



Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007

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Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007

Date introduced: 28 March 2007

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement:

Schedule 1, items 1, 3-7, 10-16, 18-25, 29-51, 54-56, 65-78, 80-82, and 84 as well as **Schedules 2 and 4** commence on the day after this Act receives Royal Assent. **Schedule 1, items 8-9, 17, 26-28, 52-53, 57-64, 79 and 83** commence on Royal Assent. **Schedule 1 item 2, and Schedule 3 items 1 and 2** have retrospective commencement dates to correct technical errors. **Schedule 5** commences on 1 July 2007. The various different commencement dates for the different amending provisions are set out in the Table in **Clause 2** of the Bill.

Purpose

The Bill presents amendments to the *Veterans' Entitlements Act 1986* (VEA) to generally:

- enhance and streamline Veterans' Affairs administrative practices.
- align provisions in the VEA with like provisions in the *Social Security Act 1991* (SSA).

Specifically, the Bill will achieve this by provisions designed to:

- amend the asset test provisions in the VEA allowing the disposal of assets to be disregarded where the asset is returned or adequate consideration was received.
- amend the compensation recovery provisions to include supplementary payments, paid in addition to a basic income support payment, such as telephone allowance, advance pharmaceutical allowance and education entry payments in the definition of 'compensation-affected pension'. This will allow the recovery of these supplementary payments from the compensation payment, where the recovery of income support payment/s previously paid is retrospective.
- amend the 'compensation-affected pension' definition to not include Income Support Supplement (ISS) paid after the person turns 'veteran qualifying age' (that is, age service pension qualifying age), rather than from when the person turns 'pension age' (that is, civilian age pension qualifying age).
- amend the VEA to explicitly identify which determinations made by the Repatriation Commission have to be communicated in writing to the claimant.

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- extend access to rent assistance (RA) to recipients of the Special Rate Disability Pension (otherwise known as the Totally and Permanently Incapacitated pension (T&PI)).
- make minor changes and technical amendments to the VEA to remove ambiguities and anomalies.

The Bill also:

- makes consequential amendments to the *Income Tax Assessment Act 1997* (ITAA) to include ISS as one of the payments that can be exempt from the claimant being required to provide a tax file number and also to describe Defence Force Income Support Allowance (DFISA) provided under the VEA as taxable income, unless the income support payment the claimant would otherwise be paid under the SSA is not taxable income.
- makes technical amendments to the *Military Rehabilitation and Compensation Act 2004* (MRCA) in regards to injuries or diseases arising from the treatment for a service related injury or disease and also to clarify that there is no onus of proof for the acceptance of liability of claims.

Background

Introduction

Many of the Parts presented in this Bill involve aligning provisions in the VEA with the like provisions in the SSA. Many of the provisions for income support payments in both the VEA and the SSA mirror each other and this parity is maintained to ensure consistency and equity of treatment between like payments. These mirrored provisions commonly refer to rates of payment, 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 like income support payments provided under the VEA, which are also income and assets tested, are age service pension, invalidity service pension and ISS.

For a general introduction to veterans' issues see the Bills Digest to the *Veterans' Entitlements (Clarke Review) Act 2004*.¹

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Schedule 1 — Amendment of the *Veterans' Entitlement Act 1986* (VEA)

Amendment to the definition of 'Australia' for the purposes of the *Veterans' Entitlement Act 1986* (VEA)

Background

Part 1 presents amendments to the definition of 'Australia' in the VEA. The current definition in sub-section 5Q(1) of the VEA includes the external territories as a part of Australia for the purposes of Parts III and IIIA of the VEA.² Part III of the VEA provides for service pension and Part 111A provides for ISS.

As set out in the Explanatory Memorandum attached to the Bill,³ the *Acts Interpretation Act 1901* (AIA) details that the external territories includes Christmas Island and Cocos (Keeling) Island but not Norfolk Island.⁴ A good description of the unique tax and welfare status of Norfolk Island is provided in the report by the Joint Standing Committee on the National Capital and External Territories on the Committees visit to Norfolk Island.⁵ The Committee visited Norfolk Island in August 2006 in order to renew its association with the Norfolk Island Government and to engage in discussions with the Norfolk Island community on matters of concern, particularly in light of foreshadowed changes to the Island's governance arrangements. The report provides a good and concise description of the taxation, immigration, social services and other arrangements that apply on the island.

The amendment presented in the Bill aims to include Norfolk Island as an external territory for some parts of the VEA. This will mean that for service pension and ISS provided under the VEA, residence in Norfolk Island will be treated as residence in Australia.

Comment

The proposal to include Norfolk Island as a part of Australia for the service pension and ISS is to bring it in line with current practice and application. Persons who only have Norfolk Island residence will be able to claim and qualify for the service pension and the ISS, so long as all other qualification requirements are met.

For age service pension under the VEA, the equivalent payment under the SSA is the age pension. Under section 23 and sub-section 7(4)(f) of the SSA, a resident of Norfolk Island is not regarded as a resident of Australia.⁶ So a person who only has Norfolk Island residence cannot qualify for the Australian age pension. Residence on Norfolk Island can count towards making up residence in Australia, but the person needs to initially have Australian residence.⁷

The age service pension provided under the VEA is in almost all respects the same as the civilian age pension provided under the SSA. The rates paid and the income and assets tests are the same. The main difference is that service pension minimum qualifying age

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(60 for males) is 5 years younger than for the age pension (65 years for males).⁸ With this proposed amendment, service pension and ISS will be different to the like payment under the SSA in recognising Norfolk Island residence as if it were the same as Australian residence. This in part recognises the compensatory element in the service pension, it being payable 5 years earlier than the age pension recognising the extra stresses and strains of having been exposed to war service.

Recording of decisions made by the Repatriation Commission

The Repatriation Commission is established by Part XI of the VEA. Section 180A in Part XI empowers the Commission to make decisions about claims for disability pension under the VEA and also claims by dependants of persons for war widows'/ers' pension (WWP) under the VEA.⁹

The Bill proposes to insert words into the VEA regarding the recording of determinations and reasons for determinations made by the Commission under the VEA. The amendments specify that determinations and reasons in respect of a claim for assistance or a payment under the VEA must:

- be recorded in writing,
- set out the Commission's findings on material questions of fact,
- refer to the evidence or other material on which the findings of fact are based, and
- provide reasons for the Commission's determination.

The amendments further set out that the Commission must give the claimant:

- a copy of the record of the Commission's decision,
- a copy of the Commission's findings on material matters of fact, the evidence or other material on which the findings of fact are based and the reasons for the decision, and
- the claimant's rights of appeal.

Comment

These obligations about the recording of Commission decisions and the notification of decisions have not been spelt out in the VEA before. They have been largely undertaken previously but as a matter of policy rather than as a legislative requirement for the Commission.

Repatriation Commission decisions about the disability pension and the WWP are certainly the most contentious decisions made under the VEA. For the disability pension, decisions involve whether an injury/illness is war/service related or not and the extent of the impact of the illness/injury. Likewise for the WWP, the decisions are about the reasons for the death of a veteran/service person and whether the death was war/service related or not. With almost all of these decisions, what hangs off the decision is not only

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the assistance that can be provided under the VEA (disability pension or WWP) but also there is often the emotional element of the claimant seeking official recognition from government that their illness/injury was caused by their service or the death of a partner was caused by or originated in their service. Therefore, these sorts of decisions will always be a matter of contest and emotion.

There are no other like provisions in the VEA or the SSA that spell out in such detail the requirements to record decisions and the notification of decisions.

Exempt Family Assistance payments from the definition of income under the VEA income test definitions

Most family assistance payments (Family Tax Benefit — Part A (FTB-A), Family Tax Benefit — Part B (FTB-B), Child Care Benefit (CCB)) are paid fortnightly during the year or alternatively claimed and paid at the end of the year in the tax assessment. Family assistance payments are not counted as income by the income tests in the VEA and the SSA. However, some family assistance payments have been provided as a one-off lump sum payment.¹⁰ Some examples have been a one-off payment of \$600 per FTB-A child to all FTB-A families announced in the 2004-05 Budget¹¹ and also a one-off payment of \$600 per person for each recipient of the carer allowance, also announced in the 2004-05 Budget.¹²

When the one-off payments of family assistance legislation was passed by the Parliament, amendments were then made to the SSA to exclude these one-off family assistance payments as income under the income test but amendments were not also made to the VEA.¹³ This Bill presents amendments that will amend the VEA to exclude these one-off family assistance payments as income under the income tests applied in the VEA.

Alignment of disposal of assets rules in the VEA with those same rules in the SSA

Background

Provisions to prevent people from depriving themselves of property or income in order to obtain a pension date back to the *Invalid and Old-age Pensions Act 1909*. Initially, where a person disposed of an asset without adequate consideration the sanction was disqualification from receipt of a pension altogether. This situation applied until the introduction in 1976 of an income only means test. Under the then new provisions, where a person deprived themselves of income in order to qualify for a pension, or for a higher rate of pension, the disposed of income continued to be deemed as income for the purposes of the income test.

The deprivation of assets rules dates back to the introduction of the assets test in 1985. Disposal of assets without adequate return was allowed to the value of \$2 000 per annum for a single person or \$4 000 for a couple. Disposal above these values resulted in the excess asset being assessable under the asset test. The assessed value of disposed assets

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was then reduced by 10 per cent each year. The deprivation of income or assets rules were again modified from 1 July 2002.¹⁴ The new rules allowed the disposal of \$10 000 in assets in a year and \$30 000 over five years.

The amendments to the VEA presented in this Bill are to align the deprivation provisions with those in the SSA, especially to allow disposals that occurred up to five years before the deprivation rule changes that occurred from 1 July 2002, as well as disposals after 1 July 2002.

Supplementary payments being added to the list of compensation affected payments

The Bill proposes to replace the existing definition of a 'compensation affected pension' in the VEA with a new definition, which adds in supplementary payments such as telephone allowance, an advance of pharmaceutical allowance and education entry payment. This will align the supplementary payments that are a compensation affected pension with the like definition in the SSA. The adding of supplementary payments to the list of compensation recoverable payments was originally provided for in the SSA with the passage of the *Social Security Amendment (Further Simplification) Act 2003*.¹⁵

Supplementary payments are those that are not payable in their own right, rather only payable contingent on some other primary payment or entitlement existing. For example, RA is not payable on its own; only if the person claiming it is otherwise qualified for an income support payment or to FTB-A at more than the base rate.

The adding of these supplementary payments to the list of 'compensation affected pension' payments means they will be recoverable if the person otherwise received a compensation payment for the same period for which these payments were provided.

The essential reason these additional or supplementary payments are being added to the list of 'compensation affected pension', is that if the primary payment is recoverable under the compensation recovery rules, then any supplementary payments paid in addition to that primary payment, should also be recoverable. Without qualification for and payment of the primary income support payment, then the supplementary payment would not have been made.

Compensation payments to be disregarded for the purposes of the compensation recovery provisions

Introduction

The amendments to the compensation recovery provisions of the VEA (that is Part IIIC of the VEA) presented in this Bill are basically to amend wording in the VEA that currently provide for an unintended result. Currently, there is the allowance in the VEA for the Repatriation Commission to disregard the receipt of compensation payments in 'special circumstances'. Currently, 'Special circumstances' might exist where there is no connection to the entitlement

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to the compensation (for example workers compensation) and to the entitlement to a compensation affected payment provided under the VEA (for example disability pension). It was never intended that 'special circumstances' might exist, just because the compensation received had no connection with the person's eligibility for a compensation affected payment provided under the VEA.

Background

Compensation received might be for various reasons like pain and suffering, medical costs and expenses, loss of enjoyment in life or for lost earnings. There are special rules in the VEA and the SSA for the treatment of compensation provided as replacement earnings. These special provisions are to ensure that persons, who are able to access replacement earnings from compensation, should not 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 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 income support.

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 VEA or the SSA, on a dollar-for-dollar basis. These payments, being payments for lost salaries/wages, therefore provide income support.

Lump-sum compensation

Lump-sum compensation payments are examined to identify the component 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 VEA (and the SSA) ascribes 50 per cent of the lump-sum as being for economic loss. The residual 50 per cent is then ascribed for other non-economic loss items such as pain and suffering and loss of enjoyment of life, medical expenses.

Recovery of compensation affected payments

Where compensation has been paid for a period and the person has also received a compensation affected payment for the same period, then the amount of the compensation affected payment can be recovered from the person.

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Waiver of recovery of a compensation affected payment in 'special circumstances'

The decision to apply the 'special circumstances' provisions to waive recovery of compensation affected payments is based on an holistic view of an individual's circumstances, that is, the decision would not usually be based on just one factor but a combination of factors. The guidelines state that the 'special circumstances' provisions should only be applied in unusual, unforeseen and exceptional circumstances. This means in situations where the compensation provisions could lead, or have led to extreme hardship or created an inequitable, unjust or unreasonable situation. There is usually not one factor which makes a situation unusual, unforeseen and exceptional, but a combination of factors applying to each individual. If 'special circumstances' are considered to exist; all or part of a compensation payment can be treated as not having been made, or not liable to be paid.

A more comprehensive description of the impact of compensation payments on income support payments provided under the VEA (and the SSA) can be seen in the Bills Digest for the *Compensation for Non-Economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Act 1999*.¹⁶

Allow payment of pension in respect of days not imprisoned

Background

For a long period, the provision for persons in gaol has been considered the responsibility of the State or Territory. Income support payments provided under the VEA (and the SSA) are not made while a person is imprisoned (held on remand or as a result of a conviction). In 1999, both the VEA and the SSA were amended so that all income support payments were paid fortnightly in arrears and entitlement to payment linked to entitlement on each day in the fortnight past.¹⁷ In the fortnight there are 10 working days for which payment is made. Previously, pension income support payments were not paid in arrears or in advance, rather, payment was linked to qualification on the one payday in the fortnight. Under this previous pension payment regime, a person incarcerated for 2 days would miss an entire fortnight's payment, if one of those two days in gaol fell on the pension payday.

Under the amendments presented in the Bill, the VEA will be amended to mirror what is currently provided for in the SSA, so that only the two days the person is in gaol are not paid for and the residual payment days in the fortnight, that is 8 days are paid (as there are 10 days that are normally paid in the fortnight).

Eligibility for treatment under Part V while in gaol

A person on a DVA income support pension¹⁸ is issued with a health concession card (Pensioner Concession Card (PCC)) and may also have a health treatment card (Gold Card). As with the denial of payment of income support to persons in gaol (see *Allow*

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payment of pension in respect of days not imprisoned above), it has been a long-standing understanding that the State or Territory is responsible for the health needs of a person in gaol. The amendments presented in this Bill will ensure that entitlement to use a concession or treatment card is not available while the person is in gaol, unless the person's payment of pension is diverted to a partner or dependant child, which would normally only be done for very short periods of incarceration. This will allow the partner or dependant child the use of the concession card, even though the primary card holder is or was in gaol.

Deprivation where consideration is subsequently received

An explanation of the deprivation of assets provisions in the VEA and the SSA is provided in the section titled '*Alignment of disposal of assets rules in the VEA with those same rules in the SSA*' above. In some cases, an asset disposed of without initial adequate consideration is later paid for, or adequate consideration received at a later date. Currently, in such cases, the deprivation provisions in the VEA do not allow for the deprived asset to be later disregarded once the consideration is received.

The amendments to the deprivation provisions in the VEA presented in the Bill will allow the later disregard of a deprived asset once adequate consideration for the asset has been received.

Recovery of overpayments of social security pension or benefit

Introduction

The origins and purpose of the DFISA were discussed in the Bills Digest for the *Veterans' Entitlements (Clarke Review) Act 2004*.¹⁹ The DFISA eliminates the difference between a veteran's SSA income support payment, which is reduced as their VEA disability pension is regarded as income, and the amount they would receive if their disability pension was not assessed as income. The DFISA makes up for the loss incurred as the rate of income support payment paid under the SSA is reduced.

Background

Disability pension provided under the VEA is income for the income test applied to income support payments provided under the SSA. Up until the introduction of DFISA, recipients of a VEA disability pension, who also were receiving an income support payment under the SSA, might have a reduction in their rate of income support payment (where the rate of VEA disability pension paid exceeds the free area in the SSA income test).

As described in the Explanatory Memorandum attached to the Bill, new grants of disability pension and rate increases are always retrospective.²⁰ Where these retrospective

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new grants or rate increases are made, there needs to be a reconciliation between the amounts of arrears of disability pension owed, the excess of income support payment paid under the SSA and the amount of DFISA owed. The amendments presented in the Bill are to remedy anomalies in the VEA whereby the correct reconciliation of payments paid for the same period is not achieved for the partner of a disability pensioner.

Comment

The need for DFISA paid under the VEA and the associated legislative arrangements were criticised by Senator Mark Bishop when the *Veterans' Entitlements (Clarke Review) Act 2004* was debated in the Senate.²¹ Senator Bishop argued that the need for DFISA could have been eliminated with a simple exclusion of VEA disability pension payments as income under the income test applied in the SSA.²² Senator Bishop then said:

That brings me to the final item in this bill, which is simply the greatest administrative mess and disaster I have ever seen. When Labor and the Democrats began urging in this place, without success, that the disability pension be exempted from the means test at Centrelink, we simply intended that it be made an exclusion under section 8(8) of the Social Security Act. Effectively, this would have been one line of text. It would simply have provided that any disability pension paid by DVA to any ex service person would be disregarded as income. What we have instead is the continuation of its inclusion as income in the means test but the payment of a refund by DVA to all the people affected. This refund, paid every fortnight, will be adjusted as any other payment would be to changing levels of income from other sources. Instead of taking one line of text, this provision to pay Defence Force income support allowance — DFISA—takes 14 A4 pages of typed text. The irony is that this new DFISA has to be excluded from the means test under the Social Security Act, which will be done by an amendment to section 8(8). So effectively the whole issue returns to where it started. The DFISA—that is, the value of the deduction for disability pension—still needs to be exempted from the Social Security Act. It is without doubt one of the most complicated and unnecessary pieces of legislation I have ever seen.²³

The amendments to the VEA presented in this part of the Bill, to ensure a proper reconciliation of payments paid under the VEA and those paid under the SSA for the same period, almost entirely arise due to the existence of DFISA. These amendments, and other DFISA related amendments in other parts of this Bill, would not be necessary if the amendment to the SSA to exclude VEA disability pension as income under the SSA, as suggested by Senator Bishop, had been made instead of the creation of DFISA.

Bereavement payments to certain carers

Background

Bereavement payments essentially involve the continuance of an income support payment (for example, service pension) paid at the rate that applied before the death of a partner (or person being cared for) for a period after the date of death. The purpose of bereavement

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payment is to allow the surviving partner (or carer) a period to cope with the transition to a lower rate of assistance, or in some cases the withdrawal of assistance. The bereavement payment period is commonly seven fortnightly payments after the date of death, paid at the rate received immediately prior to the date of death. For example, where one of a service pensioner couple dies, the surviving partner continues to receive the partnered rate of service pension that was paid to both partners, for seven payments after the date of death, before they are then paid at the single rate of pension.

The amendments to the bereavement payment provisions in the VEA presented in this part of the Bill are to ensure that where a deceased person's VEA payments immediately prior to death included DFISA, then the bereavement payment provided to a surviving partner (or carer) after death also includes the DFISA payment.

Comment

Again, these amendments are essentially fix-up amendments to the VEA and arise due to existence of DFISA. Therefore, the comments about the existence of DFISA made by Senator Mark Bishop referred to above, in the context of the grant of a VEA disability pension, also apply here.

Payment of Defence Force Income Support Allowance (DFISA) pension bonus upon the death of claimant

The deferred pension bonus scheme was introduced with the passage of the *Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998*.²⁴ Under the Deferred Pension Bonus Scheme, a person claiming age pension (under the SSA) or service pension (under the VEA) can defer payment of their pension for up to 5 years and receive a bonus when they eventually start pension payments. The amount of the bonus depends on the rate of pension the claimant is otherwise entitled to, had they not deferred payment and the length of the deferment period.

Where a person dies during the deferment period, the residual deferment amount owing up to the date of death, is paid to the person's estate.

The amendments to the VEA presented in this part of the Bill are to ensure that where a person does defer their pension under the deferred pension bonus scheme and part of their deferred pension includes deferred DFISA amounts, then the amount of DFISA bonus owing to the deceased person can be paid after the date of death. A description of the construct and the payment of DFISA can be seen in the Bills Digest for the *Veterans' Entitlements (Clarke Review) Bill 2004*.²⁵ This was the legislation that introduced the DFISA.

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Comment

Again, these amendments essentially are fix-up amendments to the VEA to ensure the intended delivery of payments occurs but they also arise due to existence of DFISA in the VEA. Therefore, the comments about the existence of DFISA, made by Senator Mark Bishop referred to above, also apply here.

Extend rent assistance eligibility to Special Rate Disability Pension (SRDP) recipients

The amendments presented in the Bill to expand access to rent assistance (RA) for Special Rate Disability Pension (SRDP) recipients are aimed at amending an unintended provision in the VEA. The SRDP is more commonly known as the Totally and Permanently Incapacitated disability pension (T&PI). The unintended provision in the VEA currently precludes access to RA to some SRDP recipients to whom it was never intended to deny access to RA. These cases are those where the SRDP recipient is on a reduced rate due to compensation income from another source for the same injury/illness.

Normally, the full rate of SDRP precludes access to RA under the RA income test but a reduced rate of SRDP may allow access to RA, if the reduced SRDP rate is low enough.

Comment

The number of cases involved in this expansion of access to RA for part-rate SRDP recipients is probably very small. These cases refer to where the rate of SRDP paid is reduced (can only be reduced by other compensation income for the same illness/injury) and the recipient is also paying qualifying private rent and is also on an income support payment provided under the VEA. This would be a very small number of cases indeed.

Schedule 2 – Amendment of the *Military Rehabilitation and Compensation Act 2004*

Unintended consequence of treatment for service injury or disease

The amendments to the MRCA presented in this Bill in regards to unintended and intended consequences of treatment of an injury or disease are aimed at fixing wording in the MRCA so that the same coverage is provided that previously applied under the VEA and the *Safety Rehabilitation and Compensation Act 1988* (SRCA). Under the current wording in the MCRA, intended consequences of treatment may not be covered, only unintended consequences of treatment. It is the aim that all consequences of treatment are covered and provided for, whether they were unintended or intended.

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Schedule 4 – Amendments to the *Income Tax Assessment Act 1936*

Introduction

The amendments to the *Income Tax Assessment Act 1936* (ITAA 1936) presented in **Schedule 4** are to amend the requirements for a claimant to provide a tax file number (TFN) when claiming ISS. There are circumstances where the power to waive the requirements to provide a TFN are appropriate.

Background

Generally, persons claiming an income support payment under the VEA (and the SSA) are required to provide a TFN. Claimants are generally expected to provide a TFN when claiming, as most claimants are likely to have a TFN and it would not be difficult for them to provide it and it does allow the checking and cross verification of information provided (shares, property, bank account balances, income and assets) with the Australian Tax Office (ATO). However, there are situations where a claimant should be exempted from providing a TFN. One example might be where the claimant has applied for a TFN with the ATO but a TFN has not yet been issued. Another example might be where the claimant is residing overseas and is making a claim for a payment under an international reciprocal agreement, which allows the making of a claim for a payment under the VEA in the country of overseas residence.

The amendments in **Schedule 4** of the Bill are basically to update the provisions in the ITAA 1936 with references to ISS claimants, which is paid under Part IIIA of the VEA, and the provision of a TFN.

Schedule 5 – Amendments to the *Income Tax Assessment Act 1997*

Background

Virtually all income support payments provided under the SSA (and the VEA) are taxable income. The only exceptions are:

- disability support pension (DSP) (where the recipient is below age pension age),
- carer payment (where both the carer and the caree are below age pension age), and
- wife pension (where both the partner and the pensioner are below age pension age).

Notwithstanding that all the other income support payments are taxable income, with the pensioner and beneficiary tax offsets applied under the *Income Tax Assessment Act 1997* (ITAA 1997), recipients of taxable income support payments pay no tax on the amount of pension or allowance paid.

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The amendments to the ITAA 1997 presented in **Schedule 5** of the Bill are essentially to clarify the taxable status of DFISA paid to individual recipients of disability pension paid under the VEA. A description of the construct and the payment of DFISA can be seen in the Bills Digest for the *Veterans' Entitlements (Clarke Review) Bill 2004*.²⁶ This was the legislation that introduced the DFISA.

The proposed amendments to the VEA are aimed at ensuring that the DFISA paid carries the same income tax status as the payment it is substituting for. So if the DFISA payment is substituting for the payment of age pension, which is a taxable income, then the DFISA paid to an individual will also be taxable. Likewise, if the payment that DFISA is replacing is DSP, which is not taxable income, then the DFISA paid will also not be taxable income.

Comment

Again, these amendments are essentially fix-up amendments to the ITAA 1997 to ensure the legislation delivers the policy intention. However, these amendments also arise due to existence of DFISA in the VEA. Therefore, the comments about the existence of DFISA, made by Senator Mark Bishop referred to above, also apply here.

Main provisions

Schedule 1 – Amendment of the *Veterans' Entitlement Act 1986*

Part 1 – Amendments

Item 11 replaces the existing definition of a 'compensation affected pension' in the VEA with a new definition which adds in supplementary payments such as telephone allowance, an advance of pharmaceutical allowance and education entry payment.

Item 12 amends the definition of Australia in the VEA to include Norfolk Island as an external territory for the purposes of the income support payments provided under Parts III and IIIA of the VEA.

Items 16, 19, 21, 23, 25, 56 and 72 place words within the VEA regarding the recording of determinations, the reasons for determinations and the notification of decisions made by the Repatriation Commission under the VEA.

Items 29 insert provisions to ensure the deprivation provisions of the VEA no longer apply once proper notification is received that adequate consideration has been received for a previously deprived asset. **Item 30** inserts provisions to ensure that the deprivation provisions of the VEA apply to assets deprived up to 5 years before 1 July 2002, being the date the then new asset test deprivation provisions commenced.

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Item 36 inserts provisions into the VEA defining the meaning of 'in gaol' and also the meaning of 'psychiatric confinement' and are the same as the like provisions in the SSA.

Item 68 inserts provisions to ensure that the amount of DFISA paid to a carer of a deceased person is not more than the carer's bereavement payment entitlement.

Item 70 inserts provisions to include any unpaid bonus of DFISA payment payable to the estate of a deceased person, where that person was entitled to an amount of DFISA bonus.

Schedule 2 – Amendment of the *Military Rehabilitation and Compensation Act 2004*

Item 1 inserts provisions to ensure that injuries and diseases caused by treatment, whether intentional or unintentional, are covered by the MRCA.

Schedule 4 – Amendments to the *Income Tax Assessment Act 1936*

Items 1 and 2 inserts provisions into the ITAA 1936 to allow an exemption from the provision of a TFN, for ISS claimants.

Schedule 5 – Amendments to the *Income Tax Assessment Act 1997*

Item 1 inserts a provision in the ITAA 1997 to ensure that any DFISA paid to a person has the same tax status as the primary income support payment paid under the SSA to the person.

Concluding comments

Much of the amendments to the VEA presented in this Bill are to align the VEA with like provisions in the SSA, hence there is nothing really contentious or controversial in the Bill. Some of these corrections to the VEA aligning with the same text in the SSA are due to the policy or legislation drafters overlooking the need to make the VEA amendments at the time of the original SSA amendments.

Other amendments are to ensure that the provisions in the VEA and other acts like the ITAA 1937 and the ITAA 1997 are worded correctly to deliver the intended policy result.

The amendments to the VEA and other acts in regards to DFISA mainly arise due to the existence of DFISA. Senator Mark Bishop has argued that the existence of DFISA is a matter of contention and an unnecessarily complex way of dealing with the treatment of disability pension paid under the VEA as income for the income tests applied under the

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SSA.²⁷ It would far simpler to just exempt disability pension as income under the SSA income test.

Endnotes

1. Peter Yeend, Veterans' Entitlements (Clarke Review) Bill 2004, *Bills Digest No. 134, 2003-04*, Parliamentary Library, Canberra, Australia, 28 May 2004.
<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd134.htm>

2. Section 5Q(1).

Australia includes the external territories for the purposes of Parts III and IIIA.

3. Explanatory Memorandum, pp. 2–3.

4. **ACTS INTERPRETATION ACT 1901**

SECT 17 - Constitutional and official definitions [see Note 2]

In any Act, unless the contrary intention appears:

(a) *Australia* or *the Commonwealth* means the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory;

5. Joint Standing Committee on the National Capital and External Territories, *Report on the Visit to Norfolk Island*, Canberra, Australia, September 2006.
http://www.aph.gov.au/house/committee/ncet/norfolk_visit/report.htm

6. **SOCIAL SECURITY ACT 1991 - SECT 23**

General definitions

23(1) In this Act, unless the contrary intention appears:

"Australia" includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Note: see also subsection 7(4), (6) and (7) for special residence rules for external Territories.

SOCIAL SECURITY ACT 1991 – SECT 7(4)

7(4) For the purposes of:

(a) Part 2.2 (age pension); and

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(b) Part 2.3 (disability support pension); and

(d) Part 2.7 (bereavement allowance); and

(e) Part 2.8 (widow B pension);

the following apply:

(f) residence of a claimant in an external Territory other than Norfolk Island is taken to be residence in Australia; and

(g) residence of a claimant in Norfolk Island is taken not to interrupt the continuity of residence of the claimant in Australia.

7. *ibid.*

8. This 5 years earlier age qualification for age service pension is to recognise the extra stresses and strains of having being exposed to the rigours of war service.

9. **VETERANS' ENTITLEMENTS ACT 1986**

SECT 180 - Functions of Commission

(1) The functions of the Commission are:

(a) to grant pensions, allowances and other benefits to veterans, dependants of veterans and certain other persons under and in accordance with the provisions of this Act;

(b) to establish, operate and maintain hospitals and other institutions for the provision of treatment for veterans, dependants of veterans and other persons eligible to be provided with treatment under Part V;

(c) to arrange for the provision of treatment and other services for veterans, dependants of veterans and other persons in accordance with this Act;

(d) to provide the Minister with information concerning, and to advise the Minister on, matters relating to the operation of this Act, including, but without limiting the generality of the foregoing, matters relating to pensions, allowances and other benefits for veterans, and dependants of veterans, incapacitated from injury or disease suffered as a result of service in a war or in war-like operations and for dependants of veterans whose deaths are attributable to any such service; and

(e) such other functions as are conferred on the Commission by this or any other Act.

(2) The Commission shall, subject to the control of the Minister, have the general administration of this Act.

10. *Family Assistance Legislation Amendment (More Help for Families – One-Off payments) Act 2004.*

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11. Department of Family and Community Services, *Portfolio Budget Statements*, 2004-05 Budget, Budget Related Paper No. 1.8, p. 51.
<http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2004-pbs.htm#budget>
12. *ibid.*, p. 57.
13. *Family Assistance Legislation Amendment (More Help for Families – One-Off payments) Act 2004*, Schedule 1, Item 19.
14. Dale Daniels, Social Security and Veterans Entitlements Legislation Amendment (Disposal of Assets - Integrity of Means Testing) Bill 2002, *Bills Digest No. 131, 2001-02*, Parliamentary Library, Canberra, Australia, 8 May 2002. <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd131.htm>
15. Peter Yeend, Social Security Amendment (Further Simplification) Bill 2003, *Bills Digest No. 86, 2003-04*, Parliamentary Library, Canberra, Australia, 30 June 2004.
<http://www.aph.gov.au/library/pubs/SearchResults.asp>
16. Peter Yeend and Fiona Walker, Compensation for Non-Economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Bill 1999, *Bills Digest No. 189, 1998-99*, Parliamentary Library, Canberra, Australia, 24 June 1999.
<http://www.aph.gov.au/library/pubs/bd/1998-99/99bd185.htm#Contact>
17. Chris Field, Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Bill 1998, *Bills Digest No. 5, 1998-99*, Parliamentary Library, Canberra, Australia, 4 August 1999. <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd005.htm>
18. Income support pensions provided under the VEA are age service pension, income support supplement and invalidity service pension.
19. Peter Yeend, Veterans' Entitlements (Clarke Review) Bill 2004, *Bills Digest No. 134, 2003-04*, *op. cit.*
20. Explanatory Memorandum, p. 22.
21. Senator Mark Bishop, Senate, *Debates*, 21 June 2004, Veterans' Entitlements (Clarke Review) Bill 2004, pp. 24401-24402. <http://www.aph.gov.au/hansard/hanssen.htm>
22. *ibid.*
23. *ibid.*
24. Peter Yeend, Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Bill 1998, *Bills Digest No. 173, 1997-98*, Parliamentary Library, Canberra, Australia, 6 April 1998. <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd173.htm#Contact>
25. Peter Yeend, Veterans' Entitlements (Clarke Review) Bill 2004, *Bills Digest No. 13, 2003-04*, *op. cit.*
26. *ibid.*
27. Senator Mark Bishop, Senate, *Debates*, 21 June 2004, *op. cit.*

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