





# **Veterans' Entitlements Amendment Act 2011**

**No. 95, 2011**

**An Act to amend the *Veterans' Entitlements Act  
1986*, and for related purposes**



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## **An Act to amend the *Veterans' Entitlements Act 1986*, and for related purposes**

[Assented to 15 September 2011]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Veterans' Entitlements Amendment Act 2011*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 September 2011
2. Schedule 1	20 September 2011.	20 September 2011
3. Schedule 2	The day this Act receives the Royal Assent.	
4. Schedule 3	20 September 2011.	20 September 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Prisoner of war recognition supplement**

### **Part 1—Main amendments**

#### *Veterans' Entitlements Act 1986*

##### **1 After Part VIA**

Insert:

### **Part VIB—Prisoner of war recognition supplement**

#### **Division 1—Eligibility for prisoner of war recognition supplement**

##### **115M Eligibility for prisoner of war recognition supplement**

###### *World War 2 internments—European States*

- (1) A veteran is eligible for a prisoner of war recognition supplement if the veteran was interned by the military forces of an enemy State at any time during the period starting on 3 September 1939 and ending at the end of 11 May 1945.
- (2) A civilian is eligible for a prisoner of war recognition supplement if:
  - (a) the civilian was interned by the military forces of an enemy State at any time during the period starting on 3 September 1939 and ending at the end of 11 May 1945; and
  - (b) the civilian was domiciled in Australia immediately before the civilian's internment.

###### *World War 2 internments—Japan*

- (3) A veteran is eligible for a prisoner of war recognition supplement if the veteran was interned by the military forces of Japan at any time during the period beginning on 7 December 1941 and ending at the end of 29 October 1945.

- (4) A civilian is eligible for a prisoner of war recognition supplement if:
- (a) the civilian was interned by the military forces of Japan at any time during the period beginning on 7 December 1941 and ending at the end of 29 October 1945; and
  - (b) the civilian was domiciled in Australia immediately before the civilian's internment.

*North Korean internments*

- (5) A veteran is eligible for a prisoner of war recognition supplement if the veteran was interned by the military forces of North Korea at any time during the period beginning on 27 June 1950 and ending at the end of 19 April 1956.

*One supplement only*

- (6) A person is not entitled to more than one prisoner of war recognition supplement.

*Definitions*

- (7) In this section:

***civilian*** means a person who is not a veteran.

***enemy State*** means:

- (a) a European State that was at war with the Crown at any time during the period starting on 3 September 1939 and ending at the end of 11 May 1945; or
- (b) a European ally (whether or not a State) of a State covered by paragraph (a).

***interned*** means:

- (a) confined in a camp, building, prison, cave or other place (including a vehicle); or
- (b) restricted to residing within specified limits.

***military forces*** means air forces, naval forces, land forces or other military forces (however described).

### **115N When prisoner of war recognition supplement is payable**

- (1) If, on 20 September 2011, the Commission is satisfied that a person is eligible for a prisoner of war recognition supplement, the supplement is payable to the person without the person having to make a claim for the supplement under Division 3.
- (2) If subsection (1) does not apply in relation to a person, a prisoner of war recognition supplement is not payable to the person unless the person makes a claim for the supplement under Division 3.
- (3) A prisoner of war recognition supplement is not payable to a person in relation to a pension period if before the start of that period:
  - (a) the person had elected not to be covered by this Part; and
  - (b) that election had not been withdrawn.
- (4) An election, or a withdrawal of an election, under this section:
  - (a) must be by document lodged at an office of the Department in Australia in accordance with section 5T; and
  - (b) is taken to have been made on a day determined under that section.

## **Division 2—Rate of prisoner of war recognition supplement**

### **115P Rate of prisoner of war recognition supplement**

The rate of prisoner of war recognition supplement under section 115M is \$500.00 per fortnight.

Note: The amount specified in this section is adjusted annually in line with CPI increases under section 198D.

## **Division 3—Claims for prisoner of war recognition supplement**

### **115Q Making of claims**

- (1) A claim for a prisoner of war recognition supplement must be made in accordance with procedures determined by the Commission under subsection (2).

## Schedule 1 Prisoner of war recognition supplement

### Part 1 Main amendments

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Note: A prisoner of war recognition supplement will be made automatically to those eligible persons the Department is aware of.

- (2) The Commission may, in writing, determine the procedures for making claims.
- (3) A determination made under subsection (2) is not a legislative instrument.

#### **115R Determination of claims**

- (1) Claims are to be determined by the Commission.
- (2) If the Commission determines that a prisoner of war recognition supplement is payable to a person, the determination takes effect on the day on which the determination is made or on such earlier day as is specified in the determination.
- (3) A person who is dissatisfied with the Commission's decision on a claim may apply to the Administrative Appeals Tribunal for review of the decision.

#### **2 Subsection 119(2) (at the end of the definition of *claim*)**

Add:

; or (f) a claim for prisoner of war recognition supplement under Part VIB.

#### **3 Subsection 121(4)**

Omit "If", substitute "Subject to subsection (4A), if".

#### **4 After subsection 121(4)**

Insert:

*Exception—prisoner of war recognition supplement*

- (4A) If a person who is receiving a prisoner of war recognition supplement under Part VIB dies, an amount is payable to the person's estate as an instalment of that supplement in relation to the pension period in which the person died.

#### **5 Subsection 121(7) (definition of *pension*)**

After "includes", insert "prisoner of war recognition supplement under Part VIB,".

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**6 Subsection 198D(1) (at the end of the definition of *relevant rate*)**

Add:

; or (e) section 115P.

**7 Application—indexation**

The amendment made by item 6 applies in relation to the year commencing on 20 September 2012 and each later year commencing on 20 September.

## Part 2—Consequential amendments

### *Income Tax Assessment Act 1997*

#### **8 At the end of subsection 52-65(1) (before the note)**

Add:

; or (e) a prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986*.

#### **9 After subsection 52-65(1E)**

Insert:

(1F) A prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986* is exempt from income tax.

#### **10 Section 52-75 (after table item 12)**

Insert:

12A	Prisoner of war recognition supplement	Part VIB	Not applicable
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### *Social Security Act 1991*

#### **11 After subparagraph 8(8)(y)(vii)**

Insert:

(viiiaaa) prisoner of war recognition supplement under Part VIB of that Act; or

### *Veterans' Entitlements Act 1986*

#### **12 Before paragraph 5H(8)(fa)**

Insert:

(faaa) a payment under Part VIB (prisoner of war recognition supplement);

Note: However, a payment referred to in paragraph (faaa) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

**13 After paragraph 52Z(3A)(f)**

Insert:

- (fa) a payment under Part VIB (prisoner of war recognition supplement);

## Schedule 2—Compensation offsetting

### *Veterans' Entitlements Act 1986*

#### **1 Subsection 25A(1)**

Omit “for a”, substitute “in respect of the incapacity of the veteran from a”.

#### **2 Subsection 25A(1)**

Omit “some other injury or disease”, substitute “that injury or disease, or any other injury or disease, in relation to some other incapacity of the veteran”.

#### **3 Paragraphs 30C(1)(c), (2)(c) and (3)(c)**

Omit “the incapacity from that injury or disease or the death”, substitute “the same incapacity of the veteran from that or any other injury or disease or in respect of that death”.

#### **4 Paragraph 30C(6)(c)**

Omit “the incapacity of the veteran from that injury or disease, or that death,”, substitute “the same incapacity of the veteran from that or any other injury or disease, or in respect of that death,”.

#### **5 Paragraph 30D(1)(c)**

Omit “the incapacity from that injury or disease or the death”, substitute “the same incapacity of the veteran from that or any other injury or disease or in respect of that death”.

#### **6 Paragraph 30D(3)(b)**

Omit “the incapacity of the veteran from that injury or disease, or the death of the veteran,”, substitute “the same incapacity of the veteran from that or any other injury or disease, or in respect of that death,”.

#### **7 Paragraph 30E(b)**

Omit “the incapacity of the veteran from that injury or disease or the death of the veteran”, substitute “the same incapacity of the veteran from that or any other injury or disease or in respect of that death”.

**8 Subparagraph 30E(c)(i)**

Omit “for the incapacity or death”, substitute “in respect of the same incapacity of the veteran or in respect of that death”.

**9 Paragraph 30G(1)(b)**

Omit “the incapacity of the veteran from that injury or disease or the death of the veteran”, substitute “the same incapacity of the veteran from that or any other injury or disease or in respect of that death”.

**10 Paragraph 30H(1)(b)**

Omit “the incapacity of the veteran from that injury or disease or the death of the veteran”, substitute “the same incapacity of the veteran from that or any other injury or disease or in respect of that death”.

**11 Subparagraph 30H(1)(b)(ii)**

Omit “the incapacity or death”, substitute “the same incapacity of the veteran or in respect of that death”.

**12 Subparagraph 30K(b)(i)**

Omit “the incapacity of the veteran from that injury or disease”, substitute “the same incapacity of the veteran from that or any other injury or disease”.

**13 Subparagraph 30L(b)(iii)**

Omit “the incapacity of the veteran from that injury or disease”, substitute “the same incapacity of the veteran from that or any other injury or disease”.

**14 Subsection 30P(2)**

Omit “in respect of the incapacity or death of the veteran”.

**15 Subsection 74(2)**

Omit “from a defence-caused injury or a defence-caused disease”.

**16 Paragraph 74(2)(a)**

Omit “that injury or disease”, substitute “an injury or disease”.

**17 Paragraph 74(2)(b)**

Omit “the incapacity of the member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease”.

**18 Subparagraph 74(3)(a)(ii)**

Omit “from injury or disease”.

**19 Paragraph 74(3)(b)**

Omit “the incapacity of that member from that injury or disease, or the death of that member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease or in respect of the death of that member”.

**20 Subparagraph 74(3A)(a)(ii)**

Omit “from injury or disease”.

**21 Paragraph 74(3A)(b)**

Omit “that incapacity or death”, substitute “the same incapacity of the member from that or any other injury or disease or in respect of the death of that member”.

**22 Subparagraph 74(3B)(a)(ii)**

Omit “from injury or disease”.

**23 Paragraph 74(3B)(b)**

Omit “that incapacity or death”, substitute “the same incapacity of the member from that or any other injury or disease or in respect of the death of that member”.

**24 Subsection 74(8)**

Omit “from injury or disease, or both”.

**25 Subsection 74(8)**

Omit “from that injury or disease, or both”.

**26 Subsection 74(9)**

Omit “from injury or disease, or both”.

**27 Paragraph 75(1)(b)**

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Repeal the paragraph, substitute:

- (b) a person other than the Commonwealth appears legally liable to pay damages in respect of the same incapacity of the member from that or any other injury or disease or in respect of that death; and

**28 Paragraph 75(1)(c)**

Omit “of the injury or disease, or the death,”, substitute “of the same incapacity of the member, or in respect of that death,”.

**29 Subparagraph 76(1)(a)(i)**

After “in respect of”, insert “the incapacity of the member from”.

**30 Paragraph 76(1)(b)**

Omit “the incapacity of the member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease”.

**31 Subsection 76(1)**

Omit “in respect of the injury or disease” (wherever occurring), substitute “in respect of the incapacity of the member”.

**32 Subsection 76(1)**

Omit “from that injury or disease” (last occurring).

**33 Subparagraph 76(2)(a)(i)**

After “in respect of”, insert “the incapacity of the member from”.

**34 Paragraph 76(2)(a)**

Omit “the incapacity of the member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease”.

**35 Subparagraph 76(2)(b)(i)**

After “in respect of”, insert “the incapacity of the member from”.

**36 Paragraph 76(2)(b)**

Omit “the incapacity of the member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease”.

**37 Subsection 76(2)**

Omit “from that injury or disease” (last occurring).

**38 Subparagraph 77(a)(i)**

After “in respect of”, insert “the incapacity of the member from”.

**39 Paragraph 77(b)**

Omit “the incapacity of the member from that injury or disease”, substitute “the same incapacity of the member from that or any other injury or disease”.

**40 Subsection 78(1)**

Omit “the injury suffered by, or the disease contracted by, the member”, substitute “the same incapacity of the member from that or any other injury or disease”.

**41 Subsection 78(2)**

Omit “the injury suffered, or the disease contracted, by the member”, substitute “the same incapacity of the member from that or any other injury or disease”.

**42 Subsection 79(1)**

Omit “in respect of the incapacity from that injury or disease or of the death of the member, as the case may be”.

**43 Application**

- (1) Sections 30C, 30D, 30E, 30G, 30H, 30K, 30L, 30P, 74, 75, 76, 77, 78 and 79 of the *Veterans' Entitlements Act 1986*, as amended by this Act, apply in relation to working out the rates of pension under that Act for days on or after the commencement of this item, whether:
  - (a) in relation to section 30C of that Act—the lump sum payments were made before, on or after that commencement;  
or

- (b) in relation to section 30D of that Act—the periodic payments of compensation began to be paid before, on or after that commencement; or
  - (c) in relation to section 74 of that Act—the entitlement to receive payments by way of compensation arose, or the payments of compensation were made, before, on or after that commencement.
- (2) Section 25A of the *Veterans' Entitlements Act 1986*, as amended by this Act, applies in relation to:
  - (a) working out the rates of pension under that Act for days on or after the commencement of this item; and
  - (b) working out the rate of temporary incapacity allowance and loss of earnings allowance under that Act for days on or after the commencement of this item;whether the payments of compensation were made before, on or after that commencement.

## Schedule 3—Temporary incapacity allowance

### *Income Tax Assessment Act 1997*

**1 Section 52-65 (table item 19.1)**

Repeal the item.

**2 Section 52-75 (table item 19)**

Repeal the item.

### *Veterans' Entitlements Act 1986*

**3 Subsection 5Q(1) (paragraph (b) of the definition of *disability pension*)**

Repeal the paragraph.

**4 Paragraphs 25A(1)(b) and (3)(b)**

Omit “a temporary incapacity allowance under section 107 or”.

**5 Paragraph 96(2)(f)**

Omit “107(5) and (6) and”.

**6 Section 107**

Repeal the section.

**7 Paragraph 111(1)(f)**

Repeal the paragraph.

**8 Subsection 112(1)**

Repeal the subsection.

**9 Paragraph 112(4)(a)**

Repeal the paragraph.

**10 Subsection 112(4)**

Omit “(1),”.

**11 Paragraph 115(1)(f)**

Repeal the paragraph.

**12 Section 118NA (paragraph (b) of the definition of *adjusted disability pension*)**

Repeal the paragraph.

**13 Subsection 121(7) (definition of *pension*)**

Omit “, temporary incapacity allowance under section 107”.

**14 Subsection 128A(1) (paragraph (b) of the definition of *income payment*)**

Repeal the paragraph.

**15 Transitional**

- (1) Despite the amendment made by item 1, table item 19.1 in section 52-65 of the *Income Tax Assessment Act 1997* (as in force immediately before the commencement of this item) continues to apply on and after that commencement in relation to payments of temporary incapacity allowance made before, on or after that commencement.
- (2) Despite the amendments made by items 4, 5, 13 and 14, sections 25A, 96, 121 and 128A of the *Veterans' Entitlements Act 1986* (as in force immediately before the commencement of those items) continue to apply on and after that commencement in relation to a grant of temporary incapacity allowance made before, on or after that commencement.
- (3) Despite the amendment made by item 6, section 107 of the *Veterans' Entitlements Act 1986*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to days occurring before 20 September 2011.
- (4) If:
  - (a) before the commencement of this item:
    - (i) a veteran is admitted to a hospital or other institution for treatment in respect of a war-caused injury or a war-caused disease; or
    - (ii) a member of the Forces, or a member of a Peacekeeping Force, is admitted to a hospital or other institution for

treatment in respect of a defence-caused injury or a defence-caused disease; and

- (b) the period (the *pre-commencement period*) beginning on the day of that admission and ending at the end of 19 September 2011 does not exceed 4 weeks;

then:

- (c) section 107 of the *Veterans' Entitlements Act 1986*, as in force immediately before the commencement of this item, continues to apply, on and after that commencement, in relation to that veteran or member, that admission and that treatment; and
- (d) if, under that section, the Commission grants a temporary incapacity allowance to the veteran or member—for the purposes of subsections 107(4) and (8) of that Act, the pre-commencement period is taken to be the relevant period applicable to the incapacity.

Note: Section 96 of the *Veterans' Entitlements Act 1986* applies section 107 of that Act to members of the Forces or members of a Peacekeeping Force.

- (5) Subsection 107(8) of the *Veterans' Entitlements Act 1986*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to payments of temporary incapacity allowance made before, on or after that commencement.
- (6) Despite the amendments made by items 7 to 11, sections 111, 112 and 115 of the *Veterans' Entitlements Act 1986* (as in force immediately before the commencement of those items) continue to apply on and after that commencement in relation to applications for temporary incapacity allowance made before, on or after that commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 1 June 2011  
Senate on 22 June 2011]*

(102/11)

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