



Veterans' Affairs Legislation Amendment (Statements of Principles and Other Measures) Act 2007

No. 29, 2007

**An Act to amend the law relating to veterans'
entitlements and military rehabilitation and
compensation, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to veterans'
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[Assented to 15 March 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Veterans' Affairs Legislation
Amendment (Statements of Principles and Other Measures) Act
2007*.

*Veterans' Affairs Legislation Amendment (Statements of Principles and Other Measures) Act
2007 No. 29, 2007 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 March 2007
2. Schedules 1 to 3	The day after this Act receives the Royal Assent.	16 March 2007
3. Schedule 4, items 1 and 2	The day after this Act receives the Royal Assent.	16 March 2007
4. Schedule 4, items 3 and 4	Immediately after the commencement of section 189 of the <i>Military Rehabilitation and Compensation Act 2004</i> .	1 July 2004
5. Schedule 4, items 5 and 6	The day after this Act receives the Royal Assent.	16 March 2007
6. Schedule 4, items 7 to 12	Immediately after the commencement of section 189 of the <i>Military Rehabilitation and Compensation Act 2004</i> .	1 July 2004
7. Schedule 4, items 13 to 31	The day after this Act receives the Royal Assent.	16 March 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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—Statements of Principles

Veterans' Entitlements Act 1986

1 Subparagraph 196B(7)(a)(i)

Before “the contents”, insert “some or all of”.

2 After subsection 196B(7)

Insert:

(7A) If the investigation:

- (a) relates to a request under section 196E to review some of the contents of a Statement of Principles; or
- (b) is one to which paragraph (7)(b) applies and that relates to some of the contents of a Statement of Principles; or
- (c) is carried out because of a direction under subsection 196W(7) by the Review Council following a request to the Council under section 196Z to review the Authority's refusal to carry out an investigation relating to a request under section 196E to review some of the contents of a Statement of Principles;

the Authority may limit its investigation to matters relating to those contents.

Note: For *Review Council* see subsection 5AB(1).

3 Subparagraph 196C(4)(b)(iii)

Before “the contents”, insert “some or all of”.

4 Paragraph 196E(1)(f)

After “to review”, insert “some or all of”.

5 Subparagraph 196G(1)(a)(iii)

After “a review of”, insert “some or all of”.

6 Paragraph 196W(2)(a)

Before “the contents”, insert “some or all of”.

7 Subsection 196W(3)

After “to review”, insert “some or all of”.

8 Paragraph 196Y(1)(d)

Before “the contents”, insert “some or all of”.

9 Paragraph 196Y(2)(a)

After “to review”, insert “some or all of”.

10 Subparagraph 196Z(1)(a)(i)

Before “the contents”, insert “some or all of”.

11 Paragraph 196ZB(1)(b)

After “a review of”, insert “some or all of”.

Schedule 2—Appropriation

Veterans' Entitlements Act 1986

1 Paragraph 199(c)

Omit “by this Act”, substitute:

by, or calculated under:

- (i) this Act; or
- (ii) the regulations; or
- (iii) any other legislative instrument made under this Act;
and

Schedule 3—Income streams (veterans)

Veterans' Entitlements Act 1986

1 Section 5 (index of definitions, entry dealing with family law affected income stream)

Omit “5JC(1)”, substitute “5JC”.

2 Section 5 (index of definitions, entry dealing with original family law affected income stream)

Omit “5JC(1)”, substitute “5JC”.

3 Section 5 (index of definitions, entry dealing with primary FLA income stream)

Omit “5JC(1)”, substitute “5JC”.

4 Section 5 (index of definitions, entry dealing with secondary FLA income stream)

Omit “5JC(1)”, substitute “5JC”.

5 Subsection 5H(1) (note 1 to the definition of *income*)

Omit “46Y”, substitute “46YA”.

6 Subsection 5H(1) (note 3 to the definition of *ordinary income*)

Omit “46Y”, substitute “46YA”.

7 Subsection 5J(1) (definition of *family law affected income stream*)

Omit “subsection 5JC(1)”, substitute “section 5JC”.

8 Subsection 5J(1) (definition of *original family law affected income stream*)

Omit “subsection 5JC(1)”, substitute “section 5JC”.

9 Subsection 5J(1) (definition of *primary FLA income stream*)

Omit “subsection 5JC(1)”, substitute “section 5JC”.

10 Subsection 5J(1) (definition of *secondary FLA income stream*)

Omit “subsection 5JC(1)”, substitute “section 5JC”.

11 Subsection 5J(1C) (note 5)

Omit “46Y”, substitute “46YA”.

12 Subsection 5J(1E)

Repeal the subsection, substitute:

- (1E) An income stream is a *defined benefit income stream* if:
- (a) under the *Superannuation Industry (Supervision) Regulations 1994*, the income stream is taken to be a pension for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and
 - (b) the income stream is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*; and
 - (c) the income stream is attributable to a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).

13 After subparagraph 5JA(2)(h)(iva)

Insert:

- (ivb) to the extent necessary to give effect to an order under Part VIII AA of the *Family Law Act 1975*; or

14 Subsection 5JA(7) (definition of *life expectancy period*)

Repeal the definition, substitute:

life expectancy period, for an income stream, means:

- (a) in a case where:
 - (i) there was only one primary beneficiary on the commencement day; and
 - (ii) the primary beneficiary has decided not to round up his or her life expectancy for the purposes of this definition;
- the period starting on the income stream’s commencement day, and equal to the shorter of:

-
- (iii) the primary beneficiary's life expectancy on the commencement day; and
 - (iv) 20 years; or
 - (b) in a case where:
 - (i) there was only one primary beneficiary on the commencement day; and
 - (ii) paragraph (a) does not apply;
 the period starting on the income stream's commencement day, and equal to the shorter of:
 - (iii) the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (iv) 20 years; or
 - (c) in a case where:
 - (i) there were 2 primary beneficiaries on the commencement day; and
 - (ii) those primary beneficiaries have decided not to round up their life expectancies for the purposes of this definition;
 the period starting on the income stream's commencement day, and equal to the shorter of:
 - (iii) the greater of the life expectancies, on the commencement day, of the primary beneficiaries; and
 - (iv) 20 years; or
 - (d) in a case where:
 - (i) there were 2 primary beneficiaries on the commencement day; and
 - (ii) paragraph (c) does not apply;
 the period starting on the income stream's commencement day, and equal to the shorter of:
 - (iii) the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of the primary beneficiaries; and
 - (iv) 20 years.

15 Paragraph 5JB(2)(a)

Omit "(2B) or (2C)", substitute "(2B), (2C) or (2E)".

16 After subparagraph 5JB(2)(h)(iva)

Insert:

- (ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or

17 Subsection 5JB(2B)

Omit “An income stream’s”, substitute “If, on an income stream’s commencement day, there is only one primary beneficiary, the income stream’s”.

18 Subsection 5JB(2C)

Omit “An income stream’s”, substitute “If, on an income stream’s commencement day, there is only one primary beneficiary, the income stream’s”.

19 After subsection 5JB(2D)

Insert:

- (2E) If, on an income stream’s commencement day, there are 2 primary beneficiaries (the *first primary beneficiary* and the *second primary beneficiary*), the income stream’s *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream’s commencement day; and
 - (b) is at least as long as the lesser of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the first primary beneficiary; and
 - (ii) the second primary beneficiary; and
 - (c) is at most as long as the period worked out under subsection (2F).
- (2F) For the purposes of paragraph (2E)(c), the period is the greater of:
 - (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the first primary beneficiary, if the first primary beneficiary were 5 years younger; and
 - (ii) the second primary beneficiary, if the second primary beneficiary were 5 years younger; and
 - (b) the greater of:

- (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the first primary beneficiary reaches age 100 (assuming that the first primary beneficiary lives until then); and
- (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the second primary beneficiary reaches age 100 (assuming that the second primary beneficiary lives until then).

20 Subsection 5JC(1)

Omit “(1)”.

21 Paragraphs 5JC(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) an income stream is acquired or purchased (the *original family law affected income stream*) by a person (the *member*); and
- (b) the member’s spouse or former spouse (the *non-member*) becomes entitled to be paid some or all of that income stream under:
 - (i) a payment split under Part VIIIB of the *Family Law Act 1975*; or
 - (ii) an order under Part VIIIAA of the *Family Law Act 1975*;

22 Subsection 5JC(2)

Repeal the subsection.

23 Section 46 (note 2)

Omit “46Y”, substitute “46YA”.

24 Section 46W

Before “For the purpose”, insert “(1)”.

25 At the end of section 46W

Add:

- (2) Sections 46X and 46Y do not apply to an income stream if section 46YA applies to the income stream.

26 At the end of Subdivision B of Division 4 of Part IIIB

Add:

46YA Income from certain low-payment asset-tested income streams

- (1) If:
- (a) an income stream is an asset-tested income stream (long term) to which this Subdivision applies; and
 - (b) either:
 - (i) the income stream is an allocated pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or
 - (ii) the income stream is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the standards of subregulation 1.05(4) of the *Superannuation Industry (Supervision) Regulations 1994*; and
 - (c) one or more payments have been, or are to be, made under the income stream in respect of a period (the **payment period**) that:
 - (i) consists of the whole or a part of a financial year; and
 - (ii) begins on or after the income stream's commencement day; and
 - (d) on a day in the payment period, the amount worked out using the formula in subsection (2) is less than the amount worked out using the formula in subsection (3);
- the annual rate of ordinary income of a person from the income stream on that day is worked out under subsection (3).

Annual rate based on total payments

- (2) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

total payments means the payment, or the total of the payments, made, or to be made, under the income stream in respect of the payment period.

Annual rate based on minimum limit

- (3) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Minimum limit}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

minimum limit means the minimum limit calculated under whichever of Schedules 1A and 1AAB to the *Superannuation Industry (Supervision) Regulations 1994* is applicable.

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

Exception—income stream’s commencement day happens in June

- (4) If:
- (a) the income stream’s commencement day happens in June; and
 - (b) no payment is made under the income stream for the financial year in which the commencement day happens;
- subsections (2) and (3) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

27 Sections 46ZA, 46ZB and 46ZC

Repeal the sections, substitute:

46ZA Income from asset-test exempt income streams

- (1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year:
 - (a) if the income stream is not a defined benefit income stream—the amount determined by the Commission under this paragraph; or
 - (b) if the income stream is a defined benefit income stream—the amount determined by the Commission under this paragraph.
- (2) In making a determination under paragraph (1)(a) or (b), the Commission must comply with any relevant decision-making principles in force under section 46ZC.

46ZB Income from asset-tested income stream (long term)

- (1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year:
 - (a) if the income stream is not a defined benefit income stream—the amount determined by the Commission under this paragraph; or
 - (b) if the income stream is a defined benefit income stream—the amount determined by the Commission under this paragraph.
- (2) In making a determination under paragraph (1)(a) or (b), the Commission must comply with any relevant decision-making principles in force under section 46ZC.

46ZC Decision-making principles

The Commission may, by legislative instrument, formulate principles (*decision-making principles*) to be complied with by it in making decisions under:

- (a) paragraph 46ZA(1)(a); or
- (b) paragraph 46ZA(1)(b); or
- (c) paragraph 46ZB(1)(a); or
- (d) paragraph 46ZB(1)(b).

28 Subsections 52BA(2), (3) and (4)

Repeal the subsections, substitute:

- (2) The value of an income stream that is not a defined benefit income stream is, for the purposes of the assets test, determined by the Commission.
- (3) The value of an income stream that is a defined benefit income stream is, for the purposes of the assets test, determined by the Commission.
- (4) In making a determination under subsection (2) or (3), the Commission must comply with any relevant decision-making principles in force under subsection (5).
- (5) The Commission may, by legislative instrument, formulate principles (*decision-making principles*) to be complied with by it in making decisions under:
 - (a) subsection (2); or
 - (b) subsection (3).

29 After subsection 52C(3A)

Insert:

- (3B) Subsection (1) does not apply to an asset that is a partially asset-test exempt income stream (within the meaning of section 52).

30 Point SCH6-E2 of Schedule 6 (method statement, step 6, paragraph (d) of note 2)

Omit “46Y”, substitute “46YA”.

31 Application of amendments

- (1) The amendments made by items 5, 6, 11, 23 to 27 and 30 apply in working out the annual rate of ordinary income of a person from an income stream after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
 - (2) The amendments made by items 7 to 10 and 20 to 22 apply in working out if an income stream is:
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- (a) a family law affected income stream; or
- (b) an original family law affected income stream; or
- (c) a primary FLA income stream; or
- (d) a secondary FLA income stream;

after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.

- (3) The amendment made by item 12 applies to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries after the commencement of this item.
- (4) The amendments made by items 13 and 14 apply in working out if an income stream is covered by section 5JA of the *Veterans' Entitlements Act 1986* after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
- (5) Subject to subitem (6), the amendments made by items 15 to 19 apply in working out if an income stream is covered by section 5JB of the *Veterans' Entitlements Act 1986* after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
- (6) Paragraph 5JB(2F)(b) of the *Veterans' Entitlements Act 1986* applies to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries on or after 1 January 2006.
- (7) The amendments made by items 28 and 29 apply in working out the value of an income stream after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.

Schedule 4—Other amendments

Military Rehabilitation and Compensation Act 2004

1 Paragraph 32(1)(c)

Omit “in the case of an injury—the injury”, substitute “the injury or disease”.

2 Application of item 1

The amendment made by item 1 applies in respect of claims for acceptance of liability that are made under section 319 of the *Military Rehabilitation and Compensation Act 2004* on or after the commencement of this item.

3 Subsection 91(5) (at the end of the definition of *compensable pay-related allowance*)

Add:

; or (c) that the member would have been paid after completing his or her initial training, as mentioned in section 189.

4 Subsection 96(3) (at the end of the definition of *compensable pay-related allowance*)

Add:

; or (c) that an incapacitated Reservist would have been paid after the Reservist completed his or her initial training, as mentioned in section 189.

5 Section 120

Omit “section 118”, substitute “paragraph 118(2)(b)”.

6 Paragraph 121(1)(a)

Omit “section 118”, substitute “paragraph 118(2)(b)”.

7 Subsection 154(3) (definition of *compensable pay-related allowance*)

Repeal the definition, substitute:

compensable pay-related allowance for an incapacitated person means a pay-related allowance:

- (a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or
- (b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

8 Subsection 161(3) (definition of *compensable pay-related allowance*)

Repeal the definition, substitute:

compensable pay-related allowance for an incapacitated person means a pay-related allowance:

- (a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or
- (b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

9 Subsection 189(1)

After “sections”, insert “91, 96,”.

10 Subsection 189(1)

Omit “144, 164”, substitute “144, 154, 161, 164”.

11 Before subparagraph 189(1)(a)(i)

Insert:

- (ia) if section 91 or 96 applies—the onset date for the person’s incapacity for service; and

12 Subparagraph 189(1)(a)(ii)

Omit “or 144”, substitute “, 144, 154 or 161”.

13 Subsection 204(6)

Omit “subsection (4)”, substitute “subsection (5)”.

14 Subsection 228(1)

Omit “Commission”, substitute “Commonwealth”.

15 Subsection 228(2)

Omit “Commission”, substitute “Commonwealth”.

16 Subsection 228(3)

Omit “Commission”, substitute “Commonwealth”.

17 Subsection 237(2) (formula)

Repeal the formula, substitute:

Amount of the partner's lump sum under subsection 234(4)	–	Total of the weekly amounts already paid to the partner
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18 Section 254

Omit “Commission”, substitute “Commonwealth”.

19 Subsection 257(2)

Before “eligible”, insert “or more”.

20 At the end of subsection 320(2)

Add:

; or (d) if the person is under the age of 18 years:

- (i) by a parent or guardian of the person; or
- (ii) by someone approved by a parent or guardian of the person; or
- (iii) if there is not a parent or guardian of the person alive, or willing and able to make, or approve someone to make such a claim on behalf of the person—by another person approved by the Commission.

21 Subsection 320(3)

After “paragraph (2)(c)”, insert “or subparagraph (2)(d)(iii)”.

22 Section 327

Omit “If”, substitute “(1) Subject to subsections (2) and (3),”.

23 At the end of section 327

Add:

- (2) The Commission is only required to make a written determination under subsection (1) specifying that section 271 applies to a person

who is a current member if the Commonwealth is liable, under section 272, to pay compensation for the cost of treatment obtained for the person's service injury or disease.

- (3) The Commission is only required to make a written determination under subsection (1) specifying that section 280 applies to a person if:
- (a) for a person who is a current member—the person is, because of section 279, entitled to be provided with treatment under Part 3 of Chapter 6 but is not entitled to be provided with treatment under section 281 or 282; or
 - (b) for a person who is a former member—the person is not entitled to be provided with treatment under section 281 or 282.

24 Application of items 22 and 23

The amendments made by items 22 and 23 apply in respect of claims that are made under section 319 of the *Military Rehabilitation and Compensation Act 2004* on or after the commencement of this item.

25 Subsection 353(1)

Omit "Sections", substitute "Subsections 132(5), (6), (9), (10), (11), (11A), (11B) and (11C), sections".

26 Subsection 353(2) (after table item 7)

Insert:

7A	Subsection 132(5)	The reference to section 135 has effect as a reference to section 352 of this Act
7B	Subsections 132(5), (6) and (9)	Regulations made for the purposes of those subsections apply in working out amounts of travelling expenses for the purposes of attending a hearing of a review by the Board under this Part of this Act. However, regulations may be made under this table item for the purposes of working out the amounts of travelling expenses and, if such regulations are made, those regulations apply instead.
7C	Subsection 132(9)	The reference to a claim for a pension has effect as a reference to a claim that is made under

		section 319 of this Act by a person who, under subsection 320(2) of this Act, is entitled to make the claim.
		The subsection has effect as if paragraphs (a), (b) and (c) of that subsection were omitted
7D	Subsections 132(11A) and (11C)	A reference to an office of the Department in Australia has effect as a reference to a place approved by the Commission under subsection 323(2) of this Act

27 Application of items 25 and 26

The amendments made by items 25 and 26 apply in respect of applications for review that are made under section 352 of the *Military Rehabilitation and Compensation Act 2004* on or after the commencement of this item.

28 Section 384

Omit “a provision of this Act”, insert “this Act, under the regulations or under any other legislative instrument made under this Act (other than this power of delegation)”.

29 After paragraph 423(c)

Insert:

- (ca) travelling expenses payable under section 353 because of the application of subsections 132(5), (6), (9), (10), (11), (11A), (11B) and (11C) of the *Veterans' Entitlements Act 1986*;

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004

30 Item 28 of Schedule 1

Repeal the item.

Veterans' Entitlements Act 1986

31 Subsection 88A(1A)

Repeal the subsection.

*[Minister's second reading speech made in—
House of Representatives on 6 December 2006
Senate on 8 February 2007]*

(191/06)

22 *Veterans' Affairs Legislation Amendment (Statements of Principles and Other
Measures) Act 2007 No. 29, 2007*