that ‘this exceeds Clarke’s recommendation that this service be deemed non-warlike hazardous’.35 The decision was included in the 2010–11 Budget.36 Around 880 personnel were expected to benefit.37

The Bills Digest for the legislation which implemented the measure noted that classifying this peacetime service as qualifying service, equivalent to service during wartime, could set a significant precedent for the recognition of other forms of dangerous peacetime service:

The proponents of the submarine special service insist that, had they been detected, they were at great and overwhelming risk and danger. However, the detail of the special submarine service has not been made public due to the apparently ‘top secret’ nature of its operations. Nor has there been any publicity relating to its operations, such as might be expected if it had engaged in any conflict with, or discovered any covert operations by, other forces or nations. Therefore, the Government’s decision implies acceptance that the risks the operations ran should be given the same recognition as warlike service. This is even though the submarine operations were not during a period of hostilities against an armed enemy force, hitherto a requirement for the classification of war and warlike service. This budget initiative might therefore set a precedent for the accreditation of other claims relating to dangerous peacetime military service.38

2018 amendments

In 2018 amendments to the VEA effectively deemed that any submariner who served on a submarine special operation between 1 January 1978 and 31 December 1992 had operational service for any period they served on a submarine during this period.39

DVA had found that the high level of secrecy around these operations, and the limited information that could be provided by Defence to DVA in regards to a veteran’s service on these operations, made it difficult to establish claims for a Disability Pension. Specifically, DVA had difficulty linking injuries or illnesses contracted by a submariner with service on a classified operation as opposed to other service on a submarine during this period.40

Essentially, the amendments allowed veterans who met the eligibility criteria for service on submarine special operations at any point in that period, to make a claim for an injury or illness arising as a result of any service on a submarine during that period.

34. D Vale (Minister for Veterans’ Affairs), Response to the Clarke Committee Report on Veterans’ Entitlements, speech, 2 March 2004.
37. Ibid.
39. Item 1 of Schedule 5 of the Veterans’ Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Act 2018 inserted section 6DB into the VEA.
Eligibility criteria
Eligibility for qualifying and operational service on a submarine special operation is determined by whether an individual has received, or is eligible for, the Australian Service Medal with a clasp ‘SPECIAL OPS’ in respect of a submarine special operation during the period 1 January 1978 to 31 December 1992.41

Key issues and provisions
Covert nature of operations limits scrutiny of entitlement
The proposed extension to the period of submarine special operations classified as qualifying and operational service under the VEA is difficult to assess as so little is known publicly about these operations, the risk and danger involved, their comparability to service during wartime and, therefore, the claim these submariners have to the benefits that entail from the classification. The Parliament is being asked to trust in the assessment of the departments of Defence and Veterans’ Affairs, despite the Department of Defence previously advising the Clarke Review that there was ‘no evidence to suggest that warlike service status would be, or should have been, applied to submarine special operations’.42 It is also unclear how many service personnel will benefit from the reclassification.

Post-1997 operations considered non-warlike
The Explanatory Memorandum to the Bill notes that submarine special operations after 1997 do not meet the criteria for ‘warlike’ service.43 It states that service on these operations during the period from 13 May 1997 to 30 June 2006 will be the subject of ‘non-warlike’ determinations under the VEA and the Military Rehabilitation and Compensation Act 2004.44 This means that those with service on submarine special operations during the period 13 May 1997 to 30 June 2006 will be regarded as having operational service and be eligible for compensation and treatment for conditions attributed to this service, but will not be considered as having qualifying service for the purposes of the Service Pension and other entitlements. The Minister stated in his second reading speech that classifying this service between 1997 and 2006 as non-warlike will not require legislative change but will be made via a Ministerial determination.45

Key provisions
Section 6DB of the VEA sets out the criteria for service on submarine special operations to be considered operational service.

Item 2 removes any reference to particular dates from the heading at section 6DB.

Item 3 amends paragraphs 6DB(a) and (b) to change a reference to 31 December 1992 to 12 May 1997. This provides for service on submarine special operations from 1 January 1978 to 12 May 1997 that meets the other criteria at section 6DB to be considered as operational service.

Section 7A of the VEA sets out the criteria for what is considered qualifying service.

Item 4 amends existing subparagraphs 7A(1)(a)(v) and (vi) to change references to 31 December 1992 to 12 May 1997. This provides for service on submarine special operations from 1 January 1978 to 12 May 1997 that meets the other criteria at subparagraphs 7A(1)(a)(v) and (vi) to be considered qualifying service.

42. Clarke Review, op. cit., p. 343.
43. Explanatory Memorandum, op. cit., p. 12.
44. Ibid.
45. Chester, op. cit.
Schedule 3—Other amendments

Schedule 3 makes technical amendments relating to the definitions of *widow* and *widower* in the *Defence Service Homes Act* and the *VEA* to reflect the 2017 changes to the *Marriage Act 1961* allowing for any two people to marry, regardless of their sex or gender.

The *Marriage Amendment (Definition and Religious Freedoms) Act 2017* removed restrictions in the *Marriage Act* that limited marriage in Australia to the union of a man and a woman. The amendment allowed for two people to marry, regardless of their sex and gender.

The amendments proposed by this Schedule are intended to reflect this amendment in the definitions of *widow* and *widower* used in the *Defence Service Homes Act* and the *VEA*. The definitions make clear that the terms can apply regardless of the sex or gender of the person to whom the widow or widower was married.

**Item 4** of Schedule 3 also makes a technical amendment to the *VEA* to replace a reference to ‘direction’ in the definition of *non-illness separated spouse* at existing subsection 5E(1) with a reference to the more accurate term ‘determination’.

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