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Veterans' Affairs Legislation Amendment Bill  
(No. 3) 2002

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Veterans' Affairs Legislation Amendment Bill (No. 3) 2002

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7 February 2003

# Contents

Purpose .....	1
Background .....	1
Main Provisions .....	1
Part 1 - Amendments concerning child-related payments .....	1
Part 2 - Amendments concerning commutation of income streams. ....	2
Part 3 - Amendments concerning the accrual of certain pension bonuses under social security law .....	3
Part 4 - Amendments concerning the calculation of pension bonuses .....	3
Part 5 - Amendments concerning the backdating of claims for partner service pension in certain circumstances .....	4
Part 6 - Amendments to achieve alignment with social security law concerning the treatment of compensation payable in lump sums .....	4
Concluding Comments .....	5
Endnotes .....	5

# Veterans' Affairs Legislation Amendment Bill (No. 3) 2002

**Date Introduced:** 5 December 2002

**House:** House of Representatives

**Portfolio:** Veterans' Affairs

**Commencement:** On the day the Bill receives Royal Assent.

## Purpose

To update some minor anomalies in the *Veterans' Entitlements Act 1986* (VEA) and to align provisions in the VEA with mirror provisions in the *Social Security Act 1991* (SSA).

## Background

This Bill presents no new major initiatives or new policies and there is no singular or central theme to the amendments presented in this Bill. Rather, the Bill proposes to make minor amendments to the VEA to fix up anomalies and to make consequential amendments arising from changes to the SSA. There are some minor extensions of beneficial assistance for some veterans groups.

## Main Provisions

### Schedule 1

#### Part 1 - Amendments concerning child-related payments

These proposed amendments will provide for the continued indexation of the small number of child-related payments still provided under the VEA. In 1998, most child-related payments were transferred across from the VEA to be provided under the SSA by Centrelink, but a small number were retained as the transfer would have seen a reduction in the amount of assistance provided. The repeal of the family assistance arrangements provided under the SSA, and their replacement with Family Tax Benefit (FTB) now

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provided under the *A New Tax System (Family Assistance) Act 1999* (FAA), has meant benchmarking of the VEA child-assistance arrangements against the SSA is now no longer appropriate and the payment rates have remained frozen.

Amendments to the VEA in **Part 1 of Schedule 1** will ensure the indexation of child-related payments paid under the VEA in line with FTB indexation payment increases provided under the FAA. There are only some 50 families still receiving assistance in this manner and as the children age and are no longer eligible for assistance the number of families assisted will eventually disappear.

**Item 3 of Part 1** will link the rate of additional service pension or income support supplement paid for a child to the rate of FTB-Part A paid under the FAA.

This is a beneficial amendment to the VEA.

## Part 2 - Amendments concerning commutation of income streams

There has been a succession of amendments to both the SSA and the VEA in recent years relating to income streams, with amendments to both Acts mirroring each other. The major amendments were contained in the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1997*, in which certain categories of income stream were exempted from assets tests. Bills Digest No. 138 1997-98 refers.<sup>1</sup> Generally, those income streams that were capital in nature with a life expectancy of over 5 years can be assets exempted, so long as other requirements are met.

Further amendments were made to the VEA in respect of income streams by the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*. Bills Digest No. 109 2001-02 refers.<sup>2</sup> Those changes to the VEA were mirrored for the SSA in the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. Bills Digest No. 161 2000-01 refers.<sup>3</sup>

Both Bills Digest No. 109 2001-02<sup>4</sup> and Bills Digest No. 161 2000-01<sup>5</sup> provide a good background about income streams and the asset exemptions that can apply to certain income stream products. Almost all of the changes that have been made to both the SSA and the VEA in recent years, in regards to income stream products have been in response to the increasing diversity and variety of these products and to attempt to keep the income and asset test rules up-to-date. The amendments presented in this Bill refer to commutation of income stream products and the capacity to carry over their asset test exemption.

Where a commutation has occurred that breaches the rules of the income stream product and the asset test exemption is revoked, then an overpayment can be raised and a debt recovered. Where a second commutation occurs shortly thereafter against the same income stream product, the current provisions in the VEA do not allow debt recovery from the original commutation, but only from the second commutation. The proposed

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amendments in **Part 2 of Schedule 1** will allow debt recovery from the original commutation.

**Item 4 of Part 2** allows for the recovery from the original commutation where there is a second commutation within a five year period. **Item 5 of Part 2** allows for the recovery from the original commutation where there has been more than one commutation against one income stream product.

This is not an amendment that should affect a large number of persons, and aligns provisions in the VEA with like provisions in the SSA.

### Part 3 - Amendments concerning the accrual of certain pension bonuses under social security law

The Pension Bonus Scheme was introduced with the passage of the *Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998*. Bills Digest No. 173 1997-98 refers.<sup>6</sup> The Pension Bonus Scheme allows a person to defer taking their age pension, service pension or wife service pension in return for receiving an increased pension at a later date. Under the Pension Bonus Scheme a person may defer their pension for up to five years and for each year that a person defers their pension, he or she will receive a bonus of 8 per cent on top of their pension.

An anomaly arises where a person initially defers taking their age pension under the Pension Bonus Scheme and at a later date becomes entitled to a war widow(er)'s pension under the VEA. Under the SSA, where war widow's/er's pension becomes payable, age pension is no longer payable and any bonus accrued under the Pension Bonus Scheme is lost.

The amendments in **Part 3 of Schedule 1** allow a person to continue to carry over their Pension Bonus Scheme when transferring from an age pension to be paid income support supplement as well as war widow(er)'s pension under the VEA.

There would not be a great number of age pensioners, who have deferred their pension under the Pension Bonus Scheme, who subsequently become entitled to a war widow(er)'s pension. This is a beneficial amendment to the VEA.

### Part 4 - Amendments concerning the calculation of pension bonuses

The amendments proposed in **Part 4 of Schedule 1** flow from the Pension Bonus Scheme amendments in **Part 3 of Schedule 1** and refer to the calculation of the bonus during the period the pension is deferred and the bonus is accruing. The calculation during the deferment period takes into account any change in marital status and also pension entitlement during the deferment period.

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The amendments correct a number of minor errors of formula in the VEA and provide for the new category of person added to the Pension Bonus Scheme in VEA in **Part 3**, ie. the person previously on a SSA pension and now entitled to a VEA war widows/ers pension.

This is a beneficial amendment to the VEA.

#### Part 5 - Amendments concerning the backdating of claims for partner service pension in certain circumstances

The amendments proposed in **Part 5 of Schedule 1** are minor and will only affect a small number of claimants. The proposed amendments allow the payment of a partner service pension from the original claim for special rate disability pension, where the initial claim was rejected. Currently, the partner service pension can only be paid from the second claim.

This proposed change is beneficial.

#### Part 6 - Amendments to achieve alignment with social security law concerning the treatment of compensation payable in lump sums

As with other proposed amendments in the Bill, **Part 6 of Schedule 1** regarding compensation recovery aligns provisions in the VEA with like provisions in the SSA. The original compensation provisions in the VEA regarding treatment of lump sum compensation payments were contained in the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*. Bills Digest No. 183 1994 refers.<sup>7</sup>

A good description of the treatment of compensation against income support payments is provided in the Bills Digest for the *Compensation for Non-Economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Act 1999*. Bills Digest No. 185 1998-99 refers.<sup>8</sup>

The proposed amendments in **Part 6** are to deal with situations where there is more than one lump sum compensation payment. They mirror provisions added to the SSA by the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. Bills Digest No. 161 2000-01 refers.<sup>9</sup> Where two or more lump sum compensation payments are received in respect of the same event, they are to be regarded as one payment lumped together. This is to ensure that both lump sum payments are correctly taken into account for lump sum compensation preclusion purposes.

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## Concluding Comments

Most of the amendments to the VEA presented in this Bill are to align provisions in the VEA with like provisions in the SSA or to correct minor errors on the VEA and are generally beneficial.

## Endnotes

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- 1 Bills Digest No. 138, 1997–98: <http://wopared.parl.net/library/pubs/bd/1997-98/98bd138.htm>
- 2 Bills Digest No. 109, 2001–02: <http://wopared.parl.net/library/pubs/bd/2001-02/02bd109.htm>
- 3 Bills Digest No. 161, 2000–01: <http://wopared.parl.net/library/pubs/bd/2000-01/01BD161.htm>
- 4 Bills Digest No. 109, 2001–02, op.cit.
- 5 Bills Digest No. 161, 2000–01, op.cit.
- 6 Bills Digest No. 173, 1997–98: <http://wopared.parl.net/library/pubs/bd/1997-98/98bd173.htm>
- 7 Bills Digest No. 183, 1994:  
<http://search.aph.gov.au/search/ParlInfo.ASP?action=view&item=193&from=browse&path=Legislation/Bills+Digests/1994&items=201>
- 8 Bills Digest No. 185, 1998–99: <http://wopared.parl.net/library/pubs/bd/1998-99/99bd185.htm>
- 9 Bills Digest No. 161, 2000–01, op. cit.

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