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Veterans' Affairs Legislation Amendment Bill  
(No. 2) 2002

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Veterans' Affairs Legislation Amendment Bill (No. 2) 2002

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8 August 2002

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# Veterans' Affairs Legislation Amendment Bill (No. 2) 2002

**Date Introduced:** 27 June 2002

**House:** House of Representatives

**Portfolio:** Veterans' Affairs

**Commencement:** Within Schedule 1 of the Bill there are eight parts with various commencement dates. The commencement dates are set out in detail in the Table in **clause 2** of the Bill.

## Purpose

There is no singular or central theme to the initiatives proposed in this Bill, rather the Bill proposes to make minor amendments to the *Veterans' Entitlements Act 1986* (VEA) to fix up anomalies and to make consequential amendments arising from changes to the *Social Security Act 1991* (SSA). There are some minor extensions of beneficial assistance for some veterans groups. However, the Bill is mainly a legislative housekeeping exercise.

## Background

Many of the Parts proposed in this Bill involve aligning provisions in the VEA with like provisions in the SSA. Many provisions in both Acts for income support payments mirror each other and parity is maintained to ensure consistency and equity. These mirrored provisions commonly refer to income testing, asset testing and treatment of compensation income. All of the income support pensions and allowances provided under the SSA (except for blind pensions) are income and assets tested. The income support payments provided under the VEA that are also income and assets tested are service pensions, income support supplements and invalidity service pensions.

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## Schedule 1

### Part 1 - Amendments concerning double counting of compensation payments

#### **Income support payments are means tested to target assistance to those in need**

Both the SSA and the VEA provide income support payments for persons in need, where they are unable, or cannot be expected to provide for their own livelihood. This may be due to reasons of age, illness/disability, unemployment, caring for another person, being a sole parent and so on. Almost all income support payments paid under the SSA and the VEA are means tested (income and assets tests), to ensure payment is directed to those most in need and not to persons who can otherwise provide for themselves.

The most common form of self-support for those of working age is income from employment, but self-support may also be obtained from income from savings and investments, or overseas pensions. Self-support may also be in the form of income provided from other sources replacing lost earnings from employment, such as compensation.

#### **What is compensation under the VEA?**

Sub-section 5NB(2) of the VEA defines compensation.<sup>1</sup> These are the same compensation definitions that apply under the SSA.

#### **Compensation for lost earnings may affect access to government provided income support**

Compensation payments are commonly provided as a replacement for lost wages or earnings, as the person is no longer able to work due to their illness/injury. This is commonly called economic loss compensation and is also known as pecuniary loss. Compensation may also be paid for expenses or costs, other than lost earnings, arising from an accident or injury. Some examples are pain and suffering, loss of enjoyment of life, doctors and medical expenses, loss of or reduced capacity to undertake the basic daily functions of life like prepare and eat food, get dressed etc.

However, compensation paid for, or deemed to be paid for, lost wages or earnings may have an effect on the payment of government provided income support.

#### **Special rules in the SSA and VEA for the treatment of compensation**

There are special rules in the SSA and the VEA for the treatment of compensation provided as replacement earnings. These special provisions are to ensure that persons, who are able to access self-support by way of income support from compensation, cannot at the same time access assistance from government provided income support. It has been a long-standing view of successive governments that the compensation system has the first responsibility for the provision of income support to those with a compensable illness or injury, not the taxpayer by way of government support. The foremost concern of

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governments has been that there should not be any “double-dipping”, that is receiving compensation for lost earnings from a compensation payer or insurer while at the same time receiving government replacement earnings by way of income support.

### **Treatment of compensation against income support entitlements provided under the SSA and the VEA**

Set out below are the broad principles of treatment of compensation under the VEA and SSA.

#### Periodic compensation

Periodic payments of compensation for economic loss, such as lost earnings from employment, reduce a person's entitlement to income support payments, paid under the SSA or VEA, on a dollar-for-dollar basis. These compensation payments, being payments for lost salaries/wages, provide income support and therefore the effect is dollar-for-dollar.

#### Lump sum compensation

Lump sum compensation payments are examined to identify the component, if any, that has been paid for lost salary or wages, being the part for lost earning capacity. Where a court or tribunal ascribes the part for economic loss within a lump sum payment, this is usually accepted. Where there is no court or tribunal attribution for economic loss (commonly in out-of-court settlements), the SSA or VEA ascribes 50% of the sum as being for economic loss. The residual 50% is then ascribed for other non-economic loss items such as pain and suffering and loss of enjoyment of life etc.

To then determine the impact of the 50% ascribed for lost salaries/wages, there is a statutory formula within the SSA and the VEA. Under the formula, the 50% is then divided by the single pension cut-off figure under the pensions income test,<sup>2</sup> to set a number of weeks for which the sum provides replacement earnings. This number of weeks is then taken to have commenced either from the date periodic compensation payments stopped or the day the loss of earnings began, whichever is the later. This is often the date of injury or illness. This period is known as the lump-sum preclusion period for income support payments.

The length of the lump-sum preclusion period is largely determined by the size of the lump-sum payment, as under the statutory formula, the amount of the lump sum is divided by the single pension cut-off figure, to arrive at a number of weeks for the period. Therefore, the larger the lump sum amount the longer the preclusion period.

### **Proposal to not double count compensation against both disability pension and service pension**

The amendments proposed in **Part 1** of **Schedule 1** are generally beneficial in that compensation will no longer be double counted against two separate payments. Currently,

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where a person is receiving compensation for lost wages, and a war disability pension (war injury/illness compensation) is also paid for the same illness/injury, the compensation is a dollar-for-dollar deduction against the war pension. The compensation is then also regarded as income under the income test against any service pension paid. In short, it is double counted. The proposed amendments in **Part 1** are to amend the VEA to not count as income against the service pension any compensation off-set against the disability pension. Only excess compensation would be treated as income under the income test against the service pension.

### **Proposal to not double count compensation has parallels with other recent legislative changes**

This proposal to not double count compensation has parallels with recent amendments to both the VEA and the SEA, in respect of excess compensation being counted on a dollar-for-dollar basis against a partner's income support payments. The recent change was to no longer count excess compensation against the partner's rate of income support on a dollar-for-dollar basis, but as income under the income test. The legislation that changed the treatment of excess compensation against a partner's entitlement under the SSA was provided for in the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. The Bills Digest for this Act is No. 161 of 2000-2001.<sup>3</sup> The mirror legislation that amended the VEA was the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2001*. Bills Digest No. 17 2001-2002 refers.<sup>4</sup>

### **Part 2 - Amendments concerning lump sum compensation payments**

The VEA was amended recently to allow debts arising from the compensation provisions of the VEA to be recovered directly from insurers. The amending legislation was the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*. Bills Digest No. 109 2001-2002 refers.<sup>5</sup> The amendments in **Part 2** are minor, only referring to the recovery of a partner's compensation directly from insurers and distinguishing between periodic and lump sum compensation received before and after 20 March 1997. The date '20 March 1997' refers to when the VEA was amended to exclude the compensation recovery provisions from affecting lump sum compensation paid to a partner of a VEA income support payment recipient.

### **Part 3 - Amendments concerning entry contributions to retirement villages**

The changes proposed in **Part 3** are aligning provisions in the VEA with those already in the SSA. The changes to the SSA were made in the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*. Bills Digest No. 13 1997-98 refers.<sup>6</sup>

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### **Why rent assistance is paid**

Rent assistance is provided to assist persons on low incomes with the costs associated with renting private accommodation. Therefore, it is not paid to persons in government housing as the housing costs are already subsidised, nor is it paid to persons who are home owners as they have an equity in their residence.

### **Entry contributions paid on entry to a retirement village**

Persons entering a retirement village commonly are required to provide an entry contribution, the amount varying between different retirement residence situations. Some may purchase the unit outright, which can be sold on departure, and there is commonly on-going resident contributions to pay for administrative costs such as gardening, communal facilities, garbage disposal etc. These entry contributions are usually for higher amounts. In other cases the entry contribution may be small and the person is not purchasing any equity in the unit, merely making a contribution to the owner to provide some return to the accommodation provider. When the person leaves the unit there is no monetary return and there is also some on-going payment required to secure the unit as a residence and to aid with running costs.

### **Rent assistance can be paid to those who have not purchased a retirement unit**

In the latter situation, where on-going resident contributions are paid and the person has not paid enough of an entry contribution to be considered as having sufficient equity in the property, this is very much like paying rent and can be regarded as such, attracting rent assistance.

### **Determining home owners - minimum entry contribution**

The SSA uses a minimum entry contribution amount to distinguish between those in retirement villages who should be considered non-home owners and those considered home owners. Non-home owners are eligible for rent assistance. The amendments made to the SSA in 1997<sup>7</sup> provided clarification as to amounts to be considered as entry contributions, to ensure circumstances were not artificially contrived to attract rent assistance. This ensures rent assistance is not paid where in reality the person should be considered a home owner. The amendments proposed in **Part 3** to the VEA, mirror those made to the SSA in 1997.

## **Part 4 - amendments concerning telephone allowance (TA)**

The amendments in **Part 4** to TA are beneficial, expanding access to TA for holders of a mobile phone, where no fixed in-home phone is present. Telephone Allowance is to be paid where the only phone held is a mobile phone. Previously, TA was restricted to telephone subscribers with a phone only at their place of residence.

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## Part 5 - Amendments concerning rent assistance for persons receiving Family Tax Benefit

**Part 5** is like the amendments proposed in **Parts 2** and **3**; being aimed at aligning the VEA with amendments previously made to the SSA. The amendments proposed in **Part 5**, allowing access to rent assistance, where it is otherwise precluded under the SSA and are beneficial.

## Part 6 - Amendments concerning eligibility for Pension Loans Scheme (PLS)

The amendments to the PLS provisions in the VEA proposed in **Part 6** are beneficial. The amendments are designed to redress an unintended anomaly in the VEA, not allowing access to the PLS for Income Support Supplement (ISS) recipients who are not veterans. Many ISS recipients are also war widow/ers pension recipients and are not actually a veteran themselves, being the surviving partner of a deceased veteran. With access to the PLS currently restricted to veterans, the vast majority of ISS recipients have been unintentionally excluded from access to the scheme.

## Part 7 - Amendments concerning seniors health cards

The amendments to the VEA proposed in **Part 7** will extend access to the minor extra concessions available under the Commonwealth Seniors Health Card (CSHC) to war widows/ers at an earlier age. The amendments proposed in **Part 7** are beneficial.

The CSHC is issued to persons over age pension age not on a government income support pension and therefore not holding an attached Pensioner Concession Card (PCC). The CSHC allows access to concessional pharmaceuticals under the Pharmaceutical Benefits Scheme (PBS) and a few other minor extra concessions. The PCC also allows access to the PBS but includes access to a far larger range of other concessions that vary from place-to-place, for example discount council rates, discount car registration, discount heating and power bills. The CSHC does not provide access to these other extra variable concessions but does provide a few extra benefits not attached to the PCC, being concessional fares on Great Southern Rail lines.

Currently, all war widow/ers are issued with a PCC, being the same card issued to other pensions like service pension, age pension, sole parent pension etc. War widows/ers can claim a CSHC when they reach age pension age (65 - males, 62½ - females). The amendments to the VEA proposed in **Part 7** will allow war widows/ers the capacity to claim a CSHC from the earlier service pension qualifying age (60 - males, 57½ - females). This is clearly beneficial but is only being extended to war widows/ers.

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## Part 8 - Amendments relating to non-illness separate spouses

Both the VEA and SSA have provision for a partnered couple to be deemed to be separated due to ill health and then each provided with assistance at the higher single rate, notwithstanding they still consider themselves partnered and still a couple. This commonly applies where one of a couple enters a nursing home. Likewise, where a former couple (married or non-married) are living apart permanently and no longer consider themselves partnered, they can be regarded as separated and again the single rate paid. This is called a 'non-illness separated spouse'.

The amendments proposed in **Part 8** are to address an anomaly in the VEA, in that currently a veteran cannot be deemed to be a 'non-illness separated spouse', only the spouse of a veteran.

## Main Provisions

### Schedule 1

**Part 1** inserts into the excluded income definitions of the VEA an additional excluded income definition being compensation taken into account to reduce the rate of war disability pension. This leaves only that amount of compensation not excluded, to be regarded as income.

**Items 5 and 8** define the partner's compensation amounts to be recovered directly from insurers.

**Item 11** defines parts of entry contributions to a retirement village that are not rent and therefore cannot attract rent assistance.

**Item 14** adds to the range of persons eligible to be paid rent assistance under the VEA.

**Item 21** adds to the definitions of persons eligible for a CSHC being war widows/ers over service pension qualifying age.

## Concluding Comments

This Bill contains a miscellany of generally beneficial but minor amendments to the VEA. The amendments are designed at either ensuring a maintenance of parity with the SSA or fixing up unintended anomalies in the VEA.

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## Endnotes

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### 1 VETERANS' ENTITLEMENTS ACT 1986

#### SECT 5NB - Compensation recovery definitions

(1) In this Act, unless the contrary intention appears *compensation* has the meaning given by subsection (2).

#### *Compensation*

(2) For the purposes of [Part IIIC](#), *compensation* means:

(a) a payment of damages or compensation; or

(b) a payment under a scheme of insurance or compensation under a law of the Commonwealth or of a State or Territory, or under a contract entered into under such a scheme; or

(c) a payment (with or without admission of liability) in settlement of a claim for damages or of a claim under such an insurance scheme;

made wholly or partly in respect of lost earnings or lost capacity to earn. The payment may be in the form of a lump sum (or part of a lump sum) or in the form of a series of periodic payments and may be made either within or outside Australia, but it does not include any payment that, under subsection (3), (4), (5) or (6), is excluded from the application of this subsection.

Note: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.

2 \$1,185.00 per fortnight as at July 2002.

3 [Bills Digest No. 161, 2000-2001 - Family and Community Services Legislation \(Simplification and Other Measures\) Bill 2001.](#)

4 [Bills Digest No. 17, 2001-2002 - Veterans' Affairs Legislation Amendment \(Further Budget 2000 and Other Measures\) Bill 2001.](#)

5 [Bills Digest No. 109, 2001-02 - Veterans' Affairs Legislation Amendment \(Further Budget 2000 and Other Measures\) Bill 2002.](#)

6 [Bills Digest No. 13, 1997-1998 - Social Security and Veterans' Affairs Legislation Amendment \(Family and Other Measures\) Bill 1997.](#)

7 *ibid.*

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