

Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001 2001 No. 102

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 102

Issued by the Authority of the Minister for Veterans' Affairs

Veterans' Entitlements Act 1986

Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001

Veterans' Entitlements (One-off Payment to the Aged) Regulations 2001

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.

Under section 106 of the Act, the Repatriation Commission ("the Commission") may, in such circumstances as are prescribed, and subject to such conditions (if any) as are prescribed, grant assistance or benefits to a veteran or to a dependant of a veteran.

Regulations have been made enabling the Commission to provide a one-off payment to certain veterans or their dependants.

The Regulations facilitate a one-off payment of:

\$25,000 to veterans interned by the Japanese during the Second World War or their dependants (other than children); and

\$300 to certain elderly veterans and elderly dependants.

The circumstances in which the one-off payments are to be made are:

in the case of the \$25,000 payment to a veteran:

- the veteran was interned by the Japanese during 7 December 1941 - 29 October 1945; and
- the veteran was alive on 1 January 2001.

in the case of the \$25,000 payment to a dependant of a veteran (other than a child):

- the person is a dependant of a veteran who was interned by the Japanese during 7 December 1941 - 29 October 1945; and
- the veteran of whom the person was a dependant died before 1 January 2001; and
- the dependant was alive on 1 January 2001.

in the case of the \$300 payment to a veteran:

- on 22 May 2001 the veteran has reached the pension age for veterans under the Act and the veteran is eligible to be paid an age service pension or an invalidity service pension.

in the case of the \$300 payment to a dependant:

- on 22 May 2001 the dependant has reached the pension age for persons other than veterans under the Act and the person is eligible to be paid a partner service pension or an income support supplement under the Act; or
- on 22 May 2001 the dependant is in receipt of a pension described in subsection 4(6) of the *Veterans Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

The Government decided to make the \$25,000 payment to the relevant veterans or their dependants in recognition of the enormous suffering endured by Australian POW's at the hands of the Japanese during World War 2.

The \$300 payment to elderly veterans and elderly dependants is an acknowledgement by the Government that the circumstances of elderly Australians can sometimes be such that they could use a little more money and in that regard the Government has decided to provide these elderly Australians with some financial assistance.

Details of each of the Regulations are set out in attachments A and B.

The Regulations commenced on gazettal.

ATTACHMENT A

Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001

Regulation 1 refers to the name of the Regulations - the *Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001*.

Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 defines terms used in the Regulations. In particular the term "veteran" means a person mentioned in an item in the table in subsection 6A(1) of the Act.

Regulation 4 sets out the eligibility criteria for veterans and dependants in respect of the benefit and describes the benefit i-e a single payment of \$25,000. Eligibility Criteria for Veterans In order to be eligible for a single compensation payment of \$25,000, a veteran needs to satisfy these criteria:

- on 1 January 2001 the veteran must have been alive; and
- the veteran must have been interned by the Japanese during the period beginning on 7 December 1941 and ending at the end of 29 October 1945.

Eligibility Criteria for Dependants

In order to be eligible for a single compensation payment of \$25,000, a dependant of a veteran needs to satisfy these criteria:

- the person must be a dependant of a veteran who was interned by the Japanese during the period beginning on 7 December 1941 and ending at the end of 29 October 1945; and
- the person must not be a dependant who is a child of the veteran; and
- the veteran of whom the person is a dependant must have died before 1 January 2001; and
- the dependant must have been alive on 1 January 2001.

Regulation 4 also provides that a person who satisfies both sets of criteria for a compensation payment, that is the person is both a veteran formerly interned by the Japanese during the relevant period and a dependant of a veteran who had been interned by the Japanese during the relevant period, is only eligible for a single compensation payment of \$25,000.

Note 1 to Regulation 4 is information to the effect that the \$25,000 single payment will be exempt from income tax under sections 52-65 and 52-75 of the *Income Tax Assessment Act 1997*.

Note 2 to Regulation 4 is information that the \$25,000 single payment will be determined to be an exempt lump sum under paragraph 5H(12)(c) of the Act and therefore will not be part of the recipient's ordinary income for the purposes of the Act.

Regulation 5 The Repatriation Commission can pay pensions in such manner as it determines (see: subsection 122(4) of the Act). Under subsection 122(4) a pension includes a benefit of a kind like the single \$25,000 payment (pecuniary benefit).

The Commission may determine that a \$25,000 single payment is to be paid into a bank account. Section 122A of the Act regulates the situation of payments paid to bank accounts. However, the type of payment referred to in section 122A that may be paid into a bank account is described as

a pension or allowance under the Act and it is unclear if those payments would include the kind of payment like the single \$25,000 payment (pecuniary benefit). Thus, but for Regulation 5, it may be that where the Commission determines a single \$25,000 payment is to be paid to a bank account, the procedure that regulates such situations, as laid down in section 122A of the Act, is unavailable. Hence the need for Regulation 5 which sets out a procedure for regulating the situation where the Commission determines a single \$25,000 payment is to be paid into a bank account.

The Note to Regulation 5 is information to the effect that the Commission determines the manner in which payments like the single \$25,000 payment will be made and the Note is also information to the effect that if a potential payee requests the Commission to make the single \$25,000 payment to another person, the Commission, in its discretion, may approve the request.

ATTACHMENT B

Veterans' Entitlements (One-off Payment to the Aged) Regulations 2001

Regulation 1 refers to the name of the Regulations - the *Veterans' Entitlements (One-off Payment to the Aged) Regulations 2001*.

Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 defines terms used in the Regulations.

Regulation 4 sets out the eligibility criteria for veterans and dependants in respect of the relevant benefit and describes the benefit i-e a single payment of \$300.

Eligibility Criteria for Veterans

In order to be eligible for a single payment of \$300, a veteran needs to satisfy these criteria:

- on 22 May 2001 the veteran must have reached the pension age for veterans under section 5QA of the Act.
- on 22 May 2001 the veteran is eligible to be paid an age service pension or an invalidity service pension under the Act. These pensions are described in Part III of the Act.

Eligibility Criteria for Dependants

In order to be eligible for a single payment of \$300, a dependant of a veteran needs to satisfy these criteria:

- on 22 May 2001 the dependant must have reached the pension age for persons other than veterans under section 5QB of the Act.
- On 22 May 2001 the dependant is eligible to be paid a partner service pension or an income support supplement under the Act or the dependant must have been in receipt of a pension described in subsection 4(6) of the *Veterans Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

A partner service pension is described in Part III of the Act and an income support supplement is described in Part IIIA of the Act.

Note 1 to Regulation 4 is information to the effect that the \$300 single payment will be exempt from income tax under sections 52-65 and 52-75 of the *Income Tax Assessment Act 1997*.

Note 2 to Regulation 4 is information to the effect that the \$300 single payment will be determined to be an exempt lump sum under paragraph 5H(12)(c) of the Act and therefore will not be part of the recipient's ordinary income for the purposes of the Act.

Regulation 5 The Repatriation Commission can pay pensions in such manner as it determines (see: subsection 122(4) of the Act). Under subsection 122(4) a pension includes a benefit of a kind like the single \$300 payment (pecuniary benefit).

The Commission may determine that a \$300 single payment is to be paid into a bank account. Section 122A of the Act regulates the situation of payments paid to bank accounts.

However, the type of payment referred to in section 122A that may be paid into a bank account is described under section 122A as a pension or allowance under the Act and it is unclear if those payments would include the kind of payment like the single \$300 payment (pecuniary benefit).

Thus, but for Regulation 5, it may be that where the Commission determines a single \$300 payment is to be paid to a bank account, the procedure that regulates such situations, as laid down in section 122A of the Act, is unavailable. Hence the need for Regulation 5 which sets out a procedure for regulating the situation where the Commission determines a single \$300 payment is to be paid into a bank account.

The Note to Regulation 5 is information to the effect that the Commission determines the manner in which payments like the single \$300 payment will be made and the Note is also information to the effect that if a potential payee requests the Commission to make the single \$300 payment to another person, the Commission, in its discretion, may approve the request.