



Veterans' Entitlements Legislation Amendment (2007 Election Commitments) Bill 2008

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Veterans' Entitlements Legislation Amendment (2007 Election Commitments) Bill 2008

Date introduced: 13 March 2008

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: The provisions presented in this Bill commence from 1 July 2008.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To provide amendments to the *Veterans' Entitlements Act 1986* (VEA) and other associated acts, to give effect to several veterans' commitments made by the government during the 2007 election. These initiatives feature:

- the automatic grant of war widows'/ers' pension (WWP) to the partners of all deceased Intermediate rate and Totally and Temporarily Incapacitated (T&TI) rate disability pensioners,
- the extension of payment access to the Income Support Supplement (ISS) to all WWP recipients, and
- the extension of disability pension bereavement payment arrangements to single indigent disability pensioners who were on the Special rate¹ or the Extreme Disablement Adjustment² rate at the time of death.

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1. Special rate disability pension is more commonly known as the Totally and Permanently Incapacitated disability pension (T&PI). T&PI disability pension is payable where the veteran has a 70% or more disability (using the assessment used for the General Rate) and is unable to work for at least 8 hours a week.
 2. The EDA rate of disability pension is only for persons aged 65 or more and are not qualified to the T&PI rate or the Intermediate rate. As the person is not of working age, an inability to work test is not applied, rather an impact of disability on lifestyle test is applied, requiring 70 medical points or more and at least 6 out of 7 lifestyle points.

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Background

Schedule 1 – Extension of the automatic grant of certain pensions

Introduction

The amendments to the VEA presented in **Schedule 1** aim to expand the instances of automatic grant of war widows'/ers' pension (WWP) to the partner of all deceased Intermediate rate and T&TI rate disability pensioners.³ At the moment, not all partners of a deceased Intermediate rate or T&TI rate disability pensioner are automatically qualified for a WWP.

Background

Currently, WWP is granted automatically to the surviving partner of a disability pensioner where the disability pensioner was:

- an ex-prisoner of war, or
- receiving a disability pension at the Special rate (T&PI), or
- receiving the disability pension at the Extreme Disablement Adjustment (EDA) rate.

There are other circumstances where there is an automatic grant of WWP to the surviving partner of a disability pensioner. These are where the disability pensioner was receiving the Intermediate Rate⁴ or the T&TI rate disability pension and was also receiving a disability pension at an increased rate for a war or defence caused incapacity of a kind described below:

- two arms amputated,
- two legs and one arm amputated,
- two legs amputated above the knee,
- two legs amputated and blinded in one eye,
- one arm and one leg amputated and blinded in one eye,
- one leg and one arm amputated,
- one leg amputated above, and one leg amputated below, the knee, or

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3. Temporary and Totally Incapacitated special rate pension (T&TI) is the same impairment test as the T&PI rate (ie. 70% or more), the same inability to work test (ie. 8 hours a week) and the incapacity is temporary.
 4. Intermediate rate pension is payable where the person has a 70% or more disability (using the assessment for the General Rate) and is unable to work for at least 20 hours a week.

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- two legs amputated below the knee.⁵

So at the moment, there is no automatic qualification to a WWP for the surviving partner of a disability pensioner who was receiving the Intermediate rate or T&TI rate, only where the pensioner's disability was also one of those listed above.

Changes to automatic access to WWP announced in the 2007 election campaign

The government announced its policy of providing for the automatic grant of WWP to the surviving partners of all deceased Intermediate rate and T&TI rate disability pensioners in the 2007 election campaign.⁶

Changes presented in this Bill

The changes to the VEA presented in this Bill will provide for automatic WWP qualification, for the surviving partner of a disability pensioner, where the deceased disability pensioner was on the Intermediate or the T&TI rate, regardless of the nature of the pensioner's disability.

Cost of the initiative

The Explanatory Memorandum details in its Outline and Financial Impact section, that the estimated cost of the changes in **Schedule 1** of the Bill are \$0.0 million in 2007-08, \$0.7 million in 2008-09, \$1.5 million in 2009-10 and \$2.3 million in 2010-2011.⁷

Comment

Currently, the particular types of disability that an Intermediate rate, or a T&TI rate disability pensioner must have to attract automatic WWP qualification for a surviving partner after their death, are essentially a significant loss of a limb/s. This gives an

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5. Veterans' Entitlements Act 1986. Section 13(2) – Eligibility for pension

Where: (a) a veteran has died;

(b) the death of the veteran was not war-caused; and

(c) the veteran was, immediately before the veteran's death:

(i) a veteran to whom subsection 22(4) or section 24 applied; or

(ii) a veteran to whom section 22, 23 or 25 applied who was in receipt of a pension the rate of which had been increased by reason that the pension was in respect of an incapacity described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in section 27;

the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the veteran in accordance with this Act.

6. Mr Kevin Rudd, MP and Mr Alan Griffin, MP, *Labor's Plan for Veterans' Affairs*, Labor party 2007 Election policy paper, Canberra, Australia, 13 November 2007, pg 16. <http://www.alp.org.au/media/1107/msva130.php>
7. Explanatory memorandum, p. ii.

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indication that hitherto automatic WWP qualification was considered appropriate only in cases where the disability was physical and significant. This is probably a legacy of old attitudes to disability; that is, serious disabilities are only physical.

This has probably excluded the benefit of automatic WWP qualification to other categories of significant war or service related disabilities, like psychiatric disabilities and other physical disabilities, like a heart condition. This has probably been unfair, especially given that the disability and work tests required to be met to access the Intermediate rate or the T&TI rate disability pensions are quite onerous. That is, a 70 per cent or more impairment and unable to work for at least 8 hours a week (T&TI), or for 20 hours a week (Intermediate rate). Also, since 1990, there has been automatic qualification to WWP for the surviving partner of an EDA rate disability pension recipient, and to have this for the EDA rate pension and not for the Intermediate rate pension is anomalous.

There doesn't seem to be any intrinsic or elementary reason to confine automatic qualification to WWP for the surviving partner of a deceased Intermediate rate or T&TI rate pensioner, where they only had a major loss of a limb/s, as opposed to other significant war or service caused/related impairments.

Access to automatic qualification to WWP for a surviving partner of a deceased disability pension recipient is no small benefit. Otherwise, the surviving partner needs to make a claim for WWP and then satisfy the requirements in the VEA that the death of their partner, who was on a disability pension, was due to or connected with the war or service related disability for which they received the disability pension. This can often be contentious, especially when there is a long period of time between the date the illness/injury was originally sustained and the date of death.

Schedule 2 – Extending income support supplement to all war widows/ war widowers

Background

Income support supplement

Currently, WWP is paid at \$582.40 per fortnight⁸ and as it is compensation it is also income test and asset test free and it is not taxable income. A WWP recipient may also qualify for a means tested income support payment as well as their WWP. To qualify for an additional income support payment, the WWP recipient must also meet the income support income and assets tests. However, recognising that WWP is received free of any means testing or taxation liability, the income support payment that is provided is ISS and is paid at a lower rate than other income support payments.⁹

8. The WWP rate as at 20 March 2008.

9. Current maximum ISS rate is \$163.20 per fortnight (20 March 2008).

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Origins of Income Support Supplement

ISS was introduced with the passage of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*. Prior to March 1985, any wife or age pension paid to a WWP recipient was provided at a frozen rate under the *Social Security Act 1991* (SSA). Also, having to receive a payment under the SSA and also a WWP under the VEA, meant the person had to deal with two departments, the then Department of Social Security to receive their income support payment and also with the Department of Veterans' Affairs (DVA). ISS was introduced as a replacement payment arrangement provided by DVA to simplify the payment processes.

In introducing the ISS in March 1995, 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.

When originally introduced the ISS rate was 'frozen' – it was not indexed or increased unless a government saw fit to increase the rate. In more recent years, the ISS rate has been 'unfrozen' and it is now also indexed twice yearly to movements in Male Total Average Weekly Earnings (MTAWE).

ISS qualification

Currently, not all WWP recipients can qualify for ISS. The WWP recipient needs to:

- be of qualifying age (age 60 or more for males and over the age service pension qualifying age for females),¹⁰
- be permanently blind or permanently incapacitated and unable to work,
- have a dependant child or children, or
- be the partner of a person who is receiving an income support pension from either DVA or Centrelink.

10. For male veterans - age 60. For female veterans with qualifying service and female ISS qualifying age

Date of Birth	Qualify at
Born before 31 December 1947	now
1 January 1948 to 30 June 1949	58
1 July 1949 to 31 December 1950	58.5
1 January 1951 to 30 June 1952	59
1 July 1952 to 31 December 1953	59.5
1 January 1954 and later	60

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Changes to ISS access announced in the 2007 election campaign

The government announced the expansion of access to ISS for all WWP recipients in the 2007 election.¹¹ The changes to the access to ISS presented in this Bill will allow access to ISS to all WWP recipients.

Cost of the initiative

The Explanatory Memorandum details in its Outline and Financial Impact section that the estimated cost of the changes in **Schedule 2** of the Bill are \$0.6 million in 2007-08, \$5.3 million in 2008-09, \$4.9 million in 2009-10 and \$5.1 million in 2010-2011.¹²

WWP and recipients also on ISS

As at September 2007 there were 109 717 WWP recipients of which 83 796 (76.4 per cent) were also receiving ISS, leaving 25 921 (23.6 per cent) not receiving ISS.¹³ The vast majority of the 83 796 WWP recipients also receiving ISS would be those aged 58 or more, being the partners of former World War Two (WWII) veterans. This is confirmed by the fact that as at September 2007, of the 109 717 WWP recipients, some 100 554 (91.6 per cent) arose from their partner having WWII service.¹⁴

For the 25 921 not on ISS, not all would have other forms of income or other means of support. Certainly some would have access to other forms of support from other sources, like from:

- their own employment,
- their partner, where they have re-partnered, and/or
- superannuation, savings and investments.

For this group, where their income or assets exceed the pension income or assets test limits, no ISS is payable.

Comment

As explained above, currently only some WWP recipients can receive some additional income support in the form of ISS, albeit at a reduced rate. This initiative will allow all

11. Mr Kevin Rudd, MP and Mr Alan Griffin, MP, *Labor's Plan for Veterans' Affairs*, Labor party 2007 Election policy paper, op. cit.

12. Explanatory memorandum, p. ii.

13. Department of Veterans' Affairs, *DVA Pensioner Summary Statistics*, Canberra, Australia, September 2007, Tables 13 and 15.
http://www.dva.gov.au/media/publicat/Statistics/index.htm#pensioner_summary

14. *ibid.*, Table 14.

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WWP recipients access to ISS. Not all WWP recipients currently not being paid ISS will get paid ISS, some will have income or assets that exceed the income or assets test limits.

Schedule 3 – Extension of disability pension bereavement payments

Schedule 3 of the Bill proposes to amend the bereavement payment provisions in the VEA to provide a larger bereavement payment to persons on a T&PI or EDA rate disability pension, who are single and who die in indigent circumstances (see commentary over the page).

Changes to bereavement arrangements announced in the 2007 election campaign

The government announced its intention to provide an extended bereavement payment arrangement for some T&PI and EDA rate disability pensioners in its 2007 election veterans' policy statement.¹⁵

Cost of the initiative

The Explanatory Memorandum details in its Outline and Financial Impact section that the estimated cost of the changes in **Schedule 3** of the Bill are \$0.0 million in 2007-08, \$0.1 million in 2008-09, \$0.1 million in 2009-10 and \$0.1 million in 2010-2011.¹⁶

Current bereavement payment

Bereavement payment is provided to assist with the costs that may follow the death of a person and to help a surviving partner adjust their finances, given that the pension of the deceased person will stop.

Where the disability pensioner is single, their disability pension is stopped. No bereavement payment is made. Quite often there is one fortnightly payment paid after the date of death, as it often takes some days for DVA to be notified, but this is not usually recovered.

Where the disability pensioner was partnered, the disability pension is paid to the surviving partner for 6 fortnightly instalments after the date of death at the rate that applied at the time of death. This bereavement payment is to provide some financial assistance to the partner with the one-off extra costs of bereavement and also to provide some adjustment period for the partner to adjust to the drop in their income.

15. Mr Kevin Rudd, MP and Mr Alan Griffin, MP, *Labor's Plan for Veterans' Affairs*, Labor party 2007 Election policy paper, op. cit, p. 18.

16. Explanatory memorandum, p. ii.

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Proposed changes to the bereavement payments

The changes presented in **Schedule 3** are to provide the same 6 fortnightly payments (the bereavement payment) of disability pension, as currently applies to partnered recipients of a disability pensioner, to some single disability pension recipients. This is to apply where the pensioner was in receipt of the T&PI rate or the EDA rate and they are classified as indigent. The payments are to be made to the deceased pensioner's estate. A deceased T&PI or EDA rate disability pensioner is to be classified as indigent where the value of the person's estate is insufficient to cover all financial liabilities including funeral expenses.

Comment

The reference to the definition of indigent in the Explanatory Memorandum refers to a situation where:

the value of the person's estate is insufficient to cover all financial liabilities including funeral expenses¹⁷

There is very little detail in the Explanatory Memorandum as to what 'financial liabilities' refers to. Does it mean all financial liabilities, including bank and financial institution loans, monies owed to other persons or does it only refer to immediate debts necessary to be met to provide for a funeral? A definition of 'indigent circumstances' is not provided for in the Bill to be placed into the VEA, so one has to assume this will be spelt out as a matter of policy in guidelines, against what is described for in the Explanatory Memorandum.¹⁸ There is already a use of 'indigent circumstances' as currently a funeral benefit¹⁹ may be paid where a veteran dies in indigent circumstances.

It is common for a person to be buried within a week of their death. This means that applications for the bereavement payment to be paid to the estate of a single 'indigent' disability pensioner will need to be lodged and then assessed quickly, to meet the financial commitments of a funeral, before the funeral is conducted. The persons lodging the claim for the bereavement payment will probably be family members, friends of the pensioner or the executor of the estate of the pensioner. It is probable that many or most of the

17. Explanatory memorandum, p. 10.

18. *ibid.*

19. A funeral benefit is a one off payment made by DVA that is intended to help cover expenses incurred in respect of:

- the funeral of a deceased eligible veteran,
- the funeral of the deceased eligible dependant of a deceased veteran in specific circumstances, and
- the cost of transporting the veteran's body from the place of death to the normal place of residence.

DVA will pay up to \$2 000 towards the funeral costs of an eligible veteran or dependant.

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payments made will be post any funeral and that some of the benefit of this measure therefore may be lost. Presumably one of the benefits of this measure is to see a 'reasonable' funeral conducted for the deceased pensioner. The guidelines setting out how to assess whether the deceased pensioner was indigent will need to be both comprehensive and at the same time very clear and precise to enable timely assessments and payments.

Main provisions

Schedule 1 – Extension of the automatic grant of certain pensions

Item 1 adds references to the T&TI and the Intermediate rates of disability pension into sub-paragraph 13(2)(c)(i) of the VEA, which is the section that refers to those pensions where there is automatic entitlement to WWP, for the surviving partner of certain deceased disability pensioners.

Schedule 2 – Extending income support supplement to all war widows/ war widowers

Part 1 – Main amendments

Item 1 inserts a new section 45A into the VEA specifying that a WWP recipient is entitled to ISS. **Item 2** removes section 45AA from the VEA. Currently, there are situations where the WWP recipient can qualify for ISS on the grounds of permanent incapacity for work. Under the changes presented in this Bill, this will no longer be required as all WWP recipients will qualify for ISS, so long as they otherwise meet the income and assets tests.

Where a WWP recipient qualifies for ISS as they are assessed as being permanently incapacitated for work, any ISS paid is not taxable income. This is in line with both the Invalidity Service Pension paid under the VEA and also the Disability Support Pension paid under the SSA, which are likewise not taxable income. To ensure these WWP recipients are not in future disadvantaged, **Item 3** inserts a new sub-section 45Q(4), to require that where an ISS claimant claims that they are permanently incapacitated for work, the Repatriation Commission must make a determination as to that work capacity. This probably does not involve many cases, but for those few cases involved, where ISS is paid to a WWP recipient and they are also assessed as being permanently incapacitated for work, the ISS paid will not be taxable income.

Items 5 and 6 are transitional provisions basically ensuring that determinations about permanent incapacity for work made prior to this Bill coming into effect continue to apply.

Part 2 – Consequential amendments

Items 8 and 9 amend the SSA to reflect the amendments to the VEA in the main amendments of **Schedule 2**.

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The remaining items in **Part 2 of Schedule 2** amend various sections in the SSA that refer to the ISS qualifying age. Currently the age is over age service pension age.²⁰ This is to reflect that there is now a new definition of qualifying age in section 5Q of the VEA, being the general definitions section of the VEA. The amendments presented in this Bill will no longer require that the WWP recipient be of age service pension age to qualify for ISS.

Schedule 3 – Extension of disability pension bereavement payments

Items 1 and 2 inserts items into the *Income Tax Assessment Act 1997* (ITAA) to describe that any bereavement payment paid to a single veteran or member is not taxable income.

Item 3 inserts new provisions into the VEA to provide for a 6 payment bereavement payment to a deceased T&PI or EDA disability pensioner who died in indigent circumstances. **Items 6 and 7** inserts provisions requiring that a claim for the bereavement payment must be made within 12 months of the death of the disability pensioner.

Item 16 inserts provisions to provide that bereavement payments provided for under **Schedule 3** of the Bill are also not taxable income under the ITAA.

Concluding comments

The amendments to the VEA and associated other acts presented in this Bill are beneficial.

The extension of the automatic qualification to WWP for surviving partners of Intermediate rate and T&TI rate disability pensioners is logical. Currently, automatic qualification to WWP for the surviving partner only applies to some Intermediate rate disability pensioners, where the disability involves the loss of one or more limb/s. This is probably old fashioned and doesn't recognise that some other disabilities can be just as severe in their impact.

The extension of a bereavement payment to some single T&PI and EDA rate pensioners, who are assessed as being indigent at the time of death, while beneficial, could be problematic in application. If a part of this initiative is to help with the financial costs of a funeral for an indigent disability pensioner, often there is very limited time between the date of death and the conduct of the funeral.

20. For male veterans - age 60. For female veterans with qualifying service and female ISS qualifying age, op. cit.

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