

CHAPTER TEN

CURRENT ELIGIBILITY REQUIREMENTS

10

INTRODUCTION

10.1 Under the *Veterans' Entitlements Act 1986* (VEA) there are two major pensions for eligible persons:

- the disability pension, which is compensation for war or service related injury or disease; and
- the service pension, which is broadly equivalent to the social security age and disability support pensions.

10.2 This chapter provides an overview of the eligibility requirements for access to the disability and service pensions under the VEA.

ELIGIBILITY CRITERIA FOR DISABILITY PENSION

10.3 To be eligible for compensation payments under the VEA a person must first qualify as a **'veteran'** (s.5C), a **'member of the Forces'** (s.68 (1)) or a **'member of a Peacekeeping Force'** (s.68 (1)). Certain civilians also have access to the VEA, generally by virtue of a determination made under s.5R.

10.4 A **'veteran'** is defined in s.5C of the VEA as a person who:

- has rendered 'eligible war service';
- was a member of the Australian armed services forces who, after 31 July 1962, was engaged in warlike operations against hostile forces outside

Australia but not on ‘operational service’ in an operational area and was injured, contracted a disease or died due to action of hostile forces; or

- is a ‘Commonwealth veteran’, ‘allied veteran’ or ‘allied mariner’ (for service pension, Repatriation Pharmaceutical Benefits Card and Commonwealth Seniors Health Card purposes only).

10.5 ‘**Eligible war service**’ is defined in s.7 of the VEA and includes:

- ‘operational service’;
- continuous full-time service (CFTS) in the Australian armed services in World War I;
- CFTS in World War II in the Australian armed services (enlistment before 1 July 1947);
- CFTS service as a member of the Australian Interim Forces after 1 July 1947; and
- service in World War II by Australian mariners.

10.6 ‘**Operational service**’ is defined in ss.6A–F of the VEA. Operational service is in effect a subset of eligible war service. It has two purposes. It defines the means for basic eligibility for veterans with post-World War II service. It is also a criterion for attracting the generous ‘reverse criminal’ standard of proof for compensation claims. In that regard it is also specifically defined for some service in World Wars I and II. The standard of proof is relevant in determining the link between a veteran’s service and an injury, disease or death. Where a veteran has eligible war service but not operational service, the standard of proof that applies is the civil ‘balance of probabilities’ test (s.120 (4)).

10.7 ‘Operational service’ includes:

- s.6A — CFTS in the Australian armed services during World War I outside Australia;
- s.6A — World War II:
 - CFTS in the Australian armed services outside Australia;
 - CFTS in the Australian armed services for three months or more in the Northern Territory north of parallel 14.5 degrees south, from 19 February 1942 to 12 November 1943 inclusive (this is the period during which this area was subject to Japanese air raids);²²

²² Includes any CFTS in Australia during World War II immediately before or after the period of operational service.

- CFTS in the Australian armed services by those who enlisted in the Torres Strait Islands and served there for three months or more between 14 March 1942 and 18 June 1943;²³
 - CFTS in the Australian armed services considered by the Repatriation Commission to be service in actual combat against the enemy;
 - service as a member of the forces of a Commonwealth or allied country where the person was domiciled in Australia or an external territory immediately before enlistment in those forces and served outside the country of enlistment or within that country and the service is considered by the Repatriation Commission to be service in actual combat against the enemy;
 - civilians while employed on a special mission by the Australian Government outside Australia;
 - certain civilians killed during the invasion of Papua New Guinea as a result of enemy action;
 - certain civilians detained by the enemy; and
 - CFTS by a member of the Australian armed services serving in Australia for the period he or she was injured or contracted disease due to enemy action;
- s.6A — service in the Australian armed services with the British Commonwealth Occupation Force in Japan;
 - s.6B — Australian mariners in World War II;
 - s.6C — post-World War II:
 - service in the Australian armed services in an operational area defined in Schedule 2 of the VEA while ‘allotted for duty’ in that operational area, which generally covers service in the Korean War, Malayan Emergency, Indonesian Confrontation and later periods of operational service such as Namibia, the Gulf War, Cambodia, Somalia and the former Yugoslavia;
 - service as a member of the forces of a Commonwealth or Allied country where the person was domiciled in Australia or an external territory immediately before enlistment in those forces and rendered CFTS in an operational area;
 - s.6D — service in the Australian armed services:
 - while assigned for service in Singapore from 29 June 1950 to 31 August 1957;

²³ *ibid.*

- while assigned for service in Japan from 28 April 1952 to 19 April 1956;
- while assigned for service in north-east Thailand from 31 May 1962 to 24 June 1965; and
- in Singapore or the country then known as the Federation of Malaya from 1 August 1960 to 27 May 1963;
- s.6E — service in the Australian armed services while assigned for service:
 - in the Korean demilitarised zone after 18 April 1956; and
 - on HMAS Vampire or Quickmatch in Vietnam during the period 25–29 January 1962; and
- s.6F — ‘warlike’ and ‘non-warlike service’.

10.8 **‘Warlike and non-warlike service’** are terms the Australian Defence Force (ADF) has used since 1994 to classify service for the purposes of pay and conditions. In 1997, definitions of warlike and non-warlike service were inserted into the VEA by the *Veterans’ Affairs Legislation (Budget and Compensation Measures) Act 1997* effective from 13 May 1997.

10.9 **‘Warlike service’** under the VEA is defined in s.5C (1) as service in the ADF of a kind determined in writing by the Minister for Defence to be warlike service. A declaration of warlike service gives access to compensatory payments such as the disability pension. It is also qualifying service for service pension purposes under the VEA. In 1993, Cabinet agreed that warlike service refers to those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. These operations encompass but are not limited to:

- a state of declared war;
- conventional combat operations against an armed adversary; and
- peace enforcement operations that are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities (normally, peace enforcement operations will be conducted under Chapter VII of the United Nations Charter, and in these cases the application of all necessary force is authorised to restore peace and security).

10.10 **‘Non-warlike service’** under the VEA is defined in s.5C (1) as service in the ADF of a kind determined in writing by the Minister for Defence to be non-warlike service. A declaration of non-warlike service gives access to compensatory payments such as the disability pension, but is not qualifying service for service pension purposes. Cabinet agreed in 1993 that non-warlike service covers those activities short of warlike operations where there is a risk associated with the assigned tasks and where the application of force is limited

to self-defence. Casualties could occur but are not expected. These operations encompass but are not limited to:

- **Hazardous operations** — activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty. These can include mine avoidance and clearance, and weapons inspections and destruction. Also covered are defence force aid to the civil power, service-protected or service-assisted evacuations, other operations requiring the application of minimum force to protect personnel or property, and similar activities.
- **Peacekeeping operations** — peacekeeping is an operation involving military personnel, without powers of enforcement, to help restore and maintain peace in an area of conflict with the consent of all parties. These operations can encompass but are not limited to:
 - activities short of peace enforcement where the authorisation of the application of force is normally limited to the minimum force necessary for self-defence;
 - activities, such as the enforcement of sanctions in a relatively benign environment, that expose individuals or units to ‘hazards’ as described above;
 - military observer activities associated with the tasks of monitoring cease-fires, redirecting and alleviating cease-fire tensions, providing ‘good offices’ for negotiations and the impartial verification of assistance or cease-fire agreements, and other like activities; and
 - activities that would normally involve the provision of humanitarian relief (humanitarian relief does not include normal peacetime operations such as cyclone or earthquake relief flights or assistance).

10.11 ‘**Member of the Forces**’ is defined in s.68 of the VEA. It includes a person who has rendered ‘**defence service**’ or ‘**hazardous service**’ in the ADF.

10.12 ‘**Defence service**’ encompasses peacetime service of three years or more (or less if discharged on medical grounds) in the Australian armed forces between 7 December 1972 and the commencement of the *Military Compensation Act 1994* on 7 April 1994. However, members of the Australian armed services who enlisted before the commencement of the VEA are covered for service after 7 April 1994 as long as the period of service was unbroken. Defence service gives access to VEA compensation benefits but is not qualifying service for the service pension and associated benefits. Compensation claims by veterans with defence service only are determined on the balance of probabilities, unless the veteran has peacekeeping service or hazardous service, in which case the generous ‘reverse criminal’ standard of proof applies. Defence service also covers national

servicemen who completed a period of service after 6 December 1972 or were discharged on medical grounds after that date, and covers hazardous service since 7 December 1972.

10.13 **‘Hazardous service’** is defined in s.120 (7) of the VEA as service in the ADF of a kind determined by the Minister for Defence, by instrument in writing, to be hazardous service. There is no guidance in the VEA as to the meaning of hazardous service. To date, hazardous service has been declared for service overseas where aggressive armed forces were present, such as in the Persian Gulf, Haiti, Namibia and the former Yugoslavia, but has not been declared for any service in Australia. A declaration of hazardous service can only have effect for service since 1972. Members of the ADF with hazardous service have their disability pension claims determined subject to the ‘reverse criminal’ standard of proof, but hazardous service is not qualifying service for the purposes of the service pension and associated benefits. Since 1997, any service that would be classed as hazardous service would now be declared as non-warlike service.

10.14 A member of a peacekeeping force is defined in s.68 (1) of the VEA as a person who has served as an Australian member, or as a member of an Australian contingent, of a **‘Peacekeeping Force’** outside Australia. **‘Peacekeeping Force’** is defined in s.68 (1) of the VEA and means a force raised for peacekeeping, observing or monitoring that as been designated by the Minister for Defence as a peacekeeping force. Peacekeeping forces covered by the VEA date from 1947. Service by Australian police in designated peacekeeping forces (e.g. Cyprus) is covered, in addition to service in the ADF on peacekeeping missions. Under the VEA, peacekeeping service in a peacekeeping force gives access to the VEA disability pension and associated allowances subject to the reverse criminal standard of proof, but it is not qualifying service for the purposes of the service pension and associated benefits.

ELIGIBILITY REQUIREMENTS FOR SERVICE PENSION

10.15 To be eligible for the service pension, a person must first be a **‘veteran’** and have **‘qualifying service’** (s.7A). Service pension may also be available to Australian mariners of World War II. Additionally, it is available to British, Commonwealth and allied (BCAL) veterans and BCAL mariners of World War II with qualifying service in a war or warlike conflict in which Australian forces were engaged. Eligibility is subject to residency provisions.

10.16 **‘Qualifying service’** relates to eligibility for the service pension (under Part III of the VEA), the Repatriation Health Card — For All Conditions (Gold Card) for veterans of the Australian armed services and World War II Australian mariners who are 70 years of age or over (s.85), the Commonwealth Seniors

Health Card (s.118V) and the Repatriation Pharmaceutical Benefits Card for World War I and World War II BCAL veterans and mariners aged 70 years or more (under Part VA). Qualifying service is the threshold requirement for access to the service pension and associated benefits but does not of itself give access to these benefits:

- Under s.7A (1)(a)(i), qualifying service for veterans of the Australian armed services during **World Wars I and II** requires service, during the relevant defined period of hostilities, in operations against the enemy at a time when the person incurred danger from hostile forces of the enemy. The definition of period of hostilities is contained in s.5B (1) of the VEA. Paragraph (a) defines the period of hostilities for World War I as being from 4 August 1914 to 11 November 1918. Paragraph (b) defines the period of hostilities for World War II as being from 3 September 1939 to 29 October 1945.
- Under s.7A (1)(a)(ii), a veteran may also have qualifying service for service in certain **minesweeping and bomb clearance operations** after the cessation of hostilities in World War II. While Australian service personnel were involved in such operations well into the 1950s and 1960s, qualifying service is restricted to those who are eligible for a Naval General Service Medal or a General Service Medal (Army and Air Force) with certain minesweeping or bomb clearance clasps.
- Under s.7A (1)(a)(iii), service in the Australian armed services in post-World War II operations is qualifying service where the veteran served outside Australia in an operational area described in Schedule 2 while **allotted for duty** in that area.
- Under s.7A (1)(a)(iv), a veteran who rendered **warlike service** has qualifying service. For the definition of warlike service see 10.9, above.
- Under s.7A (1)(b), members of the defence force established by a **Commonwealth country** other than Australia have qualifying service if they served during a specified period of hostilities in a war or warlike operations in which Australian forces were engaged. In addition, they must either have served outside the country in whose forces they enlisted, at a time when they incurred danger from hostile forces of the enemy in that area, or served within that country and received or were eligible for a campaign medal specified in s.7A (2) for that service.
- Under s.7A (1)(c), members of the defence force of an **allied country** have qualifying service if they served during a period of hostilities in a war or warlike operations in which Australian forces were engaged. The periods of hostilities are the same for Commonwealth veterans. In addition, they must have served outside or within the country in whose forces they enlisted, at a time when they incurred danger from hostile forces of the enemy. A person

is not regarded as an allied veteran if they served at any time in the forces of a country at war with Australia, or engaged in warlike operations against Australian forces or in forces engaged in assisting or supporting such forces.

- Under s.7A (1)(d), civilians employed by the Commonwealth on a **special mission** outside Australia in World War I or World War II have qualifying service.
- Under s.7A (1)(e), **certain civilians** killed or detained by the enemy in World War II have qualifying service.
- Under s.7A (1)(f), qualifying service can be certain service by a member of the Australian armed services suffering from a condition that resulted from action by hostile forces or while the person was engaged in warlike operations against hostile forces after 31 July 1962 outside Australia but not while on operational service.
- Under s.7A (1)(g), **Australian mariners** must have incurred danger from hostile forces of the enemy. The definition of ‘Australian mariner’ is in s.5C (1) and applies only to those who served in World War II before 29 October 1945.
- Under s.7A (1)(h), **BCAL mariners** have qualifying service either if they were detained by the enemy, or if they incurred danger from hostile enemy forces and would have been awarded a campaign medal if they had been a member of the Australian armed services.

SUMMARY OF SERVICE REQUIRED FOR ELIGIBILITY FOR DISABILITY AND SERVICE PENSIONS

10.17 Table 10.1 summarises the service required for eligibility for the disability and service pensions for veterans of the Australian armed services and World War II Australian mariners.

Table 10.1 Required service

(a) World War I

	From	To	Disability pension	Service pension
Outside Australia	4 Aug 18	1 Sept 21	Yes	Only if incurred danger until 11 Nov 18
Home service	4 Aug 18	1 Sep 21	Yes	No

(b) World War II

	From	To	Disability pension	Service pension ^{a,b}
Outside Australia (enlistment before 1 Jul 47)	3 Sep 39	1 Jul 51 (3 Jan 49 if permanent)	Yes	Only if incurred danger until 29 Oct 45
Within Australia and coastal waters (enlistment before 1 Jul 47)	3 Sep 39	1 Jul 51 (3 Jan 49 if permanent)	Yes	Only if incurred danger until 29 Oct 45
Australian mariners	3 Sep 39	29 Oct 45	Yes	Only if incurred danger.
Interim Forces	1 Jul 47	30 Jun 49	Yes (if overseas)	No

^a The VEA requires a veteran to have served in operations against the enemy and incurred danger from hostile forces of the enemy to qualify. Further detail is provided in Chapters 11 and 12.

^b Minesweeping and bomb or mine clearance service after 29 Oct 45 is qualifying service if a veteran is awarded an appropriate medal for that service.

(c) BCOF — Japan

	From	To	Disability pension	Service pension
	Feb 46	1 Jul 51	Yes	No

(d) Post-World War II — allotted for duty in operational area

	From	To	Disability pension	Service pension
Korea	27 Jun 50	19 Apr 56	Yes	Yes
Malaya	29 Jun 50	31 Aug 57	Yes	Yes
Malaya and Singapore	1 Sep 57	31 Jul 60	Yes	Yes
Thai–Malay border	1 Aug 60	16 Aug 64	Yes	Yes
Borneo (Brunei, Sabah, Sarawak)	8 Dec 62	16 Aug 64	Yes	Yes
Singapore, Malaysia, Brunei	17 Aug 64	30 Sep 67	Yes	Yes
Vietnam	31 Jul 62	11 Jan 73	Yes	Yes
Namibia	18 Feb 89	10 Apr 90	Yes	Yes
Persian Gulf	2 Aug 90	9 Jun 91	Yes	Yes
Iraq/Kuwait	23 Feb 91	9 Jun 91	Yes	Yes
Cambodia, Laos and Thailand	20 Oct 91	7 Oct 93	Yes	Yes
Former Republic of Yugoslavia	12 Jan 92	24 Jan 97	Yes	Yes
Somalia	20 Oct 92	30 Nov 97	Yes	Yes

(e) Post-World War II — assigned for service in operational area

	From	To	Disability pension	Service pension
Singapore	29 Jun 50	31 Aug 57	Yes	No
Japan	28 Apr 52	19 Apr 56	Yes	No
North-east Thailand including Ubon	31 May 62	24 Jun 65	Yes	No
Korean demilitarised zone	18 Apr 56	Ongoing	Yes	No
Malaya and Singapore	1 Aug 60	27 May 63	Yes	No
Vietnam — HMAS Vampire and Quickmatch	25 Jan 62	29 Jan 62	Yes	No

(f) Other post-World War II overseas service — not allotted for duty in an operational area

	From	To	Disability pension	Service pension
Injured or died due to hostile enemy action or engagement in warlike operations	31 Jul 62	11 Jan 73	Yes	Yes

(g) Warlike service

	From	To	Disability pension	Service pension
North-east Thailand including Ubon	25 Jun 65	31 Aug 68	Yes	Yes
Vietnam	12 Jan 73	29 Apr 75	Yes	Yes
East Timor — OP FABER and STABILISE	16 Sep 99	23 Oct 00	Yes	Yes
East Timor — OP WARDEN	16 Sep 99	10 Apr 00	Yes	Yes
East Timor — OP TANAGER	20 Feb 00	Ongoing	Yes	Yes
Afghanistan — OP SLIPPER	7 Dec 01	Ongoing	Yes	Yes

(h) Non-warlike service

	From	To	Disability pension	Service pension
Cambodia — OP BANNER	8 Oct 93	4 Oct 99	Yes	No
Cambodia — OP VISTA	5 Jul 97	14 Jul 97	Yes	No
Guatemala — UN Observer Mission	13 Feb 97	12 May 97	Yes	No
Gabon and Congo — Technical Survey Team	25 Jul 97	7 Aug 97	Yes	No
Bougainville — Truce Monitoring Group	20 Nov 97	30 Apr 98	Yes	No
Bougainville — Peace Monitoring Group — OP BEL ISI II	1 May 98	Ongoing	Yes	No

(h) Non-warlike service (continued)				
	From	To	Disability pension	Service pension
Yugoslavia — OP AGRICOLA	25 Feb 99	10 Jun 99	Yes	No
Yugoslavia — OP ALLIED FORCE	15 Apr 99	3 Jun 99	Yes	No
Yugoslavia — OP GUARDIAN	11 Jun 99	Ongoing	Yes	No
Gulf — OP POLLARD	17 Feb 98	1 Oct 01	Yes	No
Gulf — OP DAMASK	18 Mar 99	Ongoing	Yes	No
Iraq, Saudi Arabia, Kuwait — OP BOLTON	13 May 99	Ongoing	Yes	No
Iraq, Saudi Arabia, Kuwait — OP SOUTHERN WATCH	29 Sep 99	Ongoing	Yes	No
East Timor — OP FABER	19 Jun 99	15 Sep 99	Yes	No
East Timor — OP SPITFIRE	6 Sep 99	19 Sep 99	Yes	No
Solomon Is — OP PLUMBOB	8 Jun 00	24 Jun 00	Yes	No
Solomon Is — OP TREK	4 Nov 00	Ongoing	Yes	No
Ethiopia and Eritrea — OP POMELO	15 Jan 01	Ongoing	Yes	No
Sierra Leone — OP HUSKY	15 Jan 01	Ongoing	Yes	No

(i) Hazardous service

	From	Disability pension	Service pension
Gulf — Gulfs of Iran and Oman	28 Feb 86	Yes	No
Kurdish refugees	10 Jun 91	Yes	No
Gulf — sea area	8 Jun 91	Yes	No
Gulf — sea area	1 Apr 96	Yes	No
UN — Iran	22 Oct 91	Yes	No
UN — Afghanistan— UNOC UNMCTT	8 Jun 91	Yes	No
UN — Mozambique	12 Jul 94	Yes	No
UN — Rwanda	25 Jul 94	Yes	No
UN — Haiti	27 Sep 94	Yes	No
UN — Yugoslavia	24 Jan 97	Yes	No

(j) Peacekeeping service

	From	Disability pension	Service pension
Security Council — Balkans	29 Jan 47	Yes	No
Committee of Good Offices	25 Aug 47	Yes	No
UN Special Commission — Balkans	26 Nov 47	Yes	No
UN Commission — Korea	1 Jan 49	Yes	No
UN Military Observer Group — India and Pakistan	1 Jan 49	Yes	No
UN Commission — Indonesia	28 Jan 49	Yes	No
UN Truce Supervision Organisation	1 Jun 56	Yes	No
UN Operations — Congo	1 Aug 60	Yes	No
UN Observation Mission — Yemen	1 Jan 63	Yes	No
UN Force— Cyprus	14 May 64	Yes	No
UN Observation Mission — India and Pakistan	20 Sep 65	Yes	No
UN Disengagement Observer Force	1 Jan 74	Yes	No
UN Emergency Force 2	1 Jul 76	Yes	No
UN Interim Force — Lebanon	23 Mar 78	Yes	No
Commonwealth Monitoring Force — Zimbabwe	24 Dec 79	Yes	No
Multinational Force and Observers — Sinai	18 Feb 82	Yes	No
UN Military Observer Group — Iran/Iraq	11 Aug 88	Yes	No
UN Border Relief — Cambodia	1 Feb 89	Yes	No
UN Transitional Advisory Group — Namibia	18 Feb 89	Yes	No
UN Mission for the Referendum — Western Sahara	27 Jun 91	Yes	No
UN Transitional Authority — Cambodia — Australian Police Contingent	18 May 92	Yes	No
UN — Mozambique — Australian Police Contingent	27 Mar 94	Yes	No
Australian Defence Support to Pacific Peacekeeping Force — Bougainville	21 Sep 94	Yes	No
Australian Police Contingent Multi-National Force — Haiti	10 Oct 94	Yes	No
UNAMET — East Timor (Australian Police)	11 Jun 99	Yes	No
UNTAET — East Timor (Australian Police)	25 Oct 99	Yes	No

(k) Defence service

Category	From	To	Disability pension	Service pension
ADF full-time service — after completion of 3 years or earlier if discharged on medical grounds	7 Dec 72	7 Apr 94 (later if enlisted before VEA enacted on 22 May 86)	Yes	No
National servicemen completing period of national service	7 Dec 72	Completion of period of national service	Yes	No