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No. 10 2001–02

**Veterans' Affairs Legislation Amendment
(2001 Budget Measures) Bill 2001**

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 10 2001–02

Veterans' Affairs Legislation Amendment (2001 Budget
Measures) Bill 2001

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1 August 2001

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Veterans' Affairs Legislation Amendment (2001 Budget Measures) Bill 2001

Date Introduced: 28 June 2001

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement:

Sections 1, 2 and 3 and Schedules 1 and 3 are to commence from Royal Assent.

Schedule 2 is taken to have commenced from 1 July 2001.

Items 1 and 3 of Schedule 4 commence at the later of:

- The time that is immediately after the commencement of Schedule 1 to this Act; and
- The time when Parts 4 to 10 of the *Administrative Tribunal Review Act 2001* commence.

Item 2 of Schedule 4 commences at the later of:

- The time that is immediately after the commencement of Schedule 3 to this Act; and
- The time when Parts 4 to 10 of the *Administrative Tribunal Review Act 2001* commence.

Purpose

To give effect to a number of initiatives for veterans announced by the Government in the 2001-2002 Budget.

Schedule 4 contains prospective amendments contingent on the passage of the *Administrative Review Tribunal Bill 2000*.

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Background

There is no central theme to the initiatives presented with this Bill; rather it is an omnibus Bill containing several discrete initiatives for veterans' assistance announced in the 2001-2002 Budget.

Schedule 4 contains prospective amendments contingent on the passage of the *Administrative Review Tribunal Bill 2000*.

Schedule 1 – extension of the Repatriation Pharmaceutical Benefits Scheme (RPBS) to allied veterans and mariners

Introduction

This initiative was announced in the 2001-2002 Budget.¹ The proposal is to extend access to RPBS to allied veterans and mariners with qualifying service during World War One (WWI) or World War Two (WWII), aged 70 or more and legally resident in Australia for 10 years or more.

Financial implications

The estimated cost to outlays for this initiative is \$19.5m in 2001-2002, \$33.082m in 2002-2003, \$31.586m in 2003-2004 and \$30.169m in 2004-2005.² The estimated cost to outlays of over \$30m a year in the out years appears high, given the proposal only extends access to concessional pharmaceuticals to allied veterans and mariners.

Currently, there are about 350 000 veterans with access to the RPBS using on average 34 to 35 concessional prescriptions a year at annual cost of about \$325m. The Department of Veterans' Affairs (DVA) probably don't really know exactly how many allied veterans will qualify and the cost estimates are conservative in terms of ensuring sufficient financial coverage.

Who benefits?

Neither the Budget papers nor the Explanatory Memorandum provide any indication as to the anticipated number of WWI or WWII veterans who will benefit from this initiative.

To qualify, it is proposed the allied veteran must:

- be aged 70 years or more
- have qualifying service, and
- been an Australian resident for 10 years or more.

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These are virtually the same requirements that applied to the extension of the veterans' Gold Card to Australian WWII veterans aged 70 or more with qualifying service, that was made from 1 January 1999.³

Since the extension of the Gold Card to Australian WWII veterans, there has been some criticism that veterans, without qualifying service and also allied veterans, were not issued with the Gold Card.⁴ In small part, this initiative addresses concerns about allied veterans, but the extension of the RPBS is not the same as the Gold Card, the latter covering all health treatment. The RPBS only provides access to concessional pharmaceuticals of the RPBS.

The reason the Gold Card was not extended to allied veterans was because traditionally the health needs of veterans have been the responsibility of the country for whom they served.

Repatriation Pharmaceutical Benefits Scheme (RPBS)

The Pharmaceutical Benefits Scheme (PBS) commenced in 1948 as a listing of 139 life saving and disease-preventing drugs for all eligible Australians and a wider list of drugs for pensioners.

It has grown far beyond its original purpose and now subsidises a wide range of products, covering some 559 drug substances, available in 1 354 forms and strengths and marketed as 1 992 brands. Once listed on the PBS, the drug substance is provided at an agreed concessional rate, subsidised by Government, to those with an eligible PBS card. The main forms of access to the PBS are with either a Pensioner Concession Card or a Health Care Card.

The RPBS is virtually identical to the PBS, in terms of the concessional rates applied with the main difference being is a limited range of drugs available under the RPBS that are not available under the PBS, eg. Viagra, nicotine patches. This limited range of drugs available under the RPBS are those considered appropriate for concessional access for veterans' health needs, as opposed to the health needs of the community generally.

Veterans' health needs have traditionally been the responsibility of the country for which they served

Traditionally, the responsibility for the health needs of veterans rests with the country for which they served. It is true that allied servicemen/women can gain access to the service pension, but this is under international agreements that Australia has undertaken with allied countries, to provide for the income support needs of low-income retired age service personnel. However, allied servicemen cannot gain access to the war disability pension, or their dependents to the war widows pension, these payments being compensation for war caused or related illnesses, injuries or loss.

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Where an allied servicemen has health or compensation needs arising from war caused or related illnesses or injuries, they are the responsibility of the country for which they served. This principle extends to the Gold Card, being a health treatment card, which is not provided to allied veterans or mariners, only to those who have qualifying service in Australia's armed services.

This proposal, to provide access to concessional pharmaceuticals under the RPBS to allied veterans and mariners, will, for the first time, cross the historical boundary of providing for the 'health needs' of allied veterans.

Allied veterans and mariners with 'qualifying service'

Not all persons who served in the armed services or as a mariner during a time of war are classified as a 'veteran'. Under Section 5C of the *Veterans' Entitlements Act 1986* (VEA) 'veteran' as a person who has rendered 'eligible war service'.⁵

The important words in this part of the VEA, that defines who is a veteran are 'eligible war service'.

In short, this means not all persons who were in the armed services in WWII are automatically veterans. The person must also have 'eligible war service'. Also, for allied servicemen or women, sub-paragraph (ii) only links veteran status to access to the service pension.

Eligible war service required to be classified as a 'veteran'

'Eligible war service' is defined in section 7 of the VEA.⁶ So even where a person served on an allied ship, veteran status might give them access to the service pension, but not to the health and compensation benefits – see *Veterans' health needs are the responsibility of the country for which they served* above.

Operational Service

For those who served in WWII, to be classified as a 'veteran', a person must have seen 'operational service', which is defined in sub-section 6(1) of the VEA.⁷

Schedule 2 – Beneficial treatment of superannuation assets for people aged between 55 and pension age

Introduction

The income support payments provided under the *Social Security Act 1991* (SSA) and the *Veterans' Entitlements Act 1986* (VEA) have mirrored provisions for the treatment of superannuation assets.

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As explained in the Explanatory Memorandum, this also applied prior to the change to the treatment of such assets announced in the 1996-97 Budget⁸. The change to the treatment of superannuation assets was announced in the 2001-2002 Budget in the Family and Community Services Portfolio.⁹ This measure aligns the treatment of such assets for those affected payments provided under the VEA.

Background

The government announced in the 1996-97 Budget the removal of the assets test exemption for superannuation assets for persons aged 55 years or more and less than age pension age.¹⁰ The reason stated by the government at the time of the removal of the assets test exemption for superannuation assets was:

Given that superannuation savings are not subject to compulsory preservation after a person retires and reaches age 55 years, people who are no longer gainfully employed and who have poor prospects of returning to work, can access their superannuation savings. It is therefore reasonable that they use their savings for self-provision before calling on the government for income support.¹¹

This proposal restores the status of superannuation as an exempt asset as applied prior to September 1997. The main aim of this policy is to encourage and foster self-provision in retirement. It is hoped that retired workers, or even mature age workers in transition between employment who are over age 55, will be encouraged to invest and/or retain employment termination monies into superannuation type investments. This is instead of expending employment-accumulated and/or employment termination monies on other items that do not provide for their own long-term income support, eg. holidays, holiday houses, boats, cars, household consumer items. By doing this they lessen their call on taxpayer dollars by way of age pension and other forms of income support.

Section 9 (the definitions section) of the *Social Security Act 1991* provides a legal definition of which assets are classified as superannuation assets.¹² This definition mainly refers to assets accepted by the *Income Tax Assessment Act* as superannuation assets.

Financial implications

This initiative was not itemised in the Portfolio Budget Statements for the Veterans' Affairs portfolio in the 2001-2002 Budget papers. Accordingly, the Explanatory Memorandum attached to the Bill details at page iii that the cost of this proposal is estimated to be \$.350m in each year from 2001-2002 onwards.¹³ This initiative was substantially announced in the 2001-2002 Portfolio Budgets Statement for the Family and Community Services (F&CS).¹⁴

Who benefits?

The 2001-2002 Portfolio Budgets Statement for the Family and Community Services (F&CS) portfolio indicates some 55 000 persons will receive either an increased payment or commence to receive access to payments.

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Also, some 17 000 persons will gain access to a Health Care Card or a Pensioner Concession Card.¹⁵ It is not made clear, but these numbers probably refer to both the income support payments provided through the F&CS portfolio and also those provided under the VEA, ie. Invalidity Service Pension (ISP) and Income Support Supplement (ISS).

ISP is paid to a veteran with qualifying service, aged less than service pension age (ie. 60 males and 57 females) and is permanently blind or permanently unable to work. ISP is income and asset tested. Such veterans would also be receiving war disability pension, which is not means tested.

ISS is paid in addition to the war widows/ers pension and is also income and asset tested. The war widows/ers pension recipients benefiting would be those also receiving ISS, aged over 55 and less than age pension age, ie. 65 for males and 62 for females. War widows/ers pension is not means tested.

Schedule 3 – reinstatement of certain pensions and benefits

Introduction

This initiative was announced in the 2001-2002 Budget.¹⁶

Financial implications

The Budget papers present estimated costs of \$3.493m in 2001-2002, \$15.609m in 2002-2003, \$18.200m in 2003-2004 and \$19.607m in 2004-2005.¹⁷

Background

Prior to 1984, a recipient of war widows' pension (WWP) who re-married had their WWP cancelled. The then Hawke government changed the relevant legislation so that from 1984, re-marriage no longer resulted in a loss of qualification to WWP. This was not made retrospective and only applied to re-marriages after 29 May 1984.

There was considerable debate at the time as to whether this measure should be made retrospective, with the then government resisting such overtures due to complexity and cost. Any move towards retrospectivity would need to resolve the issue of how far should it be made retrospective, ie. should it go back to 1914, when WWP was introduced? Also, any retrospectivity would have significant implications in terms of complexity of administration cost to outlays.

The decision of the Hawke government was made in the context of recognising that compensation and repatriation assistance for women after WWII had been less than had been provided for men and also women should not be discouraged from re-marrying.

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How many war widows are there?

As at June 2000, there were 107 953 war widows/widower pension recipients.¹⁸

How many war widows were affected by the 1984 decision?

Neither the Budget papers nor the Explanatory Memorandum attached to the Bill provide any estimates of the number of persons who may benefit from this proposal.¹⁹ This probably because DVA don't really know the exact numbers who may potentially qualify, having not kept track of disaffected WWP recipients since 1984.

In 1998, the government estimated about 4 100 remarried before 1984 and were still alive in 1998. Of these about 2 020 have been widowed a second time and 200 are separated/divorced from their second husband.²⁰

Who benefits - how many war widows disaffected by the 1984 decision are still alive in 2001?

In 1998, the government estimated that some 4 500 former WWP recipients were alive in 1984 with an average age then of 64. Using Australian Life-Table (1990-92), the government then estimated there were about 4 100 war widows who lost their pension prior to 1984, and were still alive as of 1997, with an average age of 77 years.²¹

Is the guesstimate correct?

If there were 4 500 alive in 1984, with an average age of 64 years, then using Life-Tables published by the Australian Bureau of Statistics (Catalogue No. 3302.0), for periods from 1984 onwards, the proportions of 64 year old women living to be 77 years of age, range from about 76% to 81.2%, ie. 3 420 to 3 654. The highest figure being for the latest Life-Table 1997-99. This methodology does not explain how the Department of Veterans' Affairs (DVA) estimated 4 100 alive in 1998. The highest number (3 654) would be more likely, if this war widows group was on average slightly healthier and survived longer than other women of the same ages, as life expectancy for women has been rising over the period.

Using similar methodology and the latest Life-Table (1997-99), the number of 64 year olds in 1984, living to be 80 years of age in 2000-01, would be approximately 3 300. In any case, it is not possible to determine exactly whether real experience is reflected in the calculations made using Life-Tables in this way, except to point out that Life-Tables are calculated on the basis of recent actual experience.

With payments to commence from no earlier than 1 January 2002, DVA costs the restoration of the WWP to 4 100 persons at \$65m over four years. Proportionally, for the lesser guesstimate of 3 300, the four-year cost would be \$52.3 million. It would have been far more expensive to have restored payments back to 1984?

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Schedule 4 – Amendments consequential on changed administrative law arrangements

Schedule 4 contains prospective amendments contingent on the passage of the *Administrative Review Tribunal Act 2001*.

The *Administrative Review Tribunal Bill 2000* was introduced to the House of Representative on 28 June 2000, passed by that House on 8 December 2000. The Bill was introduced to the Senate on 6 February 2001 and the second reading of the Bill was last discussed on 26 February 2001.

The Bills Digest for the *Administrative Review Tribunal Bill 2000* is at:

<http://www.aph.gov.au/library/pubs/bd/2000-01/01BD040.htm>

Main Provisions

Amendments to the *Veterans' Entitlements Act 1986*

Schedule 1 - Item 2 contains definitional terms for the Repatriation Pharmaceutical Benefits Scheme (RPBS), qualification requirements and legislative provisions for the description of, the requirements for and the need for a claim for RPBS. There are also the standard provisions attached to claim requirements, eg. powers to investigate, to determine qualification and the review of decisions.

Schedule 3 – Item 11 provides for an application for reinstatement to be lodged and the powers to investigate and determine an application for reinstatement.

Schedule 4 – Items 1 to 3 change the word “Appeals” in the title Administrative Appeals Tribunal to “Review”, being contingent on the passage of the *Administrative Review Tribunal Act 2001*.

Endnotes

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- 1 Portfolio Budget Statements 2001-2002, Department of Veterans' Affairs Portfolio, Budget Related Paper No. 1.4B, page 40–41.
 - 2 Ibid.
 - 3 Portfolio Budget Statements 1998-1999, Department of Veterans' Affairs Portfolio, Budget Related Paper No. 1.3B, page 80–81.

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4 Media Release by the then Shadow Minister for Veterans' Affairs, Mr Laurie Ferguson, MP, dated 3 July 1998 - *Coalition misleads veterans*.

5 Section 5C of the *Veterans' Entitlements Act 1986*.

"veteran" means:

(a) a person (including a deceased person):

(i) who is, because of section 7, taken to have rendered eligible war service; or

(ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and

(b) in Parts III and VIIC also includes a person who is:

(i) a Commonwealth veteran; or

(ii) an allied veteran; or

(iv) an allied mariner.

6 *Ibid.*

Eligible war service

(1) Subject to subsection (2), for the purposes of this Act:

(a) a person who has rendered operational service shall be taken to have been rendering eligible war service while the person was rendering operational service; and

(b) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 1 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(c) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 2, being service that commenced before 1 July 1947, shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(d) a person who rendered continuous full-time service (not being operational service) as a member of the Interim Forces during World War 2 on or after 1 July 1947 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(e) a person who was employed on a ship as an Australian mariner is taken to have been rendering eligible war service:

(i) if part of that employment was operational service—for the part of that employment that was not operational service; or

(ii) in any other case—while the person was so employed.

Note 1: For "World War 1" and "World War 2" see subsection 5B(1).

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Note 2: For "operational service" "see sections 6 to 6F.

Note 3: For "Australian mariner", "continuous full-time service", "member of the Defence Force" and "member of the Interim Forces" "see subsection 5C(1).

Note 4: Subsections (3) and (4) contain information that is relevant to paragraph (e).

(2) A person who rendered continuous full-time service in the Defence Force during World War 2:

(a) if the person was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service or solely for service in time of that war or during that time and a definite time thereafter—on or after 1 July 1951;

(b) if the person was appointed or enlisted in the Citizen Forces and was called up for continuous full-time service for the duration of, or directly in connection with, World War 2—on or after 1 July 1951; or

(c) if the person was not appointed or enlisted as set out in paragraph (a) or (b)—on or after 3 January 1949;

shall not be taken, by virtue of paragraph (1)(c), to have been rendering eligible war service while the person was so rendering continuous full-time service.

(3) Without limiting paragraph (1)(e), a person is taken to be employed on a ship as an Australian mariner while the person was at a place (being a place that is in Australia but is not on land in Australia) in the course of proceeding to employment on a ship as an Australian mariner.

(4) For the purposes of subsection (3), "Australia" does not include an external territory.

7 Ibid.

8 *Veterans' Affairs Legislation Amendment (2001 Budget Measures) Bill 2001*, Explanatory Memorandum., page 8.

9 Portfolio Budget Statements 2001–2002, Department of Family and Community Affairs, Budget Related Paper No. 1.8, page 177.

10 Portfolio Budget Statements 1996–97, Department of Social Security, Budget Related Paper No. 1.14, pages 111–112.

11 Ibid., page 111.

12 Section 9 of the *Social Security Act 1991*.

'superannuation fund' means:

(a) a fund or scheme included in the definition of "superannuation fund" in subsection 27A(1) of the Income Tax Assessment Act, other than a fund covered by subparagraph (a)(ia) of that definition; or

(b) an eligible resident non-complying superannuation fund within the meaning of the Income Tax Assessment Act.

13 *Veterans' Affairs Legislation Amendment (2001 Budget Measures) Bill 2001*, Explanatory Memorandum., op. cit., page iii.

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- 14 Portfolio Budget Statements 2001–2002, Department of Family and Community Affairs, page 177, op. cit.
- 15 Ibid.
- 16 Portfolio Budget Statements 2001–2002, Department of Veterans' Affairs Portfolio, op. cit. page 40.
- 17 Ibid., page 40.
- 18 Department of Veterans' Affairs 1999–2000 Annual Report, page 132.
- 19 Portfolio Budget Statements 2001–2002, Department of Veterans' Affairs Portfolio, op. cit. page 40.
- 20 Answer to House of Representative Question on Notice No. 2872 of 7 April 1998 1999, Hansard page 5073 – 22 June 1998.
- 21 Answer to House of Representative Question on Notice No. 2088 of 30 October 2000, Hansard page 23,339 – 4 December 2000.

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