



Veterans' Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007

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Contents

Purpose.	2
Background.	3
Passage of the Bill.	3
Schedule 1 – Veterans' Entitlements Act 1986	3
The different disability pensions and their payment rates under the VEA	3
General rate disability pension.	3
General rate disability pension payment rates September 2007 to March 2008	4
Special rate (T&PI).	4
Intermediate rate.	5
Extreme Disablement Adjustment (EDA).	5
Why do the different disability payments paid above 100 per cent general rate have different rates?	6
Disability pension ready reckoner	6
Income support and compensation payments under the VEA	8
Current indexation of the different disability pension rates.	8
Indexation of veterans' payments to CPI or to AWE – a vexed issue for veterans	9
Indexation to the CPI or AWE – who benefits can depend on timing	9
Criticisms of indexation rates to the CPI as opposed to indexing to AWE.	10
Main provisions.	11
Schedule 1 – Veterans' Entitlements Act 1986	11
Concluding comments	11

Veterans' Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007

Date introduced: 20 September 2007

House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: 20 March 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 purpose of this Bill is to provide for:

- a one-off increase in the rate of the general rate of disability pension of 5 per cent,
- the on-going indexation of the general rate of disability pension to both the Consumer Price Index (CPI) and also to movements in Male Total Average Weekly Earnings (MTAWE),
- a one-off increase in the rate of Extreme Disablement Adjustment (EDA) disability pension of \$15 a fortnight. This increase is to be applied to that part of the EDA rate paid above the 100 per cent general rate component of the EDA rate,¹
- a one-off increase in the rate of the War Widows' Pension/War Widowers' Pension (WWP). This increase of \$10 per fortnight is to that part of the WWP rate that is currently not indexed to the CPI and the MTAWE. The part of the WWP rate that is not indexed is the part paid above the age and service pension rate, being the part of the rate that used to be separately called the Domestic Allowance. This one-off \$10 per fortnight increase will see this part of the WWP rate increase to \$35 per fortnight, and
- the on-going indexation of that part of the WWP rate that is currently not indexed (see above) to both movements in the CPI and also to MTAWE.

1. The EDA rate is payable to a person aged 65 or more and the degree of incapacity from war or defence caused conditions must be extreme. The assessment only takes into account the medical impairment and lifestyle effects of a disability.

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Background

Passage of the Bill

This Bill was presented to the House of Representatives on 20 September 2007 and the Bill was passed by the House unamended on the same day. The Bill was also presented to the Senate on the same day and then passed by the Senate unamended on the same day. The Bill was granted Royal Assent on 25 September 2007.²

Schedule 1 – Veterans' Entitlements Act 1986

The different disability pensions and their payment rates under the VEA

There are four separate disability pension payments provided under the VEA. Each is not payable concurrently and each has a different payment rate. The payments are:

- General rate – paid from 10 per cent up to 100 per cent (see table below),³
- Special rate (Totally and Permanently Incapacitated (T&PI), blinded, or Totally and Temporarily Incapacitated (T&TI) – currently \$938.00 per fortnight (pf),⁴
- Intermediate rate – \$631.20pf,⁵ and
- Extreme Disablement Adjustment (EDA) rate - \$495.40pf.⁶

General rate disability pension

The general rate disability pension is payable from 10 per cent (\$32.28pf) up to a 100 per cent disability rate (\$322.80pf) – see table below. The general rate is linked to the individual's level of assessed disability. Any general rate disability pension paid, being compensation for a war or service caused illness/injury, is not income or asset tested, nor is it taxable income.

2. House of Representatives, Daily Bills List, 1st Session 2004-05-06-07, *Bills Initiated in the House of Representatives as at cob 28 September 2007*, Final for 2007.
<http://parlinfoweb.parl.net/parlinfo/Repository/Legis/OldBLst/12020800.doc>

3. The rates of disability pension apply from 20 September 2007 to 19 March 2008.

4. *ibid.*

5. *ibid.*

6. *ibid.*

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General rate disability pension payment rates September 2007 to March 2008

Level of disability	Rate per fortnight	Level of disability	Rate per fortnight
100%	\$322.80	55%	\$177.54
95%	\$306.66	50%	\$161.40
90%	\$290.52	45%	\$145.26
85%	\$274.38	40%	\$129.12
80%	\$258.24	35%	\$112.98
75%	\$242.10	30%	\$96.84
70%	\$225.96	25%	\$80.70
65%	\$209.82	20%	\$64.56
60%	\$193.68	15%	\$48.42
		10%	\$32.28

Special rate (T&PI)

The Special rate disability pension is commonly referred to as the Totally and Permanently Incapacitated (T&PI) disability pension. The Special rate works very much like the Intermediate rate, but the incapacity for work test is tougher. The Special rate is potentially payable where the person is assessed as having a 70 per cent or more disability (using the assessment used for the general rate) and is also assessed as unable to work for at least 8 hours a week. The Special rate is \$938.00pf. The \$938.00pf is the only amount of disability pension paid and is not paid in addition to any general rate disability pension.

Separate to the 8 hours a week test; there are a few other situations where the Special rate can be paid, for example where the person has pulmonary tuberculosis (TB). Where the person has TB, it is assumed the disability and inability to work requirements are met and the Special rate is paid.

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The Special rate as applied under the VEA, which is paid at a higher rate than the 100 per cent general rate, recognises the resultant work inability of the person arising from their war/service caused/related illness/injury, so has a component for income support. The Special rate disability pension, being compensation, is not income or asset tested, nor is it taxable income.

Where a person is aged 65 or more, to qualify for the Special rate additional criteria apply. The last paid work, which is precluded by the incapacity, must have commenced prior to 65 and the person must have been employed in it for at least 10 years. Retired persons, aged 65 or more, with very severe disabilities, might be entitled to the Extreme Disablement Adjustment rate of disability pension – see below.

Intermediate rate

The Intermediate rate disability pension is potentially payable where the person is assessed as having a 70 per cent or more disability (using the assessment for the general rate) and it is also assessed the person is unable to work for at least 20 hours a week. In this case, the \$631.20pf Intermediate rate is paid instead of a general rate disability pension of 70 per cent or more (that is, \$225.96pf to \$322.80pf).

The Intermediate rate is not always payable where the disability assessment is 70 per cent or more. For example, a person may be assessed as having an 80 per cent disability but may also be able to work for more than 20 hours a week. In this case the Intermediate rate is not payable, only the 80 per cent general rate, that is \$258.24pf.

The Intermediate rate, which is paid at a higher rate than the 100 per cent general rate, recognises the resultant work inability of the person arising from their war/service caused/related illness/injury, so like the Special rate, the Intermediate rate has a component for income support. Separate to the 20 hours a week test, there are a few other situations where the Intermediate rate can be paid, for example to those suffering from TB.

The Intermediate rate disability pension, being compensation, is not income or asset tested, nor is it taxable income.

Extreme Disablement Adjustment (EDA)

The EDA rate disability pension can only be considered for persons who have reached 65 years of age and who are entitled to a disability pension at 100 per cent general rate but are also not eligible to receive a Special rate or Intermediate rate pension. This may be due to the person not having paid work, which is precluded by the incapacity, having commenced prior to 65 and not employed in it for at least 10 years. See Special rate disability pension above. As the person is aged 65 or more, the inability to work tests of either 20 hours a week (ie. that used for Intermediate rate) or 8 hours a week (ie. that used for Special rate)

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are not applied. Instead, a test requiring 70 medical points or more and at least 6 out of 7 lifestyle points is applied to qualify for EDA.

EDA, being compensation, is not income or asset tested.

Why do the different disability payments paid above 100 per cent general rate have different rates?

The prime reason the three different disability pensions that are paid above 100 per cent general rate have different payment rates lies in their different origins, purpose and evolutions.

The Special rate and the Intermediate rate pensions are the two payments paid to persons of working age and therefore have a work test criteria. The difference in the rates of Special rate and the Intermediate rate recognises that the work test for Special rate is tougher, ie. an 8 hour a week test as opposed to a 20 hour a week test. With the Intermediate rate and its 20 hour test, the person has some capacity to supplement their pension with some employment income. Remembering all payments are not means tested.

Disability pension ready reckoner

Disability pension	Basic qualification	Aim & purpose of payment	Current indexation arrangements
General rate	<p>Must have a qualifying war or service related illness/injury</p> <p>Rate paid is connected to assessed level of permanent impairment from 10% to 100%</p>	<p>Compensation for war or service caused illness/injury</p> <p>No element of income support so has no income or assets test</p>	<p>Indexed twice a year to the CPI – 20 March and 20 September</p>
Special rate	<p>Must have a qualifying war or service related illness/injury</p> <p>Unable to work for at least 8 hours a week due to war/service illness/injury</p>	<p>Compensation for war or service caused illness/injury</p> <p>Is primarily compensation for war or service caused illness/injury but has some element of income support recognising the person cannot support themselves from employment due to illness/injury</p>	<p>That part of the Special rate paid above 100% of the General rate is indexed to the CPI and to movements in MTAWA twice a year 20 March and 20 September</p> <p>That part of the Special rate paid up to 100% of the General rate is indexed to the CPI twice a year 20 March and 20 September</p>

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Disability pension	Basic qualification	Aim & purpose of payment	Current indexation arrangements
		Has no income or assets test	
Intermediate rate	<p>Must have a qualifying war or service related illness/injury</p> <p>Unable to work for at least 20 hours a week due to war/service illness/injury</p>	<p>Compensation for war or service caused illness/injury</p> <p>Is primarily compensation for war or service caused illness/injury but has some element of income support recognising the person cannot wholly support themselves from employment due to illness/injury</p> <p>Has no income or assets test</p>	<p>That part of the Intermediate rate paid above 100% of the General rate is indexed to the CPI and to movements in MTAWWE twice a year 20 March and 20 September.</p> <p>That part of the Intermediate rate paid up to 100% of the General rate is indexed to the CPI twice a year 20 March and 20 September.</p>
Extreme Disablement Adjustment (EDA)	<p>Must have a qualifying war or service related illness/injury</p> <p>EDA only be considered for veterans aged 65> and are entitled to a disability pension at 100% but not the Special rate or the Intermediate rate. As the veteran is aged 65>, the inability to work tests are not used. Instead a test requiring 70 medical points or more & at least 6 out of 7 lifestyle points is applied to qualify for EDA</p>	<p>Compensation for war or service caused illness/injury</p> <p>Is compensation for war or service caused illness/injury</p> <p>Has no income or assets test</p>	<p>That part of the EDA rate paid above 100% of the General rate is indexed to the CPI and to movements in MTAWWE twice a year 20 March and 20 September.</p> <p>That part of the EDA rate paid up to 100% of the General rate is indexed to the CPI twice a year 20 March and 20 September</p>

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Income support and compensation payments under the VEA

The disability pensions provided under the VEA are paid as compensation for a war or service caused/related illness or injury. As said above, being compensation they are not means tested (income or assets) and are not taxable income. The other main compensation payment provided under the VEA is the war widow's/er's pension (WWP). WWP is paid recognising that the partner of the person has had a war or service caused or related death. Like the disability pensions, the WWP is not means tested nor is it taxable income.

The other main pension payments provided under the VEA are the income support payments, being the:

- age service pension,
- invalidity service pension, and
- Income Support Supplement (ISS).

These income support payments are paid to provide for the basic and essential costs of living like for food, accommodation, transport and are means tested (income and assets) to target assistance to those with lesser means. These payments are very like the means tested income support welfare payments provided under the *Social Security Act 1991* (SSA). They are also taxable income, although the pensioner tax rebate means in the end they pay no tax on any payment received.

Current indexation of the different disability pension rates

Major changes have been made to the indexation arrangements for the disability pensions that are paid above the 100 per cent general rate in the past few years. These changes arose from the Clarke Review of veterans' entitlements.⁷ The report recommended:

30.35 As payment for personal loss, non-economic loss compensation would be adjusted twice yearly to reflect increases in the CPI and maintain its purchasing power. As an income substitute, economic loss compensation would be adjusted twice yearly to reflect increases in MTAW and preserve its relation to community income standards.⁸

As a result, the government made changes to the indexation arrangements for the disability pensions that are paid above 100 per cent general rate.⁹ As explained in the Table above,

7. The Hon. J. C. Clarke QC, *Report of Review of Veterans' Entitlements*, Commonwealth of Australia, Canberra, 6 January 2003, <http://www.veteransreview.gov.au/report/index.htm>

8. *ibid.*, point 30.35, p. 624.

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

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these pensions are the Special rate, the Intermediate rate and the EDA rate. The changes involved indexing that part of these rates paid above 100 per cent general rate to movements in the CPI and also the MTAW, whichever indexation factor realises the greater increase. So the whole of the Special rate (\$938.00pf) isn't indexed to both the CPI and MTAW, just that amount paid above 100 per cent general rate (which is \$322.80pf), being the residual \$615.20pf. The remaining amount (\$322.80pf) continues to be indexed to the CPI alone each 20 March and 20 September. See the Table above.

Indexation of veterans' payments to CPI or to AWE – a vexed issue for veterans

The issue of indexing veterans' payments to movements in the CPI or to average weekly earnings (AWE) has been a vexed issue for many years. This concern has had a particular focus since the indexation of income support pensions (age and service pension) to 25 per cent of MTAW since 1997.¹⁰ It is further fuelled by the fact that in the period from September 1997 to September 2007, the CPI has increased by 32.4 per cent, whereas MTAW has increased by 52 per cent.¹¹ Disability pension recipients have seen the age and service pensions indexed to the CPI and to 25% of MTAW and have considered they have been comparatively disadvantaged.

The Australian Labor Party policy in this area was spelt out in early 2007.

Prior to the Budget on Sunday the 6th of May, the Labor party announced that should they win government at the next election, they would index the TPI payment to Male Total Average Weekly Earnings (MTAW) or the Consumer Price Index (CPI) whichever is the greater with the first adjustment to pensions after the 2008 May budget. This would be another major breakthrough for TPI's because when this indexation regime is implemented there will be a great feeling of relief for TPI's. It will mean that the TPI payment will maintain its real value into the future. Shadow Minister Alan Griffin and the Opposition are to be congratulated on the announcement of this policy.¹²

Indexation to the CPI or AWE – who benefits can depend on timing

While it is true in more recent times, average weekly earnings (AWE) increases have been greater than CPI increases, the table below demonstrates that there have been times in the past when the CPI has grown at a greater rate than the other two AWE indexes. In particular, between the 1985-86 and 1989-90, the CPI was increasing at a greater rate than earnings rates, mainly due to increasing interest rates and the then Wages Accords. Also,

10. Social Security and Veterans' Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997.

11. CPI – ABS catalogue No. 6401.0., AWE – ABS catalogue No. 6302.0.

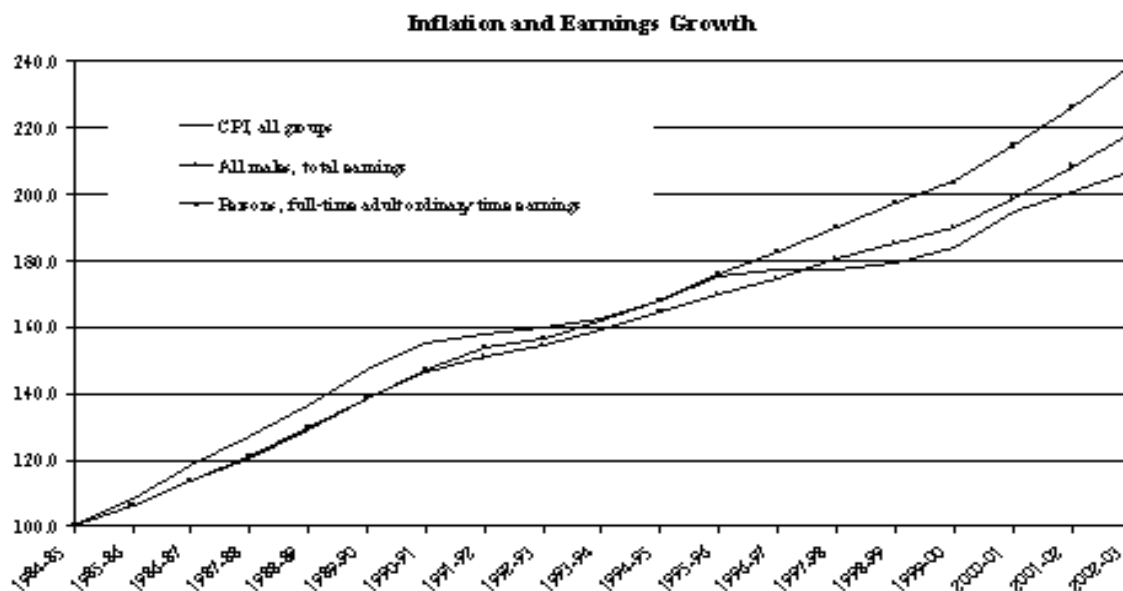
12. The Australian Federation of Totally and Permanently Incapacitated Ex-servicemen and Women Ltd, Budget 2007 media release, *media release*, Adelaide, 20 May 2007. <http://www.tpifed.org.au/index.asp?ID=245>

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this again happened in the 2000-01 year, due to a spike in the CPI induced by the introduction of the Goods and Services Tax (GST).



Criticisms of indexation rates to the CPI as opposed to indexing to AWE

The main criticism of indexing payment rates to the CPI is that while it maintains rates with rises in the cost of living it does not maintain rates with comparative living standards. This especially applies in the more recent periods, where inflation rates and interest rates are low and increases in earnings rates are comparatively high. However, it is relevant to note that more than 60 per cent of earners earn less than AWE.¹³ Also, one of the big drivers of increasing average earnings rates is the top 2 to 5 percent of earners achieving significant increases in earnings, driving the average upwards. It could be argued that calls for pension rates to be indexed to AWE, as opposed to being indexed to CPI, are opportunistic.

In considering whether the disability pensions provided under the VEA should be indexed to earnings rates, it should be remembered the disability payments are different to the income support pension payments like the service pension and the age pension provided under the SSA. See '*Income support and compensation payments under the VEA*' above. While there is probably a good case to maintain that the compensation payments should be maintained with increased living costs (that is the CPI), it is debateable as to whether the government should be required to maintain compensation payment rates with earnings rates.

13. ABS catalogue No. 6306.0.

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Main provisions

Schedule 1 – Veterans' Entitlements Act 1986

Item 1 raises 100 per cent general rate disability pension to \$338.94 per fortnight. This reflects the one-off 5 per cent increase over the 20 March 2007 to 19 September 2007 rate of this pension, which is \$322.80 per fortnight.

Item 2 amends the EDA rate raising it to \$510.40, being a one-off \$15 increase applied to the 20 March 2007 to 19 September 2007 EDA rate of \$495.40 per fortnight.

Item 3 amends the non-indexed component of the WWP rate from \$25 per fortnight increasing it to \$35 per fortnight.

Items 4 to 10 amend section 198 of the VEA to provide for the indexation of the general rate of disability pension to movements in both the CPI and MTAW, which ever provides for the greater increase. The increases in rate are to apply from 20 March and 20 September of each year. Currently the general rate is indexed to movements in the CPI alone.

Item 11 provides transitional provisions to ensure that the one-off increases in the rates are to apply from 20 March 2008 and the new indexation processes are also to apply from 20 March 2008 and are to include the one-off increases in the rates.

Concluding comments

The indexation of the general rate of disability pension to movements in both the CPI and MTAW addresses a long standing concern of disability pension recipients. Disability pensioners have considered that the indexation of income support pension rates to both the CPI and MTAW has seen them comparatively disadvantaged.

It is arguable as to whether the government should be required to index the rates of compensation pension payments to movements in earnings rates. Compensation payments are not paid for income support reasons and are not means tested. The Clarke Review recommended that the part of the disability pension rates that are paid above 100 per cent general rate should be indexed to earnings rates¹⁴ and the Howard government provided for that recommendation.¹⁵ Perhaps this move to index all disability pension rates to both the CPI and earnings rates was done with the looming 2007 November election in mind.

14. The Hon. J. C. Clarke QC, *Report of Review of Veterans' Entitlements*, Commonwealth of Australia, op. cit., point 30.35, p. 624.

15. Peter Yeend, *Veterans' Entitlements (Clarke Review) Bill 2004*, *Bills Digest No. 134 2003-04*, op. cit.

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The one-off increases in the rates of disability pension, that is 5 per cent for the general rate and \$15 per fortnight for the EDA rate, will be welcomed. Likewise the one-off increase of \$10 to the non-indexed component of the WWP rate, raising it to \$35 per fortnight will be welcomed.

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