

On a similar matter but from a different constituent, claims are made that a New Zealand veteran's War Disablement Pension is considered as income by Centrelink, but exempt from assessment as income by the ATO. Can you confirm this? Further, she claims NZ veterans, to their detriment, are not eligible to the same health care entitlements as other allied veterans living in Australia. Is it possible to get a comparison chart of the treaties applicable to NZ and other allied veterans with respect to health care entitlements? Thanks in advance for your help with this matter.

Responses

Allied veterans in the *Veterans' Entitlements Act 1986*

Currently, in the *Veterans' Entitlements Act 1986* (VEA) an allied veteran is a person who:

- has been appointed or enlisted as a member of the defence force of an allied country, and
- has rendered continuous full-time service as such a member during a period of hostilities.

What are the defence forces of allied countries? This refers to the defence force established by an allied country or Government in exile and includes:

- the regular naval, military or air forces,
- the nursing or auxiliary services of the regular naval, military or air forces, and
- the women's branch of the regular naval, military or air forces.

What are periods of hostilities?

Periods of hostilities for a Commonwealth or allied country post World War Two (WWII) veteran are:

- 1) Korea - 27 June 1950 to 19 April 1956,
- 2) Malaya - 29 June 1950 to 31 August 1957,
- 3) Warlike operations in operational areas from 31 July 1962 to 11 January 1973. This includes:
 - Sabah & Sarawak (now part of Malaysia) & Brunei – 8 December 1962 to 16 August 1964,
 - Malay – Thai border – 31 July 1962 to 16 August 1964,
 - Malaysia, Brunei & Singapore – 17 August 1964 to 30 September 1967, and
 - Vietnam – 31 July 1962 to 11 January 1973.

There are no dates past 11 January 1973 which provide VEA entitlements to Commonwealth or allied veterans.

For more detail on the assistance available to allied veterans under the VEA - see Attachment A.

What assistance are allied veterans not allowed access to under the VEA

The main forms of assistance allied veterans are not provided with under the VEA are the compensation payments. These payments are the Disability Pension (DP) and also the War Widow's/er's Pension (WWP). These are not provided to allied veterans under a long-standing understanding between Commonwealth and allied countries that the health needs and compensation issues arising out of war service are the responsibility of the country for whom the veteran served. So a DP like the T&PI rate or any other DP rate from 10% to 100% is not paid to any allied veteran. The coverage for any illness/injury arising from war or warlike service is the responsibility of their service country. A stark example of this is the non-provision of the veterans Gold Card. Not only is there no equivalent of a Gold Card in any overseas country but the health needs of a veteran are the responsibility of the country for whom they served.

The same principle applies to the WWP. The surviving partner of an allied veteran may be able to claim a WWP equivalent in the allied country, but they are not entitled to WWP under the VEA.

Why no post Vietnam War service recognised as allied service under the VEA?

You will notice that allied service after WWII which is recognised in the VEA only goes up to the Vietnam War. This recognition of allied service in the VEA is largely a legacy of the fact that most

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armed conflicts that Australia has been involved in since the Boer War have been with as a member of the Commonwealth and allied to Britain. Yes we have been involved in war or warlike service since the Vietnam War with other 'allied' countries but not essentially as a member of the Commonwealth. It is probable that that the recognition of service in the Vietnam War as 'allied' service was considered not too risky at the time, as it was not envisioned there would be many persons from then 'allied' countries in that conflict would choose to live in Australia.

It is not probable in the future that there will be the like recognition of the Iraq Wars (One and Two) and the Afghanistan War as allied service, as it was not done ostensibly as a member of the Commonwealth.

When this issue was put to DVA the response from the relevant DVA officer was as follows:

Mr. B. on 30 June 2010 queried the lack of eligibility in the Veterans' Entitlements Act 1986 (VEA) for allied veterans for conflicts since the Vietnam War.

As pointed out, successive Australian Governments have, over the years, adhered to the general principle that each nation should bear the responsibility for providing compensation and treatment to former members of its forces, irrespective of where they later choose to reside. The VEA coverage for allied veterans is limited to service in conflicts during defined periods of hostilities, with the last period of hostilities ending on 11 January 1973.

So, for all conflicts since the Vietnam War where Australia has participated there has been no coverage for members of other allied forces, including the current conflict in Afghanistan.

The basic eligibility requirement for an allied veteran is the 'incurred danger' test, the same test that was applied to Australian claimants for Repatriation benefits for service up until World War II, after which it was replaced by the process of being 'allotted for duty'. My understanding is that this mechanism for determining allied-veteran coverage stemmed from a recognition that we shouldn't look to foreign governments to establish eligibility under Australian legislation. As a result it was decided to use 'Incurred Danger' as the test for allied veterans.

I am not aware of any significant agitation on the issue of extending the coverage for allied veterans past the current date of 11 January 1973. Apart from this gentleman's enquiry, I know of only one other approach to a Minister on this subject in the last four years. Additionally, it may be worth noting that the most recent review of veterans' entitlements (the Clarke Review in 2003) made no mention of this Commonwealth/Allied veteran provision, beyond noting that there has been no extension to the periods of hostilities to cover conflicts after the Vietnam War. So, the subject obviously wasn't significant enough for the Clarke Review to say any more on the matter. We are not aware of any reason for the Government to amend the VEA to extend the periods during which Commonwealth or Allied veterans can attract qualifying service.

New Zealand veteran's War Disablement Pension

You wanted clarification as to whether the New Zealand (NZ) War Disablement Pension is considered as income by Centrelink, but exempt from assessment as income by the ATO.

Income testing under the *Social Security Act 1991*

Background

The general guidelines for the treatment of overseas pensions under the *Social Security Act 1991* (SSA) are set out in Attachment B. What these guidelines state is that unless the pension is exempt under an international social security agreement that Australia has with the paying country, the overseas pension is going to be regarded as income under the SSA. The guidelines for the treatment

of specific overseas war pensions are at Attachment C. As you can see there are no references to the NZ War Disablement Pension.

Income under the SSA

The SSA is a welfare payment act. It has a very broad definition of income (section 8) which refers to any monies or valuable consideration earned, derived or received. There are specific exemptions listed in section 8 of the SSA to income amounts or from prescribed sources that are not income and the NZ) War Disablement Pension is not listed. This means that the NZ War Disablement Pension is income for the SSA. You will be interested to know that the DP paid under the VEA is also regarded as income under the SSA. So the treatment of the NZ War Disablement Pension as income is consistent with the treatment of the like payment provided under the VEA.

Make-up for the treatment of Disability Pension as income

As a make up for the treatment of the DP, paid under the VEA, as income, the VEA also provides for the Defence Force Income Support Allowance (DFISA). For any rate reduction of a SSA pension or allowance by the treatment of the DP as income, an amount of DFISA is paid to make sure the person is not financially disadvantaged. There is no like make-up payment in the VEA for the NZ War Disablement Pension.

Tax treatment of DP in Australia

The disability pensions paid under the SSA (Disability Support Pension (DSP)) and also under the VEA (Disability Pension and Disability Service Pension) are not taxable income under the *Income Tax Assessment Act 1991* (ITAA1997). It may be that, as you claim, the NZ War Disablement Pension is not taxable income under the ITAA1997 for the same reasons. However, the reasons for the non-taxable nature of the Australian disability pensions vary.

For DSP, its non-taxability goes back to 1920. When the original DSP (Invalid Pension (IP)) was introduced in 1908, it was not payable to a blind person. This was because most blind persons were living in institutions and working full-time. The folly of not allowing access to the IP for a blind person was amended in 1920 and as a make-up the IP was made non-taxable so blind persons would not have a disincentive to work. Thereafter IP (and then DSP) have been non-taxable.

For the disability pensions paid under the VEA the story is different. The DP is a compensation payment for a war/service caused/related illness/injury. Being compensation for illness/injury acquired while in service it is not taxable. The same applies to the WWP – it is compensation for a death caused/related to service and is likewise non-taxable. The Disability Service Pension is for persons of working age and is very much like the civilian DSP and has the same characteristics as DSP so to be consistent it is also non-taxable.

Treatment of income under the SSA and the ITAA1997

It should not surprise that the treatment of income can differ between the SSA and the ITAA1997. The SSA is a welfare act and assesses income to determine a person's means and then therefore their need for support. The ITAA1997 is a revenue collection act and examines and treats income regarding a person's means and capacity to contribute to taxation revenue. Two very different purposes. The definitions of income differ between the two acts and exemptions and deductions from gross income also differ between both acts.

ATTACHMENT A

Assistance for allied veterans under the VEA

Currently, the only assistance provided to allied veterans under the VEA is the:

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- age service pension for those aged 60 or more,
- invalidity service pension, and
- Orange Card.
- More description of these benefits are provided below.

Age service pension

Age service pension is payable to an allied veteran aged 60 or more. The person must have qualifying war service. The pension is paid at the same rate as the civilian age pension.

This pension is provided to veterans of Commonwealth and allied countries under reciprocal international agreements between these countries; that each country would provide for the income support needs of the veterans resident in their country. The agreements refer only to income support and not the compensation issues for service.

Invalidity service pension

This pension is payable to an allied veteran who is of working age (aged less than age 60 or 65) and has a significant incapacity to work arising from a disability. A person is considered permanently incapacitated for work if they:

- are permanently blind in both eyes,
- are in receipt of the Special Rate of DP (T&PI), or
- have a disability that permanently prevents them from working.

Assessment of incapacity for work is not restricted to service related disabilities, however if the person is not blind or not in receipt of disability pension at the T&PI rate, the following criteria need to be satisfied:

- has a disability that results in a combined impairment rating of 40 points or more using the *Guide to the Assessment of Rates of Veterans' Pensions* (GARP),
- the disability is permanent, and
- the incapacity from the disability alone, permanently prevents the person from working for periods adding up to more than 8 hours per week.

In some cases, a claim for permanent incapacity may be decided without the need for further medical assessment. These types of cases are:

- the person is permanently blind in both eyes,
- the person receives disability pension at the T&PI rate, or
- where it is obvious from available medical evidence that the disability alone permanently prevents the person from working.

There may be a small number of allied veterans who may qualify for invalidity service pension. However, it would not be on the basis they are in receipt of a T&PI pension, as allied veterans are not able to access DP provided under the VEA – see below.

Orange Card

A Repatriation Pharmaceutical Benefits Card (RPBC) - Orange Card is issued to Commonwealth and allied veterans and mariners who:

- have qualifying service from World War I or WWII,
- are aged 70 years or over, and
- have been resident in Australia for 10 years or more.

Benefits of the Orange Card

The Orange Card allows access to the subsidised pharmaceuticals and medicines under the Repatriation Pharmaceuticals Benefits Scheme (RPBS). The RPBS contains all items available to the general public under the Pharmaceutical Benefits Scheme (PBS), and also an additional list contained in the Repatriation Schedule of Pharmaceutical Benefits (RSPB) which is exclusive to the

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veterans. Therefore the range of subsidised pharmaceutical items available with the Orange Card is much wider than that for the general public.

The Orange Card also entitles a veteran to receive the Veterans Supplement. The Veterans Supplement is a fortnightly payment which helps to offset the cost of prescriptions. The Veterans Supplement for 2010 is \$ 6.00 per fortnight. Some Orange Card holders may already receive this amount as part of their service pension or Age pension paid by Centrelink. The Veterans Supplement is indexed annually in line with the CPI.

ATTACHMENT B

4.3.6.10 Income from Overseas Payments - General Rules

Summary

This topic provides information about the following:

- overseas pensions,
- overseas pensions - blocked,
- treatment of [CFP](#) payable to surviving spouses in the bereavement payment period,
- arrears of overseas pensions,
- eligibility conditions and income test treatment details - agreement countries, and
- other overseas pensions.

Overseas pensions - general

The gross current rate of overseas pensions is generally treated as income for social security purposes whether the payments are made:

- from overseas, or
- through an Australian agent.

No amount is deducted for any bank charges.

Exception: Overseas pensions may be treated as a direct deduction rather than as ordinary income when the recipient is in Australia and would not be eligible for an Australian payment without the help of an agreement.

Example: Under the 2002 New Zealand Agreement, the amount of New Zealand superannuation and New Zealand invalid benefit payable is always directly deducted from the rate of an Australian social security payment otherwise payable.

Exception: Some of Australia's international social security agreements have provisions to disregard some components of overseas pensions from the income test.

Example: The Italian supplement is generally exempt as income for all payments except [SpB](#).

Exception: Some overseas pensions are not assessed as income as they are exempt under social security law.

Example: Pensions paid as compensation for National Socialist persecution are exempt from the social security income test.

Act reference: SSAct [section 8\(8\)](#)(n) Excluded amounts - general

Policy reference: SS Guide [4.3.6.11](#) Income from Overseas Payments - Specific Payments, [4.3.6.30](#) Holocaust Restitution Payments - Germany & Austria, [4.3.6.31](#) Holocaust Restitution Payments - Other Countries, [10.1](#) General Principles of Agreements, [10.2](#) Agreement with New Zealand 2002, [10.1.9.80](#) Payments Exempt Under Agreements

Overseas pensions - blocked

The treatment of blocked foreign income is dealt with by the Federal Court in *Rose v Secretary, Department of Social Security* (1990) 21 FCR 241. The *Rose* decision held that no territorial limitation could be implied into the definition of income. 'The construction and application of the definition of income does not depend on the circumstances that an applicant for a pension may choose to live in Australia or another country or both countries.'

Therefore, because access to a foreign pension is severely limited, for example, the paying country restricts payment of pensions overseas, or access is restricted to residents of or to people physically present in the paying country, does NOT mean the pension is considered 'blocked'.

Depending on the circumstances of the individual case, however, it MAY be accepted that a pension is NOT income for social security purposes, where the prospect of receiving the money is so remote that the monies are not 'earned, derived or received' for the person's own use or benefit.

Explanation: Shepard J in *Inguanti v Department of Social Security* ((1988) 15 ALD 348) stated that where the prospect of ever receiving money is remote, or if receipt of money, although certain, is likely to be so far in the future as to make the money of no relevant benefit in the present, it may be correct to say the money is not 'derived'.

Example 1: Country A

Due to political or financial crisis Country A is withholding remittance of pensions to 'residents' and 'non-residents'. Information is not available as to when this restriction is likely to be lifted. The available evidence however suggests that the prospect of the recipient ever receiving the money is so remote, or so far into the future, as to make the money of no relevant benefit at the time the matter is considered.

Example 2: Country B

Country B has suspended remittance of pensions to 'non-residents'. Information from Country B suggests that it has no intention of removing this restriction. Also, an official travel warning has been issued by [DFAT](#), advising against all travel to that country now and for the foreseeable future.

Example 3: Recipient cannot travel to another country to access their overseas pensions.

A recipient can only access their overseas pension by being physically present in the other country. However, they cannot travel overseas due to a medical condition, and there is no reasonable prospect of them being able to travel overseas to access their pension in the foreseeable future.

In cases such as this the recipient must be reminded that they have a legal obligation to notify Centrelink as soon as their pension payments are restored. Delegates should also attempt to verify information provided by recipients. Evidence may take the form of a letter from an independent source (e.g. fund manager or embassy). Delegates are also asked to contact [CIS](#) or [FaHCSIA](#) International Branch BEFORE they make a decision that income is blocked.

Treatment of CFP payable to surviving spouses in the bereavement payment period

On the death of a partner some recipients may also be granted either a survivor's (or widow's) pension, which is a type of CFP payable to surviving spouses, or an increase in their own payment. Where this occurs the survivor's pension income, or additional surviving spouse payment, is NOT assessed in the 14-week bereavement payment period.

Arrears of overseas pensions

All lump sum payments representing arrears of overseas pension entitlement (CFPs) are treated as periodical payments for the period covered by the arrears payment. The gross amount of lump sum payments representing arrears of overseas pension entitlements (CFPs) is assessed as income for social security purposes. The gross amount includes payments such as voluntary insurance contributions, made from the arrears payment. Any amount by which the social security payment (for the recipient or their partner) would have been reduced is a recoverable debt. The lump sum is NOT counted in the fortnight of receipt for either pension or allowance purposes.

Example: On 30 July 2004 an age pensioner receives a lump sum CFP amount in arrears. The amount is for the period 30 March 2003 to 20 July 2004. The lump sum is apportioned over the period 30 March 2003 to 20 July 2004 and any amount by which any social security payment to the pensioner or their partner would have been reduced becomes a recoverable debt. The lump sum is NOT counted as income at the time of receipt.

Act reference: SSAct [section 1228A](#) Comparable foreign payment debt recovery, [section 8\(11\)](#) An amount received by a person is an exempt lump sum

Policy reference: SS Guide [4.3.1.20](#) Determining the Rate of Income for Pensioners of Age Pension Age from 20/09/2009, [4.3.2.35](#) Income Exempt from Assessment - s8(11) Exempt Lump Sums, [6.3.1](#) Non-payment-specific Overpayments, [7.3.1.30](#) Applying CFP Provisions

Arrears paid under an international agreement

Some overseas pension arrears, representing amounts payable before the decision to grant the foreign pension, can cause a recoverable debt under an international agreement. This debt is normally recovered from arrears direct from the overseas country and no debt is raised for the recipient. The person's partner, however, may still have a recoverable debt raised under SSAct section 1228A.

Policy reference: SS Guide [10.1.8](#) Arrears, Embargoes & Overpayments

Eligibility conditions & income test treatment details - agreement countries

Eligibility conditions and details of treatment under the income test (whether Australian pension is paid under the agreement or autonomously) for specific pensions from the agreement countries is provided in SS Guide [10.1.4](#) and [10.1.9](#).

Other overseas pensions

Other overseas pensions NOT covered by the agreements with the agreement countries are also paid to people in Australia and to Australian pensioners overseas. The gross amount of all overseas pensions, whether government or privately funded, is assessed as ordinary income ([1.1.O.30](#)) and need to be reviewed annually to update their rates.

Examples: The most common are war pensions and public service pensions.

Policy reference: SS Guide [4.3.9.70](#) Income from Private Annuities & Overseas Income Streams

ATTACHMENT C

4.3.6.20 Overseas War Pensions

Summary

This topic provides information about:

- overseas war widow's pension,
- British war pensions, and
- exempt British war allowances.

Overseas war widow's pension

A person in receipt of an overseas war widow's pension may also receive a social security pension ([section 23\(1\)-'social security pension'](#)) or benefit ([section 23\(1\)-'social security benefit'](#)), including [WidB](#). An overseas war widow's pension is treated as income for social security purposes.

Before August 1981, the amount of social security WidB pension paid to a person in receipt of an overseas war widow's pension was limited. The limit ensured that the total payment of Australian widow's pension and overseas war widow's pension did NOT exceed the total amount payable to an Australian war widow, under the Veterans' Entitlements Act and Regulations.

If any case is found where this limitation is still in force, the pension MUST be reassessed, AND full arrears paid.

British war pensions

A British war pension and the following additional allowances ARE treated as income for social security purposes:

- age allowance,
- allowance for lowered standard of occupation,
- badge allowance,
- comforts allowance,
- family allowance for wife,
- meritorious service annuity,
- petty time,
- rent allowance,
- service allowance,
- severe disablement occupational allowance,
- exceptionally severe disablement allowance,
- treatment allowance, and
- unemployment benefit.

Note: The above list is not exhaustive. Further details are available from the [Veterans Agency](#). Generally, unless specifically exempted a payment should be counted as income.

British war allowances - exemptions as income

The following allowances are NOT treated as income for social security purposes. They are exempt as income on the same basis as those paid to Australian veterans:

- clothing allowance,
- constant attendance allowance,
- decoration allowance,
- family allowance in respect of children, and
- mobility supplement.

Act reference: SSAct [section 8\(8\)](#) Excluded amounts - general, see (ze)