



Veterans' Entitlements (Clarke Review) Act 2004

No. 100, 2004

**An Act to provide for compensation payments in
respect of veterans interned by North Korean
military forces and to amend the *Veterans'*
Entitlements Act 1986, and for other purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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**An Act to provide for compensation payments in
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[Assented to 30 June 2004]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Veterans' Entitlements (Clarke Review) Act 2004*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 14 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2004
2. Schedule 1	20 March 2004.	20 March 2004
3. Schedule 2, items 1 to 14	20 September 2004.	20 September 2004
3A. Schedule 2, item 15	The day on which this Act receives the Royal Assent.	30 June 2004
3B. Schedule 2, items 16 to 18	20 September 2004.	20 September 2004

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3C. Schedule 2, items 19 and 20	The later of: (a) the start of 20 September 2004; and (b) immediately after the commencement of item 4 of Schedule 1 to the <i>Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Act 2004</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	20 September 2004 (paragraph (a) applies)
3D. Schedule 2, items 21 to 44	20 September 2004.	20 September 2004
4. Schedule 3, items 1 to 13	1 January 2005.	1 January 2005
5. Schedule 3, item 14	The later of: (a) 1 January 2005; and (b) the commencement of item 45 of Schedule 1 to the <i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2005 (paragraph (a) applies)
6. Schedule 4	1 July 2004.	1 July 2004
7. Schedule 5	1 April 2004.	1 April 2004
8. Schedule 6	At the same time as section 3 of the <i>Military Rehabilitation and Compensation Act 2004</i> commences.	1 July 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Part 1 Preliminary

Section 3

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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.

Part 2—Compensation payments for North Korean internment

4 Definitions

In this Part:

Commission means the Repatriation Commission referred to in the *Veterans' Entitlements Act 1986*.

compensation payment means a payment under this Part.

designated war period means the period beginning on 27 June 1950 and ending at the end of 19 April 1956.

eligible person means a person who is eligible for a compensation payment.

interned means:

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

North Korean military forces means air forces, naval forces, land forces or other military forces of North Korea (however described).

partner, in relation to a veteran, means:

- (a) a person who is legally married to the veteran; or
- (b) a person who is a partner (within the meaning of the *Veterans' Entitlements Act 1986*) of the veteran.

Secretary means the Secretary of the Department.

social security law means:

- (a) the *Social Security Act 1991*; and
- (b) the *Social Security (Administration) Act 1999*; and
- (c) any other Act that is expressed to form part of the social security law.

Section 5

veteran means a person covered by section 6C of the *Veterans' Entitlements Act 1986*, in so far as that section relates to item 1 of the table in Schedule 2 to that Act.

5 Eligibility for compensation payment

Veteran

- (1) A veteran is eligible for a compensation payment if the following conditions are satisfied:
 - (a) the veteran was alive at the beginning of 1 July 2003;
 - (b) the veteran was interned by North Korean military forces at any time during the designated war period.

Partner of deceased veteran

- (2) A person is eligible for a compensation payment in respect of a deceased veteran if the following conditions are satisfied:
 - (a) the person was alive at the beginning of 1 July 2003;
 - (b) the veteran died before 1 July 2003;
 - (c) the person was a partner of the veteran immediately before the veteran's death;
 - (d) the veteran was interned by North Korean military forces at any time during the designated war period.

One payment only

- (3) A person is not entitled to more than one compensation payment.

6 Amount of compensation payment

A compensation payment is a one-off payment of \$25,000.

7 Claims

- (1) Claims for compensation payments must be made in accordance with procedures determined by the Secretary under subsection (2).

Note: Compensation payments will be made automatically to those eligible persons the Department is aware of.

- (2) The Secretary may, in writing, determine the procedures for making claims.

8 Determination of claims

- (1) Claims are to be decided by the Commission.
- (2) 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.

9 Death of eligible person

If an eligible person dies or died before receiving a compensation payment, then the payment is to be made to the person's estate.

Note: A claim will still be required under section 7.

10 Application of certain provisions of the *Veterans' Entitlements Act 1986*

The following provisions of the *Veterans' Entitlements Act 1986* apply as if this Part were part of that Act:

- (a) subsection 119(1) and sections 128, 208, 213 and 214;
- (b) any other provisions of that Act that are incidental to the provisions mentioned in paragraph (a).

11 Recovery of overpayments

Any overpayment under this Part may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.

12 Exemption from income tax

Compensation payments are exempt from income tax.

Section 13

13 Assets test

Veterans' Entitlements Act 1986

- (1) The value of a person's assets for the purposes of the *Veterans' Entitlements Act 1986* is reduced by any compensation payment received by the person.

Social security law

- (2) The value of a person's assets for the purposes of the social security law is reduced by any compensation payment received by the person.

14 Appropriation of Consolidated Revenue Fund

The Consolidated Revenue Fund is appropriated for the purposes of compensation payments.

Schedule 1—Indexation of above general rate disability pensions

Veterans' Entitlements Act 1986

1 Subsection 22(4)

Omit “increased by 50% of the maximum rate set out in subsection (3)”, substitute “\$433.65 per fortnight”.

2 Paragraph 98B(1)(a)

Omit “a rate that had been increased under”, substitute “the rate specified in”.

3 Subparagraph 99(2)(a)(i)

Omit “increased”, substitute “worked out”.

4 Subparagraph 113(2)(b)(i)

Omit “increased”, substitute “worked out”.

5 Subsection 198(1)

Insert:

above general rate means the following rates:

- (a) the rate under subsection 22(4);
- (b) the rate under subsection 23(4);
- (c) the rate under subsection 24(4).

6 Subsection 198(1) (paragraphs (b) and (c) of the definition of *relevant rate*)

Repeal the paragraphs.

7 At the end of subsection 198(4) (before the note)

Add:

Note 1: For indexation of each above general rate, see subsection (5E).

8 Subsection 198(4) (note)

Omit “Note”, substitute “Note 2”.

9 After subsection 198(5D)

Insert:

- (5E) This Act has effect as if, on the first day (the *adjustment day*) of each relevant period, there were substituted, for each above general rate, the rate worked out as follows:

Method statement

- Step 1.* Work out the general rate on the adjustment day.
- Step 2.* Work out the general rate on the day before the adjustment day.
- Step 3.* Work out the above general rate on the day before the adjustment day.
- Step 4.* Subtract the rate at step 2 from the rate at step 3.
- Step 5.* Multiply the amount worked out at step 4 by the pension MBR factor specified in section 59LA (rounding the result up to the nearest \$0.10).
- Step 6.* Add the rate worked out at step 1 to the amount worked out at step 5: the result is the above general rate on the adjustment day.

10 Subsection 198(10)

After “relevant rate”, insert “or an above general rate”.

Schedule 2—Defence Force Income Support Allowance

Part 1—Amendment of the Veterans' Entitlements Act 1986

1 Subsection 5H(1) (paragraph (b) of the definition of *adjusted income*)

Repeal the paragraph, substitute:

- (b) a payment that is disability pension under paragraph (d) of the definition of *disability pension* in section 5Q payable to the person;

2 Subsection 5H(1) (paragraphs (cc), (cd) and (ce) of the definition of *adjusted income*)

Repeal the paragraphs.

3 After paragraph 5H(8)(f)

Insert:

- (g) a payment under Part VIIAB, including a payment made under regulations made under that Part;

4 Subsection 5Q(1)

Insert:

Defence Force Income Support Allowance or *DFISA* means Defence Force Income Support Allowance under Part VIIAB.

5 Subsection 5Q(1)

Insert:

DFISA bonus means DFISA bonus under Part VIIAB.

6 At the end of paragraph 45TC(1)(e)

Add:

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted

disability pension (within the meaning of section 118NA) was payable to the person or the person's partner: see subsection 23(1D) of the Social Security Act.

7 After subparagraph 45TC(1)(f)(i)

Insert:

(ia) DFISA bonus; or

8 At the end of paragraph 45TC(2)(e)

Add:

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the person's partner: see subsection 23(1D) of the Social Security Act.

9 After subparagraph 45TC(2)(f)(i)

Insert:

(ia) DFISA bonus; or

10 At the end of paragraph 45TC(3)(e)

Add:

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the person's partner: see subsection 23(1D) of the Social Security Act.

11 After subparagraph 45TC(3)(f)(i)

Insert:

(ia) DFISA bonus; or

12 At the end of section 53J

Add:

Note: Even though the partner may not actually have been receiving an amount of social security pension because the rate of the pension was nil, in some cases the partner will have been taken to be receiving the pension if adjusted disability pension (within the

meaning of section 118NA) was payable to the person or the partner: see subsection 23(1D) of the Social Security Act.

13 At the end of section 53M

Add:

- (7) If DFISA was payable to the partner in relation to a social security pension the partner was receiving, then the rate of that pension on the last day of the last pension period that ended before the day of the partner's death is increased by the rate of DFISA that was payable to the partner on that day.

14 Paragraph 53NA(1)(a)

After "pension" (first occurring), insert ", DFISA".

15 After Part VIIA

Insert:

Part VIIAB—Defence Force Income Support Allowance and related payments

Division 1—Introduction

118N Simplified outline

The following is a simplified outline of this Part:

This Part is about payment of:

- (a) Defence Force Income Support Allowance (**DFISA**); and
- (b) DFISA bonus; and
- (c) DFISA-like payments under regulations made under this Part.

DFISA—see Division 2

DFISA is payable to a person if the rate of the person's social security pension or benefit has been reduced (including to nil) because the person, or the person's partner, has been paid adjusted disability pension (within the meaning of this Part).

Payment of DFISA is automatic: a person does not need to make a claim for it.

DFISA bonus—see Division 3

DFISA bonus is payable to a person if the amount of the person's social security pension bonus has been reduced (including to nil) because the person, or the person's partner, has been paid adjusted disability pension (within the meaning of this Part).

Payment of DFISA bonus is also automatic.

DFISA-like payments—see Division 4

Regulations made under this Part may provide for DFISA-like payments to be paid to a person if adjusted disability pension (within the meaning of this Part) payable to the person, or the person's partner, reduces the amount of a payment payable to the person under a Commonwealth Act, regulations or an instrument made under such an Act, or a Commonwealth administered program.

118NA Definitions

In this Part:

adjusted disability pension means:

- (a) a pension under Part II or IV (other than a pension that is payable under section 30 to a dependant of a deceased veteran); or
- (b) temporary incapacity allowance under Part VI; or
- (c) a pension payable because of subsection 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than a pension payable in respect of a child); or

- (d) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the MRCA (permanent impairment); or
- (e) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA.

amount includes a nil amount.

excluded amount means an amount that is not income for the purposes of the Social Security Act because of subsection 8(8) of that Act.

partner has the same meaning as in subsection 4(1) of the Social Security Act.

rate includes a nil rate.

social security age pension means age pension under Part 2.2 of the Social Security Act.

social security pension bonus means pension bonus under Part 2.2A of the Social Security Act.

Division 2—Defence Force Income Support Allowance

Subdivision A—Payment of Defence Force Income Support Allowance

118NB Payment of Defence Force Income Support Allowance

- (1) Defence Force Income Support Allowance (**DFISA**) is payable to a person each day on or after 20 September 2004 if:
 - (a) adjusted disability pension is payable to the person, or the person's partner, on that day; and
 - (b) social security pension or social security benefit (the **primary payment**) is payable to the person on that day; and
 - (c) the adjusted disability pension reduces (including to nil) the rate of the primary payment on that day.

Note 1: For **adjusted disability pension** and **partner** see section 118NA.

Note 2: For **social security pension** and **social security benefit** see section 5Q.

Note 3: Even though the person may not actually be paid an amount of social security pension or benefit because the rate of the pension or benefit is

nil, in some cases the pension or benefit will be taken to be payable to the person if adjusted disability pension is payable to the person or the person's partner: see subsection 23(1D) of the Social Security Act.

- (2) However, DFISA is not payable to the person on that day if:
- (a) the rate of DFISA would be nil; or
 - (b) section 1129, 1130B or 1131 of the Social Security Act (financial hardship) applies to the person in relation to the primary payment; or
 - (c) before that day:
 - (i) the person had elected not to be covered by this Division; and
 - (ii) that election had not been withdrawn.
- (3) An election, or a withdrawal of an election, under paragraph (2)(c):
- (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.

Subdivision B—Rate of Defence Force Income Support Allowance

118NC Rate of Defence Force Income Support Allowance

DFISA rate where primary payment is neither compensation affected nor prescribed

- (1) The rate of DFISA on a day that is on or after 20 September 2004 is worked out using method statement 1 in this subsection, unless:
- (a) Part 3.14 of the Social Security Act (compensation recovery) applies to reduce the rate of the primary payment on that day (in which case see method statement 2 in subsection (2)); or
 - (b) the primary payment is a social security pension or social security benefit that is prescribed for the purposes of this section (in which case, see subsection (3)).

Note: For *primary payment* see section 118NB.

<i>Method Statement 1</i>

Step 1. Work out the daily provisional payment rate for the primary payment on that day.

Note: For *daily provisional payment rate* see subsection (4).

Step 2. Work out what would have been the daily provisional payment rate (the *notional rate*) for the primary payment on that day if both of the following assumptions were made:

First assumption

The first assumption is that the adjusted disability pension payable to the person, or the person's partner, were an excluded amount (see section 118NA).

Note: This will mean the adjusted disability pension will not be treated as income when calculating the notional rate.

Second assumption

The second assumption is that, if an amount of rent assistance was included in the primary payment, that amount were reduced (but not to less than nil) by the rent reduction amount.

Note: For *rent assistance* and *rent reduction amount* see subsection (4).

Step 3. Subtract the daily provisional payment rate under step 1 from the notional rate under step 2. The difference is the rate of DFISA on that day.

DFISA rate where primary payment is compensation affected but not prescribed

- (2) The rate of DFISA on a day that is on or after 20 September 2004 is worked out using method statement 2 in this subsection if:
- (a) Part 3.14 of the Social Security Act (compensation recovery) applies to reduce the rate of the primary payment on that day; and
 - (b) the primary payment is not a social security pension or social security benefit that is prescribed for the purposes of this section.

Note: For *primary payment* see section 118NB.

Method Statement 2

Step 1. Work out the daily provisional payment rate for the primary payment on that day.

Note: For *daily provisional payment rate* see subsection (4).

Step 2. Work out the amount by which Part 3.14 of the Social Security Act reduces the daily primary payment rate on that day.

Step 3. Subtract the amount in step 2 from the rate in step 1.

Step 4. Work out what would have been the daily provisional payment rate (the *notional rate*) for the primary payment on that day if the 2 assumptions referred to in step 2 of method statement 1 in subsection (1) were made.

Step 5. Work out the amount by which Part 3.14 of the Social Security Act would have reduced the notional rate on that day if that rate had been the daily primary payment rate.

Step 6. Subtract the amount in step 5 from the rate in step 4.

Step 7. Subtract the amount in step 3 from the amount in step 6. The difference is the rate of DFISA on that day.

Regulations may prescribe other ways of calculating rate of DFISA

- (3) The regulations may prescribe a social security pension or social security benefit for the purposes of this section. If the regulations do so, the regulations must also prescribe the method to work out the daily rate of DFISA that is payable in relation to that pension or benefit.

Note: For *social security pension* and *social security benefit* see section 5Q.

Definitions

- (4) In this section:

daily provisional payment rate means the provisional payment rate, provisional annual payment rate or provisional fortnightly payment rate referred to in the Rate Calculator used under the Social Security Act to work out the rate of the primary payment, converted to a daily rate by dividing the rate by 364 (for a provisional annual payment rate) or 14 (for a provisional fortnightly payment rate).

rent assistance has the same meaning as in the Social Security Act.

rent reduction amount is the amount that would be a person's income reduction under the Social Security Act if that income reduction were worked out by applying the same income test or ordinary income test that was used under that Act in calculating the person's primary payment, but applying that test on the basis that the adjusted disability pension payable to the person, or the person's partner, were the person's only ordinary income for the purposes of that Act.

Subdivision C—Special rules for the Social Security Act

118ND Bereavement payments under the Social Security Act

Increase of bereavement payments to take account of DFISA

- (1) If, immediately before a person dies:
- (a) a social security pension or social security benefit was payable to the person; and
 - (b) DFISA was payable to the person;

then, for the purposes of the bereavement payment provisions of the Social Security Act, the rate of the pension or benefit that, if the person had not died, would have been payable to the person on a day during the bereavement period is increased by the rate of DFISA that would also have been payable to the person on that day.

Note 1: For *social security pension* and *social security benefit* see section 5Q.

Note 2: For *bereavement payment provision* and *bereavement period* see subsection (4).

DFISA paid to person after the person dies

- (2) If:

- (a) a person is qualified for payments under a bereavement payment provision of the Social Security Act in relation to the death of the person's partner; and
 - (b) after the person's partner died, an amount of DFISA to which the partner would have been entitled if the partner had not died has been paid under this Part; and
 - (c) the Social Security Secretary is not satisfied that the person has not had the benefit of the DFISA amount;
- the following provisions have effect:
- (d) the DFISA amount is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the DFISA amount exceeds the amount payable to the person under the bereavement payment provision;
 - (e) the amount payable to the person under the bereavement payment provision is to be reduced by the DFISA amount.

Note: For *bereavement payment provision* and *Social Security Secretary* see subsection (4).

Financial institutions not liable

- (3) If:
- (a) a person is qualified for payments under a bereavement payment provision of the Social Security Act in relation to the death of the person's partner; and
 - (b) the amount of DFISA to which the person's partner would have been entitled if the person's partner had not died has been paid under this Part into an account with a financial institution within the bereavement period referred to in the bereavement payment provision; and
 - (c) the financial institution pays to the person, out of the account, an amount not exceeding the total of the DFISA amounts paid as mentioned in paragraph (b);
- the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

Definitions

- (4) In this section:

bereavement payment provisions of the Social Security Act means the following provisions of that Act:

- (a) Division 9 of Part 2.2 (age pension);
- (b) Division 10 of Part 2.3 (disability support pension);
- (c) Division 9 of Part 2.4 (wife pension);
- (d) Division 9 of Part 2.5 (carer payment);
- (e) Division 9 of Part 2.7 (bereavement allowance);
- (f) Division 9 of Part 2.8 (widow B pension);
- (g) Division 9 of Part 2.10 (parenting payment);
- (h) Division 10 of Part 2.11 (youth allowance);
- (i) Division 10 of Part 2.11A (austudy);
- (j) Division 9 of Part 2.12 (newstart);
- (k) Division 11 of Part 2.12B (mature age allowance);
- (l) Division 9 of Part 2.14 (sickness allowance);
- (m) Division 9 of Part 2.15 (special benefit);
- (n) Division 9 of Part 2.15A (partner allowance);
- (o) Division 10 of Part 2.16 (special needs pension).

bereavement period has the meaning given by subsection 21(2) of the Social Security Act.

Social Security Secretary means the Secretary of the Department administered by the Minister who administers the Social Security Act.

118NE Remote Area Allowance under the Social Security Act

- (1) If, on a day that is on or after 20 September 2004:
 - (a) adjusted disability pension is payable to a person or a person's partner; and
 - (b) a social security pension or social security benefit is payable to the person; and
 - (c) the rate of the social security pension or social security benefit is nil; and
 - (d) the rate of the social security pension or social security benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) were made;

then, for the purposes of the remote area allowance provisions of the Social Security Act, the rate of the social security pension or social security benefit on that day is taken to be greater than nil.

Definitions

(2) In this section:

remote area allowance provisions of the Social Security Act means the following provisions of that Act:

- (a) point 1064-H1;
- (b) point 1065-E1;
- (c) point 1066-H1;
- (d) point 1066A-I1;
- (e) point 1066B-F1;
- (f) point 1067G-K1;
- (g) point 1067L-F1;
- (h) point 1068-J1;
- (i) point 1068A-F1;
- (j) point 1068B-G1.

Division 3—DFISA bonus

Subdivision A—Payment of DFISA bonus

118NF Payment of DFISA bonus

- (1) DFISA bonus is payable to a person if:
- (a) on a day (the *critical day*) that is on or after 20 September 2004, adjusted disability pension is payable to the person or the person's partner; and
 - (b) on the critical day, social security age pension becomes payable to the person; and
 - (c) on or after the critical day, social security pension bonus is granted to the person in relation to that age pension; and
 - (d) the adjusted disability pension reduces (including to nil) the amount of that pension bonus.

Note: For *adjusted disability pension, partner, social security age pension* and *social security pension bonus* see section 118NA.

- (2) However, DFISA bonus is not payable to the person if, on the critical day, section 1129 of the Social Security Act (financial hardship) applies to the person in relation to that age pension.

118NG When DFISA bonus is to be paid

DFISA bonus is to be paid on:

- (a) the first pension payday after the social security pension bonus was granted; or
- (b) if the Commission considers it is not practicable to pay the DFISA bonus on that payday—the next practicable day.

Note: For *pension payday* see section 5Q.

118NH Payment of bonus after death

- (1) This section sets out the only circumstances in which DFISA bonus will be payable after the death of the person concerned.

DFISA bonus payable before person dies

- (2) If:
- (a) DFISA bonus is payable to a person; and
 - (b) the person dies; and
 - (c) at the time of the person's death, the person had not received the DFISA bonus;
- the bonus is payable to the legal personal representative of the person.

Liability of Commonwealth

- (3) If DFISA bonus is paid under subsection (2), the Commonwealth has no further liability to any person in respect of that bonus.

Subdivision B—Amount of DFISA bonus

118NI Amount of DFISA bonus

- (1) The amount of DFISA bonus for a person is worked out as follows:

<i>Method Statement</i>

Step 1. Work out the amount of social security pension bonus payable to the person.

Step 2. Work out the amount of social security pension bonus (the ***notional pension bonus***) that would have been payable to the person if the adjusted disability pension payable to the person, or the person's partner, were an excluded amount.

Note: For ***excluded amount*** see section 118NA.

Step 3. Subtract the amount of the pension bonus under step 1 from the amount of the notional pension bonus in step 2. The difference is the amount of the DFISA bonus.

Division 4—DFISA-like payments etc. under regulations

118NJ DFISA-like payments etc. under regulations

DFISA-like payments

- (1) The regulations may make provision for and in relation to a payment (***DFISA-like payment***) to a person on a day that is on or after 20 September 2004 if:
 - (a) adjusted disability pension is payable to the person, or the person's partner, on that day; and
 - (b) either:
 - (i) a payment (the ***primary payment***) under a Commonwealth scheme is payable to the person on that day but, because of the adjusted disability pension, the rate of the primary payment is reduced (including to nil); or
 - (ii) apart from the adjusted disability pension, a payment (the ***primary payment***) under a Commonwealth scheme would be payable to the person on that day.

Note 1: For ***adjusted disability pension*** and ***partner*** see section 118NA.

Note 2: For ***Commonwealth scheme*** see subsection (3).

Secondary benefits

- (2) The regulations may also make provision for and in relation to a payment, or the provision of a non-financial benefit, to the person on a day that is on or after 20 September 2004 if:
- (a) a payment (other than the primary payment) or a non-financial benefit is not payable or provided to the person on that day under the Commonwealth scheme or another Commonwealth scheme, but only because the primary payment is not payable to the person on that day; and
 - (b) the primary payment is not payable to the person on that day, but only because adjusted disability pension is payable to the person, or the person's partner, on that day; and
 - (c) a DFISA-like payment is payable to the person on that day.
- (3) In this section:

Commonwealth scheme means:

- (a) an Act; or
- (b) regulations or an instrument made under an Act; or
- (c) a program administered by the Commonwealth.

16 After subsection 121(6)

Insert:

- (6A) For a pension that is DFISA:
- (a) each instalment is to be rounded to the nearest cent (rounding half a cent upwards); and
 - (b) subsections (3), (4) and (6) do not apply.

17 Subsection 122A(2) (definition of *pension*)

After "Act", insert "or DFISA bonus".

18 Before section 123

Insert:

122C Payment of DFISA outside Australia

If DFISA is payable to a person who is physically outside Australia, then it may be paid:

- (a) in the manner determined by the Commission; and

(b) in the instalments determined by the Commission.

122D Deductions of DFISA and DFISA bonus paid to Commissioner of Taxation

Deductions from DFISA because of notice from the Commissioner of Taxation

- (1) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of DFISA:
 - (a) make deductions from instalments of DFISA payable to the recipient; and
 - (b) pay the amount deducted to the Commissioner of Taxation.

Deduction from DFISA bonus because of notice from the Commissioner of Taxation

- (2) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a DFISA bonus:
 - (a) make a deduction from the bonus payable to the recipient; and
 - (b) pay the amount deducted to the Commissioner of Taxation.

Deductions from DFISA because of recipient's request to do so

- (3) The Commission may make deductions from instalments of DFISA payable to a person if the person, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission:
 - (a) to make those deductions; and
 - (b) to pay the deductions to be deducted to the Commissioner of Taxation.

The Commission must pay to the Commissioner of Taxation an amount deducted under this subsection.

Deduction from DFISA bonus because of recipient's request to do so

- (4) The Commission may make a deduction from a DFISA bonus payable to a person if the person, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission:
- (a) to make the deduction; and
 - (b) to pay the amount to be deducted to the Commissioner of Taxation.

The Commission must pay to the Commissioner of Taxation an amount deducted under this subsection.

122E Payments of DFISA at recipient's request

- (1) A DFISA recipient may, by document lodged at an office of the Department in Australia in accordance with section 5T, request the Commission to make deductions from instalments of DFISA for the purpose of making payments included in a class of payments approved by the Minister.
- (2) If such a request is made, the Commission may make the deductions and, if it does so, is to pay the amounts deducted in accordance with the request.
- (3) The Minister may, by writing, approve classes of payments for the purposes of this section.
- (4) An approval is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

19 Subsection 122D(3)

Repeal the subsection.

Note: If item 4 of Schedule 1 to the *Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Act 2004* does not commence, this item does not commence at all. See item 3C of the table in subsection 2(1).

20 Section 122E

Repeal the section.

Note: If item 4 of Schedule 1 to the *Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Act 2004* does not commence, this item does not commence at all. See item 3C of the table in subsection 2(1).

21 At the end of section 199

Add:

- ; and (e) payments made under Part VIIAB, and payments and benefits made under regulations made under that Part.

22 Point SCH6-C1 of Schedule 6

Repeal the point, substitute:

Application

SCH6-C1 Points SCH6-C2 to SCH6-C11 and point SCH6-C15 apply to a person who is in receipt of a service pension or an income support supplement. Points SCH6-C13 and SCH6-C14 apply only to a person who is in receipt of a service pension. Points SCH6-C14B and SCH6-C14C apply only to a person who is in receipt of an income support supplement.

23 Point SCH6-C2 of Schedule 6

Omit “to SCH6-C15 (which apply only to a person who is in receipt of a service pension)”, substitute “and SCH6-C14 (which apply only to a person who is in receipt of a service pension) and points SCH6-C14B and SCH6-C14C (which apply only to a person who is in receipt of an income support supplement)”.

24 Paragraph SCH6-C7(c) of Schedule 6

Repeal the paragraph, substitute:

- (c) whether or not the person, or the person's partner, receives one or more of the following payments:
 - (i) disability pension;
 - (ii) permanent impairment compensation;
 - (iii) adjusted disability pension.

25 Point SCH6-C7 of Schedule 6 (note 2)

After “For”, insert “*adjusted disability pension* and”.

26 Point SCH6-C12 of Schedule 6

Omit “to SCH6-C15”, substitute “and SCH6-C14”.

27 After point SCH6-C14 of Schedule 6

Insert:

Application

SCH6-C14A Points SCH6-C14B and SCH6-C14C apply only to a person who is in receipt of an income support supplement. If such a person, or the partner of such a person, receives adjusted disability pension, the amount of rent assistance worked out under Table C-2 may be reduced under point SCH6-C14B.

Note: For *adjusted disability pension* see point SCH6-C16.

Effect of adjusted disability pension on rate of rent assistance

SCH6-C14B This is how to work out the effect of a person's adjusted disability pension on the person's rate of rent assistance:

Method statement

Step 1. Work out the annual rate of the person's adjusted disability pension: the result is the person's **disability income**.

Note 1: For *adjusted disability pension* see point SCH6-C16.

Note 2: For the treatment of the amount of adjusted disability pension of members of a couple see point SCH6-C14C.

Step 2. Work out the person's rent assistance free area (see point SCH6-C15 below).

Step 3. Work out whether the person's disability income exceeds the person's rent assistance free area.

Step 4. If the person's disability income does not exceed the person's rent assistance free area, the person's rate of rent assistance worked out under Table C-2 is not affected.

Step 5. If the person's disability income exceeds the person's rent assistance free area, take the person's rent assistance free area away from the person's disability income: the result is the person's **disability income excess**.

Step 6. Multiply the person's disability income excess by 0.4: the result is the **rent assistance reduction amount**.

Step 7. Take the person's rent assistance reduction amount away from the rate of rent assistance worked out under Table C-2: the result is the person's ***rate of rent assistance***.

Disability income

SCH6-C14C If a person is a member of a couple, the person's disability income for the purposes of SCH6-C14B is worked out as follows:

- (a) if each member of the couple receives adjusted disability pension—by adding the couple's annual rates of adjusted disability pension and dividing the result by 2;
- (b) if only one member of the couple receives adjusted disability pension—by dividing the member's annual rate of adjusted disability pension by 2.

Note: For *adjusted disability pension* see point SCH6-C16.

28 Point SCH6-C16 of Schedule 6

Insert:

adjusted disability pension has the same meaning as in section 118NA.

Part 2—Amendment of other Acts

A New Tax System (Family Assistance) Act 1999

29 Subsection 3(1) (paragraph (a) of the definition of receiving)

After “subsections”, insert “23(1D),”.

30 After paragraph 7(h) of Schedule 3

Insert:

(ha) Defence Force Income Support Allowance under Part VIIAB of the *Veterans’ Entitlements Act 1986*;

Income Tax Assessment Act 1936

31 At the end of subsection 202EA(5)

Add:

; (j) Defence Force Income Support Allowance under Part VIIAB of the *Veterans’ Entitlements Act 1986*.

Income Tax Assessment Act 1997

32 Subsection 52-65(1)

After “pension bonus”, insert “or DFISA bonus”.

33 Subsection 52-65(1A)

After “Part IIIAB”, insert “, or DFISA bonus under Part VIIAB,”.

34 Section 52-65 (after table item 5.1)

Insert:

5A.1	Defence Force Income Support Allowance: the social security pension or social security benefit that is also payable to you on the day this allowance is payable to you is exempt from income tax under section 52-10	Exempt	Not applicable
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35 Section 52-75 (after table item 5)

Insert:

5A	Defence Force Income Support Allowance	Part VIIAB	Not applicable
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Social Security Act 1991

36 At the end of paragraph 8(8)(y)

Add:

- or (x) a payment under Part VIIAB (DFISA) of that Act (including a payment made under regulations made under that Part);

37 Subsection 23(1)

Insert:

Defence Force Income Support Allowance or ***DFISA*** means Defence Force Income Support Allowance under Part VIIAB of the Veterans' Entitlements Act.

38 After subsection 23(1C)

Insert:

(1D) If, on a day that is on or after 20 September 2004:

- (a) adjusted disability pension (within the meaning of section 118NA of the Veterans' Entitlements Act) is payable to a person or a person's partner; and
- (b) apart from this subsection, a social security pension or social security benefit is not payable to the person, but only because the rate of the pension or benefit would be nil; and

- (c) the rate of the social security pension or social security benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) of the Veterans' Entitlements Act were made;

then, despite any other provision of this Act:

- (e) the social security pension or social security benefit is taken to be payable to the person on that day; and
- (f) the person is taken to be receiving the social security pension or social security benefit on that day.

Note: This subsection overrides provisions of this Act (for example, sections 44 and 98) that provide that a social security pension or social security benefit is not payable where the rate of the pension or benefit would be nil, but only where the rate would not be nil if the 2 assumptions referred to in paragraph (c) were made.

39 At the end of paragraph 92C(e)

Add:

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA of the Veterans' Entitlements Act) was payable to the person or the person's partner: see subsection 23(1D) of this Act.

40 At the end of paragraph 92C(f)

Add:

; or (iii) DFISA bonus under Part VIIAB of the Veterans' Entitlements Act.

41 After subparagraph 1134(1)(e)(i)

Insert:

- (ia) if DFISA under Part VIIAB of the Veterans' Entitlements Act is payable to the person—the maximum payment rate less the DFISA rate; or

42 Paragraph 1134(1)(e)

Omit "lower", substitute "lowest".

Part 3—Application and transitional provisions

43 Application of amendments in this Schedule

- (1) The amendments made by items 1, 2, 22, 23, 24, 25, 26, 27 and 28 of this Schedule apply in relation to payments under the *Veterans' Entitlements Act 1986* payable on or after 20 September 2004.
- (2) The amendment made by item 29 of this Schedule applies in relation to social security payments under the *Social Security Act 1991* payable on or after 20 September 2004.

44 Transitional: claims made for social security pension or benefit that are not determined before 20 September 2004

If:

- (a) on a day (the *claim day*) that is before 20 September 2004, a person made a claim for a social security pension or a social security benefit; and
- (b) on the claim day, adjusted disability pension (within the meaning of section 118NA of the *Veterans' Entitlements Act 1986* (as amended by this Schedule)) was payable to the person or the person's partner; and
- (c) before 20 September 2004, a determination on the claim had not been made; and
- (d) apart from this item, the claim would be rejected on or after 20 September 2004, but only because the rate of the pension or benefit would be nil; and
- (e) the rate of the pension or benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) of that Act (as amended by this Schedule) were made;

then, despite any provision of the *Social Security (Administration) Act 1999*, the claim is taken to have been made on 20 September 2004.

Schedule 3—Rent assistance for war widows and war widowers

Veterans' Entitlements Act 1986

1 Subclauses 4(3) and (4) of Schedule 6

Repeal the subclauses.

2 Subpoint SCH6-A1(4) of Schedule 6 (after step 2 of method statement 3)

Insert:

Step 2A. Work out the amount per year (if any) for rent assistance using MODULE C below.

3 Subpoint SCH6-A1(4) of Schedule 6 (step 5 of method statement 3)

Repeal the step, substitute:

Step 5. Add:

- (a) the ceiling rate; and
- (b) any amount obtained under step 2A; and
- (c) any amount obtained under step 3; and
- (d) any amount obtained under step 4.

The result is the *revised rate*.

4 Subpoint SCH6-A1(4) of Schedule 6 (step 6 of method statement 3)

Omit “ceiling” (wherever occurring).

5 Subpoint SCH6-A1(5) of Schedule 6 (after step 1 of method statement 4)

Insert:

Step 1A. Work out the amount per year (if any) for rent assistance using MODULE C below.

6 Subpoint SCH6-A1(5) of Schedule 6 (after paragraph (a) of step 4 of method statement 4)

Insert:

(aa) any amount obtained under step 1A; and

7 Subpoint SCH6-A1(6) of Schedule 6 (step 9 of method statement 5)

Repeal the step, substitute:

Step 9. Work out the person's *ceiling rate* in accordance with points SCH6-A4 to SCH6-A9.

Step 9A. Add:

- (a) the ceiling rate; and
- (b) any amount obtained under step 2; and
- (c) any amount obtained under step 3.

The result is the *increased rate*.

8 Subpoint SCH6-A1(6) of Schedule 6 (step 10 of method statement 5)

Omit "ceiling rate (see Step 9)", substitute "rate (see step 9A)".

9 Subpoint SCH6-A1(7) of Schedule 6 (after step 1 of method statement 6)

Insert:

Step 1A. Work out the amount per year (if any) for rent assistance using MODULE C below.

10 Subpoint SCH6-A1(7) of Schedule 6 (after paragraph (a) of step 4 of method statement 6)

Insert:

(aa) any amount obtained under step 1A; and

11 Point SCH6-C2 of Schedule 6

After “maximum basic rate” (wherever occurring), insert “or ceiling rate”.

12 Point SCH6-C3 of Schedule 6

After “maximum basic rate”, insert “or ceiling rate”.

13 Point SCH6-C4 of Schedule 6

After “maximum basic rate” (wherever occurring), insert “or ceiling rate”.

14 Point SCH6-C4A of Schedule 6

After “maximum basic rate”, insert “or ceiling rate”.

Note: If item 45 of Schedule 1 to the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* does not commence, this item does not commence at all. See item 5 of the table in subsection 2(1).

Schedule 4—Funeral benefits

Veterans' Entitlements Act 1986

1 Subsection 98B(2)

Omit "\$572", substitute "\$1,000".

2 Paragraph 99(4)(a)

Omit "\$572", substitute "\$1,000".

3 Subsection 100(2)

Omit "\$572", substitute "\$1,000".

4 Application

- (1) The amendments made by items 1 and 2 apply in relation to the deaths of veterans occurring on or after the commencement of those items.
- (2) The amendment made by item 3 applies in relation to the deaths of dependants occurring on or after the commencement of that item.

Schedule 5—Minesweeping and bomb/mine clearance service

Veterans' Entitlements Act 1986

1 Section 6 (after table item 4)

Insert:

4A 6DA Operational service—minesweeping and bomb/mine clearance service

2 After section 6D

Insert:

6DA Operational service—minesweeping and bomb/mine clearance service

A member of the Defence Force is taken to have been rendering operational service during any period of service in respect of which the member has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the Bomb and Mine Clearance 1945-49 Clasp or the Bomb and Mine Clearance 1945-56 Clasp.

Schedule 6—MRCA-related amendments

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004

1 Subsection 7(1) (note)

Omit “section 9A”, substitute “sections 9A and 70A”.

2 Subsection 7(2) (note 1)

Omit “section 9A”, substitute “sections 9A and 70A”.

3 Subsection 8(1) (note)

Omit “section 9A”, substitute “sections 9A and 70A”.

4 Subsection 8(2) (note 1)

Omit “section 9A”, substitute “sections 9A and 70A”.

Veterans’ Entitlements Act 1986

5 At the end of subsections 70(4), (5) and (5A)

Add:

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

6 After section 70

Insert:

70A Most defence-caused injuries, diseases and deaths of members of the Defence Force no longer covered by this Act

- (1) An injury, disease or death of a member of the Forces, or any other member or former member of the Defence Force, is taken not to be defence-caused if:
- (a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and
 - (b) the injury, disease or death either:

-
- (i) relates to service rendered by the member on or after that date; or
 - (ii) relates to service rendered by the member before, and on or after, that date.

Note 1: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such injuries, diseases and deaths.

Note 2: The other members (or former members) of the Defence Force mentioned in subsection (1) are or were also members of a Peacekeeping Force.

- (2) An injury or disease of a member of the Forces, or any other member or former member of the Defence Force, that has been aggravated, or materially contributed to, by service is taken not to be defence-caused if:
 - (a) the aggravation or material contribution occurs on or after the MRCA commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and
 - (b) the aggravation or material contribution either:
 - (i) relates to service rendered by the member on or after that date; or
 - (ii) relates to service rendered by the member before, and on or after, that date; and
 - (c) if section 12 of the CTPA applies to the member—after receiving a notice under that section, the member makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravated injury or disease.

Note 1: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such aggravations and material contributions.

Note 2: The other members (or former members) of the Defence Force mentioned in subsection (2) are or were also members of a Peacekeeping Force.

- (3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

*[Minister's second reading speech made in—
House of Representatives on 1 April 2004
Senate on 13 May 2004]*

(48/04)