

2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**VETERANS' ENTITLEMENT AMENDMENT (VETERANS
JUSTIFICATION) BILL 2023**

EXPLANATORY MEMORANDUM

VETERAN'S ENTITLEMENT AMENDMENT (VETERANS JUSTIFICATION) BILL 2023

OUTLINE

The intent of the Bill is to remove the ambiguity and unjust treatment of Veteran's, Serving and Ex-Serving Members of the Australian Defence Force who have been unfairly denied their just entitlements under the Veteran's Entitlement Act 1986.

Veterans have been identified as having a higher-than-normal suicide rate than other groups and this can be traced back to the treatment, or lack thereof, by the Department of Veterans' Affairs, in particular by the Department using language that was not the intent of the legislation at the time it was tabled.

Currently, the Act disallows the veteran from the Totally and Permanently Incapacitated pension because: ***"the veteran is totally and permanently incapacitated, that is to say, the veteran's incapacity from war-caused injury or war-caused disease, or both, is of such a nature as, of itself alone, to render the veteran incapable of undertaking remunerative work for periods aggregating more than 8 hours per week"*** (this is known as the 'alone test').

Delegates within the Department of Veterans' Affairs (DVA) use the fact that the veteran may have disabilities accepted under other legislation relative to the Veteran such as:

1. The Safety Rehabilitation and Compensation Act 1983 (SRCA);
2. Military Rehabilitation and Compensation Act 2004 (MRCA); and
3. The Safety Rehabilitation and Compensation Act (Defence-related Claims) Act 1988 (DRCA).

to deny a veteran the Totally and Permanently Incapacitated and/or Special Rate Disability Pension because the veteran may have a disability under any one of the above Acts even though that disability was sustained by the veteran during his or her military career.

This Bill amends various provisions in the Act to remove the ambiguity pertaining to the **'alone test'** thus ensuring that a veteran who has disabilities under any of the Acts administered by the Department of Veterans' Affairs can and should be treated fairly when he or she is unable to work due to all of the veterans' disabilities.

NOTES ON CLAUSES

Clause 1: Short Title

1. This clause provides for the bill, when enacted, to be cited as Veterans' Entitlement Amendment (Veterans Justification) Bill 2023.

Clause 2: Commencement

2. This clause provides that the main provisions of the bill commence on the day after the Act receives Royal Assent.

Clause 3: Schedules

3. Clause 3 is an "activating clause" providing that legislation specified in a Schedule is amended or repealed as set out in the relevant items in the Schedule, and that other items in the Schedule have effect according to their terms.

Schedule 1 Amendments

Item 1

4. Item amends section 21A (4) by inserting a definition of "all accepted conditions" to be used throughout the legislation. The intent of this section is to bring justice and clarity to the legislation and to eradicate confusion by Delegates when assessing a claim or application under the legislation.

Item 2

5. This item amends section 23 by substituting new subsections 23(1)(b) and (1)(c) which replacing the word "alone" with "all accepted conditions". The Department currently uses the word "alone" to deny veterans access to the above general rate of pension if the veteran has one or more disabilities, sustained during their military career but are covered under two or more of the legislation applicable to veterans.

Item 3

6. Item 3 further amends section 23 by substituting a new section 23 (3)(d). To replace the word "alone" with "all accepted conditions." This section relates to the Intermediate Rate of Pension and will bring this section into line with all other amendments thereby making decision making by departmental Delegates easier and thereby allowing veterans with disabilities under more than one Act pertaining to veteran's justice and fairness.

Item 4

7. Item 7 amends section 24 "Special Rate of Pension" by repealing subsections (1)(b) and (c) and substitute new sections (1)(b) and (c). By replacing the word "alone" with "all accepted conditions" will clarify the intent of the legislation to allow for veterans with more than one disability under two or more Acts to access the Special Rate of Pension.
8. Item 7 further amends section 24 by repealing subsection (2A) (d) and substitute a new subsection (2A) (d). By replacing the word "alone" with "all accepted conditions" will clarify the intent of the legislation to allow for veterans with more than one disability under two or more Acts to access the Special Rate of Pension

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Veterans' Entitlement Amendment (Veterans Justification) Bill 2023

This Bill is compatible with the human rights and freedom recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill removes ambiguity and unfairness of claims lodged by veterans under the Veterans' Entitlement Act (VEA) 1986 in relation to what is known as "the alone rule".

Human Rights Implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues