



Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002

No. 11, 2002

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Compensation recovery		3
	<i>Veterans' Entitlements Act 1986</i>	3
Schedule 2—Returns from unrealisable assets		13
	<i>Veterans' Entitlements Act 1986</i>	13
Schedule 3—Income streams		14
	Part 1—Small superannuation accounts	14
	<i>Veterans' Entitlements Act 1986</i>	14
	Part 2—Other amendments	17
	<i>Veterans' Entitlements Act 1986</i>	17
Schedule 4—Rounding off		27
	<i>Veterans' Entitlements Act 1986</i>	27



Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002

No. 11, 2002

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

[Assented to 4 April 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3	The day on which this Act receives the Royal Assent	4 April 2002
2. Part 1 of Schedule 3	1 July 1995	1 July 1995
3. Anything in this Act not elsewhere covered by this table	20 September 2001	20 September 2001

Note: This table relates only to the provisions of this Act as originally passed by 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 is for additional information that is not part of this Act. This information may be included 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Compensation recovery

Veterans' Entitlements Act 1986

1 Subsection 5NB(1) (note to the definition of *periodic payments period*)

Repeal the note.

2 Subsection 5NB(2)

Omit “subsection (3), (4), (5) or (6)”, substitute “subsection (3), (4), (5), (6) or (6A)”.

3 Paragraph 5NB(4)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives the compensation affected pension under this Act; or
- (ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.

4 After subsection 5NB(6)

Insert:

- (6A) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute *compensation* for the purposes of this Act.
- (6B) The reference in subsection (6A) to a *criminal injury* is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

5 Subsection 5NB(7)

Omit “For the purposes”, substitute “Subject to subsection (8), for the purposes”.

6 At the end of paragraph 5NB(7)(c)

Add “, or both”.

7 Paragraph 59N(c)

Omit “and”.

8 Paragraph 59N(d)

Repeal the paragraph.

9 Subsection 59Q(1)

After “person for”, insert “any day or days in”.

10 Paragraph 59Q(2)(d)

After “person for”, insert “any day or days in”.

11 Paragraph 59Q(2)(e)

After “partner for”, insert “any day or days in”.

12 Subsection 59Q(2A)

After “person for”, insert “any day or days in”.

13 Paragraph 59Q(3)(a)

Repeal the paragraph, substitute:

- (a) begins on the day following the last day of the periodic payments period or, if there is more than one periodic payments period, the day after the last day of the last periodic payments period; and

14 Section 59Q (example)

Repeal the example.

15 Paragraph 59R(1)(b)

After “pension for”, insert “any day or days in”.

16 Paragraph 59R(5)(b)

Repeal the paragraph, substitute:

- (b) the sum of the payments of the compensation affected pension made to the person for a day or days in the lump sum preclusion period.

17 Section 59R (example)

Repeal the example.

18 Section 59S

Omit “per fortnight of a pension”, substitute “of compensation affected pension”.

19 Section 59T

Repeal the section, substitute:

59T Effect of periodic compensation payments on rate of person’s compensation affected pension

- (1) If:
 - (a) a person receives periodic compensation payments; and
 - (b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and
 - (c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;

the rate of the person’s compensation affected pension for that day or those days is reduced in accordance with subsection (2).

Note: For *periodic compensation payments*, *compensation affected pension* and *periodic payments period*, see subsection 5NB(1).

- (2) The person’s daily rate of compensation affected pension is reduced by the amount of the person’s daily rate of periodic compensation.
- (3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.
- (4) If:
 - (a) a person receives periodic compensation payments; and

- (b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was receiving a compensation affected pension; and
 - (c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;
- the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

Note: For *ordinary income*, see subsection 5H(1).

59TA Effect of periodic compensation payments on rate of partner's compensation affected pension

- (1) If:
 - (a) a person receives periodic compensation payments; and
 - (b) the person is a member of a couple; and
 - (c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and
 - (d) the person is eligible for a compensation affected pension for a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the pension; and
 - (e) the person's partner is eligible for a compensation affected pension, or is qualified for a compensation affected payment under the Social Security Act, for a day or days in the periodic payments period;

then, in working out the amount of the pension or payment referred to in paragraph (e), the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected pension for which the person is eligible for a day or days in the periodic payments period is to be treated as ordinary income of the person's partner.

Note 1: See also point SCH6-E3A for the effect of that excess on the application of the ordinary/adjusted income test.

Note 2: For *periodic compensation payments*, *compensation affected pension* and *periodic payments period*, see subsection 5NB(1).

Note 3: For *ordinary income*, see subsection 5H(1).

- (2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing

the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

20 Paragraph 59V(a)

Repeal the paragraph, substitute:

- (a) the rate of a person's compensation affected pension is to be reduced under this Part; and

21 Subsection 59W(1) (note)

Omit "and a *compensation debt* is involved, see subsections 56H(7) and (8)", substitute ", see point SCH6-E4".

22 Paragraph 59W(3)(d)

Repeal the paragraph, substitute:

- (d) the difference between:
 - (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period; and
 - (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 59T.

23 Paragraph 59W(4)(d)

Repeal the paragraph, substitute:

- (d) the difference between:
 - (i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person's partner for a day or days in the periodic payments period; and
 - (ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person's partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of sections 59T and 59TA.
-

24 Section 59W (examples 1 and 2)

Repeal the examples.

25 Section 59X

Repeal the section, substitute:

59X Periodic compensation payments not counted as ordinary income

If the rate of a person's compensation affected pension is reduced under section 59T because of the receipt of a series of periodic compensation payments, those payments are not regarded as ordinary income of the person for the purposes of this Act.

26 Paragraph 59Y(1)(b)

Repeal the paragraph, substitute:

- (b) the person receives or claims a compensation affected pension for a day or days in the period to which the compensation relates;

27 Paragraph 59ZA(1)(b)

After "for", insert "any day or days in".

28 At the end of subsection 59ZA(3)

Add ", unless subsection (5A) applies in which case it is worked out under subsection (5A) instead".

29 Paragraph 59ZA(4)(b)

After "for", insert "any day or days in".

30 Paragraph 59ZA(4)(c)

Repeal the paragraph, substitute:

- (c) the difference between:
 - (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and
 - (ii) the sum of the payments of compensation affected pension that would have been made to the person for

any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

31 Paragraph 59ZA(5)(b)

After “for”, insert “any day or days in”.

32 Paragraph 59ZA(5)(c)

Repeal the paragraph, substitute:

(c) the difference between:

- (i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person’s partner for a day or days in the periodic payments period or the lump sum preclusion period; and
- (ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person’s partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

33 After subsection 59ZA(5)

Insert:

(5A) If:

- (a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and
- (b) the person or the person’s partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the **recoverable amount** is the amount determined by the Commission to be the total amount by which the person’s, or the person’s partner’s, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

34 Paragraph 59ZE(1)(b)

Repeal the paragraph, substitute:

- (b) the person receives or claims a compensation affected pension for a day or days to which the compensation relates; and

35 Paragraph 59ZG(1)(b)

Repeal the paragraph, substitute:

- (b) the person receives or claims a compensation affected pension for a day or days in the periodic payments period or the lump sum preclusion period; and

36 At the end of subsection 59ZG(3)

Add “, unless subsection (5A) applies in which case it is worked out under subsection (5A) instead”.

37 Paragraph 59ZG(4)(b)

After “for”, insert “any day or days in”.

38 Paragraph 59ZG(4)(c)

Repeal the paragraph, substitute:

- (c) the difference between:
 - (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and
 - (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

39 Paragraph 59ZG(5)(b)

After “for”, insert “any day or days in”.

40 Paragraph 59ZG(5)(c)

Repeal the paragraph, substitute:

- (c) the difference between:

- (i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person's partner for a day or days in the periodic payments period or the lump sum preclusion period; and
- (ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person's partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

41 After subsection 59ZG(5)

Insert:

(5A) If:

- (a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and
- (b) the person or the person's partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the *recoverable amount* is the amount determined by the Commission to be the total amount by which the person's, or the person's partner's, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

42 At the end of point SCH6-E3

Add "However, in making this calculation disregard any amount that is taken (whether for the purposes of this Act or of the Social Security Act) to be ordinary income of either partner because of section 59TA of this Act or section 1174 of the Social Security Act."

43 After point SCH6-E3

Insert:

Schedule 1 Compensation recovery

Additional ordinary income because of excess compensation payments

SCH6-E3A Add to the amount derived for a person under point SCH6-E3 any amount that is taken (whether for the purposes of this Act or of the Social Security Act) to be ordinary income of the person because of section 59TA of this Act or section 1174 of the Social Security Act.

Schedule 2—Returns from unrealisable assets

Veterans' Entitlements Act 1986

1 Subsection 46K(2)

Repeal the subsection, substitute:

(2) If, because of:

- (a) a determination under subsection 46L(1); or
- (b) the operation of subsection 46L(1A);

a financial investment is not to be regarded as a financial asset for the purposes of section 46D or 46E, subsection (1) of this section does not apply to any return on the investment that the person actually receives.

2 After subsection 46L(1)

Insert:

- (1A) If the Commission makes a determination under section 52Y in relation to a person, any unrealisable asset of the person or the person's partner is not regarded as a financial asset for the purposes of section 46D or 46E.

Schedule 3—Income streams

Part 1—Small superannuation accounts

Veterans' Entitlements Act 1986

1 Section 5 (after the index entry relating to “asset-test exempt income stream”)

Insert:

ATO small superannuation account 5J(1)

2 Section 5 (index entry relating to “investment”)

Omit “5J(6)”, substitute “5J(6), (6A)”.

3 Section 5 (after the index entry relating to “investment”)

Insert:

Investor 5J(1)

4 Subsection 5J(1)

Insert:

ATO small superannuation account means an account kept in the name of an individual under the *Small Superannuation Accounts Act 1995*.

5 Subsection 5J(1) (definition of *investment*)

Repeal the definition, substitute:

investment:

- (a) in relation to a superannuation fund, approved deposit fund or deferred annuity—has the meaning given by subsection (6); or
- (b) in relation to an ATO small superannuation account—has the meaning given by subsection (6A).

6 Subsection 5J(1)

Insert:

investor, in relation to an ATO small superannuation account,
means the person in whose name the account is kept.

7 Subsection 5J(1) (definition of *return*)

Repeal the definition, substitute:

return:

- (a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or
- (b) in relation to any other investment (including an investment in the nature of superannuation)—means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment.

8 Subsection 5J(1) (definition of *superannuation benefit*)

Repeal the definition, substitute:

superannuation benefit, in relation to a person, means:

- (a) a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person; or
- (b) a payment under Part 7 of the *Small Superannuation Accounts Act 1995*, where the payment is in respect of an ATO small superannuation account kept in the name of the person.

9 At the end of subsection 5J(1B)

Add:

- (g) an investment in an ATO small superannuation account.

Note: See paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.

10 After paragraph 5J(1C)(c)

Insert:

- (ca) an investment in an ATO small superannuation account if the investor has not yet turned pension age;

11 After subsection 5J(6)

Schedule 3 Income streams
Part 1 Small superannuation accounts

Insert:

(6A) For the purposes of this Act:

- (a) a person has an *investment* in an ATO small superannuation account if:
 - (i) the account is kept in the name of the person; and
 - (ii) the balance of the account exceeds nil; and
- (b) the amount or value of that investment equals the balance of the account.

12 After paragraph 5J(7)(a)

Insert:

- (b) where the investment is an ATO small superannuation account—the balance of the account is taken to have been withdrawn for the purposes of the *Small Superannuation Accounts Act 1995*; or

Part 2—Other amendments

Veterans' Entitlements Act 1986

13 Subsection 5J(1) (paragraph (b) of the definition of *income stream*)

After “public sector”, insert “superannuation”.

14 Subsection 5JA(1)

Repeal the subsection, substitute:

General requirements

- (1) An income stream provided to a person is an ***asset-test exempt income stream*** for the purposes of this Act if:
 - (a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (4) in respect of the income stream; and
 - (b) subject to subsections (1B) and (1C), the Commission is satisfied that in relation to an income stream, provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
 - (c) the Commission is satisfied that the requirements of subsection (2) are being given effect to from the commencement day of the income stream.

Determination under subsection (5)

- (1A) An income stream provided to a person is an ***asset-test exempt income stream*** for the purposes of this Act if the Commission has made a determination under subsection (5) in respect of the income stream.

Guidelines relating to actuarial certificates

- (1B) The Commission may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force. The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Exception if no actuarial certificate in force

- (1C) Paragraph (1)(b) does not apply if, for a period beginning when an actuarial certificate referred to in this section ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

15 Subparagraph 5JA(2)(h)(i)

Repeal the subparagraph, substitute:

- (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

16 Subparagraph 5JA(2)(h)(iv)

Repeal the subparagraph, substitute:

- (iv) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or
(v) to the extent necessary to pay a hardship amount; and

17 At the end of paragraph 5JA(2)(h)

Add:

Note 1: For *non-commutation funded income stream*, see subsection (7).

Note 2: For *hardship amount* see subsection (7).

18 Paragraph 5JA(2)(i)

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred to a person except:

- (i) on the death of the primary beneficiary, to a reversionary beneficiary; or
- (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

19 After subsection 5JA(2)

Insert:

- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
 - (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
 - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

20 At the end of section 5JA

Add:

Definitions

- (7) In this section:

hardship amount, in relation to a person, means an amount determined by the Commission for the purposes of this definition if:

- (a) the person applies in writing to the Commission to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and
- (b) the Commission is satisfied that:
 - (i) the person's circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and

- (ii) the person has insufficient liquid assets or other assets (excluding the person's principal home) that could be realised to avoid the extreme financial hardship; and
- (iii) that amount is required to meet unavoidable expenditure.

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

- (a) the person's shares and debentures in a public company; and
- (b) managed investments; and
- (c) insurance policies that can be surrendered for money; and
- (d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

unavoidable expenditure, in relation to a person, means one or more of the following:

- (a) essential medical expenses of the person, or the person's partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;
- (b) the cost of:
 - (i) replacing the person's principal home; or
 - (ii) essential repairs to the person's principal home;to the extent that the cost of the replacement or repairs is not covered by an insurance policy;
- (c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

21 Subsection 5JB(1)

Repeal the subsection, substitute:

General requirements

- (1) An income stream provided to a person is also an ***asset-test exempt income stream*** for the purposes of this Act if:
- (a) the person has reached pension age on or before the day on which the person purchases or acquires the income stream; and
 - (b) either subsection (1A) or (1B) applies.

Note 1: For ***income stream*** see subsection 5J(1).

Note 2: For ***pension age*** see subsection (6).

No determination under subsection (3)

- (1A) This subsection applies if:
- (a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (3) in respect of the income stream; and
 - (b) subject to subsection (1D), the Commission is satisfied that, in relation to an income stream provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
 - (c) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the commencement day of the income stream.

Determination under subsection (4)

- (1B) This subsection applies if the Commission has made a determination under subsection (4) in respect of the income stream.

Guidelines relating to actuarial certificates

- (1C) The Commission may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force. The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Exception if no actuarial certificate in force

- (1D) Paragraph (1A)(b) does not apply if, for a period beginning when an actuarial certificate referred to in this section ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

22 Subparagraph 5JB(2)(a)(i)

Repeal the subparagraph, substitute:

- (i) if the person's life expectancy is less than 15 years— throughout a period that is not less than the person's life expectancy but, if the person's life expectancy does not consist of a number of whole years, not more than the person's life expectancy rounded up to the next whole number; or

23 Subparagraph 5JB(2)(h)(i)

Repeal the subparagraph, substitute:

- (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

24 Subparagraphs 5JB(2)(h)(iii) and (iv)

Repeal the subparagraphs, substitute:

- (iii) if the legal or equitable interest in the payment resulting from the commutation is transferred on the death of a person to the benefit of a reversionary beneficiary, and on the death of a reversionary beneficiary to the benefit of another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
- (iv) if the legal or equitable interest in the payment resulting from the commutation is transferred on the death of a person to the person's estate and there is no reversionary beneficiary; or
- (v) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or

(vi) to the extent necessary to pay a hardship amount; and

25 At the end of paragraph 5JB(2)(h)

Add:

Note 1: For *non-commutation funded income stream*, see subsection (7).

Note 2: For *hardship amount* see subsection (7).

26 Paragraph 5JB(2)(i)

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred to a person except:
 - (i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and

27 After subsection 5JB(2)

Insert:

Compliance with subsection (2) if certain conditions are met

- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
 - (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
 - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

28 At the end of section 5JB

Add:

(7) In this section:

hardship amount has the same meaning as in section 5JA (see subsection 5JA(7)).

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

29 After subsection 52C(3)

Insert:

Exception for an asset-tested income stream (long-term)

(3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

30 At the end of Division 11 of Part IIIB

Add:

Subdivision F—Commutation of asset-test exempt income stream

52ZMA Debt to result from commutation of asset-test exempt income stream

(1) If:

- (a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and
- (b) during the whole or any part of that period an amount of service pension or income support supplement has been paid to the person; and
- (c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and

- (d) the amount of service pension or income support supplement that has been paid to the person for that period is more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;
- an amount worked out under subsection (2) is a debt due to the Commonwealth.
- (2) That amount is an amount equal to the difference between the amount of service pension or income support supplement that has been paid to the person during the period worked out under subsection (3) and the amount that would have been so paid to the person had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.
- (3) The period for the purposes of subsection (2) is the period beginning on:
- (a) the day 5 years before the day the income stream was commuted; or
 - (b) either:
 - (i) the commencement day of the income stream; or
 - (ii) 20 September 2001;whichever occurs later.
- (4) In working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), assume that the income stream was asset tested from the commencement day and that the asset value of the income stream is depleted in accordance with the formula in subsection 52A(4).
- (5) This section does not apply to an income stream in relation to which a determination under subsection 5JA(5) or 5JB(4) is in force.

31 Subclause 12(4) of Schedule 5 (definition of *binding arrangement*)

Repeal the definition, substitute:

binding arrangement, in relation to a person, means:

Schedule 3 Income streams

Part 2 Other amendments

- (a) an arrangement that does not allow the person to commute an income stream; or
- (b) an arrangement that may only be terminated on terms that are, in the opinion of the Commission, likely to cause severe detriment to the person.

Schedule 4—Rounding off

Veterans' Entitlements Act 1986

1 Subsections 58A(5) and (6)

Repeal the subsections, substitute:

- (5) The amount worked out under subsection (4) is to be rounded to the nearest cent (rounding half a cent upwards).

2 Subsections 79K(4) and (5)

Repeal the subsections, substitute:

- (4) The amount worked out under subsection (2) or (3) is to be rounded to the nearest cent (rounding half a cent upwards).

3 Section 79P (example)

Omit “This amount is rounded under section 79R to \$34.60”, substitute “(The amount is rounded to the nearest cent under section 79R.)”.

4 Section 79R

Repeal the section, substitute:

79R Rounding of amounts

An amount worked out under this Division is to be rounded to the nearest cent (rounding half a cent upwards).

5 Subpoint SCH6-A1(2) (method statement, note 6)

Omit “off to the nearest multiple of 10 cents (see subsections 58A(2) and (3))”, substitute “to the nearest cent (see subsection 58A(5))”.

6 Subpoint SCH6-A1(3) (method statement, note 1)

Omit “off to the nearest multiple of 10 cents (see subsections 58A(2) and (3))”, substitute “to the nearest cent (see subsection 58A(5))”.

7 Subpoint SCH6-A1(6) (method statement, note 6)

Omit “off to the nearest multiple of 10 cents (see subsections 58A(2) and (3))”, substitute “to the nearest cent (see subsection 58A(5))”.

Schedule 4 Rounding off

*[Minister's second reading speech made in—
House of Representatives on 21 February 2002
Senate on 21 March 2002]*

(41/02)