



## Veterans' Entitlements Amendment Bill 2011

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## Glossary

DVA .....	Department of Veterans' Affairs
DP .....	Disability Pension
ITAA.....	<i>Income Tax Assessment Act 1997</i>
LOEA.....	Loss of Earnings Allowance
PTSD .....	Post-Traumatic Stress Disorder
PoW.....	Prisoner of War
RPA.....	<i>Repatriation Act 1920</i>
SSA .....	<i>Social Security Act 1991</i>
TIA .....	Temporary Incapacity Allowance
VA.....	Veterans' Affairs (United States)
VEA.....	<i>Veterans' Entitlements Act 1986</i>
WWI .....	World War One
WWII .....	World War Two

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## Veterans' Entitlements Amendment Bill 2011

**Date introduced:** 1 June 2011

**House:** House of Representatives

**Portfolio:** Veterans' Affairs

**Commencement:** Schedules 1 and 3 are to commence on 20 September 2011. Schedule 2 commences on the day of Royal Assent.

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

### Purpose

The purpose of the Veterans' Entitlements Amendment Bill 2011 (the Bill) is to provide the legislative support necessary for three separate veterans' initiatives announced by the Government in the 2011–12 Budget.

### Background

This Bill provides for amendments to the *Veterans' Entitlements Act 1986* (VEA) to give effect to the following 2011–12 Budget initiatives:

- provision of a new Prisoner of War (PoW) recognition supplement
- adjustments to the compensation offsetting provisions in the VEA to clarify that the offsetting provisions refer to the same incapacity even where that incapacity arises from differing medical conditions, and
- rationalisation of temporary incapacity allowance and loss of earnings allowance which are two different but very like payments paid for the same reasons.

### Schedule 1—Prisoner of war recognition supplement

The Government announced in the 2011–12 Budget the introduction of a new PoW recognition supplement (recognition supplement).<sup>1</sup> The recognition supplement is to be a payment of \$500 per fortnight and is to be tax free. In addition, the recognition supplement will not be regarded as

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1. Australian Government, 'Prisoner of War Recognition Supplement – establishment', *Budget measures: budget paper no. 2: 2011–12*, Commonwealth of Australia, 2011, p. 329, viewed 8 June 2011, [http://www.aph.gov.au/budget/2011-12/content/bp2/html/bp2\\_expense-23.htm](http://www.aph.gov.au/budget/2011-12/content/bp2/html/bp2_expense-23.htm)  
<http://www.aph.gov.au/budget/2011-12/content/bp2/html/index.htm>

'income' under the income tests that apply to income support and supplement payments provided under the VEA and the *Social Security Act 1991* (SSA).

## Other prisoner of war payments

The recognition supplement is in addition to payments which have previously been made to specific groups of former prisoners of war (PoWs). These payments have been:

- in 2001—a one-off ex-gratia payment of \$25 000 to all surviving PoWs of the Japanese, or their surviving widows/ers, and certain civilian PoWs of the Japanese<sup>2</sup>
- in 2004—a one-off ex-gratia payment of \$25 000 to all surviving PoWs of the Korean War, and their surviving widows/ers<sup>3</sup>
- in 2007—a one-off ex-gratia payment of \$25 000 to PoWs of World War Two (WWII) in Europe, or their surviving widows/widowers.<sup>4</sup>

Perhaps the only controversial element of these previous one-off payments to PoWs and their surviving widows/ers was the payment to PoWs of the Japanese made in 2001—the controversy arising out of the decision being that the payment was not also made to PoWs of Europe who had been held captive by the Germans or the Italians in WWII. The Government at the time justified this decision by highlighting that the harshness of the conditions under which the PoWs of the Japanese had been held, and their corresponding attrition rate, had been far more adverse than the conditions that the PoWs in Europe had suffered. Some 8000 service personnel were captured by the Germans and the Italians in WWII and of these 7700 (96 per cent) returned to Australia.<sup>5</sup> Between 1942 and 1945, some 22 000 Australian service personnel were PoWs of the Imperial Japanese Army and of these only 14 000 (64 per cent) returned to Australia. This very high death rate (36 per cent) for Japanese PoWs, contrasted with the death rate for the PoWs held by the German and Italian Armies (4 per cent).<sup>6</sup>

Nevertheless, this apparent inequity was addressed by the Howard government in 2007.

The PoW recognition supplement proposed by this Bill will apply to all former PoWs.

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2. P Yeend, *Compensation (Japanese Internment) Bill 2001*, Bills Digest, no. 6, 2001–02, Parliamentary Library, Canberra, 2001, viewed 8 June 2011, <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd006.htm>

3. P Yeend, *Veterans' Entitlements (Clarke Review) Bill 2004*, Bills Digest, no. 134, 2003–04, Parliamentary Library, Canberra, 2004, viewed 8 June 2011, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd134.htm>

4. P Yeend, *Social Security and Veterans Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Bill 2007*, Bills Digest, no. 1, 2007–08, Parliamentary Library, Canberra, 2007, viewed 8 June 2011, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd001.htm>

5. J Clarke, *Review of Veterans' Entitlements*, Canberra, 2003, p. 417, viewed 14 June 2011, [http://www.dva.gov.au/PENSIONS\\_AND\\_COMPENSATION/PENSIONS\\_AND\\_RATES/CLARKE\\_REVIEW/Pages/report.aspx](http://www.dva.gov.au/PENSIONS_AND_COMPENSATION/PENSIONS_AND_RATES/CLARKE_REVIEW/Pages/report.aspx)

6. P Yeend, *Compensation (Japanese Internment) Bill 2001*, Bills Digest, no. 6, 2001–02, Parliamentary Library, op. cit.

## How many prisoners of war are there?

Set out below is the number of former PoWs with a Gold Card as at 1 April 2011.<sup>7</sup> All former PoWs are automatically entitled to a Gold Card, so it is probably safe to assume the number of PoWs with a Gold Card is also the number of surviving PoWs. However, there may be some former PoWs who do not want to be identified as such. In the Table, the state figures do not sum to the total due to a few surviving PoWs residing overseas being included in the total but not reported separately.

**TABLE 7: PRISONERS OF WAR, BY POW COUNTRY AND STATE  
WITH A GOLD CARD, AS AT 1 APRIL 2011**

	NSW	VIC	QLD	SA	WA	TAS	AUS
EUROPE	118	85	66	27	60	8	368
JAPAN	249	127	126	29	55	29	618
KOREA	5	1	1	2	1	0	10
TOTAL	372	213	193	58	116	37	996

## Other prisoner of war assistance

Apart from the one-off payments already provided to some former PoWs as outlined above, there are some other assistance arrangements that are targeted at former PoWs. These include:

- the provision of a Gold Card<sup>8</sup> to a former PoW
- for a former civilian PoW—recognition as having ‘qualifying service’ during WWII. This primarily allows access to the age service pension, which is payable from age 60, as opposed to the civilian age pension, which is payable from age 65
- for a surviving partner of a PoW who has died—automatic grant of War Widow’s/er’s Pension to a surviving qualifying partner,
- for a former PoW, payment of the basic daily care fee when in residential care and exemption from income-tested fees, and
- for a former PoW, who is in residential respite care, the payment of the basic daily care fee for up to a maximum of 63 days.

7. Department of Veterans’ Affairs, *Treatment population statistics*, March 2011, Canberra, p. 16, viewed 8 May 2011, <http://www.dva.gov.au/aboutDVA/Statistics/Pages/Statistics.aspx#treat>

8. The Gold Card is issued to veterans and former members of Australia’s defence force, their widows/widowers and dependants entitled to treatment for all medical conditions. The Gold Card provides treatment for all medical conditions, access to the Repatriation Pharmaceutical Benefits Scheme, assessment for services through Veterans’ Home Care and the Seniors Supplement (if the person is a veteran of pension age and not already eligible for Pension Supplement).

## Financial implications

The Financial Impact Statement in the Explanatory Memorandum accompanying the Bill details that the estimated cost of the PoW recognition supplement will be \$8.5 million in 2011–12, \$8.1 million in 2012–13, \$6.1 million in 2013–14 and \$4.5 million in 2014–15.<sup>9</sup> Obviously the cost estimates diminish over time as the vast majority of surviving PoWs are from WWII and they are now an old population.

## Prisoner of war compensation arrangements in some other countries

### Canada

A veteran of the Canadian Forces, or Canadian merchant mariner, who was a PoW for 30 days or more, or who evaded capture or escaped from the enemy for 30 days or more, may be entitled to compensation under the Canadian *Pension Act*. Compensation may also be paid to members of Allied Forces who were domiciled in Canada or Newfoundland at the time of enlistment in World War One (WWI) or WWII and to some civilians who served in support of the Canadian Forces.

In Canada, the term PoW now also includes those who were interned in a neutral country designated as enemy-occupied territory. Algeria and Tunisia are among areas designated in this way. Additional compensation for a spouse/common-law partner and dependants, similar to that awarded for a disability pension, is also available. A PoW is entitled, on application, to basic compensation equal to:

- in respect of any period spent as a PoW in the war with Japan:
  - 5% of basic pension<sup>10</sup>, where that person was a prisoner for periods totalling at least 30 days but not more than 88 days
  - 20% of basic pension, where that person was a prisoner for periods totalling at least 89 days but not more than 364 days
  - 50% of basic pension, where that person was a prisoner for periods totalling at least 365 days
- in respect of any period spent as a prisoner of war of another power:
  - 5% of basic pension, where that person was a prisoner for periods totalling at least 30 days but not more than 88 days
  - 10% of basic pension, where that person was a prisoner for periods totalling at least 89 days but not more than 545 days

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9. Explanatory Memorandum, p. iii, viewed 8 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Title%3Aveterans%20Dataset%3AbillsCurBef,billsCurNotBef;rec=0;resCount=Default>

10. At the time of writing this Bills Digest the maximum monthly basic disability pension payment was (Canadian) \$2478.08.

- 15% of basic pension, where that person was a prisoner for periods totalling at least 546 days but not more than 910 days
- 30% of basic pension, where that person was a prisoner for periods totalling at least 911 days but not more than 1275 days
- 35% of basic pension, where that person was a prisoner for periods totalling at least 1276 days but not more than 1641 days
- 40% of basic pension, where that person was a prisoner for periods totalling at least 1642.<sup>11</sup>

Former PoWs are also entitled to receive special awards of 'attendance allowance' or 'exceptional incapacity allowance' provided that they meet the eligibility criteria.

### Comment

In Canada, there is an entitlement to on-going payments as compensation for former PoWs as well as higher levels of assistance targeted to former PoWs of Japan during WWII. Interestingly, the Canadian arrangements target more assistance the longer a person was held as a PoW. There is no such distinction in the PoW recognition supplement proposed in this Bill.

### New Zealand

The New Zealand (NZ) Government has available a one-off ex-gratia payment of \$30 000 payable to New Zealanders, both civilian and military, who were held prisoner by the Japanese during WWII. If a former PoW has died, the surviving spouse may receive the payment.<sup>12</sup>

### Comment

The NZ arrangements feature a one-off ex-gratia lump-sum payment but no on-going supplement payment similar to that paid in Canada and as is proposed in this Bill.

### United Kingdom

In recognition of the unique circumstances of their captivity, the United Kingdom (UK) Government announced on 7 November 2000, that a single ex-gratia payment of £10 000 was to be made to surviving members of British Groups who were held prisoner by the Japanese during WWII. This is referred to as the payment for Far Eastern Prisoners of War (FEPOW).<sup>13</sup> There are six categories of person who are entitled to make a claim to the FEPOW ex-gratia payment. These are:

- a surviving former member of Her Majesties Armed Forces who was held as a Japanese prisoner of war in the Far East during WWII

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11. Veterans Affairs Canada website, viewed 10 June 2011, <http://www.veterans.gc.ca/eng/sub.cfm?source=dispen>

12. Veterans' Affairs New Zealand website, viewed 10 June 2011, <http://www.veteransaffairs.mil.nz/pensions/index.html>

13. Veterans UK website, viewed 10 June 2011, [http://www.veterans-uk.info/vets\\_issues/fepow\\_ext.html](http://www.veterans-uk.info/vets_issues/fepow_ext.html)

- a surviving former service personnel who received payments under Article 16 of the 1951 Treaty of Peace with Japan, in 1951, under the auspices of the British Government. These were certain members of the then colonial forces, Indian Army and Burmese Armed Forces.
- a surviving former member of the Colonial Forces who was held as a Japanese PoW, was British at the time of internment, and who can show that they lived in the UK for at least 20 years between 1 January 1945 and 7 November 2000
- a surviving member of the Merchant Navy who was imprisoned by the Japanese in the Far East during WWII. For the purposes of the FEPOW scheme, a member of the Merchant Navy is a person who has been employed, or engaged as, or for service as, a mariner in a British ship.
- a surviving civilian who was British and interned by the Japanese in the Far East during the Second World War and who can demonstrate a close link to the United Kingdom. A close link to the UK is shown by satisfying the new residency criteria, based on at least 20 years residence in the UK between 1 January 1945 and 7 November 2000, or the criteria of the UK's 1950's compensation scheme, or
- the surviving widow or widower of a deceased person who would otherwise have been entitled under the categories listed above, providing that they were still married at the time of death.<sup>14</sup>

## Comment

The UK arrangements target PoWs of the Japanese and feature a one-off, ex-gratia lump-sum payment but no on-going supplement payment as is paid in Canada and as is proposed in this Bill.

## United States

Former PoWs are those veterans who, while on active duty in the military, air, or naval service, were forcibly detained or interned in the line of duty by an enemy government or its agents or a hostile force. Periods of war include: WWII, the Korean War, the Vietnam War, and the Persian Gulf War (service after 2 August 1990). For peacetime service, veterans who, while on active duty during peacetime, were forcibly detained or interned by a foreign government, or its agents, or a hostile force, are also considered former PoWs, if the circumstances of the internment were comparable to wartime internment (for example: Iran, Somalia or Kosovo).

The United States (US) Veterans' Affairs (VA) health care system affords priority treatment for former PoWs. Former POWs who have a service connected disability are eligible for VA health care. This includes hospital, nursing home, and outpatient treatment. Former PoWs who do not have a service connected disability are eligible for VA hospital and nursing home care without regard to their ability to pay. They are also eligible for outpatient care on a priority basis, second only to veterans with service connected disabilities.

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14. Veterans UK website, viewed 10 June 2011, [http://www.veterans-uk.info/vets\\_issues/fepow\\_eligibility.html](http://www.veterans-uk.info/vets_issues/fepow_eligibility.html)

Former PoWs receiving treatment in an approved outpatient treatment program are eligible for needed medicines, glasses, hearing aids, or prostheses. Former PoWs are eligible for all needed dental care. In addition, they are not charged a co-payment at VA pharmacies.<sup>15</sup>

Former PoWs are eligible for VA compensation for disabilities related to their military service and captivity. Certain listed conditions are presumed to be related to time in captivity—regardless of their length of time in captivity.<sup>16</sup>

If a former POW was interned for 30 days or more, additional listed diseases are presumed to be service-connected.

### Comment

The US PoW assistance arrangements feature priority for, and special access to, health care treatment and also to the VA disability payment. Access to health care is similar to the Gold Card provided to Australian PoWs. However, it should be noted the Gold Card assistance provided in Australia is unique. There are no overseas veterans' assistance arrangements which provide coverage for all medical needs and costs. Overseas, medical coverage is commonly confined to that which has been accepted as arising from service.

## Schedule 2—Compensation offsetting

The Government announced changes to the compensation offsetting provisions in the VEA in the 2011–12 Budget.<sup>17</sup>

### Compensation offsetting

The amendments to the VEA presented in **Schedule 2** to the Bill refer to the compensation offsetting provisions in the VEA. These provisions have their origins in amendments to the then *Repatriation Act 1920* (RPA) made in 1973 which took effect from 1972.<sup>18</sup> A number of separate repatriation assistance acts were replaced with a consolidation act in 1986, being the VEA.

One of the pre-1972 election commitments made by the Whitlam government was that it would open up access to assistance provided under repatriation legislation to serving members of Australia's armed forces. Prior to this, only armed service personnel with '*qualifying service*' were

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15. United States Department of Veterans Affairs website, viewed 10 June 2011, <http://www.vba.va.gov/bln/21/Benefits/POW/index.htm>

16. United States Department of Veterans Affairs website, viewed 10 June 2011, <http://www.vba.va.gov/bln/21/Benefits/POW/POWbenefits.htm>

17. Australian Government, 'Compensation offsetting under the Veterans' Entitlements Act 1986', *Budget measures: budget paper no. 2: 2011–12*, op. cit., p. 327.

18. *Repatriation Act (No. 3) 1973* [Act no. 104 of 1973].

entitled to repatriation assistance.<sup>19</sup> Injuries, illness and deaths arising from normal peacetime service were covered by other military service workers compensation type arrangements that applied for the defence force personnel.<sup>20</sup>

After the 1973 amendments to the RPA, there was a period from 1972 to 1986 when provisions of the RPA were applied to peacetime service of members of the permanent military forces. This allowed access to the Disability Pension (DP) for illness and injury and the war widows' pension for surviving widows where there had been loss of life. These arrangements were discontinued with the enactment of the VEA in 1986. At the same time as the RPA was amended to allow some access to serving members of the armed forces, the RPA was also amended to ensure that where a person had dual access to RPA assistance and also workers compensation type assistance for the same illness/injury, there should not be any double-dipping.<sup>21</sup> This was the origin of the compensation offsetting provisions in the VEA.

## Federal court decision

The current compensation offsetting provisions in the VEA refer to and use the words: 'incapacity arising from an injury or disease'.<sup>22</sup> The provisions target 'incapacity' rather than a specific illness or a disease. One reason for this is that an 'incapacity' may arise from more than one injury and/or disease. Another reason is that a particular illness/injury may affect individuals differently. The DP provisions in the VEA target the impact that an illness/injury has on a person, and its resultant affects, in terms of impairment or incapacity. The DP is paid as a percentage of the general rate of DP—from 10 per cent up to 100 per cent based on the impact that the accepted illnesses/injuries has on the person.

By way of example, the presence of a skin disease, which is accepted as being service caused/related, does not attract a flat rate of DP payment, rather the rate is linked to the impact of the skin disease on the individual. The impact is measured and assessed to set the rate of DP paid. As said, the same illness/injury will affect different persons differently. This also means that the rate of DP paid is adjustable. As a person's illness/injury worsens or their capacity to manage/cope with the condition improves or deteriorates, the rate of DP can be adjusted to recognise the changes in impact.

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19. **'Qualifying service'** refers to service that is officially defined as war service or war-like service. For a full history of the development of the Repatriation Acts see P Toose (Chairman), *Independent Enquiry into the Repatriation System*, Report, Australian Government Publishing Service, Canberra, June 1975, viewed 10 June 2011, <http://www.google.com.au/url?sa=t&source=web&cd=5&ved=0CDcQFjAE&url=http%3A%2F%2Fwww.vrb.gov.au%2Fdvapublications%2FTooseReport.doc&rct=j&q=repatriation%20assistance%20before%201972&ei=eJXtZ2NAoGsugPUmuDNBA&usg=AFQjCNHp6VII9jcNY0rjWGixTf50nuurjA>
  20. *Naval Defence Act 1910, Defence Act 1903, Air Force Act 1923*.
  21. RPA, section 107q.
  22. VEA, Division 5A—Effect of certain compensation payments on rates of pension.

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The amendments to the VEA presented in **Schedule 2** to the Bill have their origins in the decision of the Full Court of the Federal Court in *Commonwealth of Australia v Smith (Smith)*.<sup>23</sup> In *Smith*, a former member of the Royal Australian Navy had been paid a DP under the VEA for accepted service related illness/injuries, being a duodenal ulcer and also Post-Traumatic Stress Disorder (PTSD). Separate to this, Mr Smith also received a compensation award arising from the HMAS Melbourne and HMAS Voyager collision, the award being for 'severe shock'. The terms of the settlement reached between Mr Smith and the Commonwealth were confidential.

After the settlement was arrived at, the Department of Veterans' Affairs sought to recover an amount of DP from the lump sum compensation payment on the grounds that Mr Smith had received payment in respect of the same incapacity for which he had been paid DP. Mr Smith appealed against the recovery decision.

The Full Court of the Federal Court found that the compensation offsetting provisions of Division 5A of the VEA did not apply, as Mr Smith had been paid compensation for an 'incapacity arising from an injury or disease'—being 'severe shock'—which was not the same as being paid DP for an 'incapacity arising from an injury or disease'—being duodenal ulcer or PTSD.

The amendments in this Bill will ensure that in the future, the compensation offsetting provisions will apply in respect of the same incapacity and do not require that the incapacity results from the same injury or disease.

## Financial implications

The Financial Impact Statement in the Explanatory Memorandum attached to the Bill sets out that the proposed changes to the VEA will have no cost or savings implications.<sup>24</sup> The Budget papers detail that the changes will have a cost of \$2.7 million over four years and this will be met from the existing resources of the Department of Veterans' Affairs (DVA).<sup>25</sup>

## Schedule 3—Temporary incapacity allowance

The Government announced the proposed rationalisation of Temporary Incapacity Allowance (TIA) and Loss of Earnings Allowance (LOEA) in the 2011–12 Budget.<sup>26</sup> In very simple terms the rationalisation involves the closure of the TIA leaving LOEA in its place.

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23. *Commonwealth of Australia v Smith* [2009] FCAFC 175 (16 December 2009), viewed 10 June 2011, <http://www.austlii.edu.au/au/cases/cth/FCAFC/2009/175.html>

24. Explanatory Memorandum, p. iii, op. cit.

25. Australian Government, 'Compensation offsetting under the Veterans' Entitlements Act 1986', op. cit.

26. Australian Government, 'Rationalisation of Temporary Incapacity Allowance and Loss of Earnings Allowance', *Budget measures: budget paper no. 2: 2011–12*, Commonwealth of Australia, 2011, pp. 329–330.

## Temporary incapacity allowance

TIA is payable to an employed veteran who has undergone hospital or other institutional treatment for a war-caused or defence-caused disability, and has been off work for a continuous period of more than 28 days. The 28 days commences from the date of hospitalisation, and may include post-discharge out-patient treatment or post-discharge medically recommended rest and recuperation. There is no requirement that income is actually lost, but the veteran must have been prevented from undertaking his or her usual remunerative work for the whole period. TIA is paid at a rate that is the difference between the amount of disability pension already received, and the rate of the Special rate Disability Pension (T&PI).<sup>27</sup> Payment of loss of earnings allowance for this period will affect the amount of TIA.

## Loss of earnings allowance

LOEA compensates an eligible veteran for salary, wages or earnings lost due to absence from work for the treatment of war or defence caused disabilities or to attend certain appointments. LOEA is payable where there has been a loss of earnings due to a veteran:

- receiving treatment for a war or defence-caused disability (including waiting for the supply or repair of an artificial limb or other surgical aid)
- using part, or all, of his or her employer provided sick leave for a war or defence-caused disability, and now has no benefit to cover an absence for another illness
- attending an appointment arranged by the Department for the investigation of a claim for disability pension, or
- having an authorised attendant to provide assistance when obtaining treatment, or another person acting on behalf of the veteran, in relation to the veteran's claim for disability pension, who loses salary, wages or earnings.

The amount of LOEA payable is the lesser of:

- the difference between the T&PI rate of DP and the veteran's present rate of DP, or
- the amount of salary, wages or earnings actually lost (including loadings or other allowances that would have been payable).

The circumstances for which TIA and LOEA are paid are very similar. TIA requires a minimum of 28 days of hospitalisation and there is no requirement that any income has been lost. LOEA has no 28 day minimum but does require that there has been income lost.

## Financial implications

The Financial Impact Statement in the Explanatory Memorandum attached to the Bill details that the estimates costs/savings attached to the proposed changes are costs of \$0.0 million in 2010–11 and

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27. Special rate DP is more commonly referred to as the Totally and Permanently Incapacitated (T&PI) disability pension.

\$0.4 million in 2011–12, followed by savings of \$0.1 million in 2013–14 and \$0.1 million in 2014–15.<sup>28</sup>

## Comment

The proposed rationalisation of the two payments paid for virtually the same circumstances makes sense. The LOEA is probably a more beneficial payment than TIA as it does not require a minimum 28 days of hospitalisation. The main change will be that LOEA does require income to have been lost, so it will target DP recipients with employment income and more specifically those with no residual entitlement to other earnings payments, such as sick pay or compensation payments.

## Key provisions

### Schedule 1—Prisoner of war recognition supplement

#### Part 1—Main amendments

**Item 1** of Schedule 1 to the Bill inserts a **new Part VIB** into the VEA containing the main qualification and payment rate provisions for the proposed recognition supplement. The new Part provides that the following classes of persons are eligible for the recognition supplement:

- a **veteran** who 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
- a **civilian** who 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 was domiciled in Australia immediately before the civilian's internment
- a **veteran** who 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
- a **civilian** who 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 the civilian was domiciled in Australia immediately before the civilian's internment, and
- a **veteran** who 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.

A person is not entitled to more than one recognition supplement.

**New section 115N** sets out when the recognition supplement is payable. Those persons who are members of the classes of persons outlined above, who are known to the Commission on 20 September 2011 will be paid the recognition supplement without the need to make a claim.

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28. Explanatory Memorandum, p. iii, op. cit.

However, under **new subsection 115N(2)** a person who is not known to the Commission as a member of those classes of person, will need to make a formal claim for the recognition supplement.

Under **new section 115P**, the rate of recognition supplement is \$500 per fortnight. The recognition supplement is not to be payable to any surviving partner, or dependent, once a former PoW dies.<sup>29</sup>

## Part 2—Consequential amendments

**Items 8–9** of Schedule 1 to the Bill amend the *Income Tax Assessment Act 1997* (ITAA) so that the recognition supplement is not taxable income. Indirectly, this will also mean that the recognition supplement will also not be regarded as income for some government payments and assistance arrangements that use adjusted taxable income to measure income. These payments and assistance arrangements that use adjusted taxable income include the main family assistance payments, being Family Tax Benefit and Child Care Benefit as well as the Commonwealth Seniors Health Care Card.

**Item 11** amends the SSA to ensure the recognition supplement is not treated as income under the income tests applied under the SSA. **Items 12–13** do the same to the VEA, so that the recognition supplement is not income under the income tests applied under the VEA.

## Schedule 2—Compensation offsetting

The amendments presented in **Schedule 2** to the Bill primarily omit references to an 'incapacity from that injury or disease' and substitute a reference to 'the incapacity of the veteran from that or any other injury or disease', in multiple sections of the VEA. This is in direct response to the decision of the Full Court of the Federal Court in *Smith* as outlined above.

**Items 3–13** particularly amend sections 30C–30L of the VEA being the compensation offsetting provisions of the VEA. **Items 15–42** amend various sections in Division 3 of the VEA being the rate setting provisions of the VEA.

## Schedule 3—Temporary incapacity allowance

**Items 1–2** of Schedule 3 to the Bill repeal provisions in the *Income Tax Assessment Act 1997* that refer to TIA as that will no longer be a payment provided under the VEA.

**Items 3–14** repeal the various TIA provisions in the VEA.

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29. It should be noted, though, that **proposed subsection 121(4A)** provides that an instalment of the recognition supplement will be payable to the estate of a former PoW where the person has died during a pension period.

## Concluding comments

The provision of the recognition supplement for former prisoners of war which is contained in **Schedule 1** to the Bill is beneficial legislation. Most comparable overseas countries also have special assistance for former PoWs. This assistance has mainly been in the form of one-off ex-gratia lump-sum payments. The US does prioritise some health assistance arrangements to former PoWs. Canada is the only country that appears to provide an on-going regular supplement payment for former PoWs, such as the one which is contemplated by this Bill.

The compensation offsetting provisions set out in **Schedule 2** are largely in response to the decision by the Full Court of the Federal Court in *Smith* and aim to ensure the provision of DP under the VEA is targeted and that there is no double-dipping with concurrent access to other compensation arrangements.

The removal of TIA and the movement to a single loss of earnings allowance will rationalise this benefit as only one of two very like payments will continue to be made.

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