



Veterans' Affairs Legislation Amendment (Budget Measures) Act 2000

No. 157, 2000



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An Act to amend the *Veterans' Entitlements Act 1986*, and for related purposes

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[Assented to 21 December 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2000*.

2 Commencement

- (1) Subject to this section, sections 1, 2 and 3 and Schedule 1 commence on the day on which this Act receives the Royal Assent.

- (2) Schedules 2, 3 and 4 commence, or are taken to have commenced, on 1 January 2001.
- (3) Schedule 5 commences on 1 July 2001.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the provision of specified treatment to veterans, veterans' dependants and former dependants of veterans

Veterans' Entitlements Act 1986

1 Subsection 88A(1)

Repeal the subsection, substitute:

- (1) The Commission may, by written determination, state the following:
 - (a) that a veteran included in a specified class is eligible to be provided with treatment of a specified kind under this Part;
 - (b) that a person who is the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;
 - (c) that a person who was the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part.

Note: The heading to section 88A is altered by inserting “**and others**” after “**veterans**”.

2 Section 92

Repeal the section, substitute:

92 Counselling services and psychiatric assessment

- (1) The Commission may, with the approval of the Minister, arrange for the provision of:
 - (a) counselling services for:
 - (i) veterans and dependants of veterans; and
 - (ii) a person in a class in respect of which a determination under paragraph 88A(1)(c) has been made; and
 - (b) psychiatric assessment of a person in a class in respect of which a determination under paragraph 88A(1)(b) or (c) has been made.

Schedule 2—Amendments extending access to the Veterans' Children Education Scheme

Veterans' Entitlements Act 1986

1 At the end of the definition of *eligible child of a veteran* in subsection 116(1)

Add:

- ; or (e) a person determined under subsection 116C(2) to be included in a class that has been determined by the Commission under subsection 116A(1) for the purposes of this paragraph.

2 After section 116

Insert:

116A Determination of class of persons for the purposes of paragraph (e) of the definition of *eligible child* in subsection 116(1)

- (1) The Commission may, in writing, determine a class of persons for the purposes of paragraph (e) of the definition of eligible child of a veteran in subsection 116(1).

Variation or revocation

- (2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

- (3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

116B Person may apply for determination under subsection 116C(2)

An application for a determination under subsection 116C(2) to be made in respect of a person who is, or was, the child of a veteran may be made, in writing, to the Commission:

- (a) in the case of a person (the **child**) who is, or was, the child of a veteran and who is over the age of 18 years:
 - (i) by the child; or
 - (ii) with the approval of the child, by another person on behalf of the child; or
 - (iii) if the child is unable, by reason of physical or mental incapacity, to approve a person to make the claim or application on his or her behalf—by another person, being a person approved by the Commission, on behalf of the child; or
- (b) in the case of a person who is, or was, the child of a veteran and who is under the age of 18 years:
 - (i) by a parent or guardian of the child; or
 - (ii) by another person approved by a parent or guardian of the child; or
 - (iii) if there is no parent or guardian of the child alive, or willing and able to make, or approve a person to make, such an application on behalf of the child—by another person, being a person approved by the Commission; on behalf of the child.

116C Commission may determine that a person is a member of a class determined under section 116A

- (1) If an application has been made under section 116B in respect of a person, the Commission must decide whether the person the subject of the application falls within a class of persons determined by the Commission under subsection 116A(1).
- (2) If the Commission decides that the person falls within a class of persons determined by the Commission under subsection 116A(1), the Commission must determine, in writing, that the person is included in the specified class.
- (3) The Commission must give the person written notice of the Commission's decision under subsection (1).

116D Review of Commission's decision under subsection 116C(1)

- (1) A person who is dissatisfied with a decision of the Commission under subsection 116C(1) may, in writing, request the Commission to review the decision.
- (2) If a written request is made, the Commission must review the decision, or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).
- (3) When the Commission reviews a decision under subsection (2), it must make a written record of its decision (the *review decision*) upon review.
- (4) The written record must include a statement that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the review decision.
- (5) If the review decision affirms or sets aside a decision under subsection 116C(1), it must give the person who requested the review of the decision:
 - (a) a copy of the Commission's review decision; and
 - (b) subject to subsection (6), a copy of the statement about the review decision; and
 - (c) a statement that the person has a right to apply to the Administrative Appeals Tribunal for a review of the review decision.
- (6) If the statement referred to in paragraph (5)(b) contains any matter that, in the opinion of the Commission:
 - (a) is of a confidential nature; or
 - (b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;the copy given to the person is not to contain that matter.

3 At the end of section 175

Add:

(5) If the Commission, under subsection 116D(2):

- (a) affirms a decision of the Commission under subsection 116C(1); or
- (b) sets aside such a decision and substitutes another decision for it;

then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review:

- (c) of the decision so affirmed; or
- (d) of the decision made by the Commission in substitution for the decision so set aside.

Schedule 3—Amendments relating to the income test treatment of payments under the ABSTUDY Scheme

Veterans' Entitlements Act 1986

1 After paragraph 5H(8)(h)

Insert:

- (ha) a payment under the ABSTUDY Scheme;

2 At the end of Subdivision A of Division 3 of Part III

Add:

36CA Exclusion of certain participants in ABSTUDY Scheme

If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance is included; and
- (d) the payment relates to a period; age service pension is not payable to the person in respect of any part of the period.

3 At the end of Subdivision A of Division 4 of Part III

Add:

37CA Exclusion of certain participants in ABSTUDY Scheme

If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and
(d) the payment relates to a period;
invalidity service pension is not payable to the person in respect of any part of the period.

4 At the end of Subdivision A of Division 5 of Part III

Add:

38CA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and
(b) the payment is made on the basis that the person is a full-time student; and
(c) in the calculation of the payment, an amount identified as living allowance is included; and
(d) the payment relates to a period;
partner service pension is not payable to the person in respect of any part of the period.

5 After section 45D

Insert:

45DA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and
(b) the payment is made on the basis that the person is a full-time student; and
(c) in the calculation of the payment, an amount identified as living allowance is included; and
(d) the payment relates to a period;
income support supplement is not payable to the person in respect of any part of the period.

Schedule 4—Amendments relating to service entitlement anomalies

Veterans' Entitlements Act 1986

1 Subparagraph 6D(1)(a)(iii)

Omit “31 August 1968”, substitute “24 June 1965”.

2 Paragraph 6D(1)(b)

Repeal the paragraph, substitute:

(b) was, at any time during the period from and including 1 August 1960 and including 27 May 1963, in the area comprising the territory of Singapore and the country then known as the Federation of Malaya;

3 Subparagraph 7A(1)(a)(iii)

Omit “subject to subsection (1A),”.

4 Paragraph 7A(1)(b)

Omit “(not being war or war-like operations so engaged in as part of, or in association with, the British Commonwealth Far East Strategic Reserve in the area described in item 3 of Schedule 2 (in column 1) during the period specified in column 2 of that Schedule opposite to that description)”.

5 Subsection 7A(1A)

Repeal the subsection.

6 Schedule 2 (table item 3, column 2)

Omit “27 May 1963”, substitute “31 July 1960”.

7 Schedule 2 (table item 5, column 2)

Omit “28 May 1963 to and including 19 April 1967”, substitute “1 August 1960 to and including 16 August 1964”.

8 Schedule 2 (table item 6, column 2)

Omit “30 September 1967”, substitute “16 August 1964”.

9 Schedule 2 (table item 7, column 1)

Repeal the cell, substitute:

The territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries.

Schedule 5—Amendments relating to calculation of payment of certain pensions and allowances

Veterans' Entitlements Act 1986

1 Subsection 5Q(1) (definition of pension period)

Repeal the definition, substitute:

pension period means a period of 2 weeks that:

- (a) starts 2 days before the beginning of a pension payday; and
- (b) ends 2 days before the beginning of the next pension payday.

2 Section 5S

Repeal the section.

3 Paragraph 19(1)(b)

Omit “or the application as provided by subsection (4)”.

4 At the end of subsection 19(1)

Add:

- ; and
- (c) subject to this section, determine an application under subsection 15(1) under subsection (5D); and
- (d) subject to this section, determine an application under subsection 15(2) as provided by subsection (5).

5 Paragraph 19(3)(b)

Omit “subsection (5)”, substitute “subsections (5A), (5B), (5C) and (5D)”.

6 Subsections 19(4) and (5)

Repeal the subsections, substitute:

- (4) The Commission must determine an application under subsection 15(2) as provided by subsection (5).

- (4A) The Commission must deal with an application under subsection 15(1) in accordance with subsections (5A), (5B) and (5C) and determine the application under subsection (5D).
- (5) The Commission must determine an application under subsection 15(2) as follows:
 - (a) first, the Commission must determine whether the claimant is entitled to be granted a pension in respect of the incapacity of the veteran;
 - (b) then, if the Commission determines that the applicant is so entitled, the Commission must proceed as set out in subsections (5A), (5B), (5C) and (5D).
- (5A) If:
 - (a) paragraph (3)(b) applies in respect of a claim; or
 - (b) subsection (4A) applies in respect of an application under subsection 15(1); or
 - (c) paragraph (5)(b) applies in respect of an application under subsection 15(2);the Commission must assess the matters set out in subsection (5C).
- (5B) The Commission must assess the matters set out in subsection (5C) in accordance with whichever of sections 22, 23, 24, 25, 27 and 30 are applicable in the particular case.
- (5C) The matters that the Commission must assess are:
 - (a) the rate or rates at which the pension would have been payable from time to time during the assessment period; and
 - (b) subject to subsection (6), the rate at which the pension is payable.
- (5D) After making an assessment under subsection (5C), the Commission must determine that pension is payable at the rate assessed.
- (5E) Pension is payable from the date of effect of the determination made under:
 - (i) in the case of a claim—subsection (3); or
 - (ii) in the case of an application made under subsection 15(2)—paragraph (5)(a); or
 - (iii) in the case of an application made under subsection 15(1)—subsection (5D).

(5F) A determination under:

- (a) subsection (3), in respect of a claim; or
- (b) subsection (5), in respect of an application under subsection 15(2); or
- (c) subsection (5D), in respect of an application under subsection 15(1);

takes effect from the date on which the determination is made or on such later or earlier date as is specified in the determination.

7 Subsection 19(6)

Omit “paragraph (5)(a)”, substitute “subsection (5C)”.

8 Subsection 19(6)

Omit “from the date of the determination”.

9 Subsection 20(1)

Omit “approve payment of the pension from and including”, substitute “specify as a date that a determination under subsection 19(3) takes effect in respect of the claim,”.

10 Subsection 20(2)

Omit “approve payment of the pension from and including”, substitute “specify as a date that a determination under subsection 19(3) takes effect in respect of the claim,”.

11 Subsection 20(3)

Repeal the subsection, substitute:

(3) Nothing in this section empowers the Commission to specify as a date that a determination of a claim under subsection 19(3) takes effect in respect of a person who has made a claim for a pension under section 14, a date before the date that the person became eligible to be granted the pension.

Note: The heading to section 20 is replaced by the heading “**Dates of effect that may be specified in respect of grant of claim for pension**”.

12 Subsection 21(1)

Omit “approve payment of pension at the increased rate, or payment of pension, from and including”, substitute “specify as a date that a determination of an application made under section 15 takes effect in respect of a person.”.

13 At the end of subsection 21(1)

Add:

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

14 Subsection 21(2)

Omit “approve payment of the increased pension, or of the pension, from and including”, substitute “specify as a date that a determination of an application made under section 15 takes effect.”.

Note: The heading to section 21 is replaced by the heading “**Dates of effect that may be specified in respect of grant of applications under section 15**”.

15 At the end of subsection 21(2)

Add:

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

16 Subsection 21(3)

Repeal the subsection, substitute:

- (3) Nothing in this section empowers the Commission to specify as a date that a determination of an application made under section 15 takes effect in respect of a person, a date before the date that the person became eligible to be granted the increased pension, or pension, as the case may be.

17 At the end of subsection 21(3)

Add:

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

18 Subsection 98(4)

Omit “first pension pay-day”, substitute “day of the first pension period”.

19 Paragraph 114(2)(b)

Omit “as from the first pension pay-day after the date on which the veteran’s application in respect of that war-caused injury or war-caused disease is received”, substitute “as from the date on which the veteran’s application for the allowance in respect of that war-caused injury or war-caused disease is received”.

20 Section 115A (definition of *CPI indexation day*)

Repeal the definition, substitute:

CPI indexation day means:

- (a) for the purposes of section 115D—the day that begins each relevant period within the meaning of that term in section 198; and
- (b) for the purposes of section 115G—a day that is an indexation day for the maximum basic rate under subsection 59B(1).

21 Section 115A (definition of *CPI payday*)

Repeal the definition.

22 Subsection 115D(1)

Omit “the pension reduction amount in respect of a veteran for a pension payday”, substitute “the daily pension reduction amount in respect of a veteran for a pension period”.

23 Subsection 115D(1)

Omit “CPI payday”, substitute “CPI indexation day”.

24 Subsection 115D(1)

Repeal the formula, substitute:

$$\frac{\text{Pension rate on commencement} - \text{General rate}}{2 \times 14}$$

25 Subsection 115D(2)

Omit “the pension reduction amount in respect of a veteran for a pension payday”, substitute “the daily pension reduction amount in respect of a veteran for a pension period”.

26 Subsection 115D(2)

Repeal the formula, substitute:

$$\left(\frac{20}{(20 - \text{No. of CPI indexation days})} \times \frac{\text{Pension rate on commencement} - \text{General rate}}{2 \times 14} \right)$$

27 Subsection 115D(3)

Omit “the pension reduction amount in respect of a veteran for a pension payday”, substitute “the daily pension reduction amount in respect of a veteran for a pension period”.

28 Subsection 115D(3)

Repeal the formula, substitute:

$$\frac{\text{Pension rate on commencement} - \text{General rate}}{14}$$

29 Subsections 115D(4) and (5)

Omit “payday”, substitute “period”.

30 Subsection 115D(6) (definition of *no. of paydays*)

Repeal the definition.

31 Subsection 115F(2)

Omit “payday”, substitute “period”.

32 Section 121

Repeal the section, substitute:

121 Instalments of pension

- (1) Pension is payable:
 - (a) in arrears; and
 - (b) by instalments relating to each pension period.

- (2) Subject to subsections (3) and (4), the amount payable to a person as an instalment of pension in relation to a pension period is the total amount of pension payable to the person for the days in that period on which pension was payable to the person.
- (3) If a person who is receiving a pension is ineligible for payment in respect of the last day of a pension period, no amount is payable to the person as an instalment of pension in relation to the pension period.
- (4) If a person who is receiving a pension dies, no amount is payable to the person as an instalment of pension in relation to the pension period in which the person died.
- (5) An instalment of pension is payable on the next payday after the end of the pension period to which the instalment relates.
- (6) For the purpose of the calculation of the amount of an instalment of pension, the rate of pension payable to a person for a day is calculated by dividing the fortnightly rate of pension by 14.
- (7) In this section:

pension includes an allowance under this Act, other than Victoria Cross allowance under section 103, temporary incapacity allowance under section 107 or loss of earnings allowance under section 108, but does not include a pension or allowance to which section 58A applies.

33 At the end of Schedule 5

Add:

Part 4—Transitional provisions: changes made by Schedule 5 to the Veterans' Affairs Legislation Amendment (Budget Measures) Act 2000

25 Definitions

In this Part:

amending Act means the *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2000*.

pension means a pension under Part II or Part IV or an allowance under Part VI.

26 Payability and payment of pension during transition period

- (1) In spite of the commencement of Schedule 5 to the amending Act, until and including 9 July 2001, the question whether pension is payable to a person is to be determined in accordance with this Act as in force immediately before 1 July 2001.
- (2) In spite of the commencement of Schedule 5 to the amending Act, until and including 12 July 2001, instalments of pension are to be paid in accordance with this Act as in force immediately before 1 July 2001.

27 Continued operation of Act in relation to cancellation etc. of pensions

- (1) In spite of the commencement of Schedule 5 to the amending Act, this Act, as in force immediately before 1 July 2001, continues to apply in relation to the cancellation and suspension of pensions, and the variation of the rates of such pensions, until and including 9 July 2001.
- (2) Without limiting subclause (1), that subclause has effect:
 - (a) in relation to the day on which a cancellation, suspension or variation takes effect; and
 - (b) whether the cancellation, suspension or variation is effected by the operation of a provision of this Act or by a determination under this Act.
- (3) A cancellation, suspension or variation that, but for this subclause, would have taken effect on 12 July 2001 takes effect on 10 July 2001.

28 First pension period

A pension period under this Act, as amended by Schedule 5 to the amending Act, must not commence earlier than 10 July 2001.

29 Transitional regulations

- (1) Regulations made under section 216 may prescribe matters in relation to any transitional matters (including prescribing any saving or application provisions) arising out of amendments of this Act made by Schedule 5 to the amending Act.
- (2) Without limiting subclause (1), and in spite of any other provision in this or any other Act, regulations made by virtue of subclause (1) may:
 - (a) modify the effect of a provision of this Part (other than this clause); or
 - (b) substitute another provision for any provision of this Part (other than this clause).

*[Minister's second reading speech made in—
House of Representatives on 29 June 2000
Senate on 4 September 2000]*

(124/00)

