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No. 128 2003–04

Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004

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Veterans' Entitlements Amendment (Direct Deductions and
Other Measures) Bill 2004

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Social Policy Section
7 May 2004

Contents

Purpose.	1
Background.	2
Schedule 1 – Part 2 – Victoria Cross Allowance (VCA).	2
Schedule 1 – Part 3 – Automatic grant of income support supplement to age pensioners and wife pensioners	2
What is ISS?.	2
Origins of ISS.	3
Proposed automatic grant of ISS to the surviving partner of a deceased veteran.	3
Schedule 1 – Part 4 – calculation of disability pension arrears	3
Schedule 1 – Part 6 – calculation of rent assistance	4
Schedule 1 – Part 7 – reduction in pension arrears resulting from partner’s receipt of service pension	4
Schedule 1 – Part 8 – value of financial assets for the purposes of the deeming rules	5
Schedule I – Part 9 – deemed income and actual income from accrued returns	5

Deeming of income	5
Schedule 1 – Part 10 – means test exemption of certain superannuation assets	7
Schedule 1 - Part 11 – income and asset test treatment of ATO small superannuation accounts and private rental income	7
ATO small superannuation accounts	7
Rental income	7
Schedule 1 - Part 14 – disposal of income and assets	8
Deprivation of assets	9
Schedule 1 – Part 15 – compensation recovery provisions	9
Main Provisions	10
Schedule 1	10
Concluding Comments	11
Endnotes	11

Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004

Date Introduced: 25 March 2004

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: Most of the provisions commence on the day the Act receives Royal assent. Items 11, 12 and 14 of Schedule 1 commence from 1 July 2004. Items 38-40 and item 42 of Schedule 1 which relate to Victoria Cross Allowance have retrospective operation from 1 July 1995.

Purpose

This Bill is an omnibus Bill. It contains various, unrelated, proposed amendments to the *Veterans' Entitlements Act 1986* (VEA). There is no central theme to the whole Bill, rather each proposed amendment is separate and stands on its own.

There are 16 parts in **Schedule 1** of the Bill, signifying there are at least 16 different and separate proposals in the Bill. The proposed amendments give effect to several minor policy initiatives and improvements to the application and administration of the VEA.

If there is a central theme to the 16 parts it would be that many parts (**Parts 6, 8, 9, 10, 11, 14 and 15**) are designed to update provisions in the VEA with like or mirror provisions in the *Social Security Act 1991* (SSA). Many provisions for income support payments in both acts mirror each other and parity is desirable to ensure consistency and equity. All of the income support pensions and allowances provided under the SSA (except for the blind pension), are income and asset tested. The like income support payments provided under the VEA that are also income and asset tested are the service pension, income support supplement (ISS) and invalidity service pension.

None of the proposals on their own, or collectively, is significant either in terms of numbers of persons affected or in terms of government expenditure or savings.

Generally the proposed amendments are beneficial to the recipients of income support payments provided under the VEA.

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Background

This background does not discuss each of the 16 different parts in **Schedule 1**, just the proposals requiring some explanation. Some of the parts are simple, self explanatory and not controversial and therefore are not discussed in this digest. These parts are:

- **Part 1** - enhancements to the direct deduction arrangements
- **Part 5** - the partner service pension to Norfolk Island residents
- **Part 12** - the ceiling rate of service pension
- **Part 13** - referring to offences, and
- **Part 16** - the minor technical amendments

Schedule 1 – Part 2 – Victoria Cross Allowance (VCA)

The current annual rate of the VCA is \$2808 per annum and is paid annually in advance to those veterans who have been awarded this decoration. In the past, the VCA has been increased on an ad-hoc basis as governments have perceived the need to raise the allowance. While direct information was not available from the Department of Veterans' Affairs (DVA), there is indirect evidence there are at present two recipients of the Victoria Cross in Australia.¹

Part 2 proposes to increase the annual rate of the VCA to \$3230 effective from 1 July 2004 and to index the annual rate of the VCA to the CPI from 1 July 2005.

Schedule 1 – Part 3 – Automatic grant of income support supplement to age pensioners and wife pensioners

Probably the first item of **Schedule 1** that requires some background explanation is **Part 3**, which refers to ISS.

What is ISS?

ISS refers to the income tested income support supplement paid to some recipients of veterans disability pension or a veterans war widows pension. Neither the veterans disability pension or the veterans war widows' pension is means tested (income or assets), because it is largely paid as compensation for war related illness/injury or death. Some recipients of these veterans compensation payments may also qualify for another income tested income support payment provided under the SSA, for example age pension or wife

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pension. If they are entitled, the amount of age or wife ISS is paid at a reduced rate, recognising they are also receiving a means test free veterans war compensation payment.

Some disability pension or war widows pension recipients do not qualify for ISS as their income and/or assets preclude payment of age or wife pension under the means tests.

Origins of ISS

Prior to March 1985, any additional age or wife pension was provided by the then Department of Social Security (now provided by Centrelink) as a frozen rate age or wife pension under the SSA. With the passage of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*,² ISS was introduced as a replacement payment arrangement to be provided by the Department of Veterans' Affairs (DVA). ISS is paid at the same rate and under the same conditions as any age pension or wife pension otherwise payable under the SSA.

In introducing the ISS in March 1985, DVA then automatically transferred all age and wife pension payments under the SSA across to be paid ISS by DVA. There was theoretically a choice but a recipient actually had to object in order to not be automatically transferred, so the vast majority of recipients are now paid ISS through DVA.

Proposed automatic grant of ISS to the surviving partner of a deceased veteran

Normally, to be granted a pension under either the VEA or the SSA a person is required formally to lodge a claim. **Part 3 of Schedule 1** proposes to provide for the automatic grant of ISS to eligible age and wife pensioners, where their veteran partner has died. This will eliminate the necessity for the surviving partner to lodge a formal claim, on the death of their veteran partner, when DVA already knows the person is entitled to ISS. This is in line with other automatic grant arrangements for ISS that already exist under the VEA and is a beneficial proposal.

Schedule 1 – Part 4 – calculation of disability pension arrears

Part 4 of Schedule 1 proposes to amend the definition of 'arrears period' in section 27A of the VEA for the purpose of calculation disability pension arrears.

In almost all cases where any pension is granted or the rate increased, the action to process the grant or rate increase occurs after the date of effect. For example, a claim for a pension that was lodged on 14 January 2004 may not be assessed and determined until some time in February or March 2004. Even then, the grant may not be processed through the payment system until some days or weeks after the determination date. Then, when the claim is processed, the arrears of payment owed are backdated to the original date of claim, that is 14 January, or where the VEA otherwise allows, up to 3 months prior to that claim date.

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Where the claimant was also receiving another income support payment paid under the SSA in that 'arrear period', for example age pension, there may also need to be a deduction from the arrears of disability pension owed, to recover the excess of age pension already paid.

Part 4 proposes to amend the VEA to define in the VEA what period the 'arrear period' covers. Currently the 'arrear period' is defined as being from the date of claim (or up to 3 months earlier) up to the date of the decision on the claim. The 'arrear period' will be defined as being up to the date the claim decision is processed through the payment system. This will align the definition of the 'arrear period' in the VEA with the realities of claim and payment processing and also with other 'arrear period' definitions in the VEA and the SSA.

Schedule 1 – Part 6 – calculation of rent assistance

Part 6 of Schedule 1 proposes to amend the VEA to clarify the impact of disability pension on the rate of rent assistance, where either the person or their partner is receiving a disability pension.

Disability pension, whilst not considered as income for veterans service pension, is considered as income for the purpose of calculating any rent assistance paid in addition to service pension. This is essentially legislative housekeeping to ensure the wording in the VEA achieves the desired result and the original intention of the legislature.

Schedule 1 – Part 7 – reduction in pension arrears resulting from partner's receipt of service pension

Part 7 of Schedule 1 refers to the same issue in the VEA as does **Part 6**, that is the impact of disability pension as income for the purposes of the calculation of the rate of any rent assistance paid in addition to veterans service pension.

As mentioned above, disability pension is not considered as income for the purposes of calculating the service pension paid to the veteran or their partner. However, disability pension is income for the purposes of calculating any rent assistance, paid in addition to service pension to the veteran or their partner. The VEA does allow for the reduction in rate of on-going rent assistance where disability pension is being received. However, at present, where there has been a retrospective grant of disability pension, or a retrospective increase in the rate of disability pension, there is no provision to recover any overpayment of rent assistance paid to the partner.

This proposed amendment is to ensure that the application of the provisions in the VEA achieves the desired result and the original intention of the legislature.

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Schedule 1 – Part 8 – value of financial assets for the purposes of the deeming rules

Part 8 proposes amendments to the VEA to clarify the application of the legislation in regard to the value of an asset for the assets test, as opposed to the value of that same asset for the 'deemed' income provisions. See **Part 9** below for a description of the 'deeming' principles and process.

For the assets test, the net value of the asset is to be taken into account. However, for the purposes of the income test and the 'deeming' of income from the asset, the whole of the value is to be regarded, when setting the 'deemed' amount of income. An example occurs with 'marginal lending accounts', where a bank lends money to a person who then invests the money in shares. The banks will commonly lend up to 70% of the value of the shares purchased. For the assets test, the value of the shares is the net value, which is the market value of the shares less the money owed back to the bank. However, for the purposes of deeming income from the shares, the whole asset value of the shares is to be taken into account.

Changes were made to the SSA with the recent passage of the *Social Security Amendment (Further Simplification) Bill 2003*. It is another example of the VEA being kept in alignment with the SSA for the application of mirror provisions and legislation. It is beneficial and will ensure there is legislative support for the current treatment of assets under the asset test and the income test.

Schedule 1 – Part 9 – deemed income and actual income from accrued returns

As with other parts in this Bill, **Part 9** proposes to amend the VEA to maintain parity with other like provisions in the SSA. The 'deemed' income arrangements are explained below. The amendments in **Part 9** are designed to ensure that income from financial investments is not counted twice, once under the 'deeming' arrangements then again under the ordinary income provisions of the VEA.

Deeming of income

Under the income test in the VEA and the SSA, any income realised from financial investments is assessed under one simple set of rules, known as the 'deeming' principles. The 'deeming' rules were introduced to both the SSA and the VEA with the *Social Security and Veterans' Affairs Amendment Act 1995*.³ 'Deeming' assumes the financial investment is earning a prescribed rate of income, no matter what income it is actually earning.

Financial investments include:

- bank, building society and credit union accounts

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- cash
- term deposits
- cheque accounts
- friendly society bonds
- managed investments
- assets in superannuation and rollover funds (for people over 55 who have been on income support for a total cumulative period of at least 39 weeks after reaching the age of 55, or people of age pension age)
- listed shares and securities
- loans and debentures
- shares in unlisted public companies, and
- gold, silver or platinum bullion.

Financial investments do not include:

- residential home or its contents
- cars, boats and caravans
- antiques, stamp or coin collections
- assets held in superannuation and rollover funds if are under age pension age
- standard life insurance policies
- holiday homes, farms or other real estate, and
- income streams other than asset-tested income streams (short term)

From 20 March 2004, the 'deeming' rates are:

- if single and getting either a pension or allowance, the first \$35 600 of financial investments is deemed to earn income at 3% per annum and any amount over that is deemed to earn income at 5% per annum; or

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- if a member of a couple and at least one is getting a pension, the first \$59 400 (combined) of financial investments is deemed to earn income at 3% per annum and any amount over that is deemed to earn income at 5% per annum.

Deeming rates are set by the Minister for Family and Community Services.

Put simply, the amendments proposed in **Part 9** are beneficial and will ensure income from an asset is not counted twice, once under the deeming provisions and again under the ordinary income provisions.

Schedule 1 — Part 10 – means test exemption of certain superannuation assets

Part 10 proposes to align the asset test provisions in respect of superannuation assets in the VEA with the similar provisions in the SSA. The amendments to the superannuation provisions in the SSA were made by the *Family and Community Services and Veterans' Affairs Legislation Amendment (Further Assistance for Older Australians) Act 2001*. Bills Digest No. 18 of 2001-02 refers.⁴

The exemption of superannuation assets for persons aged 55 or more but less than retirement age is primarily designed to encourage persons to invest in superannuation to provide for their own retirement. By investing in superannuation, persons are maximising self-provision in retirement and reducing outlays for the age pension, or for veterans, the service pension. This is a beneficial provision.

Schedule 1 - Part 11 – income and asset test treatment of ATO small superannuation accounts and private rental income

ATO small superannuation accounts

Part 11 has two separate unrelated parts, the first dealing with small superannuation accounts held and administered by the Australian Tax Office (ATO). As with **Part 10**, the first part of **Part 11** aligns the VEA with provisions in the SSA. As mentioned above, the proposal to treat small superannuation accounts held by the ATO as recognised superannuation assets has benefits, especially for those aged 55 or more but less than retired age.

Rental income

The second part of **Part 11** proposes changes to the assessment of private rental income and again proposes to align sections in the VEA with like sections in the SSA. The treatment of rental income in the SSA was amended by the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. Bills Digest No. 161 of 2000-01 refers.⁵ Like provisions were made to the VEA with the *Veterans' Affairs*

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Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002. Bills Digest 17 of 2001-02 refers.⁶ However, the VEA amendments did not contain provisions in regards to private rental income as opposed to business rental income. **Part 11** proposes to fix this omission.

At present, the VEA treats private rental income like ordinary business income, so the range of deductions that would be allowed for tax purposes are generally also allowed. In the SSA, the allowable rental deductions for private rental income have been narrowed and are now directly linked to the general definitions of allowable income deductions provided in section 51 of the *Income Tax Assessment Act 1936* and also subsection 8-1 of the *Income Tax Assessment Act 1997*. In both of these provisions, the general definitions of 'allowable income deductions' target those deductions directly incurred in earning or producing the income. For rental properties, some examples are rates, property maintenance and agents' fees.

In allowing only deductions directly incurred in earning the rental income, some rental income deductions allowed under the Income Tax Assessment Acts (ITAA) may not be allowed under the SSA. An example is capital depreciation.

The main reason for the differences in allowable income deductions between the SSA and ITAA largely stems from the different treatment and measurement of income between the acts. The ITAA assesses an individual's level of income in order to determine a tax liability to provide revenue to government, regardless of a person's need. The SSA assesses income as one means of measuring need for support and requirement for welfare assistance. In other words, the ITAA are income measurement and tax revenue acts, whilst the SSA is a welfare assistance act.

The proposed alignment of the private rental provisions in the VEA with those in the SSA will only affect the means tested income support payments provided under the VEA, being the service pension, ISS and invalidity service pension.

This proposal in the Bill means that where private rental income is received which is not income from a business, losses and outgoings that relate to the rental property will be allowed as deductions against the rental income.

Schedule 1 - Part 14 – disposal of income and assets

As with most of the proposed changes to the VEA presented in this Bill, **Part 14** proposes amendments to the VEA to maintain parity with like provisions in the SAA. **Part 14** has parallels with **Part 9** in that it is designed to ensure income from one source is not counted twice.

The proposed amendments in **Part 14** are designed to ensure that income from a 'deprived' asset is not counted twice, as can currently apply under the existing provisions

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in the VEA (that is, counted once under the 'deeming' provisions and also counted again under the ordinary income provisions).

The explanatory memorandum gives an extensive history of the development of the issue leading to this proposed amendment. Part 9 above provides an explanation of the 'deeming principles. There is one other concept that may not be readily understood, being 'deprivation' of assets - see below.

Deprivation of assets

'Deprivation' refers to an individual giving away or depriving themselves of an asset without receiving adequate consideration for the transaction. For example, a person passes title of a property to a relative for less than its true value or even gifts the property. There are provisions in the SSA and the VEA which provide that the deprived asset is to be considered an asset of the original owner, and (where appropriate), also regard that asset as continuing to earn income. These provisions are designed to not allow individuals to gift or deprive themselves of an asset and indirectly gain access to a payment or a higher rate of payment.

Put simply, the amendments proposed in **Part 14** are beneficial and will ensure income from a deprived asset is not counted twice, once under the deeming provisions and again under the ordinary income provisions.

Schedule 1 – Part 15 – compensation recovery provisions

Part 15 proposes to align the compensation recovery provisions in the VEA with the similar compensation provisions in the SSA. The amendments to the SSA were provided for with the passage of the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. Bills Digest No. 161 of 2000-01 refers.⁷ That Bills Digest gives a good background about the impact of compensation payments on means tested income support payments provided under both the VEA and the SSA.

Where there has been more than one payment period of periodic compensation, the current description of 'periodic payments of compensation' in the VEA may not pick up both periods. Only one period may be counted. The amendments proposed in **Part 15** reword the description of 'periodic payments period' in the VEA to ensure where there is more than one period of periodic payments, each is accounted for.

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Main Provisions

Schedule 1

Item 11 in Part 2 will provide for the proposed one-off increase in the rate of VCA from the current \$2808 per year up to the proposed \$3230 per year. **Item 12 in Part 2** will ensure the rate is indexed annually to the CPI and **Item 14 in Part 2** sets out the mechanics of how the VCA rate is indexed to the CPI.

Item 16 in Part 3 sets out those war widows who will qualify for automatic grant of ISS on death of their partner.

Item 20 in Part 4 sets out the proposed period of arrears that is to apply for the retrospective grants or rate increase of disability pension.

Item 25 in Part 6 inserts 'disability pension' into the income definitions for the calculation of rent assistance.

Item 31 in Part 7 ensures a partner's rent assistance, paid in addition to service pension, is accounted for in any retrospective grant of disability pension to the person.

Item 32 in Part 8 inserts an exception for the valuing of an asset for deeming into subsection 52C(1) of the VEA. Subsection 52C(1) in the VEA refers to asset value where there is a charge or encumbrance on the asset.

Item 37 in Part 10 will insert the proposed description of superannuation assets that are to be disregarded as assets in some circumstances.

Item 40 in Part 11 propose to add small superannuation accounts administered by the ATO to the list of described assets that are superannuation type assets. This will mean they will also get the beneficial concessional treatment under other sections of the VEA this class of asset currently obtains.

Items 50 and 51 in Part 14 will ensure that income from a 'deemed' asset is counted only once, not under both the ordinary income provisions and again under the 'deemed' income provisions.

Item 54 and Item 56 in Part 15 proposes to amend the wording of periodic payment period in the VEA to pick up one or more periods of periodic compensation payment.

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Concluding Comments

This omnibus Bill of proposed amendments to the VEA presents changes that are generally beneficial. Many of the items are maintaining parity between the VEA and like provisions in the SSA.

Endnotes

- 1 Australian War Memorial, *List of Australian winners of the Victoria Cross*; see: <http://www.anzacday.org.au/education/medals/vc/austlist.html>
- 2 Marco Bini, 'Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994', *Bills Digest* no. 96, 1994, Parliamentary Library, Canberra 1994; see: http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=434&TABLE=BILLSDGGS
- 3 Max Spry, Social Security and Veterans' Affairs Amendment Act 1995, *Bills Digest* no. 60, 1995-96, Parliamentary Library, Canberra, 1995; see: http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=605&TABLE=BILLSDGGS
- 4 Nathan Hancock and Dale Daniels, 'Family and Community Services and Veterans' Affairs Legislation Amendment (Further Assistance for Older Australians) Act 2001', *Bills Digest* no. 18, 2001-02, Parliamentary Library, Canberra, 2001; see: <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd018.htm>
- 5 Nathan Hancock and Peter Yeend, 'Family and Community Services Legislation (Simplification and Other Measures) Act 2001', *Bills Digest* no. 161, 2000-01, Parliamentary Library, Canberra, 2001; see: <http://www.aph.gov.au/library/pubs/bd/2000-01/01BD161.htm>
- 6 Peter Yeend, 'Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002', *Bills Digest* no. 17, 2001-02, Parliamentary Library, Canberra, 2001; see: <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd017.htm>
- 7 *ibid*

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