

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (No. 2) 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,  
Senator the Hon John Faulkner)





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## **Veterans' Affairs Legislation Amendment Bill (No. 2) 1993**

### ***Outline and Financial Impact Statement***

#### **Outline**

This small portfolio Bill proposes four minor changes to veterans' benefits.

It gives effect to the Government's Budget announcement to extend benefits under the Veterans' Children Education Scheme to children of veterans who receive Extreme Disablement Adjustment allowance. This measure will ensure equitable access to the Scheme for all children of seriously disabled disability pensioners. The same benefits for children of Australian mariners will be provided for in a separate amendment to the Seamen's War Pensions and Allowances Regulations.

The Bill contains two minor policy amendments to the Veterans' Entitlements Act. The first is to assess allocated pensions and allocated annuities according to the managed investment rules. The second amends the definition of "shares and listed securities" to ensure that it applies to both Australian and foreign-sourced investments.

Lastly, an amendment is proposed to the *Veterans' Affairs Legislation Amendment Act (No. 2) 1991* to extend the Advance Pharmaceutical Allowance for a further twelve months.

#### **Financial Impact**

The financial implications of the Government's promise to extend benefits under the Veterans' Children Education Scheme to children of pensioners who receive Extreme Disablement Adjustment allowance are \$0.112M in 1993/94, \$0.095M in 1994/95 and \$0.108M in 1995/96.

The cost of assessing allocated pensions and allocated annuities in accordance with the managed investment provisions over the next three years is negligible.

The amendment to the definition of shares and listed securities commences from the date of Royal Assent. This amendment will have no financial impact.

Extension of the Advance Pharmaceutical Allowance allows a chronically ill pensioner to receive up to seven payments of his/her pharmaceutical allowance in an advance lump payment. As the provisions do not allow for the payment of pharmaceutical allowance in excess of the yearly limit, the cost will be negligible.



## **PART 1 - PRELIMINARY**

Part 1 of the Bill sets out how the amending Act is to be cited (Clause 1), and when the various Parts and Divisions of the Amending Act are to commence (Clause 2).

## **PART 2 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986**

### ***Division 1 - Preliminary***

Clause 3 of the Bill specifies that in this Act, the "Principal Act" is the *Veterans' Entitlements Act 1986*

### ***Division 2 - Allocated pensions***

#### **Summary of proposed changes**

The proposed amendments will establish the basis for assessing allocated pensions and allocated annuities for the purposes of the income and assets tests. An allocated pension or annuity is an investment where the source fund provides the investor with the choice of a variable income. The value of the allocated pension or annuity will be taken into account for the purposes of the assets test and will be income tested according to the earning rate of the fund.

#### **Background**

Section 46T of the Principal Act provides that a person's ordinary income from an immediate annuity is the amount payable each year less the deductible amount. Section 46U of the Act provides an equivalent assessment rule for superannuation pensions. The terms "immediate annuity", "superannuation pension" and "deductible amount" are defined in subsection 5J(1) of the Principal Act. Under the current assessment provisions, the value of a superannuation pension is disregarded for the purposes of the assets test under paragraph 52(1)(d). The value of certain annuities is also disregarded for calculating the value of a person's assets under subsection 52A(1) of the Act.

Subsection 52A(1) does not apply to annuities that are disposable or deferrable, or were purchased or became payable on or after 15 August 1989. The rest of section 52A details the treatment of these categories of annuities.

Some financial institutions are now offering allocated pensions and other pensions and annuities where the payment rate or the basis of any variation is not fully defined in the trust deed or in the annuity contract. These pensions and annuities differ from the traditional forms of pensions and annuities in that they provide the beneficiary with a variable income. The beneficiary can adjust the cash flow to meet his/her particular needs. In this manner, the investment operates in a similar way to a bank account. The beneficial owner of an allocated pension or allocated annuity can withdraw money at a rate to suit his/her requirements and the balance of the account is applied to generate a rate of return.



This amendment proposes to subject an investment in an allocated pension or allocated annuity to:

the ordinary income test by regarding it as a "managed investment" under Division 8 of Part III of the Principal Act; and

the assets test under section 52 of the Principal Act.

### **Explanation of clauses**

Clause 4 inserts the terms "Allocated annuity" and "Allocated pension" in the index of definitions.

Clause 5 inserts the new definitions of "allocated annuity" and "allocated pension" in section 5J of the Principal Act. New subsection 5J(9) would provide that a pension or annuity is an allocated one if either the payment rate or the basis of any variation in the payment rate is not fully defined in the trust deed or annuity contract.

Paragraph (b) of this clause includes an allocated pension or an allocated annuity in the definition of "managed investment". This will ensure that Division 8 of Part III of the Principal Act - Managed Investments - applies to the assessment of income from the allocated pension or annuity.

Paragraph (c) of this clause provides a technical amendment to the list of investments detailed at subsection 5J(1C) of the Principal Act which do not meet the definition of a managed investment.

Clauses 6 and 7 will ensure that the value of an allocated pension or allocated annuity is taken into account for assessing the value of a person's assets.

### **Commencement**

Subclause (2) of Clause 2 specifies that this provision commences immediately after Division 19 of Part 2 of the *Social Security Legislation Amendment Act (No.3) 1992*. The commencement date specified in that Act was "1 October 1993 or the date of the report to the Senate by a Senate standing or select committee on the application of Division 19, whichever is the later." The Senate Select Committee on Superannuation, which is investigating the application of Division 19 of the *Social Security Legislation Amendment Act (No.3) 1992*, is not expected to table its report until early December 1993. The commencement of this provision will, therefore, remain tied to the commencement of the corresponding provision in the Social Security legislation and will not operate retrospectively.

### ***Division 3 - Shares and other listed securities***

#### **Summary of proposed changes**

The proposed change would expand the definition of "listed security" at subsection 5J(1) of the Principal Act to include any shares and other listed securities that are listed on any stock exchange.

#### **Background**

This amendment arises from the Government's 1992 Budget legislative program in which the definition of shares and listed securities was restricted to those listed on a stock exchange "in Australia". This restriction, which was not inserted in a similar provision in the Social Security Act, was the cause of public debate and was seen as likely to encourage shareholders to expose themselves to higher risks by transferring their holdings overseas.

The Department of Social Security has decided to retain the broader definition. In order to minimise confusion among pensioner shareholders who may be dealing with that Department as well as the Department of Veterans' Affairs, it is proposed that the relevant definition be the same in both the Veterans' Entitlements Act and the Social Security Act.

#### **Explanation of the clauses**

Clause 8 would amend the definition of listed security at subsection 5J(1) of the Principal Act by removing the words "in Australia" from the definition.

#### **Commencement**

Subclause (1) of Clause 2 specifies that Division 3 commences from the date of Royal Assent.

## ***Division 4 - Veterans' Children Education Scheme***

### **Summary of proposed changes**

The proposed changes would extend the definitions of "eligible child of a member of the Forces or of a member of a Peacekeeping Force" and of "eligible child of a veteran" for the purposes of Part VII of the Veterans' Entitlements Act to include a child of a veteran who is in receipt of an Extreme Disablement Adjustment.

### **Background**

The Veterans' Children Education Scheme provides assistance toward the education of children of deceased or severely disabled veterans or members of the Forces who are in receipt of certain pensions as defined at section 116 of the Veterans' Entitlements Act. Although the legislation provides assistance under the scheme to children of deceased veterans who were in receipt of Extreme Disablement Adjustment immediately prior to their death, it does not provide for children of veterans and other members of the Forces who are still in receipt of an Extreme Disablement Adjustment.

The changes also include a minor technical drafting amendment to correct an earlier omission of a reference to subsection 22(4) in subparagraph (a) (ii) of the definition of "eligible child of a veteran" in section 116 of the Veterans' Entitlements Act.

### **Explanation of clauses**

Paragraph (a) of Clause 9 would amend subparagraph (b) (i) of the definition of "eligible child of a member of the Forces or a member of a Peacekeeping Force" at section 116 of the Principal Act to include a child of a member of such Forces who is in receipt of Extreme Disablement Adjustment, as provided for by subsection 22(4) of the Principal Act.

Paragraphs (b) and (c) of Clause 9 would effect similar amendments to subparagraphs (a) (ii) and (b) (i) of the definition of "eligible child of a veteran" at section 116 of the Principal Act.

### **Commencement**

Subclause (3) of Clause 2 specifies that this amendment commences on 1 January 1994.

## **PART 3 - EXTENSION OF ADVANCE PHARMACEUTICAL ALLOWANCE**

### **Summary of proposed changes**

Section 17 of the *Veterans' Affairs Legislation Amendment Act (No.2) 1991* is a sunset clause which will repeal the Advance Pharmaceutical Allowance provisions contained in Part VIIA of the *Veterans' Entitlements Act 1986* from 1 January 1994. It is proposed to extend this sunset clause for a further twelve months to review the future pharmaceutical requirements of pensioners who access these provisions.

### **Background**

As part of the changes to the Pharmaceutical Benefits Scheme which was introduced in November 1990, provision was made for the payment of Advance Pharmaceutical Allowance. This is an advance of up to seven fortnight's worth of a person's pharmaceutical allowance. It is available for chronically-ill pensioners with a high volume of prescription drug use. The advance scheme was initially introduced for a twelve month period but was extended for a further two years in 1991 with the introduction of a co-payment and an offsetting pharmaceutical allowance for pensioners receiving pharmaceuticals under the Repatriation Pharmaceutical Benefits Scheme.

Under the current provisions of section 17 of the *Veterans' Affairs Legislation Amendment Act (No.2) 1991*, the advance pharmaceutical provisions would be repealed from 1 January 1994. It is proposed to extend the provisions for a further twelve-month period to determine the effect the repeal would have on the users of the advance payment scheme.

### **Explanation of the clauses**

Clause 10 amends the date contained in section 17 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1991* from 1 January 1994 to 1 January 1995.

Clause 11 will insert a note at the end of subsection 118F(1) of the *Veterans' Entitlements Act 1986* to alert the reader that the Advance Pharmaceutical Allowance provisions are subject to a sunset clause.

**Commencement:** Date of Royal Assent.





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