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Veterans' Entitlements (Special Assistance) Regulations 1999

Statutory Rules 1999 No. 4

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Veterans' Entitlements Act 1986*.

Dated 8 DEC 1999 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

BRUCE SCOTT
Minister for Veterans' Affairs



Veterans' Entitlements (Special Assistance) Regulations 1999

Statutory Rules 1999 No. 1

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made under the

Veterans' Entitlements Act 1986

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Veterans' Entitlements (Special Assistance) Regulations 1999*.

2 Commencement

These Regulations commence on the date that Schedule 4 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* commences.

3 Definitions

(1) In these Regulations:

Act means the *Veterans' Entitlements Act 1986*.

claim means a claim for crisis payment.

claimant means the person by whom, or on whose behalf, a claim is made.

contacted the Department has the meaning given by regulation 4.

crisis payment means a payment under these Regulations.

home means a person's principal place of residence.

lawful custody means detention of a person in gaol, or in psychiatric confinement because he or she has been charged with an offence.

liquid assets, of a person, means cash and readily realisable assets of the person, and of the person's partner (if the person is a member of a couple), and includes:

- (a) shares and debentures in a public company within the meaning of the Corporations Law; and
- (b) amounts deposited with, or lent to, a bank or other financial institution by the person or partner (whether or not the amount can be withdrawn or repaid immediately); and

Regulation 3

- (c) amounts due, and able to be paid, to the person or partner by, or on behalf of, a former employer of the person or partner;

but does not include:

- (d) an amount that is a qualifying eligible termination payment for Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

Note For *qualifying eligible termination payment* see subs 27A (12) to (12C) of the *Income Tax Assessment Act 1936*.

pension entitlement means an age service pension, an invalidity service pension, a partner service pension or an income support supplement.

severe financial hardship means:

- (a) for a person who is not a member of a couple — the value of the person's liquid assets is less than the fortnightly amount, at the maximum payment rate, of the pension entitlement that is payable to the person; and
- (b) for a person who is a member of a couple — the value of the person's liquid assets is less than twice the fortnightly amount, at the maximum payment rate, of the pension entitlement that is payable to the person.

Note A number of expressions used in these Regulations are defined in the Act and have the same meaning in these Regulations as in the Act. For example:

- Commission
- member of a couple
- partner.

Regulation 3

- (2) In these Regulations, the *maximum payment rate* of a pension entitlement payable to a person is the rate worked out using the Rate Calculator as follows:

Class of entitlement	Applicable Method statement steps
service pension (not blind, not war widow/war widower — pensioner)	Method statement 1, Step 4
service pension (blind, not war widow/war widower — pensioner)	Method statement 2, Step 4
service pension (not blind, war widow/war widower — pensioner)	Method statement 1, Step 4
service pension (blind, war widow/war widower — pensioner)	Method statement 1, Step 4
income support supplement, not blind	Method statement 5, Step 4
income support supplement, blind	Method statement 1, Step 4

Regulation 4

Part 2 Eligibility for crisis payment**4 Meaning of *contacted the Department* for this Part**

- (1) For this Part, a person has *contacted the Department* if:
- (a) the person, or someone on the person's behalf, contacted the Department; and
 - (b) the contact relates to claiming a crisis payment; and
 - (c) the person is, on the day the contact happens, in Australia; and
 - (d) the person claims a crisis payment within 14 days after the day the contact happens; and
 - (e) the Department has a record of the contact.
- (2) For subregulation (1), the contact may happen by post or telephone or by facsimile transmission.

5 Eligibility for crisis payment — release from gaol or psychiatric confinement

- (1) A person is eligible for a crisis payment if:
- (a) the person, after spending at least 14 days in lawful custody, is released; and
 - (b) the person contacts the Department, or claims the crisis payment, within 7 days after being released; and
 - (c) on the day on which the contact happens or the claim is lodged the person:
 - (i) is in severe financial hardship; and
 - (ii) is an appropriate claimant.
- (2) For subregulation (1):
appropriate claimant is a person who receives a pension entitlement.

Regulation 6**6 Eligibility for crisis payment — extreme circumstances forcing departure from home**

- (1) A person is eligible for a crisis payment if:
- (a) the person has left, or cannot return to, his or her home because of an extreme circumstance; and
 - (b) the extreme circumstance makes it unreasonable to expect the person to remain in, or return to, the home; and
 - (c) the person has established, or intends to establish, a new home; and
 - (d) when the extreme circumstance happened, the person was in Australia; and
 - (e) the person contacts the Department, or claims the crisis payment, within 7 days after the extreme circumstance happened; and
 - (f) on the day on which the contact happens, or the claim is lodged, the person:
 - (i) is in severe financial hardship; and
 - (ii) has made a claim (whether on the same day or on an earlier day) for a pension entitlement and is eligible for the pension entitlement; and
 - (g) in the 12 months before the day on which the claim is made, no more than 3 crisis payments have been payable to the person.

Note Examples of extreme circumstances as a result of which a person would be eligible for crisis payment are the person's house being burnt down, or the person being subjected to domestic or family violence.

- (2) For paragraph (1) (e), an extreme circumstance that is a continuing circumstance is taken to have happened when the circumstance first happened.
- (3) A person is not eligible for a crisis payment for an extreme circumstance if the Commission is satisfied that the extreme circumstance was brought about in order to obtain a crisis payment.

Regulation 7

7 Crisis payment not payable in addition to disaster relief payment

A crisis payment is not payable to a person for an extreme circumstance if the person is eligible for a disaster relief payment (however described) for the extreme circumstance.

Note Section 106 of the Act (which authorises the Commission to make crisis payments) provides that special assistance, for example, a crisis payment, is not payable if the person is eligible for assistance under another provision of the Act.

Part 3 Claims for crisis payment

8 How to claim

- (1) A person who wants a crisis payment must make a proper claim.
- (2) To be a proper claim, a claim must be:
 - (a) in writing; and
 - (b) in accordance with a form approved by the Commission; and
 - (c) accompanied by any evidence reasonably available to the claimant that is relevant to the claim.

9 Making of claim

- (1) To be a proper claim, a claim must be lodged:
 - (a) at an office of the Department or a place approved by the Commission; or
 - (b) with a person approved for the purpose by the Commission.
- (2) A place or person approved under paragraph (1) (a) or (b) must be a place or person in Australia.
- (3) A person may make a claim on behalf of another person.

10 Claimant must be in Australia

A claim for a crisis payment is not a proper claim unless the claimant is in Australia on the day on which the claim is lodged.

Regulation 11

11 Claim may be withdrawn

- (1) A claimant for a crisis payment or someone else on behalf of a claimant may withdraw a claim that has not been decided.
- (2) A claim that is withdrawn is taken to have not been made.
- (3) A withdrawal may be made orally or in writing to the Department.
- (4) A person withdrawing a claim on behalf of a claimant must be authorised in writing by the claimant to act on behalf of the claimant.

12 Claim taken not to have been made

A claim for a crisis payment is taken not to have been made if:

- (a) the claim is based on the eligibility requirements set out in regulation 6; and
- (b) when the claim is made, the person is not eligible for the payment.

13 Investigation of claim

- (1) If a person lodges a proper claim for a crisis payment, the Secretary must investigate the claim.
- (2) When the investigation is finished, the Secretary must submit the claim to the Commission for decision.
- (3) A claim submitted to the Commission must be accompanied by:
 - (a) any evidence submitted by the claimant with the claim; and
 - (b) any documents relevant to the claim that are under the control of the Department, including any evidence or documents relevant to the claim obtained during the investigation.

Part 4 Deciding claims

14 Commission to decide claim

- (1) The Commission must decide a claim submitted to it by the Secretary under subregulation 13 (2).
- (2) When the Commission decides a claim, it must make a written record of the decision.

15 Grant of claim

The Commission may decide to grant a claim if it is satisfied that:

- (a) the person by, or for, whom the claim is made is eligible for a crisis payment; and
- (b) the crisis payment is payable.

Note See r 7 for circumstances in which crisis payment is not payable.

16 Notifying claimant of decision on claim

When a claim is decided, the Commission must notify the claimant, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the claimant's right, if dissatisfied with the decision, to request the Commission to review the decision.

17 Date of effect of decision

- (1) This regulation applies to a decision under regulation 14 or 24.
- (2) A decision takes effect on the day specified in the decision.
- (3) The day may be the day on which the decision is made or a later day or an earlier day.

Regulation 18

Part 5 Payment of crisis payments

18 Amount of payment

(1) The amount of a crisis payment payable to a person is half the fortnightly amount, at the maximum basic rate, of the pension entitlement that is payable to the person.

(2) For subregulation (1):

maximum basic rate, of the pension entitlement of a person, means the rate of that entitlement worked out in accordance with the Rate Calculator.

Note For *Rate Calculator*, see s 5Q of the Act. Module B of the Rate Calculator is used to establish the maximum basic rate.

19 Payment into bank account

(1) This regulation applies if the Commission has determined, under section 122 of the Act, that a crisis payment is to be paid to the credit of a bank account nominated and kept by a person.

(2) The account may be an account that is kept by the person alone, jointly or in common with another person.

Note Under s 122 of the Act, a pecuniary benefit under the Act is payable in the way the Commission determines.

20 Deduction from crisis payment

The Commission may deduct an amount from a crisis payment payable to a person if the person asks the Commission:

(a) to deduct the amount; and

(b) to pay the amount to the Commissioner of Taxation.

Note Under s 125 of the Act, a pecuniary benefit under the Act is, subject to the Act, absolutely inalienable.

Regulation 22

21 Effect of garnishee or similar order

A garnishee order or similar order does not apply to the amount of a crisis payment in an account kept with a financial institution if:

- (a) the crisis payment was paid to the credit of the account in the 4 weeks before the order came into force; and
- (b) the crisis payment was payable to the person whose account it is (whether on the person's own behalf or not).

22 Crisis payments not payable in lawful custody

A crisis payment is not payable to a person on a day on which the person is in lawful custody.

Regulation 23

Part 6 Review of decisions**23 Request for review**

- (1) A claimant who is dissatisfied with a decision of the Commission under Part 4, or another person on a claimant's behalf, may request the Commission to review the decision.
- (2) A request for review must:
 - (a) be in writing; and
 - (b) set out the grounds on which the request is made; and
 - (c) be lodged with the Commission within 3 months after the day on which the person seeking review was notified of the decision.

24 Commission's duty if request for review made

- (1) If the Commission receives a request under regulation 23 for review of a decision, the Commission must review the decision:
 - (a) within 3 months after the day on which the request was lodged; or
 - (b) within a longer period agreed in writing by the person who made the request.
- (2) On review of a decision, the Commission must:
 - (a) affirm the decision; or
 - (b) set the decision aside.
- (3) If the Commission sets aside a decision, it must make a decision in place of the decision set aside.
- (4) A person to whom the Commission has delegated its power to review decisions under this regulation must not review a decision if that person made the decision under review.

Regulation 26

25 Written record of decision on review and copy to person who requested review

- (1) When the Commission reviews a decision, it must:
 - (a) make a written record of the decision made on review; and
 - (b) give a copy of the written record to the person who requested review.
- (2) The written record must:
 - (a) set out the Commission's findings on relevant questions of fact; and
 - (b) refer to the evidence or other material on which the findings are based; and
 - (c) give reasons for the decision made on review.

26 Review by Administrative Appeals Tribunal

- (1) Application under the *Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for a review of a decision of the Commission under regulation 24.
- (2) The application must be made within 3 months after the day on which the person seeking review was given a record of the decision under paragraph 25 (1) (b).

Note

1. Made by the Governor-General on *the Commonwealth of Australia Gazette* on *1999*, and notified in *1999*.

8 December
15 December