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VETERANS' ENTITLEMENTS BILL 1985

Date introduced: 16 October 1985
House: House of Representatives
Presented by: Hon. A.C. Holding, M.P., Minister Representing the Minister for Veterans' Affairs

DIGEST OF BILL

Purpose

To consolidate, rationalise and simplify Repatriation legislation.

Background

The Repatriation Act 1920 and associated legislation entitles veterans and their dependants to assistance in the form of disability pensions and allowances, and service pensions. Compensation is primarily for incapacity or death as a result of war service. It is available for service in the First and Second World Wars, the Korea-Malaya operations, the Far East Strategic Reserve, South East Asia, service with the Defence Force on or after 7 December 1972, or an Australian contingent of a gazetted peacekeeping force.

Disability Pensions and Associated Payments

Disability pensions for eligible veterans are paid in three main categories namely, the Special Rate (i.e., the Totally and Permanently Incapacitated or T&PI pension), the Intermediate Rate and the General Rate depending on the degree of the veteran's incapacity. The disability pension is not subject to personal income tax or an income or assets test. Various allowances are provided to supplement disability pensions and vary according to the type or severity of disablement and the special needs of the pensioners. These allowances include a Temporary Totally Incapacitated (TTI) pension, a Temporary Incapacity Allowance and a Loss of Earnings allowance.
Disability pensions, war and defence widows' pensions are automatically adjusted each May and November in line with movements in the Consumer Price Index (CPI). Supplementary pensions and allowances are not subject to automatic indexation.

Service Pensions

A service pension is virtually equivalent to an age or invalid pension and is generally payable to a male veteran, aged 60 years, who has served in a theatre of war, or a female veteran, aged 55 years, or veterans who are permanently unemployable. Service pensions are paid at the same rates as age pensions and service pensioners are eligible for the same range of additional payments as are age pensioners. They have the advantage of being available 5 years earlier and providing eligibility to a wide range of repatriation medical treatments. Like age pensions, service pensions are increased in November and May in line with movement in the CPI.

Service pensions paid on account of age are subject to income tax while those paid to people below pension age because of permanent unemployability are exempt from tax. Since March 1985, all service pensions except those paid to blind veterans are subject to a test on assets.

The Repatriation Act, since its introduction in 1920, has been amended extensively and, consequently, has become cumbersome in its operation. Furthermore, supplementary legislation has exacerbated this problem.

Over the years, there have been a number of examinations of the Repatriation system. In November 1973, the Senate Standing Committee on Health and Welfare reported on the Repatriation System.[1] The Committee concluded that "there is now clear evidence that the Repatriation Act has become cumbersome and difficult to interpret over the period of fifty years since it was enacted, and that it should be re-written".[2]

A major enquiry was undertaken by the Hon. Mr Justice B.P. Toose, C.B., who presented his report, "Independent Enquiry into the Repatriation System", in June 1975.

In September 1982, the Minister for Veterans' Affairs announced that a comprehensive review of the repatriation legislation would be undertaken to provide
simplified legislation covering all repatriation entitlements. On 9 February 1983, the Minister announced the establishment of an advisory committee to present the views of the veterans and their dependants. The Advisory Committee on Repatriation Legislation Review reported in November 1983. Chaired by Sir William Keys, it comprised representatives of the RSL, Legacy, the War Widows' Guild and the Australian Veterans' and Defence Services Council. A draft Veterans' Entitlements Bill 1985 (VEB) based on the recommendations of the Advisory Committee, was subsequently tabled in Parliament on 30 May 1985.

Prior to the tabling of the draft VEB, the Repatriation Legislation Amendment Bill 1985 was introduced on 17 May 1985 into the House of Representatives to remove the effects of the High Court decision in Repatriation Commission v O'Brien, delivered on 27 February 1985. For all cases determined on or after 6 June 1985, there must be evidence capable of raising a reasonable hypothesis linking a claim for incapacity or death with war service. Furthermore, the test that compensation is paid, unless the Commission is satisfied beyond reasonable doubt that there are insufficient grounds, was restricted. The test applies only to veterans who served overseas in World War II, allocated to operational service in Korea, Malaya, Borneo or Vietnam, served on peacekeeping duties overseas or were involved in hazardous service. For other claims, the Commission may refuse compensation unless it is reasonably satisfied that there are sufficient grounds for determining that the death or incapacity was war-related. Claims for war widows' pensions are determined according to the standard of proof applying to the service of their husbands except that where the veteran's death occurs 40 years or more after his war or other qualifying service, a widow's pension will not be granted unless the determining authority is reasonably satisfied that there are sufficient grounds which indicate that the veteran's death was war-caused.

The Repatriation Bill was subsequently amended in the Senate. The amendment was accepted by the House of Representatives at a special sitting on 31 May 1985. A sunset clause was inserted into the Bill so that the changes to the standard of proof will cease to be of force 6 months after the commencement of the Act (i.e. 5 December 1985). (Refer to Bills Digest for the Repatriation Legislation Amendment Bill 1985 for an outline of the developments in the standard of proof test).
Following submissions from, and consultations with, various interested parties from the veteran community, the draft VEB was further amended. The present Bill incorporates these amendments.

Outline and Main Provisions

The VEB maintains many of the provisions of the Repatriation Act 1920 and will come into operation on 5 December 1985. A detailed analysis of the clauses of the Bill is contained in the Explanatory Memorandum.

The Bill will provide for:

- disability, orphans' and war widows' pensions as compensation for a war-caused injury, disease or death (Part II of VEB). Particular defence personnel who served in the Vietnam theatre and who were not previously treated as allotted for such service are to receive VEB coverage (clause 6 and Schedule 2). Clause 13 specifies the eligibility requirements of these pensions. There will be no onus of proof on a claimant when making a claim for a pension or a pension increase (sub-clauses 14(4) and 15(4)). The extent of incapacity and the rate of pension payable are to be determined according to a Guide of Assessment of Rates of Veterans' pensions (clause 29);

- service pensions for veterans with qualifying service (Part III). The VEB will extend eligibility for a service pension to veterans involved in bomb or mine clearance work after World War II and for some veterans who served in Malaya after 1957;

- disability pensions for members of peace-keeping forces and certain members of the Defence Forces, and war widows' and orphans' pensions for the dependants of deceased members (Part IV). The intention of the legislation is to allow enlistees after the commencement of the VEB who engage in hazardous service to be entitled to disability pensions (clause 68). However, because of a drafting error, an amendment to the VEB will be required to achieve this result;
medical treatment for eligible veterans and their dependants (Part V). The VEB will allow all service pensioners with a 50% disability pension to be entitled to full treatment (clause 85);

allowances and other benefits (Part VI);

veterans' children education scheme (Part VII);

Veterans' Review Board (Part IX);

review of decisions by the Administrative Appeals Tribunal (Part X);

the Repatriation Commission (Part XI);

the standard of proof to negate the O'Brien decision and to be applied by the Repatriation Commission when making a determination or decision about a claim (clause 119).

1. A criminal standard of proof is to apply to veterans with operational service for pensions under part II of the VEB. Compensation will be paid unless the Commission is satisfied beyond reasonable doubt that there is "no sufficient" ground for doing so (sub-clause 119(1)).

2. For a claim by a member of a peacekeeping force or a member of the Forces engaging in hazardous service, and their dependants, the Commission will need to determine whether the inquiry, disease or defence was defence-caused. Compensation will be paid unless the Commission is satisfied beyond reasonable doubt that there is no sufficient ground for that conclusion (sub-clause 119(2)).

3. A pension will not be payable when there is no material giving rise to a reasonable hypothesis of a relationship between service and disability or death (sub-clause 119(3)).
4. All other decisions under the legislation are to be made on the civil standard of proof i.e. the Commission shall decide the matter to its reasonable satisfaction (sub-clause 119(4)).

5. There is to be no presumption of entitlement to a pension, allowance or other benefit (sub-clause 119(5)).

6. There is to be no onus of proof on any party in relation to the determination of a claim (sub-clause 119(6)).

7. There will be no 40 year rule applying the civil standard of proof to war widows' claims where a veteran dies 40 years or more after service.

For further information, if required, contact the Education and Welfare Group.

3 December 1985

Bills Digest Service

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References

2. Ibid., p.1.

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