Veterans' Affairs Legislation Amendment Bill 2012

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Veterans' Affairs Legislation Amendment Bill 2012

Date introduced: 27 June 2012
House: House of Representatives
Portfolio: Veterans' Affairs
Commencement: All provisions commence on Royal Assent, except for item 6 of Schedule 1 to the Bill, which commences 27 May 2012.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Veterans’ Affairs Legislation Amendment Bill 2012 (the Bill) amends various statutes to give effect to changes to benefits and services for veterans and Australian participants in the British nuclear tests carried out from 1952–1957.

The Bill amends the Veterans’ Entitlements Act 1986¹ (Veterans’ Entitlements Act) and related legislation to:

• clarify processes for approval and authorisation of travel for treatment for eligible veterans, nuclear test participants and their attendants
• enable special assistance to be provided by legislative instrument instead of by regulation
• exempt bereavement payments in respect of indigent veterans or members² from the social security income test
• ensure that debt recovery arrangements apply to all relevant provisions of the Veterans’ Entitlements Act and its regulations and legislative instruments
• exempt from income tax payments under the new Veterans’ Pharmaceutical Reimbursement Scheme, and reimbursement of costs of treatment and testing for cancer for eligible nuclear test participants and
• make minor changes to clarify and update various provisions.

Background—Veterans’ Affairs legislation

There are three main Acts that provide for compensation and coverage of a war or defence service injury, disease or death. They are the:

2. A reference to a ‘member’ in the Veterans’ Entitlements Act is a reference to a member of the Defence Force.

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- Veterans’ Entitlements Act, which provides for those who undertook operational service, peacekeeping service and hazardous military service, and/or peacetime military service from 7 December 1972 up to 6 April 1986
- Safety Rehabilitation and Compensation Act 1988\(^3\) (Safety Rehabilitation and Compensation Act), which provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004 and
- Military Rehabilitation and Compensation Act 2004\(^4\) (Military Rehabilitation and Compensation Act), which provides coverage for illness, injury or death arising from military service undertaken from 1 July 2004.\(^5\)

The Australian Participants in British Nuclear Tests (Treatment) Act 2006 (Nuclear Tests Treatment Act) provides for eligible nuclear test participants to receive treatment and testing for cancer.\(^6\) From October 1952 to October 1957, British atomic weapons detonation tests were conducted at Monte Bello Islands off the west coast of Western Australia and at Emu Field and Maralinga in South Australia. Background information describing the conduct of the tests, claims for assistance by the test participants and also coverage by the Australian Government for participants up to 2006 is contained in the Bills Digest that refers to the original British nuclear tests treatment legislation.\(^7\)

**Main issues and relevant provisions**

**Travel for treatment**

Veterans’ Affairs legislation provides for payment of expenses to eligible persons that are incurred by the person, and his or her attendant, for travel undertaken to obtain treatment.

For example, subsection 110(1) of the Veterans’ Entitlements Act provides:

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5. There is some overlap of coverage between the VEA and the SRCA and the MRCA respectively. For example, a person may have an entitlement to coverage under the VEA and the MRCA at the same time. In such cases a person may have to choose which coverage they want to receive. Where a person does choose, this may also lead to offsets against entitlements under the other Act. For further background, see L Buckmaster, Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010, Bills Digest, no. 22, 2010–11, Parliamentary Library, Canberra, 2010, viewed 1 August 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3d%3A%22legislation%2Fbillsdgs%2F305096%22


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Where a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, for the purpose of:

(a) obtaining treatment;

(b) restoration of his or her health; or

(c) being fitted with surgical aids or appliances or artificial replacements;

the veteran, or the dependant, as the case may be, is, subject to this section and to such conditions as are prescribed, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

Similarly, subsection 19(1) of the Australian Participants in British Nuclear Tests Treatment Act 2006 (Nuclear Tests Treatment Act) provides that:

If:

(a) an eligible person travels for the purpose of obtaining treatment; and

(b) the Commission approves the travel; and

(c) such conditions as are prescribed are satisfied;

the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.

For the purposes of the Nuclear Tests Treatment Act, ‘treatment’ is defined in section 4 as treatment of malignant neoplasia (cancer) and includes testing.

As can be seen above, reimbursement for treatment-related travel expenses is dependent on approval from the ‘Commission’. This refers to the Repatriation Commission, the body responsible for the general administration of the Veterans’ Entitlements Act.  

At present, both statutes provide for the Repatriation Commission to authorise an advance payment on account of the travelling expenses that a person is expected to become entitled to be paid. In the event that the amount of the advance paid exceeds the amount of travelling expenses that are actually payable to the person in respect of that travel, the person is liable to repay an amount equal to the excess to the Commonwealth. The Bill clarifies processes for approval and authorisation by the Repatriation Commission of travel for treatment for eligible veterans, nuclear test participants and their attendants by providing that such approval or authorisation may be given before or after the travel has been undertaken. This is provided for with the insertion of:

- new subsection 19(2A) in the Nuclear Tests Treatment Act (item 2) and

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• **new subsection 110(2A)** in the Veterans’ Entitlements Act (item 68).

This change will most likely be seen as beneficial by eligible veterans, nuclear test participants and their attendants, given that it will clarify that there is flexibility in the process for obtaining approval and authorisation for treatment-related travel expenses. Of some concern though, is that regulations 9–9AB of the Veterans’ Entitlements Regulations 1986 set out strict rules about how much travelling allowance is to be paid to a person. In calculating the amount payable, for example, paragraph 9(5)(c) emphasises the desirability of using the cheapest form of suitable transport for the travel. The danger is that a person will undertake travel without knowledge of these rules and expend an amount which will not be approved for full reimbursement by the Repatriation Commission.

**Special assistance**

Section 106 of the Veterans’ Entitlements Act and section 424 of the Military Rehabilitation and Compensation Act provide for the payment of special assistance or benefits that would not otherwise be available under either Act. The provisions allow for regulations to be made prescribing the circumstances under which the payments will be made. At the date of writing this Bills Digest no relevant regulations have been made in respect of the Military Rehabilitation and Compensation Act.

However, the Veterans’ Entitlements (Special Assistance) Regulations 1999 provide that the Repatriation Commission may grant special assistance to certain pensioners in the form of ‘crisis payments’. A crisis payment is a ‘one-off’ payment which can be made in a number of circumstances, for example, to assist new and existing clients in financial hardship when they are released from lawful custody of at least 14 days duration. Similarly, crisis payments can be made to persons who are forced to leave their home and establish a new one due to, for instance, fleeing domestic violence or in the event of a house fire.

The Bill enables special assistance under both the Veterans’ Entitlements Act and the Military Rehabilitation and Compensation Act in circumstances, and subject to conditions, to be set out in legislative instrument, rather than by regulation. It does this by:

• omitting the word ‘prescribed’ from subsection 106(1) of the Veterans’ Entitlements Act and substituting ‘prescribed in a legislative instrument made by the [Repatriation] Commission for the purpose of this subsection’ (item 66) and

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12. It should be noted that the Repatriation Commission already has the power to make legislative instruments, for example, under subsection 45UIC(6) of the Veterans’ Entitlements Act, to specify the special circumstances for a top up of pension bonus.

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omitting the phrase ‘prescribed by the regulations’ from subsection 424(1) of the Military Rehabilitation and Compensation Act and substituting ‘prescribed in a legislative instrument made by the [Military Rehabilitation and Compensation] Commission for the purposes of the subsection’ (item 32).

The Government states that this will ‘provide for more timely provision of special assistance’.  

A regulation is a form of legislative instrument, that is, an instrument in writing that is of a legislative character, and that is, or was, made in the exercise of a power delegated by the Parliament. Section 216 of the Veterans’ Entitlements Act and section 440 of the Military Rehabilitation and Compensation Act provide for the making of regulations by the Governor-General. The amendments in items 32 and 66 are necessary to allow for legislative instruments to be made other than by the Governor-General. Although both regulations and the legislative instruments arising from these amendments are disallowable instruments, the proposed legislative instruments will not require any action by the Governor-General. Given that special assistance is, by its nature a crisis payment, the amendments will allow for new classes of circumstances requiring the making of such payments to be specified as and when they are identified.

**Bereavement payments**

Section 98AA of the Veterans’ Entitlements Act provides for the payment of a bereavement payment to the estate of a deceased veteran if:

- immediately before the veteran died, he or she was not a member of a couple
- immediately before the veteran died, he or she was being paid a disability pension under the Veterans’ Entitlements Act and
- the veteran died in indigent circumstances.

Under subsection 98AA(2) of the Veterans’ Entitlements Act, ‘the amount of the bereavement payment is six times the amount of the pension that would have been payable to the veteran, if he or she had not died, on the first pension pay day after he or she died’. Bereavement payments are intended to assist the deceased veteran’s or member’s family with the cost of funeral expenses.

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15. Under section 16A of the Acts Interpretation Act 1901, references to the Governor-General in Acts are to be read as referring to the Governor-General acting on the advice of the Executive Council. This is a formal process which requires a number of administrative actions, so it is unsuitable where a legislative instrument needs to be made to respond to an emergency situation.
16. Indigent circumstances are where the value of the estate is not sufficient to cover all liabilities including funeral expenses.
The Bill proposes to exempt bereavement payments from income tests applied to social security payments. This is done by inserting a reference to section 98AA of the Veterans’ Entitlements Act into subparagraph 8(8)(y)(viii) of the Social Security Act 1991 (Social Security Act) which lists amounts to be treated as exempt income for the purposes of the income test under that Act (item 34).

**Debt recovery arrangements**

The Bill amends the Veterans’ Entitlements Act to ensure that debt recovery arrangements apply to all relevant provisions of the Veterans’ Entitlements Act and its regulations and legislative instruments. As explained in the Explanatory Memorandum:

> Section 205 of the Veterans’ Entitlements Act is a general application provision for the recovery of overpayments and debts from any payment made under the Act.

> The overpayments can arise as a consequence of a false statement or an omission or on the basis that a payment was not lawfully payable or not authorised. In addition to overpayments and debts incurred under the Veterans’ Entitlements Act, the section lists overpayments made under other Acts or schemes that may be recovered by deductions from payments made under the Act.  

The Bill amends paragraph 205(1)(a) of the Veterans’ Entitlements Act by replacing the current reference to ‘a provision of this Act or of the Regulations’ with a reference to ‘this Act, the regulations or another legislative instrument under this Act’ (item 70).

This amendment would, for example, mean that special assistance provided as a result of a legislative instrument made under the Veterans’ Entitlements Act (discussed above) would be subject to debt recovery arrangements.

**Income Tax exemptions**

The Bill exempts from income tax, those reimbursements made under the Veterans’ Pharmaceutical Reimbursement Scheme (VPRS) and for treatment and testing for cancer for eligible nuclear test participants. The VPRS provides an annual reimbursement to eligible veterans when their total cost of concessional pharmaceutical copayments exceeds the value of the pharmaceutical allowance component of the Pension, Veterans and MRCA Supplements in a calendar year.

As explained on the Department of Veterans’ Affairs website:

> The Veterans’ Pharmaceutical Reimbursement Scheme commenced on 1 January 2012 and is a new scheme to reimburse eligible veterans’ out of pocket costs associated with the concessional pharmaceutical copayment.

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The first reimbursements under the Scheme will commence in early 2013.

Eligible veterans are those under the Veterans’ Entitlements Act 1986 who have a Gold Card or White Card, are entitled to receive a DVA disability pension and who have qualifying service, or those who have equivalent status under the Military Rehabilitation and Compensation Act 2004.19

Treatment and testing for cancer for eligible nuclear test participants is explained in an earlier section of this Bills Digest.

The Bill provides for exemptions from income tax for each of the above measures through changes to the Income Tax Assessment Act 1997 (items 7–13).

Financial implications

The Explanatory Memorandum states that the amendments in the Bill have no financial impact.20

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