

Senate Community Affairs Committee

Inquiry into the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008

Nov 2008

Cancellation of Partner Service Pension following Marital Separation

Questions on Notice

1. Please outline the process by which a veteran's separated partner may currently apply to receive the Partner Service Pension on the basis that they are an 'illness separated' partner.
2. What criteria are used to determine whether a separated partner is eligible to receive illness separated Partner Service Pension?
3. A number of separated partners that will be affected by the provisions of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008 argue that their separation is due to the effects of their veteran partner's service, for example due to PTSD, depression or other conditions. Where the main source of a couple's separation is behaviour caused by a veteran's active service, is this sufficient grounds to access Partner Service Pension on the basis of illness separation?
4. What assurance can be given that those partners who have separated due to illness or behaviour caused by a veteran's active service will continue to receive Partner Service Pension?
5. What is the savings estimate from the Partner Service Pension schedule of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008, taking into account the number of partners affected by the bill that may be eligible to continue receiving the pension as illness separated partners?

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Answer to Question 1:

Illness separated couple following admission to aged care or another care situation:

- ◆ It is automatically accepted that a couple is separated on the basis of illness without the need to obtain medical evidence. Admission is generally confirmed through a copy of the resident agreement with the aged care facility.

Where neither person is living in a care situation:

- ◆ both partners are asked to complete the D9157 '*Statement of Relationship – Couple living separately due to illness*' and these forms are sent to a centralised decision-making point for assessment. Further details are provided in answer to Question 2 below.

A written determination must be made under section 5R(5) *Veterans' Entitlements Act 1986* (VEA), in all cases that the Commission is satisfied that all the requirements to assess a couple as illness-separated have been met.

Answer to Question 2:

The definition of an illness separated couple is set out in subsection 5R(5) of the VEA. To be considered an illness separated couple, two people must be unable to live together in a matrimonial home because of the illness (including mental illness) or infirmity of either or both of them. They must also continue to have a married or marriage-like relationship, even though they may be living in separate accommodation.

In forming an opinion as to whether two people are living together in a marriage-like relationship, section 11A VEA requires a delegate to have regard to all the circumstances of the relationship, including the following factors:

- the financial aspects of the relationship,
- the nature of the household,
- the social aspects of the relationship,
- any sexual relationship between the people, and
- the nature of the people's commitment to each other.

The order in which the factors are set out does not imply an order of importance and does not place a limit on the factors that may be considered in a particular case. The combination of all aspects of the relationship, its nature, the history, the personal and financial circumstances of each person, expectations for the future, whether children are in the relationship, are assessed in arriving at a decision to consider two people as living in a marriage-like relationship.

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Answer to Question 3:

The illness or infirmity of both members of a couple are taken into account in determining requests for illness-separation consideration. The medical reason for a couple's separation is not limited to service-related illness or infirmity of the veteran. The Bill does not intend to restrict the application of the illness-separation provision to couples who separate only because of an accepted War or Defence cause disability.

In addition to living apart due to illness, the veteran and spouse must remain members of a couple – that means, remain legally married and continue to have a married relationship.

Although members of an illness separated couple are each entitled to the single rate of service pension, their combined income and assets are included in a joint pension assessment. This means that their joint income and assets, if over the free areas, reduce the pension of each member of the couple equally, and the details can be disclosed to the other partner.

The presence of a particular condition (eg PTSD, depression) of itself is not a predetermining factor. Presentation of conditions can vary greatly between individuals.

Answer to Question 4:

The Department of Veterans' Affairs has written to all individuals who are potentially affected by the change on 1 January 2009 in anticipation of the passage of the legislation. A special team has been established by the Department to assist these partners to ensure their circumstances are properly considered and that they are fully informed of the process to seek consideration of illness-separation if appropriate.

Partners who express an interest in testing eligibility for 'illness separated' assessment are sent the D9157 '*Statement of Relationship – Couple living separately due to illness*' for completion. Information collected from both the veteran and the spouse are taken into account in determining whether the couple are illness-separated. The same criteria is applicable to all separated couples including partners who have separated due to illness or behaviour caused by a veteran's active service.

Members of a couple who are determined as living apart due to illness (including mental illness) are not affected by this measure.

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Answer to Question 5:

Illness separated couples were not taken into consideration in the initial costings undertaken. This was because partners were assumed to have correctly informed DVA of their circumstances on separation from the veteran and that they were therefore correctly assessed as being separated maritally from the veteran rather than being illness separated.

Around 60 partners have requested forms be sent to them to apply for assessment as an illness separated couple. Of these, only around 15 have been returned to date.

Assumptions used in calculating the cost of those partners whose assessment changes from maritally separated to illness separated:

- The costing is based on average pension rates as at 5 February 2008 (the same date as used in the original budget costing)
- The impact on FaHCSIA and DEEWR offsets has not been calculated due to the short time frame available and the small number of people affected. It is likely that the FaHCSIA and DEEWR offsets previously advised will be reduced by around 6.51%.
- Illness separated assessment forms have been issued to 60 people.
- 75%, or 45 people, are assumed to be assessed as illness separated. This is 6.51% of the below age pension age population (691) in the original budget costing.
- 6 separations per year will be illness separated. This is 6.51% of the 94 separations per year for the below age pension age population in the original budget costing.
- Population assumed to increase by 6 every year with no deaths due to the relatively low age of the population (ie below pension age).
- Indexation to Male Total Average Weekly Earnings (MTAWE) applied as per parameters from Finance.

The budgeted savings would be reduced by around \$2.6 million over the forward estimates due to the effect of this number of partners having their assessment changed from maritally separated to illness separated.