

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 294

Issued by the Authority of the Minister for Veterans' Affairs

Veterans' Entitlements Act 1986

*Veterans' Entitlements (Special Assistance) Amendment Regulations
2006 (No. 1)*

Section 216 of the *Veterans' Entitlements Act 1986* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are by the Act required or permitted 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* (the Principal Regulations) provide that the Repatriation Commission may grant special assistance to certain pensioners entitled to benefits under the Act. The special assistance takes the form of 'crisis payments'. A crisis payment is a 'one-off' payment to assist new and existing clients in financial hardship when they are released from lawful custody of at least 14 days or 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 is one week of the maximum basic rate of pension (single or partnered rate) plus the pension supplement at the maximum rate.

The Principal Regulations are based on virtually identical legislation within the *Social Security Act 1991* administered by the Department of Families, Community Services and Indigenous Affairs.

The purpose of the amendment Regulations is to:

- clarify that the limit of 3 crisis payments a person may receive in the 12 month period before receiving a fourth payment applies only to crisis payments made for an extreme circumstance, and crisis payments made to a person on release from lawful custody do not count towards the limit;
- allow a person to receive a crisis payment where the person qualifies for a disaster relief payment after (but not before) claiming the crisis payment; and
- enable a domestic violence victim to obtain a crisis payment even though the person has remained in the home while the offender leaves or is removed from the home (presently the victim must have left the home).

The amendment Regulations are largely identical to amendments to the "crisis payment provisions" of the *Social Security Act 1991* being introduced by the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006*, which was introduced into the House of Representatives on 14 September 2006.

Further details of the amendment Regulations are contained in the Attachment.

The amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence at different times (on the day after registration, on 1 December 2006 and on 1 January 2007) so as to commence at the same time as similar amendments to the *Social Security Act 1991*.

No consultation in respect of the amendment Regulations was undertaken with clients of the Department of Veterans' Affairs (DVA) because the regulations are beneficial and, in any event, needed to be introduced relatively quickly in order that they commenced when virtually identical measures introduced by the Department of Families, Community Services and Indigenous Affairs (FaCSIA) commenced. There are public policy reasons for ensuring that similar beneficiaries receive similar entitlements at the same time

FaCSIA undertook consultation with the wider community, in respect of its measures, including consultation with the Departments of Employment and Workplace Relations and Education, Science and Training. DVA was involved in this process

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ATTACHMENT

Details of the *Veterans' Entitlements (Special Assistance) Amendment Regulations 2006 (No. 1)*

- Regulation 1 sets out the name of the Regulations - *Veterans' Entitlements (Special Assistance) Amendment Regulations 2006 (No. 1)*.
- Regulation 2 specifies that regulations 1 to 3 and Schedule 1 will commence on the day after the Regulations are registered, Schedule 2 will commence on 1 December 2006 and regulation 4 and Schedule 3 will commence on 1 January 2007.

The reason for the delayed commencement of some provisions is to ensure they commence when similar amendments to the *Social Security Act 1991* are expected to commence (pending passage of legislation). There are public policy reasons for ensuring that similar beneficiaries receive similar entitlements at the same time.

- Regulation 3 provides that schedules 1 to 3 will amend the *Veterans' Entitlements (Special Assistance) Regulations 1999* (the Principal Regulations).
- Regulation 4 ensures that a victim of domestic or family violence will be eligible for a crisis payment where the perpetrator left, or was removed from, the family home on or after 1 January 2007.

Schedule 1 - Amendments that will commence on the day after registration

- Item [1] makes it clear that the current limit of 3 crisis payments in the 12 month period before claiming a fourth payment applies only to crisis payments made in extreme circumstances. This means that, for example, if a person received a crisis payment upon being released from gaol, and later claimed a crisis payment because of an extreme circumstance, then the crisis payment for release from gaol will not be counted for the purpose of determining if the person had already received 3 crisis payments for extreme circumstances in the relevant 12 month period, before receiving a fourth.

Schedule 2 - Amendments that will commence on 1 December 2006

- Item [1] seeks to prevent "double-dipping" by providing that a crisis payment is not payable to a person for an extreme circumstance if, in respect of the same extreme circumstance, the person is eligible for any type of disaster relief payment.

However the prohibition on double-dipping will not apply where a person claims a crisis payment and then subsequently qualifies for an Australian Government Disaster Recovery Payment, or other disaster relief payment, for the same extreme circumstance.

An Australian Government Disaster Recovery Payment is payable under the *Social Security Act 1991*.

Apart from the double-dipping provision, currently a person otherwise eligible for a crisis payment may not be entitled to the payment if alternative assistance is available under the *Veterans' Entitlements Act 1986*.

Schedule 3 - Amendments that will commence on 1 January 2007

- Item [1] alerts readers of the amendment Regulations to the fact that the term “family member” is defined in the Act.
- Item [2] provides that a crisis payment paid to a person under new regulation 6A who is a victim of domestic or family violence will be counted in the limit on the number of crisis payments that can be paid to the person (no more than 3 payments in the 12 month period before claiming a fourth payment).
- Item [3] introduces a new regulation 6A into the Principal Regulations that sets out eligibility criteria for a crisis payment where the person seeking the payment is a victim of domestic or family violence but has remained in the home.

Under regulation 6A, a person is eligible for a crisis payment if:

- the person is a victim of domestic or family violence in Australia and the perpetrator is a family member of the victim; and
- the victim and the perpetrator were living together at the time the violence occurred; and
- as a result of the violence, the perpetrator leaves the victim's home or is removed from it; and
- the victim remains in the home;
- the home is in Australia; and
- within 7 days after the day on which the perpetrator leaves the home or is removed, the victim contacts the Department of Veterans' Affairs (DVA) or claims a crisis payment; and
- on the day when contact is made with DVA or a claim made, the person is in severe financial hardship (defined in subregulation 3(1) of the Principal Regulations) and has claimed a pension entitlement (defined in subregulation 3(1) of the Principal Regulations) on that day or an earlier day, and is eligible for the pension entitlement; and

- in the 12 months before the day on which the claim is made, the person has not been paid more than 3 crisis payments in respect of one of, or a combination of two or more of the following:
 - (i) domestic violence;
 - (ii) family violence; and/or
 - (iii) an extreme circumstance.

However, a person is not eligible for a crisis payment for domestic or family violence if the Repatriation Commission is satisfied that the perpetrator of the violence left the person's home with a view to enabling the person to obtain a crisis payment.