

Veterans' Entitlements (Special Assistance) Regulations 1999

1999 No. 319

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 319

Issued by the Authority of the Minister for Veterans' Affairs

Veterans' Entitlements Act 1986

Veterans' Entitlements (Special Assistance) Regulations 1999

Section 216 of the *Veterans' Entitlements Act 1986* (the Act) enables the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Veterans' Entitlements (Special Assistance) Regulations 1999* prescribe a set of circumstances in which the Repatriation Commission may grant special assistance to certain pensioners entitled to benefits under the *Veterans' Entitlements Regulations 1986*.

The special assistance will take the form of 'crisis payments'.

A crisis payment will be a 'one-off payment to assist new and existing clients in financial hardship when they are forced to leave their home and establish a new one due to a limited number of circumstances, such as fleeing domestic violence or in the event of a house fire. The amount of the payment will be a flat rate of one week's full entitlement without 'add-ons'.

The regulations are based on virtually identical legislation prepared by the Department of Family and Community Services (*Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*).

Details of each of the regulations are set out in the attachment.

The regulations will commence on the date that Schedule 4 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* prepared by the Department of Family and Community Services commences. Schedule 4 is taken to have commenced on 1 July 1999.

The fact that the regulations take effect before gazettal will not cause the regulations to be ineffective by virtue of subsection 48(2) of the *Acts Interpretation Act 1901* because the rights of a person at gazettal would not be affected so as to disadvantage the person nor will a liability be imposed on any person in respect of anything done or omitted to be done before gazettal.

ATTACHMENT

Veterans' Entitlements (Special Assistance) Regulations 1999

Regulation 1 refers to the name of the regulations - the *Veterans' Entitlements (Special Assistance) Regulations 1999*.

Regulation 2 provides for the regulations to commence on the date that Schedule 4 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* submitted by the Department of Family and Community Services commences.

Regulation 3 inserts the following definitions:

Act, being the *Veterans' Entitlements Act 1986*.

claim, a claim for a crisis payment

claimant, a person who makes a claim or on whose behalf a claim is made.

contacted the Department, is defined in regulation 4.

crisis payment, this is the payment to be made to people eligible for it.

home, a person's principal place of residence.

lawful custody, detention in gaol or psychiatric confinement, due to being charged with an offence.

liquid assets, cash, readily realisable assets of a person and any partner, shares and debentures, amounts with a bank or other financial institution, outstanding debts owed by a former employer or partner but not termination payments.

pension entitlement, age service pension, invalidity service pension, partner service pension or the income support supplement.

severe financial hardship, is where the value of a single person's liquid assets is less than the maximum fortnightly pension payable to the person.

A member of a couple is in severe financial hardship where the value of the person's liquid assets is less than twice the maximum fortnightly pension payable to the person.

Some expressions used in the regulations, such as 'Commission',

'member of a couple' and 'partner' are defined in the *Veterans' Entitlements Act 1986* and are to have the same meaning.

maximum payment rate, of a person's *pension entitlement* is to be worked out by using the Rate Calculator in the Act with reference to the procedure in the regulations. The maximum payment rate of a pension is relevant to working out if a person is in *severe financial hardship*.

Regulation 4 defines **contacted the Department** as being where:

- * a person or someone on their behalf contacts the Department of Veterans' Affairs;
- * the contact is about claiming a crisis payment;

- * on the day of contact, the person is in Australia;
- * 14 days after the contact, a crisis payment is claimed; and
- * the contact has been recorded by the Department of Veterans' Affairs.

Contact may be by post, telephone or facsimile message.

This regulation is to enable contact about claiming a crisis payment to be treated as an informal claim that will assist those claimants who have difficulty lodging a formal claim within 7 days of their particular crisis.

Regulation 5 sets out the circumstances where an ex-prisoner or ex psychiatric patient is eligible for a crisis payment, namely:

- * must be released from prison after spending at least 14 days there;
- * crisis payment is claimed formally or informally (contact) within 7 days of release;
- * claimant is in **severe financial hardship** (which is defined) on day of formal or informal (contact) claim; and
- * claimant receives **a pension entitlement** (which is defined) on day of formal or informal (contact) claim.

Regulation 6 sets out the circumstances where a person other than an ex prisoner or ex-psychiatric patient is eligible for a crisis payment, namely:

- * person forced from **home** (which is defined) due to fire or violence etc;
- * unreasonable for person to remain in or return **home**.
- * a new **home is** planned;
- * person was in Australia when the crisis occurred.
- * person claims formally or informally (contact) crisis payment within 7 days of crisis;
- * on claim day the person is in **severe financial hardship** and has claimed a **pension entitlement**, on the same day or earlier, and the person is eligible for the **pension entitlement** and
- * person has not been paid more than 3 crisis payments in the 12 months before the payment is claimed.

A crisis (extreme circumstance) that is a continuing crisis is taken to have happened when the crisis first occurred.

A person is not eligible for a crisis payment where the person creates the crisis in order to obtain a crisis payment.

Regulation 7 provides that a crisis payment is not payable if a claimant is eligible for a disaster relief-type payment in respect of the relevant crisis.

Regulations refer to the steps to be followed if a claim for a crisis payment

8, 9 and 10 is to be regarded as a proper claim, namely:

- * claim must be in writing and in the approved form;

- * any relevant and reasonably available evidence must accompany the claim;

- * claim must be lodged at an office of the Department of Veterans' Affairs in Australia or at a place in Australia

approved by the Repatriation Commission or lodged with a person in Australia approved by the Repatriation Commission. A claim may be made on behalf of a person;

and

- * claimant must be in Australia when making a claim.

Regulation 11 governs the situation relating to withdrawing a claim for a crisis payment, namely that:

- * a claim that has not been decided may be withdrawn by the claimant or a person on the claimant's behalf,

- * once withdrawn, the claim is taken to have not been made;

- * a withdrawal may be made orally or in writing to the Department of Veterans' Affairs; and

- * a person withdrawing a claim on behalf of a claimant must have been authorised by the claimant to act on the claimant's behalf.

Regulation 12 provides that a claim for a crisis payment will not be taken to have been made if the claim is based on the eligibility requirements set out in regulation 6 and at the time of making the claim the person is not eligible for the payment.

Regulation 13 imposes duties on the Secretary of the Department of Veterans' Affairs in relation to investigating a claim for a crisis payment. Those duties are as follows:

- * where a proper claim is lodged the Secretary must investigate it;

- * upon the completion of the investigation the Secretary must submit the claim to the Repatriation Commission for decision; and

- * a claim submitted to the Commission must be accompanied by any evidence submitted by the claimant and by any documents relevant to the claim under the control of the Department of Veterans' Affairs, including any relevant evidence or documents obtained during the investigation.

Regulations 14 to 16 impose duties on the Repatriation Commission in relation to deciding a claim for a crisis payment submitted to it by the Secretary of the Department of Veterans' Affairs. Those duties are as follows:

- * to decide the claim and to record its decision in writing;

- * at its discretion, to grant a claim if the claimant is eligible for a crisis payment and the crisis payment is payable; and

- * to notify the claimant, in writing, of the decision and of the claimant's rights of review by the Repatriation Commission.

Regulation 17 specifies that a decision on a claim for a crisis payment or a decision made in the review process is to take effect on the day specified in the decision which may be the day the decision is made or a later or earlier day.

Regulation 18 sets out the formula for determining the amount of a crisis payment, namely it is to be half the fortnightly amount, at the **maximum basic rate**, of the **pension entitlement** that is payable to the person.

The phrase 'maximum basic rate' means the rate of pension entitlement worked out by using Module B of the Rate Calculator in the *Veterans' Entitlements Act 1986*.

Regulation 19 governs the situation where the Repatriation Commission has decided under section 122 of *the Veterans Entitlements Act 986*, that a person's crisis payment is to be paid into the person's bank account. In these circumstances, the account may be kept by the person alone, jointly or in common with another person.

Regulation 20 allows the Repatriation Commission to make deductions from a crisis payment to pay tax if the recipient of the crisis payment agrees. (note the crisis payment is not taxable).

Regulation 21 exempts crisis payments, in an account in a financial institution, from garnishee and similar orders if the crisis payment was paid into the account in the 4 weeks before the order was effective and the crisis payment was payable to the holder of the account

Regulation 22 prohibits the payment of a crisis payment to a person in lawful custody.

Regulation 23 establishes an internal-review procedure for claimants dissatisfied with a Commission decision under Part 4 of the regulations. Part 4 deals with the Repatriation Commission deciding claims for crisis payments. A request for review must:

- * be in writing;

- * set out the grounds for review; and

- * be lodged with the Repatriation Commission within 3 months of the aggrieved person being notified of the relevant decision.

Regulation 24 sets out the Repatriation Commission's duties when it receives a request under proposed regulation 23 to review a decision, those duties being:

- * to review the decision within 3 months after the request was received or within such time as agreed in writing;

- * affirm or set aside the decision under review; and

- * substitute a decision for any decision set aside.

This regulation also prohibits a Commission delegate from hearing a review if that delegate was the person who made the decision being reviewed.

Regulation 25 imposes a duty on the Repatriation Commission, when it makes a decision reviewing a decision to grant or reject a claim for a crisis payment, to make a written record of its decision and to give a copy to the aggrieved person. That record must:

- * set out the Commission's findings on relevant questions of fact;

- * refer to the material on which the findings are based; and

* give reasons for the Commission's decision.

Regulation 26 provides for a right of appeal to the Administrative Appeals Tribunal from a decision of the Repatriation Commission made on an internal review. The appeal must be made within 3 months after the person making the appeal was given a copy of the Repatriation Commission's decision on the internal review.