Veterans’ Entitlements (Special Assistance — Motorcycle Purchase) Regulations 2001

Statutory Rules 2001 No. 209 as amended

made under the

Veterans’ Entitlements Act 1986

This compilation was prepared on 14 August 2007 taking into account amendments up to SLI 2007 No. 239

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Part 1  Preliminary

1  Name of Regulations  [see Note 1]

These Regulations are the *Veterans’ Entitlements (Special Assistance — Motorcycle Purchase) Regulations 2001*.

*Note*  These Regulations are made for the purposes of section 106 of the *Veterans’ Entitlements Act 1986*.

2  Commencement

These Regulations are taken to have commenced on 1 July 2000.

3  Definitions

In these Regulations:

*Act* means the *Veterans’ Entitlements Act 1986*.

*ANTS GST Act* means the *A New Tax System (Goods and Services Tax) Act 1999*.

*applicant* means the person by whom, or on whose behalf, an application for motorcycle benefit is made.

*car* has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

*car limit* has the meaning given by subsection 40-230 (3) of the *Income Tax Assessment Act 1997*.

*Department* means the Department of Veterans’ Affairs.

*GST* has the meaning given by section 195-1 of the ANTS GST Act.

*GST-free* has the meaning given by section 195-1 of the ANTS GST Act.

*GST inclusive market value*, in relation to a motorcycle or part, means the market value of the motorcycle or part without any discount for an amount of GST (excluding the value of any modifications made solely for the purpose of adapting the motorcycle or part for driving or for transporting a person).
**motorcycle** means a motor vehicle with not more than 4 wheels that is steered by means of handle bars.

**motorcycle benefit** means a benefit under these Regulations.

**part**, for a motorcycle, means a standard part, but does not include oils, greases, paints, hydraulic oils, refrigerant gases, radiator additives, petrol additives, brake fluids or petrol.

**recipient created tax invoice** has the meaning given by subsection 29-70 (3) of the ANTS GST Act.

**Secretary** means the Secretary of the Department.

**tax invoice** means a document that complies with the requirements of subsection 29-70 (1) and, if applicable, section 54-50 of the ANTS GST Act.

*Note* A number of expressions used in these Regulations are defined in the Act and have the same meaning in these Regulations as in the Act. For example:

- Commission
- defence-caused disease (see Division 2 of Part IV of the Act, in particular subsections 70 (4) and (5))
- defence-caused injury (see Division 2 of Part IV of the Act, in particular subsections 70 (4) and (5))
- Secretary
- veteran (see subsection 5C (1) and section 96 of the Act)
- war-caused disease
- war-caused injury.
Part 2 Eligibility for motorcycle benefit

4 Who is eligible for motorcycle benefit?
For these Regulations, a person is eligible for motorcycle benefit if:
(a) the person is:
   (i) a veteran to whom section 24 of the Act applies who receives a pension under Part II of the Act; or
   (ii) a veteran who has lost a leg or both arms as a result of a war-caused injury or war-caused disease, or as a result of a defence-caused injury or defence-caused disease; or
   (iii) a veteran who has had a leg or both arms rendered permanently and completely useless as a result of a war-caused injury or war-caused disease, or as a result of a defence-caused injury or defence-caused disease; and
(b) regulation 5 or 6 applies to the person.

Note For the purposes of Part VI of the Act (which includes section 106 under which these Regulations are made), veteran includes a member of the Forces and a member of a Peacekeeping Force.

5 Eligibility — purchase of motorcycle
(1) Subject to subregulations (2) and (3), this regulation applies to a person if:
(a) on or after 1 July 2000, the person purchases a motorcycle in respect of which GST is payable; and
(b) the person intends to use the motorcycle for his or her personal transportation (whether or not as the driver).
Regulation 5

(2) This regulation does not apply to the person if, in the 2 years immediately before the purchase of the motorcycle mentioned in subregulation (1), the person received motorcycle benefit in relation to another motorcycle (the *earlier purchased motorcycle*), unless:

(a) the earlier purchased motorcycle has been used to transport the person for distances totalling more than 40 000 kilometres; or

(b) the earlier purchased motorcycle:
   (i) is no longer reasonably capable of being used for the purpose for which a motorcycle of that kind is ordinarily used; and
   (ii) is not insured for its replacement value; or

(c) the Commission is satisfied that there are special circumstances justifying the purchase of the motorcycle mentioned in subregulation (1).

*Example*
A special circumstance could include the theft and non-recovery of the earlier purchased motorcycle if it is not insured for its replacement value.

(3) This regulation does not apply to the person if, in the 2 years immediately before the purchase of the motorcycle mentioned in subregulation (1), the person had purchased a GST-free car, unless:

(a) the car or vehicle has been used to transport the person for distances totalling more than 40 000 kilometres; or

(b) the car or vehicle:
   (i) is no longer reasonably capable of being used for the purpose for which a car or vehicle of that kind is ordinarily used; and
   (ii) is not insured for its replacement value; or

(c) the Commission is satisfied that there are special circumstances justifying the purchase of the motorcycle.

*Example*
A special circumstance could include the theft and non-recovery of the car or vehicle if the car or vehicle is not insured for its replacement value.
6 Eligibility — purchase of part for motorcycle

This regulation applies to a person if:
(a) on or after 1 July 2000, the person purchases a motorcycle part in respect of which GST is payable; and
(b) the person intends to use the part for a motorcycle for which the person has been granted motorcycle benefit, to replace a part of the motorcycle that:
   (i) is no longer fit for its purpose due to wear and tear; or
   (ii) was destroyed, damaged or stolen and was not insured for its replacement value.
Part 3 Applications for motorcycle benefit

7 Applications — formal requirements

(1) An application for motorcycle benefit must be:
   (a) in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by a tax invoice, or a recipient created tax invoice, as required by the ANTS GST Act to be issued in relation to the purchase of the motorcycle or motorcycle part.

(2) The application must be forwarded to, or delivered at, an office of the Department in Australia.

Note Section 5T of the Act deals with the circumstances in which an application is taken to have been forwarded to, or delivered at, an office of the Department in Australia.

(3) An application may be made by a person on behalf of another person.

(4) An application must not be made by, or on behalf of, a person unless the person is in Australia on the day when the application is forwarded, or delivered, under subregulation (2).

8 Withdrawal of application

(1) An applicant for motorcycle benefit may withdraw an application that has not been decided by making a withdrawal orally, or in writing, to the Department.

(2) An application that is withdrawn is taken not to have been made.

(3) The Department must make a written record of a withdrawal that is made orally.
(4) An applicant must not withdraw an application that was made on behalf of another person, unless the applicant is authorised in writing by the person to withdraw the application.

9 Investigation of application

(1) If an application that complies with regulation 7 is made, the Secretary must investigate the application.

(2) After the investigation is finished, the Secretary must submit the application to the Commission for decision.

(3) An application that is submitted to the Commission must be accompanied by:
   (a) any evidence submitted with the application; and
   (b) any documents relevant to the application that are under the control of the Department, including any relevant evidence or documents obtained during the investigation.

10 Commission to decide application

(1) The Commission must decide an application submitted to it by the Secretary.

(2) The Commission may decide to grant the application if it is satisfied that the person by, or on behalf of, whom the application is made is eligible for motorcycle benefit.

(3) The Commission must make a written record of the decision.

11 Notification of decision

The Commission must notify the applicant, in writing, of:
(a) the decision; and
(b) the reasons for the decision; and
(c) the applicant’s right, if dissatisfied with the decision, to request the Commission to review the decision.
Regulation 12

12 Date of effect of decision

(1) This regulation applies to a decision under regulation 10, 15 or 17.

(2) A decision takes effect on the day specified in the decision.

(3) The day may be the day when the decision is made, or a later or earlier day.
Part 4  Payment of motorcycle benefit

13  Amount of motorcycle benefit

The motorcycle benefit in relation to a motorcycle or motorcycle part is:

(a) if the GST inclusive market value of the motorcycle or motorcycle part does not exceed the car limit — an amount equal to \( \frac{1}{11} \) of the value; or

(b) if the GST inclusive market value of the motorcycle or motorcycle part exceeds the car limit — an amount equal to \( \frac{1}{11} \) of the car limit.

Note 1  A payment under these Regulations is exempt from income tax — see sections 52-65 and 52-75 of the Income Tax Assessment Act 1997.

Note 2  A payment received by a person under these Regulations is determined to be an exempt lump sum under paragraph 5H (12) (c) of the Act, and is therefore not part of the person’s ordinary income for the purposes of the Act — see the definition of ordinary income in subsection 5H (1) of the Act.

14  Payment into bank account

If the Commission has determined that motorcycle benefit is to be paid to the credit of a bank account nominated and kept by a person, the account may be an account that is kept by the person alone, or jointly or in common with another person.

Note  A pecuniary benefit that is payable to a person under the Act:

(a) is payable in the way the Commission determines — see subsection 122 (4) of the Act; and

(b) may, on request by the person, be paid to another person if the Commission approves the payment to that other person — see subsection 122 (2) of the Act.

15  Repayment of motorcycle benefit in certain circumstances

(1) This regulation applies if motorcycle benefit has been paid to a person.
Regulation 15

(2) If the Commission is satisfied that, in the relevant period, the person owns a car that is GST-free, the Commission must:
   (a) decide that the person must repay the whole, or a part, of the benefit; and
   (b) notify the person, in writing, of:
      (i) the decision; and
      (ii) the reasons for the decision; and
      (iii) the person’s right, if dissatisfied with the decision, to request the Commission to review the decision.

(3) An amount to be repaid under a decision under subregulation (2) is a debt due to the Commonwealth.

(4) For subregulation (2), the relevant period for a person is the period beginning on the day when the person purchased the motorcycle to which the motorcycle benefit relates, and ending on the day when the person would be entitled to motorcycle benefit in relation to the purchase of another motorcycle.

Example

For a person who receives motorcycle benefit for a motorcycle purchased on 4 July 2001, the relevant period begins on that day. The period may end 2 years after that day, or the period may end earlier, for example if the motorcycle is used to transport the person for more than 40 000 kilometres before the 2 years has ended.
Part 5  Review of decisions

16  Request for review

(1) A person who is dissatisfied with a decision of the Commission under regulation 10 or 15, or another person on that person’s behalf, may request the Commission to review the decision.

(2) A request for review must:
(a) be in writing; and
(b) set out the grounds on which the request is made; and
(c) be lodged with the Commission, by being forwarded to, or delivered at, an office of the Department in Australia, within 3 months after the day when the person seeking review was notified of the decision.

17  Commission’s duty if request for review made

(1) If the Commission receives a request under regulation 16 for review of a decision, the Commission must review the decision:
(a) within 3 months after the day when the request was lodged; or
(b) within any longer period agreed in writing with the person who made the request.

(2) On review of a decision, the Commission must:
(a) affirm the decision; or
(b) set the decision aside.

(3) If the Commission sets aside a decision, it must make a decision in place of the decision set aside.

(4) A person to whom the Commission has delegated its power to review decisions under this regulation must not review a decision if that person made the decision under review.
Regulation 18

18 Written record of decision on review and copy to person who requested review

(1) After a decision is reviewed under regulation 17, the Commission must:
   (a) make a written record of the decision made on review; and
   (b) give a copy of the written record to the person who requested the review.

(2) The written record must:
   (a) set out the Commission’s findings on relevant questions of fact; and
   (b) refer to the evidence or other material on which the findings are based; and
   (c) if the decision under review is a decision under regulation 10, refer to the applicant’s right to apply to the Administrative Appeals Tribunal for review of the Commission’s decision; and
   (d) give reasons for the decision made on review.

Note In giving the written record, the Commission must have regard to the Code of Practice determined under section 27B of the Administrative Appeals Tribunal Act 1975 (Gazette No. S 432, 7 December 1994), accessible on the Internet at:


19 Review by Administrative Appeals Tribunal

(1) Application under the Administrative Appeals Tribunal Act 1975 may be made to the Administrative Appeals Tribunal for review of a decision of the Commission under regulation 17 in respect of a decision under regulation 10.

(2) The application must be made within 3 months after the day when the person seeking review was given a record of the decision under paragraph 18 (1) (b).
Notes to the Veterans’ Entitlements (Special Assistance — Motorcycle Purchase) Regulations 2001

Note 1

The Veterans’ Entitlements (Special Assistance — Motorcycle Purchase) Regulations 2001 (in force under the Veterans’ Entitlements Act 1986) as shown in this compilation comprise Statutory Rules 2001 No. 209 amended as indicated in the Tables below.

Under the Legislative Instruments Act 2003, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

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