



Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008

No. 81, 2008

**An Act to amend the law relating to veterans'
affairs, 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' affairs, and for other purposes

[Assented to 12 July 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Veterans' Affairs Legislation
Amendment (International Agreements and Other Measures) Act
2008*.

*Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Act
2008 No. 81, 2008 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.	12 July 2008
2. Schedule 1, Parts 1 to 5	The day after this Act receives the Royal Assent.	13 July 2008
3. Schedule 1, items 25 to 44	The day on which this Act receives the Royal Assent.	12 July 2008
4. Schedule 1, item 45	The day on which this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 2 of Schedule 2 to the <i>Veterans' Entitlements Legislation Amendment (2007 Election Commitments) Act 2008</i> commences on or before that day.	Does not commence
5. Schedule 1, items 46 to 69	The day on which this Act receives the Royal Assent.	12 July 2008
6. Schedule 1, item 70	Immediately after the commencement of item 20 of Schedule 3 to the <i>Veterans' Affairs Legislation Amendment (2001 Budget Measures) Act 2001</i> .	4 September 2001
7. Schedule 1, items 71 to 86	The day on which this Act receives the Royal Assent.	12 July 2008
8. Schedule 2	The day after this Act receives the Royal Assent.	13 July 2008
9. Schedule 3, Parts 1 to 4	The day after this Act receives the Royal Assent.	13 July 2008
10. Schedule 3, Part 5	Immediately after the commencement of item 22 of Schedule 4 to the <i>Veterans'</i>	16 March 2007

2 *Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008* No. 81, 2008

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Affairs Legislation Amendment (Statements of Principles and Other Measures) Act 2007.</i>	

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—Veterans' Entitlements Act 1986

Part 1—International agreements

1 At the end of section 199

Add:

; and (f) amounts for the purpose of giving effect to arrangements entered into under section 203 (Arrangements with Governments of other countries).

2 Application

Paragraph 199(f) of the *Veterans' Entitlements Act 1986* applies to payment of amounts on or after the commencement of this Part for the purpose of giving effect to arrangements entered into under section 203 of that Act before, on or after that commencement.

3 Section 203

Omit "Governor-General", substitute "Minister".

4 Paragraph 203(a)

Omit "the same".

5 Paragraph 203(a)

Omit "as are granted in that country to, or in relation to, persons who have been members of the Defence Force of the Commonwealth and have rendered operational service during such a war or in that operational area, as the case may be".

6 Saving of arrangements made before this Part commences

The amendments of section 203 of the *Veterans' Entitlements Act 1986* made by this Part do not affect an arrangement entered into under that section before the commencement of this Part.

Part 2—Amounts excluded from income

7 After paragraph 5H(8)(haa)

Insert:

- (hab) a payment of an approved scholarship (within the meaning of subsection 8(1) of the *Social Security Act 1991*) awarded on or after 1 September 1990;

8 After paragraph 5H(8)(pab)

Insert:

- (pac) disability expenses maintenance;

Part 3—Rental income forgone

9 At the end of section 48

Add:

- (2) Subsection (1) does not apply to a course of conduct consisting of the provision of short-term or long-term residential accommodation to a family member of the person for no payment or payment less than the market value of the provision of the accommodation.

Note: For *family member* see subsection 5L(1).

Part 4—Assets disregarded for assets test

10 After paragraph 52(1)(oa)

Insert:

- (ob) the value of any native title rights and interests of the person, or of a community or group of which the person is a member;

11 At the end of subsection 52(1)

Add:

- ; (q) the amount (if any) that the person has retained from a payment made to the person by the Mark Fitzpatrick Trust.

12 After subsection 52(1D)

Insert:

Native title rights and interests

(1DA) In this section:

native title rights and interests means:

- (a) native title rights and interests within the meaning of section 223 of the *Native Title Act 1993*; or
 - (b) any rights and interests of a similar nature under any law of a State, a Territory or a foreign country (whether or not the rights and interests relate to land or waters outside Australia);
- but, to avoid any doubt, does not include any right or interest in a lease or licence, or in a freehold estate.

Part 5—Minor amendments

13 Section 5 (index of definitions)

Omit:

money that attracts interest

46G

14 Subsection 5N(1) (note 2 at the end of the definition of *Government rent*)

Omit “(4A)”, substitute “(4)”.

15 Section 5PA

Repeal the section.

16 Subsection 59LA(1) (definition of *pension MBR factor*)

Omit “worked out to 3 decimal places.”.

17 After subsection 59LA(2)

Insert:

(2A) A pension MBR factor worked out under subsection (1) is to be worked out to 3 decimal places. However:

- (a) if a pension MBR factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the pension MBR factor is to be increased by 0.001; and
- (b) if a pension MBR factor worked out under subsection (1) or paragraph (a) of this subsection would be less than 1, the pension MBR factor is to be increased to 1.

18 At the end of section 115G

Add:

- (3) This section has effect only for the purposes of working out the amount of a veteran's invalidity service pension.

19 Subsection 118D(1) (note 1)

Repeal the note.

20 Subsection 118D(1) (note 2)

Omit "Note 2:", substitute "Note:".

21 Subsection 118K(6) (note)

Repeal the note.

22 Subsection 118M(1) (note)

Repeal the note.

23 Subpoint 118ZZA-5(1) (note)

Repeal the note.

24 Subsection 128A(3C)

Omit "first pension payday", substitute "day".

Part 6—Technical amendments, including amendments relating to legislative instruments

25 Subsection 5C(5)

Omit “declare in writing”, substitute “, by legislative instrument, declare”.

26 Subsection 5C(5) (second sentence)

Repeal the sentence.

27 Subsection 5J(1F)

Omit “in writing”, substitute “by legislative instrument”.

28 Subsection 5J(1F) (second sentence)

Repeal the sentence.

29 Subsection 5JA(1B)

Omit “in writing”, substitute “by legislative instrument”.

30 Subsection 5JA(1B) (second sentence)

Repeal the sentence.

31 Subsection 5JA(6)

Omit “in writing”, substitute “by legislative instrument”.

32 Subsection 5JA(6) (second sentence)

Repeal the sentence.

33 Subsection 5JB(1C)

Omit “in writing”, substitute “by legislative instrument”.

34 Subsection 5JB(1C) (second sentence)

Repeal the sentence.

35 Subsection 5JB(5)

Omit "in writing", substitute "by legislative instrument".

36 Subsection 5JB(5) (second sentence)

Repeal the sentence.

37 Subsection 5JBA(5) (definition of *PF*)

Omit "in writing by the Commission", substitute "by the Commission under subsection (5A)".

38 After subsection 5JBA(5)

Insert:

(5A) The Commission must, by legislative instrument, determine principles for the purposes of the definition of *PF* in subsection (5).

39 Subsection 5JBA(12)

Omit "in writing", substitute "by legislative instrument".

40 Subsection 5JBA(12) (second sentence)

Repeal the sentence.

41 Subsection 5JBA(13)

Repeal the subsection.

Note: The following heading to subsection 5JBA(14) is inserted "*Definitions*".

42 Subsection 29(7)

Repeal the subsection.

43 Subsections 29(9) and (10)

Repeal the subsections, substitute:

Legislative instruments

- (9) Subsections (10) and (11) apply in relation to:
- (a) a document prepared by the Commission in accordance with subsection (1); or
 - (b) an instrument under subsection (2);
- that is approved by the Minister under subsection (3).

- (10) The document or instrument is a legislative instrument made by the Minister on the day on which he or she approves it.
- (11) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, the document or instrument may be expressed to take effect before the date it is registered under that Act.

44 Subsection 37AA(3)

Repeal the subsection, substitute:

Legislative instrument

- (3) A determination under this section is a legislative instrument.

45 Subsection 45AA(3)

Repeal the subsection, substitute:

Legislative instrument

- (3) A determination under this section is a legislative instrument.

46 Subsection 49M(3)

Omit “disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

47 Subsection 52B(3) (definition of *pension valuation factor*)

Omit “for the purposes of this section”, substitute “under subsection (4)”.

48 Subsection 52B(4)

Repeal the subsection, substitute:

- (4) The Commission must, by legislative instrument, make a determination for the purposes of the definition of *pension valuation factor* in subsection (3).

49 Subsection 52ZC(4)

Omit “by the Minister for Social Security by determination in writing”, substitute “, by legislative instrument, by the Minister administering the Social Security Act”.

50 Subsection 52ZC(5)

Repeal the subsection.

51 Subsection 52ZQ(2)

Omit "writing", substitute "legislative instrument".

52 Subsection 52ZQ(4)

Repeal the subsection.

53 Subsection 52ZZA(2)

Omit "by writing, determine", substitute "by legislative instrument, declare".

54 Subsection 52ZZA(3)

Omit "determination", substitute "declaration".

55 Subsection 52ZZA(4)

Repeal the subsection.

56 Subsection 52ZZA(5)

Omit "writing", substitute "legislative instrument".

57 Subsection 52ZZA(7)

Repeal the subsection.

58 Subsection 52ZZB(4)

Omit "writing", substitute "legislative instrument".

59 Subsection 52ZZB(6)

Repeal the subsection.

60 Subsections 52ZZO(3), (4) and (5)

Omit "writing", substitute "legislative instrument".

61 Subsection 52ZZO(7)

Repeal the subsection.

62 Subsections 52ZZZO(3), (4) and (5)

Omit "writing", substitute "legislative instrument".

63 Subsection 52ZZZO(7)

Repeal the subsection.

64 Subsection 52ZZZQ(1)

Omit "(1)".

65 Subsection 52ZZZQ(1)

Omit "writing", substitute "legislative instrument".

66 Subsection 52ZZZQ(2)

Repeal the subsection.

67 Subsection 53B(3)

Repeal the subsection, substitute:

Legislative instrument

(3) A determination under this section is a legislative instrument.

68 Subsection 88A(3)

Repeal the subsection, substitute:

Legislative instrument

(3) A determination under this section is a legislative instrument.

69 Subsections 90A(5) and (6)

Repeal the subsections, substitute:

(5) An instrument determining or amending principles that is approved by the Minister under subsection (4) is a legislative instrument made by the Minister on the day on which he or she approves it.

(6) Section 12 of the *Legislative Instruments Act 2003* has effect in relation to an instrument referred to in subsection (5) as if a reference in that section to the day when the instrument is registered were a reference to the day on which the Minister approves it.

70 Subsection 100(1) (note)

Omit "133", substitute "113".

Note: This item fixes an incorrect cross-reference.

71 Subsection 115B(4)

Repeal the subsection, substitute:

- (4) A scheme made by the Commission, or an instrument varying or revoking such a scheme, that has been approved by the Minister under subsection (3) is a legislative instrument made by the Minister on the day on which he or she approves it.

72 Subsection 116A(1)

Omit "in writing", substitute "by legislative instrument".

73 Subsection 116A(2)

Omit "written determination", substitute "legislative instrument".

74 Subsection 116A(3)

Repeal the subsection.

75 Subsection 118(2)

Omit "determines in writing", substitute ", by legislative instrument, determines".

76 Subsection 118(3)

Repeal the subsection.

77 Subsection 122B(5) (second sentence)

Repeal the sentence.

78 Subsection 122B(6)

Omit "disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*", substitute "legislative instrument".

79 Subsection 132(12)

Omit "section,", substitute "section".

80 Subsections 180A(2) and (3)

Omit "in writing", substitute "by legislative instrument".

81 Subsection 180A(4)

Repeal the subsection.

82 Paragraph 196B(8)(c)

Omit "revoke", substitute "make a determination revoking".

83 Subsection 196B(13)

Omit "A determination under subsection (10)", substitute "Despite section 12 of the *Legislative Instruments Act 2003*, a determination under subsection (10) of this section".

84 After subsection 196B(13)

Insert:

- (13A) A determination under this section:
- (a) must be in writing; and
 - (b) is a legislative instrument.

85 Section 196D

Repeal the section.

86 Saving of determinations

Definitions

- (1) In this item:

amended VEA means the *Veterans' Entitlements Act 1986* as in force immediately after the commencement time.

commencement time means the time when this item commences.

unamended VEA means the *Veterans' Entitlements Act 1986* as in force before the commencement time.

Determinations under subsection 5JBA(5)

- (2) A determination that:

- (a) was made under the definition of **PF** in subsection 5JBA(5) of the unamended VEA; and
 - (b) was in force immediately before the commencement time;
-

has effect at and after that time as if it had been made under subsection 5JBA(5A) of the amended VEA.

Determinations under subsection 52B(3)

- (3) A determination that:
- (a) was made under the definition of *pension valuation factor* in subsection 52B(3) of the unamended VEA; and
 - (b) was in force immediately before the commencement time;
- has effect at and after that time as if it had been made under subsection 52B(4) of the amended VEA.

Determinations under subsection 52ZZA(2)

- (4) A determination that:
- (a) was made under subsection 52ZZA(2) of the unamended VEA; and
 - (b) determined that each company included in a specified class of companies is a *declared private company* for the purposes of section 52ZZA of the unamended VEA; and
 - (c) was in force immediately before the commencement time;
- has effect at and after that time as if it declared that each company included in the specified class is a *declared private company* for the purposes of section 52ZZA of the amended VEA.

Schedule 2—Australian Participants in British Nuclear Tests (Treatment) Act 2006

1 Subsection 4(1) (definition of *nuclear test participant*)

Omit “or (3)”, substitute “, (3) and (3A)”.

2 After subsection 5(3)

Insert:

(3A) A person is a *nuclear test participant* if the person:

- (a) was at any time during the period from the beginning of 1 May 1965 to the end of 30 June 1988 present in the nuclear test area that was the Maralinga area; and
- (b) was, at that time, either:
 - (i) a Commonwealth Police Officer under the *Commonwealth Police Act 1957*; or
 - (ii) a member of the Australian Federal Police under the *Australian Federal Police Act 1979*; and
- (c) was, at that time, an Australian resident.

(3B) Paragraph 5(1)(a) of the *Australian Federal Police Act 1979* does not apply to subparagraph (3A)(b)(i) of this section.

Note: Paragraph 5(1)(a) of the *Australian Federal Police Act 1979* provides that a reference in a law of the Commonwealth to a Commonwealth Police Officer is to be read as a reference to a member of the Australian Federal Police.

3 Treatment before commencement but on or after 19 June 2006

- (1) The Repatriation Commission may approve, under subsection 13(1) of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, treatment for a person that was provided before the commencement of this Schedule but on or after 19 June 2006 if:
 - (a) the person makes a claim under that Act within 6 months after that commencement for a determination that the person is an eligible person; and

- (b) the Commission determines under that Act that the person is an eligible person because of subsection 5(3A) of that Act (as amended by this Schedule).

- (2) This item has effect despite subsection 13(2) of that Act.

4 Expenses of travel before commencement but on or after 19 June 2006

- (1) This item applies to travel undertaken before the commencement of this Schedule but on or after 19 June 2006 for the purpose of:
 - (a) obtaining treatment of a person who:
 - (i) makes a claim under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* within 6 months after that commencement for a determination that the person is an eligible person; and
 - (ii) is determined by the Commission under that Act to be an eligible person because of subsection 5(3A) of that Act (as amended by this Schedule); or
 - (b) accompanying a person described in paragraph (a) travelling for the purpose described in that paragraph as his or her attendant.
- (2) If a claim for a determination of entitlement to be paid travelling expenses in connection with the travel is made under that Act (disregarding subsection 21(2) of that Act) within 6 months after the commencement of this Schedule, the Repatriation Commission may:
 - (a) approve or authorise the travel, for the purposes of section 19 of that Act; and
 - (b) determine the claim under that Act.

Schedule 3—Military Rehabilitation and Compensation Act 2004

Part 1—Definition of disease

1 Section 5 (definition of *disease*)

Repeal the definition, substitute:

disease means:

- (a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development);
or
- (b) the recurrence of such an ailment, disorder, defect or morbid condition;

but does not include:

- (c) the aggravation of such an ailment, disorder, defect or morbid condition; or
- (d) a temporary departure from:
 - (i) the normal physiological state; or
 - (ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

Note: This amendment corrects the formatting, but does not change the wording, of the definition of *disease* in section 5 of the *Military Rehabilitation and Compensation Act 2004*.

Part 2—Effect of days worked on compensation

2 Subsection 196(3) (paragraph (c) of the definition of *number of days*)

Repeal the paragraph, substitute:

- (c) otherwise:
 - (i) 5; or
 - (ii) if the Commission determines another number as the number of days that the person would normally work in the part of the week—that other number.

Part 3—Weekly compensation for wholly dependent partners

3 Paragraph 234(5)(a)

Omit “and (b)”, substitute “, (b) and (c)”.

4 Waiver of earlier overpayments

If:

- (a) before the commencement of this Part, an amount of compensation was paid as if the amendment made by this Part had already commenced; and
- (b) that amount exceeded the amount of compensation that was payable because the amendment had not commenced; and
- (c) the excess would be recoverable by the Commonwealth apart from this item;

the right to recover the excess is waived.

Part 4—Claims for compensation

5 Subsection 322(2)

Repeal the subsection.

Note 1: The heading to section 322 is altered by omitting “**liability**”.

Note 2: The following heading to subsection 322(1) is inserted “*Claim for acceptance of liability*”.

6 At the end of section 322

Add:

Claim for compensation

- (4) A claim for compensation must not be made if another claim for compensation for the same matter has not yet been finally determined.
- (5) Another claim for compensation for the same matter must be supported by additional evidence.

When a claim is finally determined

- (6) For the purposes of this section, a claim is finally determined when either:
 - (a) a decision that has been made in respect of the claim is not subject to any form of reconsideration or review; or
 - (b) a decision that has been made in respect of the claim was subject to some form of reconsideration or review, but the period within which such a reconsideration or review could be instituted has ended without a reconsideration or review having been instituted.

7 Application of amendments

The amendments made by this Part apply in relation to a claim made on or after the commencement of this Part, whether a claim for compensation for the same matter has been made before, on or after that commencement.

Part 5—Technical correction

8 Subsection 327(1)

After “(3),” insert “if”.

Note: This inserts a word that was wrongly omitted by an earlier amendment.

*[Minister’s second reading speech made in—
House of Representatives on 19 March 2008
Senate on 16 June 2008]*

(61/08)

24 *Veterans’ Affairs Legislation Amendment (International Agreements and Other
Measures) Act 2008 No. 81, 2008*