



Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 2016

No. 102, 2016

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title	2
2	Commencement	2
3	Schedules	3
Schedule 1—Payments before a person receives a Commonwealth superannuation benefit		4
	<i>Military Rehabilitation and Compensation Act 2004</i>	4
Schedule 2—Non-liability health care for certain mental health disorders		14
	<i>Veterans' Entitlements Act 1986</i>	14
Schedule 3—Pension age		15
	<i>Military Rehabilitation and Compensation Act 2004</i>	15



Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 2016

No. 102, 2016

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

[Assented to 7 December 2016]

The Parliament of Australia enacts:

No. 102, 2016

*Veterans' Affairs Legislation Amendment (Budget and Other
Measures) Act 2016*

1

1 Short title

This Act is the *Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 2016*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2016
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 January 2017 (F2016N00047)
3. Schedule 2	The day after this Act receives the Royal Assent.	8 December 2016
4. Schedule 3	1 July 2017.	1 July 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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—Payments before a person receives a Commonwealth superannuation benefit

Military Rehabilitation and Compensation Act 2004

1 Subsection 5(1) (subparagraph (aa)(i) of the definition of *Commonwealth superannuation scheme*)

Repeal the subparagraph, substitute:

- (i) sections 89A and 89B;

2 Subsection 5(1) (after subparagraph (a)(ii) of the definition of *Commonwealth superannuation scheme*)

Insert:

- (ia) sections 126 and 126A;

3 Section 84

Omit “Commonwealth superannuation.”, substitute “a benefit under a Commonwealth superannuation scheme. (However, the amount of compensation the member receives for a week might be worked out under Divisions 2 to 6 if the member has applied for the benefit, but has not begun to receive or has not received the benefit (see section 89B).)”.

4 Section 89A (heading)

Repeal the heading, substitute:

89A Amount of compensation for persons receiving a Commonwealth superannuation benefit

5 At the end of section 89A

Add:

Note: The Commission may determine that this section does not apply if a person has applied for a benefit under a Commonwealth superannuation scheme, but has not begun to receive or has not received the benefit (see section 89B).

6 At the end of Division 1 of Part 3 of Chapter 4

Add:

89B Payments before a person receives a Commonwealth superannuation benefit

- (1) The Commission may, in writing, determine that section 89A does not apply to a person if:
 - (a) the person has applied for a benefit under a Commonwealth superannuation scheme on the basis of the person's incapacity for service or work, and the application has not been withdrawn; and
 - (b) the person has not begun to receive or has not received the benefit (as the case requires); and
 - (c) the person has been notified, in writing:
 - (i) of the effect of section 89A and this section; and
 - (ii) that the person may be overpaid while section 89A does not apply to the person; and
 - (iii) that the overpayments may be recovered under Part 3 of Chapter 11; and
 - (d) the person has agreed, in writing:
 - (i) for section 89A not to apply; and
 - (ii) to notify the Commission if the person withdraws the application for the benefit; and
 - (iii) to notify the Commission if the person begins to receive or receives the benefit.
- (2) The determination has effect according to its terms.

Revocation of determination

- (3) The Commission may, in writing, revoke the determination if the Commission is satisfied that:
 - (a) the person has withdrawn the application for the benefit; or
 - (b) the person has begun to receive or has received the benefit; or
 - (c) the person has not complied with a requirement to provide information, or take any further action, in relation to the application for the benefit.

- (4) After a determination is revoked in relation to a person who has begun to receive or has received a benefit under a Commonwealth superannuation scheme, section 89A is taken always to have applied to the person.

Status of instruments

- (5) A determination under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

7 Division 7 of Part 3 of Chapter 4 (heading)

Repeal the heading, substitute:

Division 7—Amount of compensation where a Commonwealth superannuation benefit is received

8 Section 116A

Omit “has received Commonwealth superannuation.”, substitute “has received a benefit under a Commonwealth superannuation scheme. (However, this Division might not apply if the member has applied for the benefit, but has not begun to receive or has not received the benefit (see section 89B).)”.

9 Section 124

Omit “is also receiving Commonwealth superannuation”, substitute “is receiving or has received a benefit under a Commonwealth superannuation scheme”.

10 Paragraph 124(a)

Omit “Commonwealth superannuation (see section 126)”, substitute “or have received a benefit under a Commonwealth superannuation scheme (although the amount of compensation the persons receive might be worked out under Subdivision C if the persons have applied for the benefit, but have not begun to receive or have not received the benefit) (see sections 126 and 126A)”.

11 Paragraph 125(2)(a)

Omit “Commonwealth superannuation”, substitute “a Commonwealth superannuation benefit”.

12 Section 126 (heading)

Repeal the heading, substitute:

126 Amount of compensation for retired persons receiving a Commonwealth superannuation benefit

13 At the end of section 126

Add:

Note: The Commission may determine that this section does not apply if a person has applied for a benefit under a Commonwealth superannuation scheme, but has not begun to receive or has not received the benefit (see section 126A).

14 After section 126

Insert:

126A Payments before a retired person receives a Commonwealth superannuation benefit

- (1) The Commission may, in writing, determine that section 126 does not apply to a person if:
- (a) the person has applied for a benefit under a Commonwealth superannuation scheme on the basis of the person’s incapacity for service or work, and the application has not been withdrawn; and
 - (b) the person has not begun to receive or has not received the benefit (as the case requires); and
 - (c) the person has been notified, in writing:
 - (i) of the effect of section 126 and this section; and
 - (ii) that the person may be overpaid while section 126 does not apply to the person; and
 - (iii) that the overpayments may be recovered under Part 3 of Chapter 11; and
 - (d) the person has agreed, in writing:

- (i) for section 126 not to apply; and
 - (ii) to notify the Commission if the person withdraws the application for the benefit; and
 - (iii) to notify the Commission if the person begins to receive or receives the benefit.
- (2) The determination has effect according to its terms.

Revocation of determination

- (3) The Commission may, in writing, revoke the determination if the Commission is satisfied that:
- (a) the person has withdrawn the application for the benefit; or
 - (b) the person has begun to receive or has received the benefit; or
 - (c) the person has not complied with a requirement to provide information, or take any further action, in relation to the application for the benefit.
- (4) After a determination is revoked in relation to a person who has begun to receive or has received a benefit under a Commonwealth superannuation scheme, section 126 is taken always to have applied to the person.

Status of instruments

- (5) A determination under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

15 Subdivision C of Division 2 of Part 4 of Chapter 4 (heading)

Repeal the heading, substitute:

Subdivision C—Amount of compensation where no Commonwealth superannuation benefit is received

16 Subdivision D of Division 2 of Part 4 of Chapter 4 (heading)

Repeal the heading, substitute:

**Subdivision D—Amount of compensation where a
Commonwealth superannuation benefit is received**

17 Section 133

Omit “has received Commonwealth superannuation.”, substitute “has received a benefit under a Commonwealth superannuation scheme. (However, this Subdivision might not apply if the person has applied for the benefit, but has not begun to receive or has not received the benefit (see section 126A).)”.

18 Section 137

Omit “Commonwealth superannuation”, substitute “a benefit under a Commonwealth superannuation scheme”.

19 Section 197

Omit “receives Commonwealth superannuation”, substitute “receives or has received a benefit under a Commonwealth superannuation scheme”.

20 After paragraph 345(2)(b)

Insert:

- (ba) a determination or revocation under section 89B or 126A (payments before a person receives a Commonwealth superannuation benefit);

21 Division 2 of Part 3 of Chapter 11 (heading)

Repeal the heading, substitute:

**Division 2—Recovery of overpayments to persons receiving
a Commonwealth superannuation benefit**

22 Section 417

Before “Section 418”, insert “(1)”.

23 Paragraph 417(a)

Omit “(the *retiree*) retires from”, substitute “(the *incapacitated person*) ceases”.

24 Paragraph 417(b)

Omit “retiree”, substitute “incapacitated person”.

25 Paragraph 417(c)

Repeal the paragraph, substitute:

- (c) subsection (2) applies to the incapacitated person.

26 At the end of section 417

Add:

- (2) This subsection applies to the incapacitated person if:
 - (a) without limiting paragraph (b):
 - (i) the Commission made a determination in relation to the incapacitated person under section 89B or 126A; and
 - (ii) the determination has been revoked; and
 - (iii) the incapacitated person has begun to receive or has received a benefit under a Commonwealth superannuation scheme; or
 - (b) the Commission is of the opinion that it might pay, or might have paid, more compensation under Part 3, 4 or 5 of Chapter 4 to the incapacitated person than he or she is entitled to receive because of:
 - (i) Division 7 of Part 3 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or
 - (ii) Subdivision D of Division 2 of Part 4 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or
 - (iii) section 204 (reduction in rate of Special Rate Disability Pension).

27 Paragraph 418(1)(a)

Omit “retiree”, substitute “incapacitated person”.

28 Subparagraph 418(1)(b)(i)

Repeal the subparagraph, substitute:

- (i) the incapacitated person has received any payment in respect of his or her entitlement mentioned in paragraph 417(1)(b); and
-

29 Subparagraph 418(1)(b)(ii)

Omit “retiree’s”, substitute “incapacitated person’s”.

30 Paragraph 418(1)(c)

Omit “retiree has not received such payment and the retiree’s”,
substitute “incapacitated person has not received such payment and the
incapacitated person’s”.

31 Paragraphs 418(2)(a) and (b)

Omit “retiree”, substitute “incapacitated person”.

32 Subparagraph 418(2)(b)(ii)

Omit “retirement”, substitute “the incapacitated person’s cessation of
employment”.

33 Section 419 (heading)

Repeal the heading, substitute:

419 Commission to give notice to incapacitated person

34 Section 419

Omit “retiree”, substitute “incapacitated person”.

35 Section 420 (heading)

Repeal the heading, substitute:

**420 What happens if the incapacitated person has not received any
Commonwealth superannuation benefit in respect of his
or her cessation of employment**

36 Paragraph 420(1)(a)

Repeal the paragraph, substitute:

- (a) the incapacitated person has not received any payment in
respect of his or her entitlement mentioned in
paragraph 417(1)(b); and

37 Paragraph 420(1)(b)

Omit “retiree’s”, substitute “incapacitated person’s”.

38 Subsection 420(1) (note)

Omit “retiree”, substitute “incapacitated person”.

39 Paragraph 420(2)(a)

Omit “retiree”, substitute “incapacitated person”.

40 Subsection 420(3)

Omit “retiree”, substitute “incapacitated person”.

41 Paragraph 420(4)(a)

Omit “the retirement of the retiree”, substitute “the incapacitated person ceased his or her employment”.

42 Paragraph 420(4)(b)

Omit “retiree”, substitute “incapacitated person”.

43 Subparagraphs 420(4)(b)(ia) and (i)

Omit “superannuation”, substitute “a Commonwealth superannuation benefit is”.

44 Subsection 421(1)

Omit “a retiree”, substitute “an incapacitated person”.

45 Subsection 421(1)

Omit “the retiree”, substitute “the incapacitated person”.

46 Paragraphs 421(2)(a) and (3)(a) and (b)

Omit “retiree”, substitute “incapacitated person”.

47 Application of amendments

The amendments made by this Schedule apply in relation to a liability to pay compensation that first arises after this item commences.

48 Transitional provision

- (1) This item applies if:
 - (a) immediately before this item commences, a person's normal earnings for the week are calculated under section 179 of the *Military Rehabilitation and Compensation Act 2004* because:
 - (i) the person has applied for a benefit under a Commonwealth superannuation scheme on the basis of the person's incapacity for service or work, and the application has not been withdrawn; and
 - (ii) the person has not begun to receive or has not received the benefit (as the case requires); and
 - (b) the Commission determines, in writing, that this item applies.
- (2) On the commencement of this item, the Commission is taken to have made a determination under section 89B or 126A (as the case requires) of the *Military Rehabilitation and Compensation Act 2004*, as inserted by this Schedule, in relation to the person.
- (3) To avoid doubt, the Commission may, in accordance with subsection 89B(3) or 126A(3) (as the case requires) of that Act, as inserted by this Schedule, revoke a determination that is taken to have been made under subitem (2).
- (4) To avoid doubt, a determination by the Commission under paragraph (1)(b) is not an original determination for the purposes of Chapter 8 of that Act.

Schedule 2—Non-liability health care for certain mental health disorders

Veterans' Entitlements Act 1986

1 Subsection 85(2)

Omit “, pulmonary tuberculosis, post-traumatic stress disorder, alcohol use disorder or substance use disorder”, substitute “or pulmonary tuberculosis”.

2 After subsection 85(2) (before the note)

Insert:

Note 1: A veteran or other person may be eligible to be provided with treatment under this Part for mental health conditions (such as post-traumatic stress disorder, alcohol use disorder or substance use disorder) and other conditions under a determination made under section 88A.

3 Subsection 85(2) (note)

Omit “Note”, substitute “Note 2”.

4 Application and transitional provision

- (1) The amendments of subsection 85(2) the *Veterans' Entitlements Act 1986* made by this Schedule apply in relation to any application lodged under that subsection:
 - (a) after the commencement of this item; or
 - (b) before the commencement of this item, that has not been determined before that time.
- (2) An application covered by paragraph (1)(b) is taken to be a request made in accordance with the *Veterans' Entitlements (Extension of Non-Liability Health Care for Mental Health Treatment) Determination 2016* as in force immediately before the commencement of this item.

Schedule 3—Pension age

Military Rehabilitation and Compensation Act 2004

1 Subsection 5(1)

Insert:

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

2 Subsection 118(1) (paragraph (c) of the note)

Omit “63 or more”, substitute “the age that is 2 years before pension age or older”.

3 Section 120 (heading)

Repeal the heading, substitute:

120 Compensation for those over pension age

4 Section 120

Omit “65”, substitute “pension age”.

5 Section 121 (heading)

Repeal the heading, substitute:

121 Compensation for those over the age that is 2 years before pension age

6 Paragraph 121(1)(b)

Omit “63”, substitute “the age that is 2 years before pension age”.

7 Subsection 138(3) (paragraph (a) of the definition of *number of days*)

Repeal the paragraph, substitute:

- (a) if the person’s service injury is sustained, or service disease is contracted, before the person turns the age that is 2 years

before pension age—on the day before the person turns pension age; and

8 Subsection 138(3) (paragraph (b) of the definition of *number of days*)

Omit “63”, substitute “the age that is 2 years before pension age”.

9 Subsection 139(2) (paragraph (b) of the note)

Omit “63 or more”, substitute “the age that is 2 years before pension age or older”.

10 Application—pension age

- (1) The amendments of the *Military Rehabilitation and Compensation Act 2004* made by this Schedule apply, subject to subitem (4), in relation to a payment of compensation in respect of a week that begins after the commencement of this item.
- (2) However, in the case of a person who suffered an injury or disease before that commencement, subitem (1) does not prevent a week from being counted for the purposes of subsection 121(2) of the *Military Rehabilitation and Compensation Act 2004* even if the week began before that commencement.
- (3) If:
 - (a) a person suffered an injury or disease before the commencement of this item; and
 - (b) compensation is payable under Division 2 of Part 4 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004* in respect of the injury or disease for a maximum of 104 weeks (whether consecutive or not) during which the person is incapacitated for work; and
 - (c) the last of those weeks (the ***final payment week***) ends before the person reaches pension age (within the meaning of the *Military Rehabilitation and Compensation Act 2004* (as amended by this Schedule));subsection 121(2) of that Act has effect, in relation to the injury or disease, as if the number of weeks mentioned in that subsection were increased by the number of weeks in the period:

-
- (d) beginning immediately after the end of the final payment week; and
 - (e) ending immediately before the person reaches pension age (within the meaning of the *Military Rehabilitation and Compensation Act 2004* (as amended by this Schedule)).
- (4) The amendment of section 138 of the *Military Rehabilitation and Compensation Act 2004* made by this Schedule applies in relation to advices given under paragraph 138(1)(d) of that Act after the commencement of this item.
-

[Minister's second reading speech made in—
House of Representatives on 13 October 2016
Senate on 22 November 2016]

(136/16)

No. 102, 2016

Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 2016

17