



Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007

No. 89, 2007

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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

[Assented to 21 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Veterans' Affairs Legislation
Amendment (2007 Measures No. 1) Act 2007*.

Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007 No. 89, 2007 1

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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2007
2. Schedule 1, item 1	The day after this Act receives the Royal Assent.	22 June 2007
3. Schedule 1, item 2	Immediately after the commencement of item 59 of Schedule 13 to the <i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i> .	1 July 1998
4. Schedule 1, items 3 to 7	The day after this Act receives the Royal Assent.	22 June 2007
5. Schedule 1, items 8 and 9	The day on which this Act receives the Royal Assent.	21 June 2007
6. Schedule 1, items 10 to 16	The day after this Act receives the Royal Assent.	22 June 2007
7. Schedule 1, item 17	The day on which this Act receives the Royal Assent.	21 June 2007
8. Schedule 1, items 18 to 25	The day after this Act receives the Royal Assent.	22 June 2007
9. Schedule 1, items 26 to 28	The day on which this Act receives the Royal Assent.	21 June 2007
10. Schedule 1, items 29 to 51	The day after this Act receives the Royal Assent.	22 June 2007
11. Schedule 1, items 52 and 53	The day on which this Act receives the Royal Assent.	21 June 2007
12. Schedule 1,	The day after this Act receives the Royal	22 June 2007

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
items 54 to 56	Assent.	
13. Schedule 1, items 57 to 64	The day on which this Act receives the Royal Assent.	21 June 2007
14. Schedule 1, items 65 to 78	The day after this Act receives the Royal Assent.	22 June 2007
15. Schedule 1, item 79	The day on which this Act receives the Royal Assent.	21 June 2007
16. Schedule 1, items 80 to 82	The day after this Act receives the Royal Assent.	22 June 2007
17. Schedule 1, item 83	The day on which this Act receives the Royal Assent.	21 June 2007
18. Schedule 1, item 84	The day after this Act receives the Royal Assent.	22 June 2007
19. Schedule 2	The day after this Act receives the Royal Assent.	22 June 2007
20. Schedule 3, item 1	Immediately after the time specified in the <i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i> for the commencement of item 126 of Schedule 1 to that Act.	1 July 2004
21. Schedule 3, item 2	Immediately after the time specified in the <i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i> for the commencement of item 130 of Schedule 1 to that Act.	1 July 2004
22. Schedule 4	The day after this Act receives the Royal Assent.	22 June 2007
23. Schedule 5	1 July 2007.	1 July 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 contains additional information that is not part of this Act. Information in this column may be added to or edited 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—Amendment of the Veterans' Entitlements Act 1986

Part 1—Amendments

1 Section 5 (index of definitions, entry dealing with realise)

Repeal the entry.

2 Subsection 5F(1) (note to the definition of *child*)

Repeal the note.

3 At the end of paragraph 5H(8)(e)

Add:

Note: However, a payment referred to in paragraph (b), (c) or (e):

- (a) is counted in working out the amount of rent assistance a person is entitled to, and may reduce that amount (see Module C of the Rate Calculator); and
- (b) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

4 Paragraph 5H(8)(ea) (note)

Repeal the note, substitute:

Note: However, a payment referred to in paragraph (ea) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

5 After paragraph 5H(8)(p)

Insert:

- (paa) a payment of family assistance, or of one-off payment to families, under the Family Assistance Act;
- (pab) a payment under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;

6 Subsection 5J(1) (definition of *realise*)

Repeal the definition.

7 Subsections 5J(7) and (8)

Repeal the subsections.

8 Paragraph 5JB(1A)(b)

Omit "subsection (1D)", substitute "subsections (1C) and (1D)".

9 Subsection 5L(1) (at the end of the definition of asset)

Add:

Note: However, certain property or money is to be disregarded when calculating the value of a person's assets for certain purposes (for example, see subsection 52(1)).

10 Subsection 5MB(7) (note)

Omit "52J", substitute "52JE".

11 Subsection 5NB(1) (definition of *compensation affected pension*)

Repeal the definition, substitute:

compensation affected pension means:

- (a) an invalidity service pension payable to a person who has not reached pension age; or
- (b) a partner service pension payable to a person who has not reached pension age; or
- (c) income support supplement payable to a person who has not reached qualifying age within the meaning of subsection 45A(2); or
- (d) a telephone allowance payable to a person who:
 - (i) is receiving invalidity service pension or partner service pension and has not reached pension age; or
 - (ii) is receiving income support supplement and has not reached qualifying age within the meaning of subsection 45A(2);

other than a telephone allowance payable to the person because the person:

- (iii) is the holder of a seniors health card; or
 - (iv) is in receipt of a pension under Part II or Part IV at a rate that is specified in subsection 22(4) (extreme disablement adjustment rate); or
 - (v) is in receipt of a pension under Part II or Part IV at a rate that is specified in section 24 (special rate); or
-

- (vi) is in receipt of a pension under Part II or Part IV at a rate that is increased under subsection 27(2) by an amount specified in any of items 1 to 8 of the Table in subsection 27(1); or
- (vii) is in receipt of a pension under Part II or Part IV at a rate that is specified in subsection 30(1) (certain war widows and war widowers rate); or
- (viii) is a veteran who rendered eligible war service during World War 1; or
- (ix) is a Commonwealth veteran who rendered continuous full-time service during World War 1; or
- (x) is an allied veteran who rendered continuous full-time service during World War 1; or
- (e) an advance pharmaceutical allowance under Division 2 of Part VIIA, payable to a person who:
 - (i) is receiving invalidity service pension or partner service pension and has not reached pension age; or
 - (ii) is receiving income support supplement and has not reached qualifying age within the meaning of subsection 45A(2);other than an advance pharmaceutical allowance payable to the person because the person is eligible to be provided with treatment under Part V; or
- (f) an education entry payment payable to a person who:
 - (i) is receiving invalidity service pension or partner service pension; or
 - (ii) is receiving income support supplement and has not reached qualifying age within the meaning of subsection 45A(2).

Note: For *pension age* see sections 5QA and 5QB.

12 Subsection 5Q(1) (definition of *Australia*)

Repeal the definition, substitute:

Australia includes the external Territories for the purposes of section 5PAA, Parts III, IIIA and IIIAB, Division 8A of Part IIIB, Subdivision E of Division 11 of Part IIIB, section 52ZO, Parts VIIA, VIIAC, VIIAD, VIIB and VIIC, section 132 and Schedule 6.

13 At the end of subsection 27A(1)

Add:

- ; and (e) an amount (the *recovered amount*), or no amount, in respect of that reduction has been deducted under section 205 or section 205AA.

14 Subsection 27A(2) (method statement, step 6)

Repeal the step, substitute:

Step 6. Subtract the amount obtained in step 5 from the amount obtained in step 4. The result is called the *notional excess payment*.

Step 6A. Subtract the recovered amount (if any) from the notional excess payment. The result is called the *excess payment*.

15 Subsection 27B(2)

Omit "Steps 4, 5 and 6", substitute "steps 4 to 6A".

16 At the end of section 35H (before the note)

Add:

Record of determination and reasons

- (4) When the Commission determines the claim it must make a written record of its determination.
- (5) The Commission must also make a statement in writing about the determination that:
- (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (6) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
- (a) a copy of the record of the Commission's determination; and

- (b) subject to subsection (7), a copy of the statement about the determination referred to in subsection (5); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (7) If the statement referred to in paragraph (6)(b) contains any matter that, in the opinion of the Commission:
- (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;
- the copy given to the person is not to contain that matter.

Note: The following heading to subsection 35H(1) is inserted "*Determination of claim*".

17 Section 35H (note)

After "Division 16", insert "of Part IIIB".

18 Paragraph 36A(1)(b)

After "in gaol", insert "or in psychiatric confinement".

19 At the end of section 36L (before the note)

Add:

Record of determination and reasons

- (5) When the Commission determines the claim it must make a written record of its determination.
- (6) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:

- (a) a copy of the record of the Commission's determination; and
 - (b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:
- (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;
- the copy given to the person is not to contain that matter.

Note: The following heading to subsection 36L(1) is inserted "*Determination of claim*".

20 Paragraph 37A(1)(b)

After "in gaol", insert "or in psychiatric confinement".

21 At the end of section 37L (before the note)

Add:

Record of determination and reasons

- (5) When the Commission determines the claim it must make a written record of its determination.
- (6) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
 - (a) a copy of the record of the Commission's determination; and
-

- (b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:
- (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;
- the copy given to the person is not to contain that matter.

Note: The following heading to subsection 37L(1) is inserted "*Determination of claim*".

22 Paragraph 38A(1)(b)

After "in gaol", insert "or in psychiatric confinement".

23 At the end of section 38L (before the note)

Add:

Record of determination and reasons

- (5) When the Commission determines the claim it must make a written record of its determination.
- (6) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
 - (a) a copy of the record of the Commission's determination; and
 - (b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and
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- (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:
 - (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;the copy given to the person is not to contain that matter.

Note: The following heading to subsection 38L(1) is inserted "*Determination of claim*".

24 Paragraph 45B(1)(b)

After "in gaol", insert "or in psychiatric confinement".

25 At the end of section 45Q (before the note)

Add:

Record of determination and reasons

- (5) When the Commission determines the claim it must make a written record of its determination.
- (6) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
 - (a) a copy of the record of the Commission's determination; and
 - (b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
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- (8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:
- (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;
- the copy given to the person is not to contain that matter.

Note: The following heading to subsection 45Q(1) is inserted "*Determination of claim*".

26 Subsection 49C(5) (note)

Omit "qualifies for an age service pension", substitute "is eligible for a designated pension (as defined by section 45TA)".

27 Paragraph 49F(a)

Omit "income supplement", substitute "income support supplement".

28 Subsection 49S(6) (note)

Omit "qualifies for an age service pension", substitute "is eligible for a designated pension (as defined by section 45TA)".

29 At the end of Subdivision B of Division 11 of Part IIIB

Add:

52FAAA Application of asset deprivation rules to cease in respect of certain assets

If:

- (a) a person, or a person's partner, has:
 - (i) acquired an asset; or
 - (ii) received consideration that is not inadequate consideration for an asset; and
- (b) the value of the asset is included in the value of the person's assets by Subdivision BA or BB because of a previous disposition of the asset; and
- (c) the person has, by document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department of the circumstances covered by paragraphs (a) and (b);

whichever of Subdivisions BA and BB is applicable ceases, from the start of the day on which the document is lodged, to apply in respect of that disposition of the asset.

30 At the end of Subdivision BB of Division 11 of Part IIIB

Add:

52JE Certain dispositions to be disregarded

This Subdivision does not apply to a disposition of assets that took place:

- (a) more than 5 years before the time when:
 - (i) the person who disposed of those assets; or
 - (ii) if that person was, at the time when that disposition took place, a member of a couple—that person's partner; became eligible to receive a service pension or income support supplement; or
- (b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of those assets could reasonably have expected that the person or the person's partner would become eligible to receive a service pension or income support supplement.

31 After paragraph 52Z(3A)(d)

Insert:

- (da) a payment of compensation (other than a payment covered by paragraph (d)) to the extent that the payment is taken into account:
 - (i) under Division 5A of Part II; or
 - (ii) under section 74;to reduce a disability pension payable to the person under Part II or Part IV, as the case requires;

32 Subsection 53E(2)

Omit "amount in column 5", substitute "amount in, or worked out in accordance with, column 5".

33 Subsection 53E(2) (cell at table item 2, column 5)

Repeal the cell, substitute:
50% of the amount in column
5 of item 1

34 Subsection 53E(2) (cell at table item 2, column 6)

Repeal the cell, substitute:
50% of the amount in column
6 of item 1

35 Subsections 55(1) and (2)

Repeal the subsections, substitute:

- (1) Subject to subsection (3), an instalment of a service pension or income support supplement is not payable to a person in respect of a day on which the person is:
 - (a) in gaol; or
 - (b) undergoing psychiatric confinement because the person has been charged with an offence.

Note: While an instalment is not payable to a person, the person is not entitled to benefits under Division 12 because the person is not *receiving a service pension or income support supplement* unless a determination is in force under subsection 53D(3), 55A(1) or 85(8).

Note: The heading to section 55 is altered by adding at the end "**or in psychiatric confinement following criminal charge**".

36 Subsection 55(4)

Repeal the subsection (including the note), substitute:

Meaning of in gaol

- (4) For the purposes of this Act, a person is *in gaol* if:
 - (a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or
 - (b) the person is undergoing a period of custody pending trial or sentencing for an offence.

Meaning of psychiatric confinement

- (5) Subject to subsection (6), *psychiatric confinement* in relation to a person includes confinement in:

- (a) a psychiatric section of a hospital; and
 - (b) any other place where persons with psychiatric disabilities are, from time to time, confined.
- (6) The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be *psychiatric confinement*.

37 Paragraph 55A(1)(a)

Omit “be suspended or forfeited under section 55”, substitute “not be payable because of section 55”.

38 Subsection 55A(3)

After “in gaol” (first occurring), insert “or undergoing psychiatric confinement because the person has been charged with an offence”.

39 At the end of subsection 55A(3)

Add “or psychiatric confinement”.

40 Subsection 55A(3) (note)

Omit “and may be eligible for treatment at Departmental expense”.

41 Subsection 59C(2) (method statement, step 3)

Omit “*provisional*”, substitute “*initial*”.

42 Subsection 59C(2) (method statement, steps 4 and 5)

Repeal the steps, substitute:

Step 4. The *provisional indexed amount* is:

- (a) if paragraph (b) does not apply—the initial indexed amount; or
- (b) if the amount to be indexed is the amount in item 10 of the CPI Indexation Table in subsection 59B(1)—the amount worked out by determining the difference between the initial indexed amount and the current figure then multiplying that difference by the indexation adjustment worked out under subsection 59C(2AA).

Step 5. Use section 59E to round off the provisional indexed amount: the result is the *indexed amount*.

The indexed amount may be increased under section 59EA in certain cases.

43 After subsection 59C(2)

Insert:

(2AA) For the purposes of step 4 in the Method statement in subsection (2), the *indexation adjustment* is worked out by using the formula:

$$\frac{\text{Income free area} + \text{Income/assets reduction limit}}{\text{Income/assets reduction limit}}$$

where:

income/assets reduction limit means the relevant amount specified in column 5 in Table 53E in subsection 53E(2).

income free area means the relevant amount specified in column 5 in Table E-1 in point SCH6-E6.

44 Subsection 59E(1) (note 1)

Omit "Step 3", substitute "step 4".

45 Paragraph 59M(1)(b)

After "pension age", insert "or qualifying age".

46 Subsection 59M(1)

After "following pensions", insert ", supplements, allowances and payments".

47 At the end of subsection 59M(1)

Add:

- ; (g) telephone allowance;
- (h) advance pharmaceutical allowance;
- (i) education entry payment.

48 Subsection 59M(1) (note 2)

Repeal the note, substitute:

Note 2: These pensions, supplements, allowances and payments may be *compensation affected pensions* (see section 5NB).

49 Subsection 59M(2)

After "pension", insert ", supplement, allowance or payment".

50 Subsection 59M(3)

After "pension", insert ", supplement, allowance or payment".

51 Subsection 59M(4)

After "pension", insert ", supplement, allowance or payment".

52 Subsection 59Q(6)

Omit "none of subsections (3), (4) and (5)", substitute "neither subsection (3) nor (4)".

53 Subsection 59Q(8) (note)

Repeal the note.

54 Subsection 59ZL(2)

Repeal the subsection, substitute:

(2) If:

- (a) a person or a person's partner is eligible for a compensation affected pension; and
- (b) the person receives compensation; and
- (c) the set of circumstances that gave rise to the compensation is not related to the set of circumstances that give rise to the person's or the person's partner's eligibility for the compensation affected pension;

the fact that those 2 sets of circumstances are unrelated does not alone constitute special circumstances for the purposes of subsection (1).

55 Section 79I

Before "If", insert "(1)".

Note: The following heading to new subsection 79I(1) is inserted "*Determination of application*".

56 At the end of section 79I

Add:

Record of determination and reasons

- (2) When the Commission makes a determination with respect to an application under subsection (1), it must make a written record of its determination.
- (3) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's determination.

Notification of determination

- (4) As soon as practicable after the Commission makes a determination with respect to an application under subsection (1), the Commission must give the person who made the application:
 - (a) a copy of the record of the Commission's determination; and
 - (b) subject to subsection (5), a copy of the statement about the determination referred to in subsection (3); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (5) If the statement referred to in paragraph (4)(b) contains any matter that, in the opinion of the Commission:
 - (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the application, be prejudicial to his or her physical or mental health or well-being;the copy given to the person is not to contain that matter.

57 Subsection 93D(1) (definition of *pathology service*)

Repeal the definition, substitute:

pathology service means a procedure of a kind described in an item in the table of pathology services prescribed by regulations made

for the purposes of subsection 4A(1) of the *Health Insurance Act 1973*.

58 Subsection 93D(11)

Repeal the subsection.

59 Subsection 112(3)

After "must be made", insert "within".

60 Paragraph 112(3)(a)

Omit "within 3 months", substitute "12 months".

61 Subsection 118NC(1) (method statement, step 2)

Omit "rent reduction amount", substitute "rent assistance reduction amount".

62 Subsection 118NC(1) (method statement, step 2, note)

Omit "*rent reduction amount*", substitute "*rent assistance reduction amount*".

63 Subsection 118NC(4)

Insert:

rent assistance reduction amount is the amount that would be a person's income reduction under the Social Security Act if that income reduction were worked out by applying the same income test or ordinary income test that was used under that Act in calculating the person's primary payment, but applying that test on the basis that the adjusted disability pension payable to the person, or the person's partner, were the person's only ordinary income for the purposes of that Act.

64 Subsection 118NC(4) (definition of *rent reduction amount*)

Repeal the definition.

65 After subsection 118ND(1)

Insert:

(1A) If, immediately before a person (the *care recipient*) who is being cared for by another person (the *carer*) who is not the care recipient's partner dies:

- (a) a social security pension or social security benefit was payable to the carer; and
- (b) DFISA was payable to the carer;

then, for the purposes of the bereavement payment provisions of the Social Security Act, the rate of the pension or benefit that, if the care recipient had not died, would have been payable to the carer on a day during the bereavement period is increased by the rate of DFISA that would also have been payable to the carer on that day.

Note 1: For *social security pension* and *social security benefit* see section 5Q.

Note 2: For *bereavement payment provision* and *bereavement period* see subsection (4).

66 Paragraph 118ND(2)(c)

Omit "Social Security Secretary", substitute "Commission".

67 Subsection 118ND(2) (note)

Omit "and *Social Security Secretary*".

68 After subsection 118ND(2)

Insert:

DFISA paid to a carer after care recipient dies

(2A) If:

- (a) a person (the *carer*) is qualified for payments under a bereavement payment provision of the Social Security Act in relation to the death of another person (the *care recipient*), who is not the carer's partner, for whom the carer has been caring; and
- (b) after the death of the care recipient, an amount of DFISA to which the carer would have been entitled if the care recipient had not died has been paid under this Part; and
- (c) the Commission is not satisfied that the carer has not had the benefit of the DFISA amount;

the following provisions have effect:

- (d) the DFISA amount is not recoverable from the carer, except to the extent (if any) that the DFISA amount exceeds the amount payable to the carer under the bereavement payment provision;
- (e) the amount payable to the carer under the bereavement payment provision is to be reduced by the DFISA amount.

Note: For *bereavement payment provision* see subsection (4).

69 Subsection 118ND(4) (definition of *Social Security Secretary*)

Repeal the definition.

70 After subsection 118NH(2)

Insert:

DFISA bonus not payable before person dies

(2A) If:

- (a) a person claims a social security pension bonus; and
- (b) the person dies; and
- (c) at the time of the person's death, the claim had not been determined;

then, if the claim is granted, DFISA bonus is payable to the legal representative of the person.

71 Subsection 118NH(3)

After "subsection (2)", insert "or (2A)".

72 At the end of section 118ZF (before the note)

Add:

Record of determination and reasons

- (4) When the Commission determines the claim it must make a written record of its determination.
- (5) The Commission must also make a statement in writing about the determination that:
 - (a) sets out the Commission's findings on material questions of fact; and

- (b) refers to the evidence or other material on which those findings are based; and
- (c) provides reasons for the Commission's determination.

Notification of determination

- (6) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
 - (a) a copy of the record of the Commission's determination; and
 - (b) subject to subsection (7), a copy of the statement about the determination referred to in subsection (5); and
 - (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.
- (7) If the statement referred to in paragraph (6)(b) contains any matter that, in the opinion of the Commission:
 - (a) is of a confidential nature; or
 - (b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;the copy given to the person is not to contain that matter.

Note: The following heading to subsection 118ZF(1) is inserted "*Determination of claim*".

73 Subsection 198E(1) (table item 4, column 5)

Omit "March or September", substitute "September or March".

74 Subpoint SCH6-A1(4) of Schedule 6 (method statement 3, step 2)

Omit "points SCH6-A4 and SCH6-A5", substitute "points SCH6-A4 to SCH6-A9".

75 Subpoint SCH6-A1(5) of Schedule 6 (method statement 4, step 1)

Omit "points SCH6-A4 and SCH6-A5", substitute "points SCH6-A4 to SCH6-A9".

76 Paragraph (f) of point SCH6-C3 of Schedule 6

Repeal the paragraph, substitute:

- (f) in a case where the person is entitled to be paid a family tax benefit—the person satisfies either point SCH6-C3A or SCH6-C3B.

77 Point SCH6-C4A of Schedule 6

Repeal the point.

78 Point SCH6-F1 of Schedule 6 (method statement, step 6, paragraph (a) of note 2)

Omit "52J", substitute "52JE".

79 Subparagraph (a)(iii) of point SCH6-G1 of Schedule 6

Omit "Part IIID", substitute "Part IVA".

Part 2—Application and saving provisions

80 Application—items 13 to 15

The amendments made by items 13 to 15 of this Schedule apply if the decision to grant the pension, or to increase the rate of the pension, mentioned in paragraph 27A(1)(a) of the *Veterans' Entitlements Act 1986* is made after the commencement of this item.

81 Applications—items 16, 19, 21, 23, 25, 55, 56 and 72

The amendments made by items 16, 19, 21, 23, 25, 55, 56 and 72 of this Schedule apply in respect of a determination made on or after the commencement of this item.

82 Application and saving—items 35 to 39

- (1) Despite the amendments made by items 35 to 39 of this Schedule, if:
- (a) a person began a period in gaol before the commencement of those items; and
 - (b) that period in gaol had not ended by the time those items commenced;

then sections 55 and 55A of the *Veterans' Entitlements Act 1986* continue to apply in relation to each instalment of service pension or income support supplement payable, or that would otherwise be payable, to the person before the person is released from gaol as if the amendments made by those items had not been made.

- (2) Despite the amendments made by items 35 to 39 of this Schedule, any direction in force before the commencement of those items under subsection 55(1) or 55A(1) of the *Veterans' Entitlements Act 1986* continues in force after the commencement of those items as if the amendments made by those items had not been made.
- (3) The amendments made by items 35 to 39 of this Schedule apply in relation to an instalment of a service pension or income support supplement that is payable to a person in respect of a day that:
- (a) is on or after the commencement of this item; and
 - (b) is not part of a continuous period, during which the person has been undergoing psychiatric confinement, that began before the commencement of this item.

83 Application—items 59 and 60

The amendments made by items 59 and 60 of this Schedule apply in respect of an application for travelling expenses that is made on or after the commencement of this item.

84 Application—items 70 and 71

The amendments made by items 70 and 71 of this Schedule apply in respect of a claim for a social security pension bonus that is made before, on or after the commencement of this item.

Schedule 2—Amendment of the Military Rehabilitation and Compensation Act 2004

Part 1—Amendments

1 Subsections 29(1) and (2)

Repeal the subsections, substitute:

Liability for injuries and diseases caused by treatment

- (1) For the purposes of this Act, an injury (the *relevant injury*) sustained, or a disease (the *relevant disease*) contracted, by a person is a *service injury* or a *service disease* if:
 - (a) all of the following apply:
 - (i) the person receives treatment for an earlier service injury or service disease;
 - (ii) the treatment is paid for or provided wholly or partly by the Commonwealth;
 - (iii) as a consequence of that treatment, the person sustains the relevant injury or contracts the relevant disease; or
 - (b) the person receives any treatment under regulations made under the *Defence Act 1903* for an earlier injury or disease that is not a service injury or service disease and as an unintended consequence of that treatment, the person sustains the relevant injury or contracts the relevant disease.

Liability for injuries and diseases aggravated by treatment

- (2) For the purposes of this Act, an injury (the *relevant injury*) sustained, or a disease (the *relevant disease*) contracted, by a person is a *service injury* or a *service disease* if:
 - (a) all of the following apply:
 - (i) the person receives treatment for an earlier service injury or service disease;
 - (ii) the treatment is paid for or provided wholly or partly by the Commonwealth;
 - (iii) as a consequence of that treatment, the relevant injury or relevant disease, or a sign or symptom of the relevant
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injury or relevant disease, is aggravated by the treatment; or

- (b) the person receives any treatment under regulations made under the *Defence Act 1903* for an earlier injury or disease that is not a service injury or service disease and, as an unintended consequence of that treatment, the relevant injury or relevant disease, or a sign or symptom of the relevant injury or relevant disease, is aggravated by the treatment.

2 Paragraph 337(a)

After “claiming compensation”, insert “or claiming for the acceptance of liability”.

Part 2—Application provisions

3 Application—item 1

Subsections 29(1) and (2) of the *Military Rehabilitation and Compensation Act 2004* as amended by item 1 of this Schedule apply in relation to an injury sustained, or disease contracted, before, on or after the commencement of that item.

4 Application—item 2

The amendment made by item 2 of this Schedule applies in relation to a matter that is, or might be, relevant to the determination of a claim made on or after the commencement of that item.

**Schedule 3—Amendment of the Military
Rehabilitation and Compensation
(Consequential and Transitional
Provisions) Act 2004**

1 Item 126 of Schedule 1

Repeal the item.

2 Item 130 of Schedule 1

Repeal the item.

Schedule 4—Amendment of the Income Tax Assessment Act 1936

1 After paragraph 202EA(5)(i)

Insert:

- (ia) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*;

2 At the end of subsection 202EB(5)

Add:

- ; or (d) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

Schedule 5—Amendment of the Income Tax Assessment Act 1997

1 Section 52-65 (table item 5A.1)

Repeal the item, substitute:

5A.1	Defence Force Income Support Allowance: the whole of the social security pension, or the whole of the social security benefit, that is also payable to you on the day this allowance is payable to you is exempt from income tax under section 52-10	Exempt	Not applicable
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[Minister's second reading speech made in—
House of Representatives on 28 March 2007
Senate on 12 June 2007]

(48/07)
