



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

ELEVENTH REPORT

OF

2002

25 September 2002

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MEMBERS OF THE COMMITTEE

Senator J McLucas (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator T Crossin
Senator D Johnston
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT OF 2002

The Committee presents its Eleventh Report of 2002 to the Senate.

The Committee draws the attention of the Senate to clauses of the following which contains provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Veterans' Affairs Legislation Amendment Act (No. 2) 2002

Veterans' Affairs Legislation Amendment Act (No. 2) 2002

Introduction

The Committee dealt with the bill for this Act in *Alert Digest No. 7 of 2002*, in which it made various comments. The Minister for Veterans' Affairs has responded to those comments in a letter dated 27 August 2002.

Whilst this bill has now been passed by both Houses (and received Royal Assent on 6 September 2002) the response may, nevertheless, be of interest to Senators. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 7 of 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Veterans' Affairs. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans' Entitlements Act 1986* (VEA) to:

- remove an inequity in the operation of various compensation recovery provisions of the VEA to ensure that certain pensioners will not be disadvantaged because they are not subject to the same compensation recovery provisions as other pensioners in similar circumstances;
- make consequential amendments relating to earlier changes to the recovery of lump sum compensation payments received by the partners of service pension or income support supplement recipients;
- prevent the misuse of the provisions relating to the payment of retirement village entry contributions for the purpose of obtaining rent assistance for which a person would otherwise be ineligible;
- clarify access rights to a telephone allowance for those eligible persons who operate a mobile telephone instead of a fixed telephone;

- align the eligibility for rent assistance under the VEA for pensioners who also receive a Family Tax Benefit at the base rate with the provisions of the *Social Security Act 1991* that apply to social security pensioners in similar circumstances. The amendments ensure that access to rent assistance is available under the VEA to those persons receiving Family Tax Benefit without a rent component;
- extend the eligibility criteria for the Pension Loans Scheme to certain persons who are not a veteran or the partner of a veteran; and to provide that a person who is eligible for, or receiving, income support supplement may be eligible for the Pension Loans Scheme from ‘qualifying age’;
- enable war widows and war widowers to be eligible for the Commonwealth Seniors Health Card (CSHC) from ‘qualifying age’; and
- amend the definition of a ‘non-illness separated spouse’ so that it may apply to a person who is a veteran or a non-veteran.

No assurance that retrospectivity is benign

Items 3 to 8 of Schedule 1

By virtue of item 3 in the table to subclause 2(1), items 3 to 8 of Schedule 1 to this bill would commence immediately after the commencement of Schedule 1 to the *Veterans’ Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*. Reference to that Act, and to Alert Digest No. 2 of 2002, indicates that Schedule 1 to that Act commenced retrospectively on 20 September 2001. However, reference to the Committee’s Third Report of 2002 reveals that, when the Committee inquired of the Minister whether that retrospectivity would adversely affect any person, the Minister was able to assure the Committee that there was no adverse effect arising from that retrospectivity. However, none of the above information is contained in the Explanatory Memorandum to the bill currently under consideration. The most that that Memorandum advises is that the amendments proposed by items 3 to 8 of Schedule 1 to this bill will have “No financial impact.” Whether the lack of financial impact relates to the Commonwealth or to pensioners under the *Veterans’ Entitlements Act 1986* is not indicated. The Committee, therefore, **seeks the Minister’s advice** as to why the above details gleaned from the Committee’s Digest and Report were not included in the Explanatory Memorandum.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Minister

My advice was sought as to why the relevant details regarding the earlier amendments made by Schedule 1 of the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002* were not included in the Explanatory Memorandum for the *Veterans' Affairs Legislation Amendment Bill (No. 2) 2002*. The comments also refer to there being no assurance that the effect of the retrospectivity is benign.

I am able to confirm that the proposed amendments are beneficial and could not adversely affect any person. The amendments are consequential amendments to the compensation recovery provisions of the *Veterans' Entitlements Act 1986* (VEA) that provide for the direct recovery of compensation debts from compensation payers and insurers.

The Explanatory Memorandum states that the amendments are consequential to earlier amendments included in the *Veterans' Affairs legislation Amendment (1996-97 Budget Measures) Act 1997*. That Act included beneficial amendments which had exempted the partners of persons receiving payments of lump sum compensation, on or after 20 March 1997, from being subject to the compensation recovery provisions of Part IIIC of the VEA. That Act should have included amendments to the provisions that are the subject of the proposed amendments.

The commencement date for the amendments specified in subclause 2(1) was the earliest possible given the amendments made by Schedule 1 of the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*. That Act had included amendments to the provisions that are the subject of the relevant amendments. The amendments made by that Act implemented a beneficial policy relating to the treatment of periodic compensation payments received by the partner of a person receiving a service pension.

The basis for the statement that the amendments had no financial impact is that the Department is not aware of any cases where a notice has been issued to a compensation payer or insurer for the direct recovery of any pension overpayments relating to the post-20 March 1997 receipt of lump sum compensation by the partner of a person receiving a service pension.

Further I am not aware of any reason why there would be any need to include in the Explanatory Memorandum of a later Bill a reference to the response given to concerns raised by the Committee concerning proposed amendments included in an earlier Bill.

The Committee thanks the Minister for this response.

Jan McLucas
Chair



MINISTER FOR VETERANS' AFFAIRS

MINISTER ASSISTING THE MINISTER FOR DEFENCE

Senator J McLucas
Chairman
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

RECEIVED

29 AUG 2002

*Senate Standing Committee
for the Scrutiny of Bills*

Dear Senator McLucas *Jan*

I refer to the Committee's letter of 22 August 2002 concerning comments in the Senate Standing Committee for the Scrutiny of Bills Alert Digest (No. 7 of 2002) of 21 August 2002, relating to the retrospective amendments to be made by subclause 2(1) and by Items 3 to 8 of Part 2, of Schedule 1 of the *Veterans' Affairs Legislation Amendment Bill (No. 2) 2002*.

My advice was sought as to why the relevant details regarding the earlier amendments made by Schedule 1 of the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002* were not included in the Explanatory Memorandum for the *Veterans' Affairs Legislation Amendment Bill (No. 2) 2002*. The comments also refer to there being no assurance that the effect of the retrospectivity is benign.

I am able to confirm that the proposed amendments are beneficial and could not adversely affect any person. The amendments are consequential amendments to the compensation recovery provisions of the *Veterans' Entitlements Act 1986* (VEA) that provide for the direct recovery of compensation debts from compensation payers and insurers.

The Explanatory Memorandum states that the amendments are consequential to earlier amendments included in the *Veterans' Affairs Legislation Amendment (1996-97 Budget Measures) Act 1997*. That Act included beneficial amendments which had exempted the partners of persons receiving payments of lump sum compensation, on or after 20 March 1997, from being subject to the compensation recovery provisions of Part IIIC of the VEA. That Act should have included amendments to the provisions that are the subject of the proposed amendments.

The commencement date for the amendments specified in subclause 2(1) was the earliest possible given the amendments made by Schedule 1 of the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*. That Act had included amendments to the provisions that are the subject of the relevant amendments. The amendments made by that Act implemented a beneficial policy relating to the treatment of periodic compensation payments received by the partner of a person receiving a service pension.

The basis for the statement that the amendments had no financial impact is that the Department is not aware of any cases where a notice has been issued to a compensation payer or insurer for the direct recovery of any pension overpayments relating to the post-20 March 1997 receipt of lump sum compensation by the partner of a person receiving a service pension.

Further I am not aware of any reason why there would be any need to include in the Explanatory Memorandum of a later Bill a reference to the response given to concerns raised by the Committee concerning proposed amendments included in an earlier Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Danna', with a horizontal line drawn underneath it.

DANNA VALE MP

27 AUG 2002

