



# **Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986**

**No. 28, 1986**

**An Act to make certain transitional provisions and consequential amendments related to the enactment of the *Veterans' Entitlements Act 1986***



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# **Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986**

**No. 28, 1986**

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**An Act to make certain transitional provisions and consequential amendments related to the enactment of the *Veterans' Entitlements Act 1986***

*[Assented to 19 May 1986]*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## Part I—Preliminary

### 1 Short title

This Act may be cited as the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

### 2 Commencement

- (1) Subject to subsection (2), this Act shall come into operation on a day to be fixed by Proclamation.
- (2) Section 61 shall come into operation on the day on which this Act receives the Royal Assent.

### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

**Board** means the Veterans' Review Board established by section 107VB of the *Repatriation Act 1920* and continued in existence by section 134 of the *Veterans' Entitlements Act*;

**commencing date** means the day fixed by Proclamation under subsection 2 (1);

**Repatriation Act** means the *Repatriation Act 1920*;

**repealed Act** means an Act repealed by subsection 3 (1) of the *Veterans' Entitlements Act* or the provisions of an Act repealed by subsection 3(2) of that Act;

**Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986*.

- (2) In this Act, a reference to a particular section included in Division 1 or Division 5 of Part III of the Repatriation Act shall, unless the contrary intention appears, be read as including a reference to that section in its application by virtue of:
- (a) Division 5A, 5B, 5C, 5D, 6, 7, 8 or 9 of Part III of the Repatriation Act;
  - (b) the *Interim Forces Benefits Act 1947*;
  - (c) the *Repatriation (Far East Strategic Reserve) Act 1956*; or
  - (d) the *Repatriation (Special Overseas Service) Act 1962*.
- (3) In this Act, a reference to a particular regulation included in the Repatriation Regulations shall be read as including a reference to that regulation in its application:
- (a) by virtue of Part XII, XIII or XIV of the Repatriation Regulations; or
  - (b) by virtue of the Interim Forces Benefits Regulations, the Repatriation (Far East Strategic Reserve) Regulations or the Repatriation (Special Overseas Service) Regulations.
- (4) Unless the contrary intention appears, expressions that are defined for the purposes of the Veterans' Entitlements Act have, when used in this Act, the same respective meanings as they have in the Veterans' Entitlements Act.
- (5) In this Act, a reference to the repeals effected by subsection 3 (1) of the Veterans' Entitlements Act shall be read as including a reference to the repeals effected by subsection 3(2) and Part VI of Schedule 1 of that Act.

## Part II—Existing pensions and allowances and provision for treatment

### 4 Existing pensions, other than service pensions

- (1) In this section, unless the contrary intention appears:
- (a) *pension* means pension other than service pension;
  - (b) a reference to a member of the Forces (including a deceased member of the Forces) shall be read as a reference to a member of the Forces within the meaning of:
    - (i) Division 1, 6, 7, 8 or 9 of Part III of the Repatriation Act;
    - (ii) the *Repatriation (Far East Strategic Reserve) Act 1956*; or
    - (iii) the *Repatriation (Special Overseas Service) Act 1962*; and as including a reference to:
    - (iv) a member of the Interim Forces within the meaning of the *Interim Forces Benefits Act 1947*; and
    - (v) a person the incapacity or death of whom is deemed, by section 7A of the *Repatriation (Special Overseas Service) Act 1962*, to have resulted from an occurrence that happened during a period of special service of the person as a member of the Forces;
  - (c) a reference to a dependant of a member of the Forces (including a deceased member of the Forces) shall be read as a reference to a person who is, within the meaning of the Division or Act specified in paragraph (b) that is applicable to that member, a dependant of that member, including, but without limiting the generality of the foregoing, a person to whom a pension was, immediately before the commencing date, payable under section 44 of the Repatriation Act; and
  - (d) a reference to the widow of a deceased person shall be read in the same manner as such a reference is required by subsection 35(6) of the Veterans' Entitlements Act to be read for the purposes of Part III of that Act.

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- (2) Where a person who was a member of the Forces was, immediately before the commencing date, in receipt of a pension under a repealed Act in respect of incapacity from an injury suffered, or disease contracted, by the person, the Veterans' Entitlements Act applies to and in relation to the person as if:
- (a) that pension had been granted to the person under Part II of the Veterans' Entitlements Act;
  - (b) that person had been determined, under the Veterans' Entitlements Act, to be a veteran as defined by subsection 5(1) of that Act; and
  - (c) that injury had been determined, under the Veterans' Entitlements Act, to be a war-caused injury, or that disease had been so determined to be a war-caused disease, as the case may be.
- (3) Where a person who was a dependant of a deceased member of the Forces, being a person who was the widow or a child of that member of the Forces, was, immediately before the commencing date, in receipt of a pension under a repealed Act in respect of the death of that member of the Forces, the Veterans' Entitlements Act applies to and in relation to the person as if:
- (a) that pension had been granted to the person under Part II of the Veterans' Entitlements Act;
  - (b) the person had been determined, under the Veterans' Entitlements Act, to be a dependant of a deceased veteran; and
  - (c) the death of that member of the Forces had been determined, under the Veterans' Entitlements Act, to be war-caused.
- (4) Where a person who was a member of the Forces, or a member of a Peacekeeping Force, as defined by section 107J of the Repatriation Act was, immediately before the commencing date, in receipt of a pension under that Act in respect of an injury suffered, or disease contracted, by the person, the Veterans' Entitlements Act applies to and in relation to the person as if:
- (a) that pension had been granted to the person under Part IV of the Veterans' Entitlements Act;

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- (b) that person had been determined, under the Veterans' Entitlements Act, to be a member of the Forces, or a member of a Peacekeeping Force, as the case may be, as defined by subsection 68(1) of that Act; and
  - (c) that injury had been determined, under the Veterans' Entitlements Act, to be a defence-caused injury or that disease had been so determined to be a defence-caused disease, as the case may be.
- (5) Where a person who was a dependant of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, as defined by section 107J of the Repatriation Act, being a person who was the widow or a child of that deceased member, was, immediately before the commencing date, in receipt of a pension under that Act in respect of the death of that member, the Veterans' Entitlements Act applies to and in relation to that person as if:
- (a) that pension had been granted to the person under Part IV of the Veterans' Entitlements Act;
  - (b) that person had been determined, under the Veterans' Entitlements Act, to be a dependant of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, as the case may be; and
  - (c) the death of that member of the Forces, or of that member of a Peacekeeping Force, as the case may be, had been determined, under the Veterans' Entitlements Act, to be defence-caused.
- (6) Subject to section 6 of this Act, where a person was, immediately before the commencing date, in receipt of a pension under a repealed Act by virtue of the operation of subsection 66(2) of the *Repatriation Legislation Amendment Act 1985*, that pension continues to be payable to the person under and in accordance with the provisions of the repealed Acts as if those Acts had not been repealed by the Veterans' Entitlements Act and the amendments and repeals referred to in that subsection had not been made.

- (7) Where a pension is payable by virtue of subsection (6), the rate at which it is payable is, subject to subsection (8), the rate at which it was payable immediately before the commencing date, but no higher rate.
- (8) Subsection (7) does not apply to a pension the rate of which was, immediately before the commencing date, fixed by reference to the provisions of the *Social Security Act 1947*.
- (9) Where:
- (a) a pension had been granted to a person under a repealed Act from a date before 1 November 1978 in respect of incapacity caused by pulmonary tuberculosis; and
  - (b) that pension continues to be payable to the person on and after the commencing date as if it had been granted under the Veterans' Entitlements Act;
- the rate of that pension shall not be less than the maximum rate specified in subsection 22(7) of the Veterans' Entitlements Act.
- (10) Where:
- (a) a veteran dies on or after the commencing date;
  - (b) the widow of the veteran does not become eligible, by reason of the death of the veteran, to receive a pension under Part II of the Veterans' Entitlements Act; and
  - (c) the widow continues, after the death of a veteran, to be paid a pension by virtue of subsection (6) of this section as the widow of the veteran;
- the widow shall, forthwith after she re-marries or marries, notify the Secretary, in writing, that she has married or re-married and the date of the marriage or re-marriage.
- Penalty: \$1,000 or imprisonment for 6 months, or both.
- (11) Where, before the commencing date:
- (a) a claim had been made by a member of the Forces for a pension under a repealed Act; and
  - (b) a decision had been made under the repealed Act in respect of the claim;

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- (i) granting a pension to the member in respect of incapacity from an injury or a disease, but assessing the rate of that pension at a nil rate; or
- (ii) determining, expressly or by necessary implication, that the member was eligible to be granted a pension in respect of incapacity from an injury or a disease, or both, but refusing to grant a pension to the member on the ground that the extent of the incapacity of the member from that injury or disease, or both, was insufficient to justify the grant of a pension;

the Veterans' Entitlements Act applies to and in relation to that member as if that injury had been determined under that Act to be a war-caused injury or that disease had been so determined to be a war-caused disease, as the case requires.

- (12) Subsection (11) applies to a member of the Forces, or a member of a Peacekeeping Force, as defined by section 107J of the Repatriation Act as if:
  - (a) a reference in that subsection to a member of the Forces were read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as so defined;
  - (b) a reference in that subsection to a war-caused injury were read as a reference to a defence-caused injury; and
  - (c) a reference in that subsection to a war-caused disease were read as a reference to a defence-caused disease.

**5 Pensions—re-marriage or marriage of widow**

- (1) Where:
  - (a) a person, being the widow of a deceased member of the Forces, has re-married or married after 28 May 1984 and before the commencing date; and
  - (b) the person was, immediately before her re-marriage or marriage, in receipt of a pension under a repealed Act as a dependant of the member;

notwithstanding the provisions of the repealed Act, the pension, and any domestic allowance payable to her under regulation 176D of the Repatriation Regulations, shall be deemed not to have

ceased to be payable to her by reason of her re-marriage or marriage and, subject to subsection (2) of this section:

- (c) instalments of that pension, and that allowance (if payable), shall be paid to her under the Veterans' Entitlements Act, but in accordance with the provisions of the repealed Act and of the Repatriation Regulations (if applicable), in respect of the period commencing on the date of her re-marriage or marriage and ending on the date immediately preceding the commencing date; and
  - (b) subsection 4(3) of this Act applies to and in relation to that pension as if it had not ceased to be payable to her upon her re-marriage or marriage.
- (2) Where instalments of pension become payable to a person by reason of the application of subsection (1);
- (a) if the person has been paid a gratuity before the commencing date under section 40A of the Repatriation Act, an amount equal to the amount of that gratuity shall be deducted from the instalments of pension that so become payable;
  - (b) if the person has not been paid a gratuity under section 40A of the Repatriation Act—that gratuity shall be deemed not to be payable to the person; and
  - (c) subsection 205(3) of the Veterans' Entitlements Act applies as if the pension that is to be deemed by subsection (1) of this section not to have ceased to be payable were a new pension that became payable to the person under the Veterans' Entitlements Act upon the commencing date in respect of the period commencing on the date of the marriage or re-marriage and ending immediately before the commencing date.
- (3) Where:
- (a) a person, being the widow of a deceased member of the Forces, makes a claim for a pension as a dependant of the member, or for a gratuity under section 40A of the Repatriation Act, within 12 months after her re-marriage or marriage; and

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- (b) a pension would have been granted to her if her claim had been determined before her marriage or re-marriage;  
the person shall be deemed, for the purposes of subsection (1) of this section, to have been in receipt of that pension immediately before her re-marriage or marriage.
- (4) In this section;
- (a) **member of the Forces** means;
- (i) a member of the Forces within the meaning of section 4;  
or
- (ii) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1) of the Veterans' Entitlements Act;
- (b) **pension** means pension (other than service pension) payable under a repealed Act in respect of the death of a member of the Forces; and
- (c) **widow** has the same meaning as it has in Part III of the Veterans' Entitlements Act.

**6 Commutation of certain pensions**

- (1) This section applies to a person to whom a pension to which subsection 4(7) applies continues to be payable by virtue of subsection 4(6)
- (2) Within the period of 6 months commencing on and including the commencing date, a person to whom this section applies may elect to commute to a lump sum payment calculated in accordance with this section payments of that pension payable after the last pension pay-day in June 1986.
- (3) Where a pension ceases to be payable by virtue of subsection 4 (6) to a person to whom this section applies on or before the last pension pay-day in June 1986, any election made by the person under subsection (2) is void and of no effect.
- (4) Where a person to whom this section applies makes an election under subsection (2) (not being an election that is void by reason of subsection (3)):

- (a) the pension payable to the person by virtue of subsection 4(6) shall, by force of this section, be cancelled immediately after the last pension pay-day in June 1986; and
  - (b) there is payable to the person a single lump sum payment equal to the aggregate of 78 fortnightly instalments of that pension at the rate at which instalments were payable immediately before the pension is so cancelled.
- (5) An election under subsection (2):
- (a) shall be in writing and in accordance with a form approved by the Commission;
  - (b) shall be made by forwarding the election to, or delivering the election at, an office of the Department in Australia; and
  - (c) may be made by the pensioner or by any other person who would, if the election were a claim for a pension for the pensioner as the dependant of a veteran, be entitled under section 16 of the Veterans' Entitlements Act, to make the election on behalf of the pensioner.

## **7 Assessment of rate of pension**

- (1) Where, after the commencing date:
- (a) approval is given by the Commission, the Board, or the Administrative Appeals Tribunal for payment of a pension, or for payment of a pension at a higher or lower rate, to be made from a date before the commencing date; or
  - (b) the Commission, the Board or the Administrative Appeals Tribunal is reviewing the rate at which a pension was payable before the commencing date;
- the rate at which that pension may be paid at any time before the commencing date shall be assessed by reference to the relevant provisions of the repealed Acts as in force at that time but otherwise in accordance with the provisions of the Veterans' Entitlements Act and the principles applicable under that Act.
- (2) Subsection (3) applies to a pension to which Part II of the Veterans' Entitlements Act applies by virtue of subsection 4(2) or 4(4) of this Act.

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- (3) The Commission, the Board or the Administrative Appeals Tribunal shall not, in the course of re-assessing the rate at which a pension to which this subsection applies, determine, as the degree of incapacity of the person to whom that pension is payable, a percentage that is less than the percentage of the maximum general rate of pension constituted by the rate at which that pension was, immediately before the commencing date, paid unless the Commission, the Board or the Administrative Appeals Tribunal as the case may be, is satisfied:
- (a) that the incapacity of that person has decreased since the rate of that pension was previously assessed or last assessed; or
  - (b) that the previous assessment or last assessment would not have been made but for a false statement or misrepresentation of a person.

**8 Existing service pensions**

- (1) Where a person who was a member of the Forces was, immediately before the commencing date, in receipt of a service pension under a repealed Act, the Veterans' Entitlements Act applies to and in relation to the person as if:
- (a) that service pension had been granted to the person under Part III of the Veterans' Entitlements Act; and
  - (b) that person had been determined, under the Veterans' Entitlements Act, to be a veteran as defined by subsection 35(1).
- (2) Where a person was, immediately before the commencing date, in receipt of a service pension under a repealed Act by reason that the person was the wife of a member of the Forces or the widow of a deceased member of the Forces, the Veterans' Entitlements Act applies to and in relation to the person as if:
- (a) that service pension were a wife's service pension that had been granted to the person under Part III of the Veterans' Entitlements Act; and
  - (b) that member of the Forces had been determined, under the Veterans' Entitlements Act, to be a veteran as defined by subsection 35(1).

- (3) Where a person was, immediately before the commencing date, in receipt of a service pension under section 85AA of the Repatriation Act (including that section in its application by virtue of Division 5A, 5B, 5C, 5D, 6, 7, 8 or 9 of Part III of that Act or of subsection 7 (2) of the *Repatriation (Special Overseas Service) Act 1962*), the Veterans' Entitlements Act applies to and in relation to the person as if that service pension were a carer's service pension that had been granted to the person under Part III of the Veterans' Entitlements Act.
- (4) In this section, unless the contrary intention appears:
- (a) a reference to a member of the Forces (including a deceased member of the Forces) shall be read as a reference to a member of the Forces within the meaning of:
- (i) Division 5, 6, 7, 8 or 9 of Part III of the Repatriation Act; or
  - (ii) the *Repatriation (Special Overseas Service) Act 1962*; and as including a reference to a person who was:
  - (iii) a member of the Forces of a Commonwealth country within the meaning of Division 5A of Part III of the Repatriation Act;
  - (iv) a member of the Forces of an allied country within the meaning of Division 5B of Part III of the Repatriation Act;
  - (v) an Australian mariner who has served in a theatre of war within the meaning of Division 5C of Part III of the Repatriation Act;
  - (vi) a Commonwealth mariner, or an allied mariner, within the meaning of Division 5D of Part III of the Repatriation Act; or
  - (vii) a person to whom Division 6, 7, 8 or 9 of Part III extends by virtue of section 102, 107, 107D or 107G, as the case requires, of the Repatriation Act;
- (b) a reference to a wife of a person, or to a widow of a deceased person, shall be read in the same manner as such a reference is required by subsection 35(6) of the Veterans' Entitlements Act to be read for the purposes of Part III of that Act; and

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- (c) a reference to a service pension (including a wife's service pension and a carer's service pension) shall be read as including a reference to remote area allowance and to rent assistance.

### 9 Special temporary allowance

- (1) Subject to subsection (2), section 65 of the Veterans' Entitlements Act extends to the death of the spouse of a service pensioner that occurred before the commencing date.
- (2) Subsection (1) does not apply to the death of the spouse of a service pensioner that occurred before the commencing date if, before that date:
  - (a) the service pensioner had been granted the additional service pension referred to in paragraph 98B(2)(d) of the Repatriation Act; and
  - (b) the service pensioner had been paid all the instalments of that additional service pension payable under that section.
- (3) For the purpose of the application of section 65 of the Veterans' Entitlements Act in accordance with subsection (1) of this section, a grant of additional service pension referred to in paragraph 98B(2)(d) of the Repatriation Act made before the commencing date shall, if all the instalments of that additional service pension had not been paid before that date, be treated as a grant of a special temporary allowance under section 65 of the Veterans' Entitlements Act and instalments of that additional service pension paid before that date shall be treated as instalments of that special temporary allowance.

### 10 Restrictions on dual pensions

- (1) Where a service pension, or a pension under Part III or IV of the *Social Security Act 1947*, that was being paid immediately before the commencement of section 9 of the *Repatriation Act 1973* continued, by virtue of subsection 9(2) of the *Repatriation Act 1973* to be payable immediately before the commencing date, that pension continues, subject to this section, to be payable on and

after that date but, unless that pension is payable by reason that the pensioner was suffering from pulmonary tuberculosis, the rate of that pension shall not, at any time, exceed the rate at which it was being paid immediately before the day on which the *Social Services Act 1973* received the Royal Assent.

- (2) Where a service pension continues to be payable by virtue of subsection (1), the Veterans' Entitlements Act, other than section 42 of that Act, applies, subject to this section, as if it were a service pension, a wife's service pension or a carer's service pension, as the case requires, granted under that Act.
- (3) Where:
- (a) a person is entitled to receive a service pension, a wife's service pension or a carer's service pension under the Veterans' Entitlements Act; and
  - (b) a pension under Part III or IV of the *Social Security Act 1947* is payable to the person by virtue of subsection (1) of this section;
- the pension referred to in paragraph (b), ceases to be payable to the person upon the person ceasing to be entitled to receive that service pension.
- (4) Where:
- (a) a person is entitled to receive a pension under Part III or IV of the *Social Security Act 1947*; and
  - (b) a service pension, a wife's service pension or a carer's service pension is payable to the person under the Veterans' Entitlements Act by virtue of paragraph (a) of this section;
- that service pension ceases to be payable to the person upon the person ceasing to be entitled to receive the pension referred to in paragraph (a).
- (5) Where a provision of the *Social Security Act 1947* contains a reference to income in relation to a person, then, in the application of that provision to a person to whom a service pension, a wife's service pension or a carer's service pension continues to be payable by virtue of subsection (1), that pension shall, notwithstanding

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anything to the contrary contained in that Act, be taken to be income of the person.

- (6) Where a provision of the Veterans' Entitlements Act contains a reference to income in relation to a person, then, in the application of that provision to a person to whom a pension under Part III or IV of the *Social Security Act 1947* continues to be payable by virtue of subsection (1), that pension shall, notwithstanding anything to the contrary contained in the Veterans' Entitlements Act, be taken to be income of the person.

### 11 Patients in mental hospitals

- (1) Subject to subsection (2), where a person who was, on 31 October 1980, a mental hospital patient for the purposes of section 94B of the Repatriation Act as in force at any time before 1 November 1980 ceases, on or after the commencing date, to be a mental hospital patient (otherwise than by reason of death), the person is entitled, in respect of each day in the prescribed period in respect of which a part of the person's service pension was suspended under that section, to payment of that part of that pension that was so suspended.
- (2) Subsection (1) does not apply to a person who has ceased, on or after 1 November 1980 and before the commencing date, to be a mental hospital patient.
- (3) In subsection (1), the *prescribed period* in relation to a mental hospital patient means:
- (a) where the period commencing on, and including, the day on which he or she commenced to be an inmate of a mental hospital and ending on, but not including 31 October 1980, was less than 84 days—that period; or
  - (b) in any other case—the period consisting of the last 84 days of the period commencing on, and including, the day on which he or she commenced to be such an inmate and ending on, but not including, 31 October 1980.

- (4) Where a person had commenced to be an inmate of a mental hospital on 2 or more occasions before 1 November 1980, subsection (3) applies in relation to the person as if a reference to the day on which he or she commenced to be such an inmate were a reference to the day on which he or she last commenced to be such an inmate.
- (5) For the purposes of this section, where a mental hospital patient has been absent from the mental hospital for a continuous period of 4 weeks or more, the patient shall be deemed to have ceased to be a mental hospital patient at the expiration of the period of 4 weeks commencing on the commencement of that absence.

## **12 Boer War Veterans**

- (1) this section, ***Boer War Veteran*** means, subject to subsection (2), a person who, during the war in South Africa that commenced on 11 October 1899, was:
  - (a) a member of a naval or military force or contingent raised in Australia for active service in that war; or
  - (b) engaged in active service in South Africa as a member of the Naval Forces or Military Forces of any part of the Dominions of the Crown other than Australia.
- (2) A person who was a member of the Forces referred to in paragraph (1)(b) is not a Boer War Veteran for the purposes of this section unless the person satisfies the Commission that the person was resident in Australia within the period of 12 months immediately before being appointed or enlisted for active service in South Africa as a member of the Forces referred to in paragraph (1)(b).
- (3) Subsection 85(4) of the Veterans' Entitlements Act extends to the provision of treatment for a Boer War Veteran in like manner as it applies to the provision of treatment for a veteran referred to in paragraph (a) of that subsection.
- (4) Section 99 of the Veterans' Entitlements Act extends to a Boer War Veteran as if references in paragraphs 99(1)(d) and (e) and in

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subsections 99(2), (3), (4), (5), (6) and (7) to a veteran included references to a Boer War Veteran.

**13 Persons deemed to be in receipt of pensions, &c.**

- (1) Where, before the commencing date, a person had been granted:
  - (a) a pension of a kind referred to in subsection 4(2), (3), (4), (5) or (6); or
  - (b) a service pension (including remote area allowance and rent assistance) of a kind referred to in subsection 8(1), (2) or (3);but the person had not been paid any instalments of that pension or service pension before that date or that pension or service pension was suspended immediately before that date, the person shall be deemed to have been in receipt of that pension or service pension immediately before that date for the purpose of the application of that subsection to and in relation to the person.
- (2) Where the pension or service pension referred to in subsection (1) was suspended immediately before the commencing date, the decision to suspend the pension or service pension has effect on and after that date as if it had been made under subsection 31(6) or 58(1), as the case requires, of the Veterans' Entitlements Act.
- (3) Where, before the commencing date, a person had been granted an allowance of a kind described in column 1 of the Table in section 15, but the person had not been paid any instalments of that allowance before that date, or the allowance was not payable immediately before that date by reason of the operation of subregulation 180(4) or (5) or 180AAA(3) of the Repatriation Regulations, subregulation 62(4) or (5) of the Repatriation (Far East Strategic Reserve) Regulations or subregulation 62(4) or (5) of the Repatriation (Far East Strategic Reserve) Regulations, the person shall be deemed to have been in receipt of that allowance immediately before that date for the purpose of the application of that section to and in relation to the person.

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**14 Eligibility for treatment under repealed Acts may continue**

- (1) An approval given by the Commission before the commencing date under a repealed Act for the provision of any treatment for a person, being an approval that had not been revoked before that date, continues in force on and after that date as if it were an approval given under Part V of the Veterans' Entitlements Act.
- (2) The date from which a person is eligible to be provided with treatment under Part V of the Veterans' Entitlements Act may be a date before the commencing date, but a person shall not be provided with any treatment both under that Act and under a repealed Act.
- (3) The power of the Commission under Part V of the Veterans' Entitlements Act to approve treatment after the treatment has been provided extends to approving treatment that was provided before the commencing date, being treatment that had not been duly provided under a repealed Act.
- (4) For the purpose of the application of the Veterans' Entitlements Act in accordance with subsections (1), (2) and (3) of this section:
  - (a) an application to be provided with treatment made under a repealed Act and not determined before the commencing date shall be determined on or after that date as if it had been made under the Veterans' Entitlements Act; and
  - (b) any determination made, or other act or thing done, by the Commission before the commencing date that affected, or was capable of affecting, the eligibility or right of a person to be provided with treatment under a repealed Act has effect, on and after that date, as if made or done under the Veterans' Entitlements Act for the purpose of determining the eligibility or right of that person to be provided with treatment under Part V of the Veterans' Entitlements Act.
- (5) Subject to subsection (6), where a person, being:
  - (a) the widowed mother or the widowed step-mother of an unmarried member of the Forces who died before the commencing date; or

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- (b) a person who is in receipt of a pension that continues to be payable by virtue of subsection 4 (6), being a pension that became payable to the person by reason that the person was a child of a deceased member of the Forces,
- was, by virtue of a determination or decision in force under a prescribed regulation immediately before that date, eligible to be provided with medical treatment under the Repatriation Regulations, the person is eligible to be provided with treatment under Part V of the Veterans' Entitlements Act, on and after the commencing date, for any injury suffered, or disease contracted, by the person as if:
- (a) the member of the Forces had been determined, under the Veterans' Entitlements Act, to be a veteran as defined by subsection 5(1) of that Act;
  - (b) the person was a dependant of that veteran for the purposes of subsection 86(1) of the Veterans' Entitlements Act; and
  - (c) a determination under that Act were in force determining that the death of that veteran was war-caused.
- (6) A widowed mother, or a widowed step-mother, of a member of the Forces who has re-married after the death of the member (whether before, on or after the commencing date), is not eligible to be provided with treatment under Part V of the Veterans' Entitlements Act by virtue of subsection (5) of this section at any time after her re-marriage or marriage.
- (7) For the purpose of subsection (5), each of the following regulations is a prescribed regulation:
- (a) regulation 73 of the Repatriation Regulations;
  - (b) regulation 38 of the Repatriation (Far East Strategic Reserve) Regulations; and
  - (c) regulation 38 of the Repatriation (Special Overseas Service) Regulations.
- (8) In subsections (5) and (6):
- child**, in relation to a deceased member of the Forces, includes a person who, after the termination of the pension granted to the person under a repealed Act as the child of a member of the Forces

has been granted a further pension under subsection 39 (4) or 46A(1) of the Repatriation Act;

**widowed mother**, in relation to a deceased member of the Forces means a widowed person:

- (a) who is the mother of the member; or
- (b) if the member was born out of wedlock—who is the woman by whom the member was brought up;

being a person who became a widow prior to, or within 3 years after, the death of the member, and includes the unmarried mother of the member by whom the member was brought up;

**widowed step-mother**, in relation to a deceased member of the Forces, means a widowed step-mother of the member who became a widow prior to, or within 3 years after, the death of the member.

- (9) Where a person who was a member of the Forces was, immediately before the commencing date, eligible to be provided with medical treatment for venereal disease contracted during war service, by virtue of a determination or decision in force under a prescribed regulation, the person is eligible to be provided with treatment under Part V of the Veterans' Entitlements Act for that disease from and including the commencing date as if:
  - (a) a determination under that Act were in force determining that venereal disease was a war-caused disease from which the person was suffering; and
  - (b) the person had been determined, under the Veterans' Entitlements Act, to be a veteran as defined by subsection 5(1) of that Act.
- (10) For the purposes of subsection (9), each of the following regulations is a prescribed regulation:
  - (a) regulation 65 of the Repatriation Regulations; and
  - (b) regulation 6 of the Interim Forces Benefits Regulations.
- (11) Where:
  - (a) a person was, immediately before 25 November 1976, a service pensioner eligible to be provided with treatment under regulation 66 of the Repatriation Regulations;

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- (b) the person ceased, on that date, to be a service pensioner by reason only that the person was, on that date, a prescribed person within the meaning of section 123AB of the Repatriation Act; and
- (c) the person has been such a prescribed person continuously from that date to and including the date immediately preceding the commencing date;

Part V of the Veterans' Entitlements Act applies to the person as if the person were eligible to be provided with treatment under subsection 85(5) of that Act until the person ceases to be a prescribed person for the purposes of that Part or the rate of the person's income exceeds the annual rate of the person's income on 25 November 1976, whichever first occurs.

**15 Existing allowances**

- (1) Where a person was, immediately before the commencing date, in receipt of an allowance of a kind described in column 1 of the following table, that allowance continues to be payable to the person, on and after that date, under the provisions of the Veterans' Entitlements Act specified in column 2 of that table opposite to the description in column 1 as if it had been granted by the Commission under that last-mentioned provision, but subject to the provisions of the Veterans' Entitlements Act:

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<b>Column 1</b> <b>Description of allowance</b>	<b>Column 2</b> <b>Provision of Veterans' Entitlements Act</b>
Clothing allowance under: (a) regulation 180A of Repatriation Regulations; (b) regulation 63 of Repatriation (Far East Strategic Reserve) Regulations; or (c) regulation 63 of Repatriation (Special Overseas Service) Regulations.	Section 97

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<b>Column 1</b> <b>Description of allowance</b>	<b>Column 2</b> <b>Provision of Veterans' Entitlements Act</b>
Attendant allowance under: (a) Schedule 2 to the Repatriation Act; or (b) Schedule 5 to the Repatriation Act.	Section 98
Decoration allowance under: (a) regulation 180 of Repatriation Regulations; (b) regulation 62 of Repatriation (Far East Strategic Reserve) Regulations; or (c) regulation 62 of Repatriation (Special Overseas Service) Regulations.	Section 102
Victoria Cross allowance under: (a) regulation 180AA of Repatriation Regulations; (b) regulation 62A of Repatriation (Far East Strategic Reserve) Regulations; or (c) regulation 62A of Repatriation (Special Overseas Service) Regulations.	Section 103
Recreation transport allowance under: (a) regulation 104A of Repatriation Regulations; (b) regulations 51 and 52 of Repatriation (Far East Strategic Reserve) Regulations; or (c) regulations 51 and 52 of Repatriation (Special Overseas Service) Regulations.	Section 104
Temporary incapacity allowance under regulation 72A of Repatriation Regulations.	Section 107
Loss of earnings allowance under regulation 71 of Repatriation Regulations.	Section 108

- (2) An allowance that continues to be payable by virtue of subsection (1) is payable at the rate at which it was paid immediately before the commencing date until that rate is varied under the Veterans' Entitlements Act.

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- (3) Nothing in subsection (2) shall be taken to prevent the rate at which an allowance is payable being varied as from a date before the date on which the decision to vary the rate is made, being a date not earlier than the commencing date.
- (4) For the purpose of applying subsection (1) in respect of clothing allowance or recreation transport allowance, a decision of a Deputy Commissioner shall have effect, on and after the commencing date, as if it were a decision of the Commission.

**16 Allowances and other benefits**

- (1) Subject to this section, the provisions of Part VI of the Veterans' Entitlements Act extend to the grant of an allowance or other benefit under that Part in respect of a period before the commencing date or of an event that occurred before the commencing date.
- (2) An allowance or other benefit shall not be granted under Part VI of the Veterans' Entitlements Act in respect of a period before the commencing date or in respect of an event that occurred before the commencing date if, before the commencing date, a corresponding allowance or benefit had been granted under a repealed Act in respect of that period or event.
- (3) Subject to subsection (2) of this section, section 100 of the Veterans' Entitlements Act extends to a person, being the widowed mother or the widowed step-mother of an unmarried member of the Forces who died before the commencing date as if she were a dependant of a deceased veteran.
- (4) Subsection (3) does not apply to a widowed mother, or a widowed step-mother, of a member of the Forces who has re-married, whether before, on or after the commencing date, at any time after her re-marriage.
- (5) Where, immediately before the commencing date:
  - (a) a person was a pensioner as defined by regulation 179A of the Repatriation Regulations; or

- (b) a person was a person in receipt of an age or invalid pension or a wife's pension or a widow's pension within the meaning of subregulation 179A(5) of the Repatriation Regulations; for the purposes of that regulation by reason only of the operation of subsection 25(2) or (3) of the *Repatriation Acts Amendment Act (No. 2) 1985*, the person shall be deemed to be a service pensioner or to be in receipt of an age pension, an invalid pension, a wife's pension or a widow's pension, as the case may be, for the purposes of section 101 of the Veterans' Entitlements Act on and after the commencing date until the person ceases to be a prescribed person for the purposes of Part V of the Veterans' Entitlements Act or the annual rate of the person's income exceeds the annual rate of the person's income on 25 November 1976, whichever first occurs.
- (6) Paragraph 132(11)(c) of the Veterans' Entitlements Act does not apply to or in relation to travelling expenses in respect of travel that was completed before the commencing date.
- (7) Section 112 of the Veterans' Entitlements Act does not apply to or in relation to an application for:
- (a) temporary incapacity allowance or loss of earnings allowance in respect of a period before the commencing date; or
  - (b) travelling expenses in respect of travel that was completed before the commencing date.
- (8) Section 113 of the Veterans' Entitlements Act does not apply to or in relation to the funeral of a person that occurred before the commencing date.
- (9) Upon the approval of the Vehicle Assistance Scheme under section 105 of the Veterans' Entitlements Act, a motor vehicle made available, before the approval of that Scheme, to a veteran who is eligible to participate in that Scheme, being a vehicle that was made available to the veteran under the Scheme known as the gift car scheme and that was in the possession of the veteran immediately before that approval was given, shall be deemed to have been made available to the veteran under the Vehicle Assistance Scheme.

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- (10) Subject to this section, on and after the commencing date, an allowance or other pecuniary benefit paid or payable under a repealed Act in respect of a period ending before that date may be reviewed, having regard to information received by the Commission either before, on or after that date, as if it had been granted under Part VI of the Veterans' Entitlements Act.
- (11) Where, after the commencing date:
- (a) an allowance or other pecuniary benefit is granted under Part VI of the Veterans' Entitlements Act in respect of a period before the commencing date or of an event that occurred before that date; or
  - (b) the amount or rate of an allowance or other pecuniary benefit in respect of such a period or event is being determined or reviewed;
- the amount or rate of that benefit or allowance in respect of any time before the commencing date shall be determined by reference to the relevant provisions of the repealed Acts as in force at that time, but otherwise in accordance with the provisions of the Veterans' Entitlements Act.

## **Part III—Claims, applications and reviews**

### **17 Pending Claims**

- (1) Where:
- (a) a claim for a pension, not being a service pension;
  - (b) an application for such a pension or for an increase in the rate of such a pension;
  - (c) a claim for a service pension (including remote area allowance and rent assistance); or
  - (d) an application for an allowance or other benefit of a kind to which Division 2 of Part VI of the Veterans' Entitlements Act applies;

had been received at an address of the Department before the commencing date but had not been determined before that date, the claim or application shall be dealt with and determined under the Veterans' Entitlements Act as if it had been made under that Act.

- (2) For the purposes of the application of subsection (1) in relation to a claim or application:
- (a) a claim that was in accordance with a form approved by the Commission for the purposes of subsection 25(1) of the Repatriation Act shall be deemed to be in accordance with a form approved by the Commission for the purposes of subsection 14(3) of the Veterans' Entitlements Act;
  - (b) an application that was in accordance with a form approved by the Commission for the purposes of subsection 26(3) of the Repatriation Act shall be deemed to be in accordance with a form approved by the Commission for the purposes of subsection 15 (3) of the Veterans' Entitlements Act;
  - (c) a claim that was in accordance with a form approved by the Commission for the purposes of section 88 of the Repatriation Act shall be deemed to be in accordance with a form approved by the Commission for the purposes of subsection 43(1) of the Veterans' Entitlements Act;

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- (d) an application that was duly made for the purposes of whichever of the prescribed regulations was applicable shall be deemed to be in accordance with a form approved by the Commission for the purposes of subsection 111(2) of the Veterans' Entitlements Act; and
  - (e) an approval given, investigation carried out, decision made or act or thing done for the purposes of, or in connection with, the claim or application before the commencing date shall, by force of this section, have the force and effect, on and after that date, for the purposes of consideration and determination of the claim or application under the Veterans' Entitlements Act, that it would have if that Act had been in operation when it was given, carried out, made or done and it had been given, carried out, made or done under, and for the purposes of consideration and determination of the claim or application under, that Act.
- (3) Subsection (1) does not apply to a claim or application that had been received at an address of the Department before the commencing date but was, before that date, deemed, by force of subsection 29A(4) or (5) of the Repatriation Act, to have been refused.
- (4) Where a claim or application to which subsection (1) applies is granted, payment of the pension, service pension, allowance or other benefit to which it relates may be approved from a date determined in accordance with the relevant provisions of the Veterans' Entitlements Act, including a date before the commencing date.
- (5) For the purpose of paragraph (2)(d):
- (a) the Repatriation Regulations;
  - (b) the Interim Forces Benefits Regulations;
  - (c) the Repatriation (Far East Strategic Reserve) Regulations; and
  - (d) the Repatriation (Special Overseas Service) Regulations;
- are each prescribed regulations.

**18 Pending reviews by Commission**

- (1) Where, before the commencing date:
  - (a) the Commission had commenced to review a decision:
    - (i) granting a pension (not being a service pension) or assessing the rate of such a pension; or
    - (ii) with respect to a claim for such a pension or an application for such a pension or for an increase in the rate of such a pension;
  - (b) a request to review a decision of the Commission had been made under section 90C of the Repatriation Act; or
  - (c) the Commission had, otherwise than by reason of such a request, commenced to review a decision granting a service pension or assessing the rate of a service pension;but the Commission had not made its decision in respect of the review, the Commission may complete the review and make its decision in respect of the review as if it had been instituted under Part II, III or IV, as the case requires, of the Veterans' Entitlements Act.
- (2) For the purposes of the application of subsection (1) in relation to a review, any investigation carried out, decision made or act or thing done, for the purposes of, or in connection with, the review before the commencing date shall, by force of this section, have the force and effect, on and after that date for the purposes of completion and determination of the review, that it would have if the Veterans' Entitlements Act had been in operation when it was carried out, made or done, and it had been carried out, made or done under and for the purposes of a review under Part II, III or IV, as the case requires, of that Act.
- (3) The decision of the Commission upon a review to which subsection (1) applies shall be such decision as the Commission considers to be, in all the circumstances of the particular case, in accordance with the provisions of the Veterans' Entitlements Act and of this Act.

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**19 Pending applications to the Board or the Tribunal**

- (1) An application made, or deemed to be made to the Board under section 107VC of the Repatriation Act that had not been determined under that Act before the commencing date shall, on and after that date, be treated as if it were an application that had been made to the Board under section 135 of the Veterans' Entitlements Act, and shall be heard and determined by the Board accordingly.
- (2) An application made to the Administrative Appeals Tribunal under section 107VZW of the Repatriation Act that had not been determined by that Tribunal before the commencing date shall, on and after that date, be treated as if it were an application that had been made to that Tribunal under section 175 of the Veterans' Entitlements Act, and shall be heard and determined by that Tribunal accordingly.
- (3) For the purposes of the application of subsection (1) or (2) in relation to an application for a review of a decision, any approval given, investigation carried out, report prepared, decision made or act or thing done before the commencing date for the purposes of, or in connection with, that application to, or the review of that decision by, the Board or the Administrative Appeals Tribunal, as the case may be, shall, by force of this section, have the force and effect, on and after that date, for the purposes of consideration and determination of that decision by the Board or that Tribunal that it would have if it had been given, carried out, prepared, made or done under the Veterans' Entitlements Act for the purposes of, or in connection with, that application to, or the review of that decision by, the Board or that Tribunal under that Act.
- (4) The decision of the Board or of the Administrative Appeals Tribunal upon an application to which subsection (1) or (2) applies shall be such decision as the Board, or the Tribunal, considers to be, in all the circumstances of the particular case, in accordance with the provisions of the Veterans' Entitlements Act and of this Act.

**20 Reviews of certain decisions made under repealed Acts**

- (1) Where, but for the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, a person would have had, on or after the commencing date, a right to make application under section 107VC of the Repatriation Act for a review of a decision of the Commission made before that date, application may, subject to subsections (3), (4), (6) and (7) of this section, be made to the Board under section 135 of the Veterans' Entitlements Act for a review of that decision.
- (2) Where, but for the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, a person would have had, on or after the commencing date, a right to make application under section 90C of the Repatriation Act for a review of a decision of the Commission made before that date, application may be made to the Commission under section 59 of the Veterans' Entitlements Act for a review of that decision.
- (3) Subject to subsections (4) and (6), an application under subsection (1) for a review of a decision of the Commission may be made within 12 months after service on the person to whom the decision relates of a copy of that decision in accordance with subsection 34(2) of the Veterans' Entitlements Act, but not otherwise.
- (4) An application under subsection (1) for a review of a decision of the Commission (including a decision of a Repatriation Board deemed by section 50 of the *Repatriation Legislation Amendment Act 1984* to be a decision of the Commission), being a decision made before 1 January 1985:
  - (a) assessing a rate of pension or an increased rate of pension;
  - (b) refusing to grant a pension on the ground that the extent of the incapacity of the applicant is insufficient to justify the grant of a pension;
  - (c) refusing to increase the rate of a pension; or
  - (d) reducing the rate of a pension;may be made on a day not later than;
  - (e) the day that occurs 3 months after the day on which a copy of that decision was served on the applicant; or

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- (f) 6 December 1985;  
whichever is the later date, but not otherwise.
- (5) Subsection (2) does not apply to a decision of a Repatriation Board if an appeal to the Commission against that decision had been instituted before 1 January 1985.
- (6) An application under subsection (1) for a review of a decision of the Commission (being a decision made on or after 1 January 1985 that is of a kind referred to in paragraph (4)(a), (b), (c) or (d)), or an application made under subsection (2) for a review of a decision of the Commission, may be made within 3 months after service on the person to whom the decision relates of a copy of that decision in accordance with subsection 34(2) of the Veterans' Entitlements Act, but not otherwise.
- (7) Subsection (1) does not apply to a decision of the Commission if an application for a review of that decision has been made to the Board before the commencing date and that application has not been withdrawn and has not been otherwise disposed of.
- (8) Subsections 135(4) and (5) of the Veterans' Entitlements Act do not apply to or in relation to an application to which subsection (1) of this section applies.
- (9) Where, but for the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, a person would have had, on or after the commencing date, a right to make application under section 107VZW of the Repatriation Act for a review of a decision of the Commission or of the Board made before that date, application may, subject to section 29 of the *Administrative Appeals Tribunal Act 1975* in its application in accordance with subsection 176(4) of the Veterans' Entitlements Act, be made to the Administrative Appeals Tribunal under section 175 of the Veterans' Entitlements Act for a review of that decision by that Tribunal, and the application shall be heard and determined by that Tribunal accordingly.
- (10) Subsection (9) does not apply to a decision of the Commission or the Board if an application for a review of that decision had been

made to the Administrative Appeals Tribunal before the commencing date and that application has not been withdrawn and has not been otherwise disposed of.

- (11) A power conferred by the Veterans' Entitlements Act on the Commission:
- (a) to review a decision;
  - (b) to cancel or suspend a pension; or
  - (c) to increase or decrease the rate of a pension;
- extends to reviewing the decision, suspending the pension or increasing or reducing the rate of the pension in respect of a period before the commencing date or cancelling the pension on a date before the commencing date as if that Act had been in force throughout that period or on that date, as the case may be.
- (12) In exercising a power referred to in subsection (11), the Commission:
- (a) may have regard to information received by the Commission, the Board or the Administrative Appeals Tribunal before the commencing date under a repealed Act and to information received by the Commission on or after that date under the Veterans' Entitlements Act; and
  - (b) shall make such decision as it considers to be, in all the circumstances of the particular case, in accordance with the provisions of the Veterans' Entitlements Act and of this Act.

## **21 Retrospective operation of decisions**

- (1) Where a decision is made by the Commission, the Board or the Administrative Appeals Tribunal under the Veterans' Entitlements Act, including a decision so made by virtue of a provision of this Act, granting a pension, increasing or reducing the rate of a pension or granting an allowance or another pecuniary benefit, a date, which may be a date before the commencing date, may be fixed, in accordance with the relevant provisions of the Veterans' Entitlements Act, as the date as from which payment of the pension, payment of the pension at the increased or reduced rate or payment of the allowance or other benefit is approved.

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- (2) For the purpose of the application of subsection (1):
- (a) any decision of the Board to which section 107VY of the Repatriation Act applied immediately before the commencing date; and
  - (b) any decision of the Administrative Appeals Tribunal to which section 107VZZ of the Repatriation Act so applied;
- shall continue to be binding on the parties to the proceedings for the remainder of the period for which it was binding under that section.

**22 Reasons for decisions**

- (1) Section 34 of the Veterans' Entitlements Act extends to a decision made by the Commission before the commencing date under a repealed Act, being a decision of a kind similar to a kind of decision to which that section applies.
- (2) Section 62 of the Veterans' Entitlements Act extends to a decision made by the Commission before the commencing date under a repealed Act, being a decision of a kind similar to a kind of decision to which that section applies.
- (3) Section 140 of the Veterans' Entitlements Act extends to a decision made by the Board before the commencing date under a repealed Act, being a decision of a kind similar to a kind of decision to which that section applies.
- (4) For the purposes of the Veterans' Entitlements Act and of this Act:
  - (a) any reasons for a decision in respect of a pension other than a service pension duly given and served by the Commission in accordance with a provision of a repealed Act shall have effect on and after the commencing date as if given and served under section 34 of the Veterans' Entitlements Act;
  - (b) any reasons for a decision in respect of a service pension duly given and served by the Commission in accordance with a provision of a repealed Act shall have effect on and after the commencing date as if given and served under section 62 of the Veterans' Entitlements Act; and

- (c) any reasons for a decision of the Board duly given and served in accordance with a provision of a repealed Act shall have effect on and after the commencing date as if given and served under section 140 of the Veterans' Entitlements Act.

## Part IV—Miscellaneous transitional provisions

### 23 Child of a person

(1) Where:

- (a) a person who was, immediately before the commencing date, in receipt of a benefit under Part IVAAA of the *Social Security Act 1947* was, immediately before that date, a child, within the meaning of subsection 83(1) of the Repatriation Act as then in force, of a member of the Forces, being a member who was in receipt of a service pension;
  - (b) the person has not ceased to receive that benefit (otherwise than by virtue of subsection 135B(3) of the *Social Security Act 1947*); and
  - (c) the member has not ceased to receive a service pension;
- the definition of **child** in subsection 5(1) of the Veterans' Entitlements Act shall, for the purpose of applying Part III of that Act to and in relation to that person and member, be read as if "IVAAA or" were omitted from subparagraph (b)(iii) of that definition.

(2) In subsection (1):

**member of the Forces** means a member of the Forces within the meaning of Division 5 of Part III of the Repatriation Act (as in force immediately before 11 November 1982 and including that Division as extended by another Division of that Part or by another Act), and includes a member of the Forces of a Commonwealth country within the meaning of Division 5A of that Part, a member of the Forces of an allied country within the meaning of Division 5B of that Part, an Australian mariner within the meaning of Division 5C of that Part and a Commonwealth mariner or allied mariner within the meaning of Division 5D of that Part;

**service pension** means:

- (a) in relation to any time before the commencing date—a pension under Division 5 of Part III of the Repatriation Act

(including that Division as extended by another Division of that Act or by another Act); or

(b) in relation to any other time—a service pension under Part III of the Veterans' Entitlements Act.

(3) Where:

(a) a person who was, immediately before the commencing date, in receipt of a benefit under Part IVAAA of the *Social Security Act 1947*, being a benefit granted in pursuance of a claim lodged before 11 November 1982, was, immediately before that date, a child of another person within the meaning of section 123AB of the Repatriation Act as then in force; and

(b) the person has not ceased to receive that benefit (otherwise than by virtue of subsection 135B(3) of the *Social Security Act 1947*);

the definition of *child* in subsection 5(1) of the Veterans' Entitlements Act shall, for the purpose of applying section 83 of that Act to and in relation to that person and that other person, be read as if "IVAAA or" were omitted from subparagraph (b)(iii) of that definition.

(4) Where a person living outside Australia is a child of a person who is in receipt of, or is a claimant for, a pension under Part III of the Veterans' Entitlements Act, then, notwithstanding the provisions of subsection 35(8) of that Act, the person shall be treated as the child of that person for the purposes of that Part if, immediately before 5 September 1985, the child was treated, for the purposes of Division 5 of Part III of the Repatriation Act as then in force, as a child of that person.

## **24 Certain persons deemed to be domiciled in Australia**

A person who, before the commencement of the *Repatriation Act 1952*, had satisfied the Commission that the person was resident in Australia or a Territory of the Commonwealth within the period of 12 months immediately preceding the person's appointment, enlistment or enrolment in the naval, military or air forces, or a service auxiliary of any of those forces, of a part of the Dominions

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of the Crown other than the Commonwealth, shall, for the purposes of subsection 6(2) of the Veterans' Entitlements Act, be deemed to have been domiciled in Australia immediately before the person's appointment, enlistment or enrolment in those forces.

**25 Reduction in rate of pension**

- (1) Subject to subsection (2), where a person was, immediately before the commencing date, in receipt of a pension (not being a service pension) under a repealed Act the rate of which was reduced in accordance with subsection 24(1), 101(1), 107C(6) or 107Q(3) of the Repatriation Act, the amount of that deduction shall not be increased on or after the commencing date, by reason of the application of section 26 of the Veterans' Entitlements Act to and in relation to that pension.
- (2) Where:
  - (a) a person is in receipt of a pension to which subsection (1) applies; and
  - (b) the amount of the periodical payments received by the person under a law of a foreign country or of a State has been increased, or a lump-sum payment has been so received, since the amount of that reduction was calculated or last calculated;the amount of the reduction shall be re-calculated in accordance with the provisions of section 26 of the Veterans' Entitlements Act and, if the amount of the reduction as so re-calculated exceeds the amount of the reduction immediately before the commencing date, that pension shall be reduced by the amount of the reduction as so re-calculated and subsection (1) of this section ceases to apply to the pension but, in any other case, subsection (1) continues to apply to the pension.
- (3) Where a pension is granted to a person under Part II or IV of the Veterans' Entitlements Act and payment of the pension from a date before the commencing date is approved, the person shall be deemed to have been in receipt of that pension immediately before the commencing date for the purposes of subsection (1).

**26 Summons**

Where a summons had been issued before the commencing date requiring a person to appear and give evidence, or produce documents, on or after that date:

- (a) if the summons was issued under section 29B of the Repatriation Act—section 32 of the Veterans' Entitlements Act;
- (b) if the summons was issued under section 107VV of the Repatriation Act, in its application in accordance with section 90C of that Act—section 60 of the Veterans' Entitlements Act; or
- (c) if the summons was issued under section 107VV of the Repatriation Act otherwise than in its application in accordance with section 90C of that Act—section 151 of the Veterans' Entitlements Act,

applies to and in relation to the summons as if it had been issued under that section of the Veterans' Entitlements Act.

**27 Guide to Assessment of Rates of Veterans' Pensions**

- (1) Subject to subsection (2) of this section, subsections 22(4) and 29(4) of the Veterans' Entitlements Act do not apply to a determination of the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, made before 1 July 1986.
- (2) Where, on or after the commencing date and before 1 July 1986, the Commission, the Board or the Administrative Appeals Tribunal is making a determination of the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, it shall make its determination having regard to the material before it and, if it is of the opinion that the material before it is sufficient to enable it to do so, it may make its decision according to the provisions of the approved Guide to the Assessment of Rates of Veterans' Pensions.
- (3) In subsections (1) and (2):

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- (a) a reference to a veteran shall be read as including a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1) of the Veterans' Entitlements Act; and
- (b) a reference to a war-caused injury shall be read as including a reference to a defence-caused injury and a reference to a war-caused disease shall be read as including a reference to a defence-caused disease.

### **28 Savings—child living outside Australia**

Where:

- (a) a person was in receipt of, or was a claimant for, a service pension under Division 5 of Part III of the Repatriation Act on 4 September 1985;
- (b) the person:
  - (i) has received that pension continuously since 5 September 1985; or
  - (ii) has been granted a service pension in pursuance of that claim under that Division or under Part III of the Veterans' Entitlements Act and has been in receipt of that pension continuously since it was so granted, as the case may be;
- (c) a child of that person is living outside Australia; and
- (d) that child was, on 4 September 1985, treated for the purposes of Division 5 of Part III of the Repatriation Act as then in force, as a child of that person;

subsection 35(8) of the Veterans' Entitlements Act does not apply to or in relation to that child.

### **29 Calculation of value of property**

Where, on 14 March 1985, a person was absent from the principal home of the person, any absence of the person from that home before that date shall be disregarded for the purpose of applying subsection 50(8) of the Veterans' Entitlements Act to and in relation to that person.

**30 Pension loan scheme**

- (1) For the purpose of the application of section 51 of the Veterans' Entitlements Act to and in relation to a person, a request lodged by the person, in accordance with subsection 6AB(2) of the *Social Security Act 1947* (in its application for the purposes of the Repatriation Act) after 14 March 1985 and before 14 June 1985, shall be deemed to have been lodged on 14 March 1985.
- (2) Section 51 of the Veterans' Entitlements Act extends to a request lodged by a person, in accordance with subsection 6AB(2) of the *Social Security Act 1947* (in its application for the purposes of the Repatriation Act) on or after 14 March 1985 and before the commencing date as if:
  - (a) the Veterans' Entitlements Act had come into operation on 14 March 1985;
  - (b) the request had been duly lodged under section 51 of that Act; and
  - (c) any decision of the Commission that it was satisfied as referred to in paragraph 51(4)(c) of that Act given before the commencing date had been given under that paragraph;but a debt created before the commencing date is not recoverable under section 6AB of the *Social Security Act 1947* (as so applied) and also under section 51 of the Veterans' Entitlements Act.
- (3) A charge lodged for registration under section 6AB of the *Social Security Act 1947* (in its application for the purposes of the Repatriation Act) before the commencing date has effect on and after that date as if it were a charge under section 51 of the Veterans' Entitlements Act.

**31 Deprivation of income or property**

- (1) Where, immediately before the commencing date, an amount is deemed to be income of a person in respect of a deprivation of income, that amount shall, subject to subsection (2), continue to be deemed to be income of the person for the purposes of the application of Part III of the Veterans' Entitlements Act to and in relation to that person.

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- (2) Where, immediately before the commencing date, section 6AC of the *Social Security Act 1947*, in its application for the purposes of the Repatriation Act, applied to and in relation to an amount that was deemed to be income of a person in respect of a deprivation of income that took place on or after 1 June 1984, section 52 of the Veterans' Entitlements Act applies to and in relation to that deprivation.
- (3) Where, immediately before the commencing date, an amount was required to be included in the value of the property of a person in relation to a disposal of property by the person or the person's spouse that took place on or after 1 June 1984, that amount shall, subject to section 52 of the Veterans' Entitlements Act, continue to be included in the value of the property of the person.

### 32 Rent Assistance

- (1) The repeal of subsection 15(2) of the *Repatriation Acts Amendment Act 1974* by subsection 3(1) of the Veterans' Entitlements Act does not have the effect of authorising or requiring the payment of rent assistance at a rate less than the rate at which it was payable immediately before the commencing date.
- (2) The repeal of section 24 of the *Repatriation Acts Amendment Act (No. 2) 1976* by subsection 3(1) of the Veterans' Entitlements Act does not have the effect of authorising or requiring the cancellation of rent assistance that was in force immediately before the commencing date or the payment of rent assistance at a rate less than the rate at which it was payable immediately before that date.
- (3) Where, immediately before the commencing date, rent assistance was being paid to a pensioner at a rate calculated in accordance with section 24 of the *Repatriation Acts Amendment Act (No. 2) 1976*, the rate of that rent assistance shall not be increased to a rate higher than the rate at which it was then payable or, if that rate is reduced under subsection (4) of this section, the rate to which it has been so reduced or last so reduced, as the case may be, unless and until the time at which the pensioner would have been entitled to rent assistance at a rate higher than that rate if the pensioner were

applying for a new grant of rent assistance and, as of that time, the rate of the rent assistance shall be increased to that higher rate and this subsection ceases to apply to the pensioner.

- (4) Subject to subsection (3), rent assistance to which that subsection applies is subject to adjustment by reason of each change in income of the pensioner on or after the commencing date to the same extent as it would be adjusted if, immediately before the change, the pensioner was, having regard to the annual rate of his or her income, entitled, under the Veterans' Entitlements Act, to be paid rent assistance at the rate at which that assistance was being paid to the pensioner.
- (5) Subject to subsection (6), where, immediately before the commencing date, a person had been continuously in receipt of supplementary assistance allowance since 31 January 1982 by virtue of, and as provided by, subsection 92(3) of the *Repatriation Acts Amendment Act 1981*, then, notwithstanding the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, rent assistance is payable to the person under section 55 of the Veterans' Entitlements Act at the rate at which supplementary assistance allowance would be payable to the person, but for those repeals, by virtue of, and in accordance with, subsection 92(3) of the *Repatriation Acts Amendment Act 1981*.
- (6) Subsection (5) ceases to apply to rent assistance in relation to a person:
  - (a) if the person would, if sections 98AA and 98A of the *Repatriation Act 1920*, as amended and in force on 31 January 1982, were still in force, cease to be entitled to be paid supplementary assistance allowance under those sections; or
  - (b) if the rate at which rent assistance would, but for this section, be payable to the person under the Veterans' Entitlements Act exceeds the rate at which it is payable to the person in accordance with subsection (1) of this section.
- (7) In this section **supplementary assistance allowance** includes rent assistance.

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**33 Requests to institute proceedings, &c.**

- (1) Where a person had been requested, under subsection 107S(1) of the Repatriation Act to institute proceedings or fresh proceedings, or properly to prosecute proceedings, before the commencing date and the proceedings to which the request related had not been completed before that date, section 75 of the Veterans' Entitlements Act applies to and in relation to that person and to and in relation to the proceedings to which that request related, on and after that date, as if that request had been made by notice under subsection 75(1) of the Veterans' Entitlements Act.
- (2) For the purpose of the application of section 75 of the Veterans' Entitlements Act in accordance with subsection (1) of this section, any act or thing done under section 107S of the Repatriation Act in pursuance of the request under that section shall be treated, on and after the commencing date, as if it had been done under section 75 of the Veterans' Entitlements Act.

**34 Payment of damages to Commonwealth**

- (1) Where the requirements of a notice given to a person under subsection 107T(1) or (2) of the Repatriation Act had not been complied with before the commencing date, section 76 of the Veterans' Entitlements Act applies, on and after that date but subject to subsection (2) of this section, as if the notice were a notice given to the person by the Commission under that section.
- (2) The amount payable to the Commonwealth in pursuance of a notice to which subsection (1) applies shall not exceed the amount specified in that notice.

**35 Deductions of overpayments of pension**

Where an amount was, immediately before the commencing date, recoverable from a person under section 107U of the Repatriation Act, that amount may, on and after that date, be recovered from the person under section 79 of the Veterans' Entitlements Act, but the amount shall not be recovered both under section 107U of the

Repatriation Act and under section 79 of the Veterans' Entitlements Act.

### **36 Establishment of hospitals, &c.**

A hospital or other institution established, or deemed to have been established, by the Commission under section 120D of the Repatriation Act and maintained by the Commission immediately before the commencing date shall, on and after that date, be deemed to have been established under section 89 of the Veterans' Entitlements Act and that section applies in relation to it accordingly.

### **37 Recovery of cost of medical treatment**

- (1) Subject to subsection (3) of this section, section 93 of the Veterans' Entitlements Act extends to and in relation to:
  - (a) a person who:
    - (i) was provided with prescribed medical treatment within the meaning of section 120E of the Repatriation Act before the commencing date; and
    - (ii) recovered or received compensation from another person before that date or recovers or receives compensation from another person on or after that date; and
  - (b) a person who became liable before, or becomes liable on or after, the commencing date, to pay compensation to a person who was provided with treatment referred to in subparagraph (a)(i) of this section before the commencing dateas if that medical treatment were treatment that had been provided to the person under Part V of the Veterans' Entitlements Act.
- (2) For the purpose of applying section 93 of the Veterans' Entitlements Act in accordance with subsection (1) of this section, a notice under subsection 120E(3) or (4) of the Repatriation Act that was served before the commencing date shall have effect on and after that date as if it were a notice under subsection 93(3) or (4), as the case may be, of the Veterans' Entitlements Act.

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- (3) The cost of treatment provided before the commencing date is not recoverable under a repealed Act and also under section 93 of the Veterans' Entitlements Act in its application in accordance with subsection (1) of this section.
- (4) The repeals effected by subsection 3(1) of the Veterans' Entitlements Act do not affect the liability, on and after the commencing date, of a person under subsection 124(1A) of the Repatriation Act, to pay reasonable charges in respect of treatment provided for the person under the Repatriation Regulations where, before the commencing date, the person had been notified as provided in regulation 70A of those Regulations.

### **38 Notification of event or change of circumstances**

Where an event or change of circumstances of a kind described in subsection 124(4) or (5) of the Veterans' Entitlements Act occurred before the commencing date:

- (a) if the last day on which the person in receipt of a service pension, a wife's service pension, a carer's service pension or rent assistance could have notified the occurrence of that event or change of circumstances as required by the provisions of the Repatriation Act or of a notice under that Act is a day on or after the commencing date—the provisions of those subsections extend to that event or change of circumstances; or
- (b) if that last day was a day before the commencing date—section 98AAA of the Repatriation Act continues, notwithstanding the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, to apply to that event or change of circumstances.

### **39 Deduction of tax from service pensions**

Where a request made by a person for the purposes of subsection 52(2) of the Repatriation Act before the commencing date had not been revoked before that date, the request shall, by force of this section, have effect on and after that date as if it had been made

under, and for the purposes of, subsection 125(2) of the Veterans' Entitlements Act.

#### **40 Payment of service pension**

Where a decision of the Commission made under section 93 of the Repatriation Act was applicable in relation to a service pension payable to a person immediately before the commencing date, that decision has effect, by force of this section, on and after that date to and in relation to the service pension, wife's service pension or carer's service pension, as the case may be, payable to the person in accordance with section 8 of this Act as if the decision were an approval under section 122 of the Veterans' Entitlements Act given by the Commission on the commencing date.

#### **41 Advances on account of loss of earnings allowance**

Where the Commission has, under regulation 71 of the Repatriation Regulations, authorised the payment of an advance to a person on account of loss of earnings allowance in respect of a period ending on or after the commencing date:

- (a) so much of the amount of that advance as equals the amount of loss of earnings allowance payable to the person under that regulation in respect of the part of that period that ended on the day immediately preceding the commencing date shall be treated as having been paid as loss of earnings allowance in respect of that part of that period; and
- (b) the balance of that amount shall be treated as an advance authorised by the Commission under section 109 of the Veterans' Entitlements Act in respect of the part of that period commencing on the commencing date.

#### **42 Application of section 120 of Veterans' Entitlements Act to decisions of Commission**

- (1) Subject to subsection (3), section 120 of the Veterans' Entitlements Act applies to and in relation to the consideration and determination by the Commission of a claim for a pension on or

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after the commencing date, whether the claim was received at an office of the Department before, on or after that date.

- (2) Subject to subsection (3), section 120 of the Veterans' Entitlements Act applies to and in relation to every determination or decision made by the Commission under the Veterans' Entitlements Act, including a determination or decision so made by reason of the application of that Act as provided in this Act.
- (3) Where, on or after the commencing date, the Commission is considering and determining a claim for a pension (not being a service pension) that was received at an office of the Department in Australia before 15 May 1985:
  - (a) section 120 of the Veterans' Entitlements Act does not apply to or in relation to its consideration and determination of the claim; and
  - (b) the Commission shall, subject to subsection (4) of this section, grant the claim unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for granting the claim.
- (4) In applying paragraph (3)(b) in respect of the incapacity of a person from injury or disease, or in respect of the death of a person, related to service rendered by the person, the Commission shall be satisfied, beyond reasonable doubt, that there is no sufficient ground for determining:
  - (a) that the injury was a war-caused injury or a defence-caused injury;
  - (b) that the disease was a war-caused disease or a defence-caused disease; or
  - (c) that the death was war-caused or defence-caused;as the case may be, if the Commission, after consideration of the whole of the material before it, is of the opinion that the material before it does not raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person.

**43 Application of sections 120 and 139 of Veterans' Entitlements Act to reviews by the Board**

- (1) Subject to subsection (2), where the Board reviews, on or after the commencing date, a decision or determination of the Commission made before that date, section 139 of the Veterans' Entitlements Act applies to and in relation to the review, and, for the purpose of its application in relation to the review, the Commission shall be deemed to have the powers and discretions conferred on it by the Veterans' Entitlements Act in its application by virtue of the provisions of this Act.
- (2) Where, on or after the commencing date, the Board reviews, upon an application that was made to it before 15 May 1985, a decision of the Commission with respect to a claim for a pension, the Commission shall be deemed to have the powers and discretions conferred on it by:
  - (a) the provisions of the Veterans' Entitlements Act, other than section 120 of that Act; and
  - (b) the provisions of subsections 42(3) and (4) of this Act.

**44 Application of section 120 of Veterans' Entitlements Act to reviews by Administrative Appeals Tribunal**

- (1) Subject to subsection (2), where the Administrative Appeals Tribunal reviews, on or after the commencing date, a decision made under a repealed Act, the person who made the decision shall be deemed, for the purposes of section 43 of the *Administrative Appeals Tribunal Act 1975*, to have the powers and discretions conferred on that person by the Veterans' Entitlements Act in its application by virtue of this Act.
- (2) Where, on or after the commencing date, the Administrative Appeals Tribunal, upon application made by the Commission, reviews a decision given by the Board before 15 May 1985, being a decision granting a claim for a pension, the person who made the decision shall be deemed, for the purposes of section 43 of the *Administrative Appeals Tribunal Act 1975*, to have the powers and discretions conferred on the Commission by:

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- (a) the provisions of the Veterans' Entitlements Act, other than section 120 of that Act; and
- (b) the provisions of subsection 42(3) of this Act.

**45 Notice to be given of certain events affecting pensions**

- (1) Where a person was, immediately before the commencing date, required by section 40AA of the Repatriation Act to notify the Secretary of the occurrence of an event in respect of another person, that section continues, notwithstanding the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, to apply to and in relation to those persons until a notice is served on that first—mentioned person under section 127 of the Veterans' Entitlements Act.
- (2) Section 96 of the Repatriation Act continues, notwithstanding the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, to apply to and in relation to a person who was in receipt of a service pension under Division 5 of Part III of the Repatriation Act immediately before the commencing date until a notice is served on that person under section 127 of the Veterans' Entitlements Act.

**46 Savings—children under Soldiers' Children Education Scheme**

Where a person who had attained the age of 25 years was, immediately before the commencing date, receiving benefits under the Soldiers' Children Education Scheme prepared by the Commission under regulation 88 of the Repatriation Regulations:

- (a) Part VII of the Veterans' Entitlements Act applies to the person as if the person had not attained the age of 25 years; and
- (b) while the person is in receipt of benefits under the Veterans' Children Education Scheme, as the eligible child of a veteran or the eligible child of a member of the Forces or of a member of a Peacekeeping Force, within the meaning of that Part, Part V of the Veterans' Entitlements Act applies to and in relation to the person as if the person had not attained the age of 25 years.

**47 Furnishing of information**

- (1) Section 127 of the Veterans' Entitlements Act extends to a matter that might affect, or have affected, the payment of a pension, allowance or other pecuniary benefit, or the provision of treatment, under a repealed Act in respect of a time before the commencing date as if references in that section to the Veterans' Entitlements Act included references to the repealed Act.
- (2) For the purpose of the application of section 127 of the Veterans' Entitlements Act, a notice given to a person under section 121 of the Repatriation Act before the commencing date, being a notice requiring the furnishing of information within a period ending on or after that date, shall be treated as if it had been given under section 127 of the Veterans' Entitlements Act.
- (3) Subject to subsection (4), section 128 of the Veterans' Entitlements Act extends to information, documents or evidence in relation to a matter that might affect or might have affected:
  - (a) the grant or payment of a pension, allowance or other pecuniary benefit under a repealed Act; or
  - (b) the provision of medical treatment under a repealed Act;as if the reference to the Veterans' Entitlements Act, or to Part V of that Act, included a reference to the repealed Act.
- (4) Section 128 of the Veterans' Entitlements Act, in its application by virtue of subsection (3), does not authorise the service of a notice in respect of a matter on a person if a notice had been given to the person in respect of the matter under section 121A of the Repatriation Act.
- (5) For the purpose of the application of section 128 of the Veterans' Entitlements Act, a notice given to a person under section 121A of the Repatriation Act before the commencing date, being a notice requiring the furnishing of information or the production of documents, within a period ending on or after that date, or requiring the person to appear on a date on or after that date to give evidence and produce documents shall be treated as if it had been given under section 128 of the Veterans' Entitlements Act.

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- (6) Notwithstanding anything in section 127 or 128 of the Veterans' Entitlements Act:
- (a) the penalty for an offence against subsection 127(4) or (5) of the Veterans' Entitlements Act in respect of a notice to which subsection (2) of this section applies is a fine not exceeding \$500; and
  - (b) the penalty for an offence against subsection 128(4) of the Veterans' Entitlements Act in respect of a notice to which subsection (5) of this section applies is a fine not exceeding \$1,000 or imprisonment for 6 months, or both.

**48 Membership of Board**

- (1) The members of the Board appointed under subsection 107VZC(1) of the Repatriation Act and holding office immediately before the commencing date shall, subject to the Veterans' Entitlements Act, continue to hold office as members of the Board, but otherwise in accordance with their respective periods of appointment, as if they had been appointed under subsection 158(1) of the Veterans' Entitlements Act.
- (2) An appointment of a person made under subsection 107VZF(1) of the Repatriation Act to act as a member of the Board, being an appointment that had not been terminated by the Minister or by reason of the person's resignation, before the commencing date, continues in force, subject to the Veterans' Entitlements Act, on and after that date as if it had been made under subsection 161(1) of the Veterans' Entitlements Act.
- (3) Where a person who held office as a member of the Board immediately before the commencing date in pursuance of an appointment made under the Repatriation Act was, on the occasion of his or her appointment, or on any occasion of his or her re-appointment, as a member of the Board, a person selected from lists submitted in accordance with a request made under subsection 107VZC(3) of the Repatriation Act, the person shall, during the balance of the period of that appointment, be deemed to be a Services member within the meaning of Part IX of the Veterans' Entitlements Act.

**49 Leave of Absence**

Where the Minister had, under section 107VZG of the Repatriation Act, granted leave of absence to a full-time member of the Board for a period ending on or after the commencing date, that grant of leave of absence has effect, on and after that date, as if it were a grant of leave of absence made by the Minister under section 162 of the Veterans' Entitlements Act.

**50 Membership of Commission**

- (1) The members of the Commission appointed under subsection 8(1) of the Repatriation Act and holding office immediately before the commencing date shall, subject to the Veterans' Entitlements Act, continue to hold office as members of the Commission, but otherwise in accordance with their respective periods of appointment, as if they had been appointed under subsection 182(2) of the Veterans' Entitlements Act.
- (2) The member of the Commission who held office as Chairman of the Commission immediately before the commencing date shall, subject to the Veterans' Entitlements Act, hold office as President of the Commission, but otherwise in accordance with his or her period of appointment as Chairman, as if the member had been appointed President of the Commission under subsection 183(1) of the Veterans' Entitlements Act.
- (3) The member of the Commission who held office as Deputy Chairman of the Commission immediately before the commencing date shall, subject to the Veterans' Entitlements Act, hold office as Deputy President of the Commission, but otherwise in accordance with his or her period of appointment as Deputy Chairman, as if the member had been appointed Deputy President of the Commission under subsection 183(1) of the Veterans' Entitlements Act.
- (4) Where the person who held office under the *Public Service Act 1922* as Secretary to the Department also held, immediately before the commencing date, the offices of a commissioner and Chairman of the Commission, subsection (2) of this section does not prevent

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the person continuing to hold the office of Secretary to the Department but section 184 of the Veterans' Entitlements Act applies to and in relation to the person while he or she continues to hold both of those offices.

- (5) Where a person who held office as a commissioner immediately before the commencing date was, when appointed to be a commissioner, selected from a list submitted in accordance with subsection 8(2) of the Repatriation Act, the person shall be deemed, for the purposes of subsection 182(4) of the Veterans' Entitlements Act, to be a person whose name was, when the person was appointed to be a commissioner, on a list submitted in accordance with a request made under subsection 182(3) of the Veterans' Entitlements Act.

### **51 Leave of Absence**

Where the Minister had, under section 17AA of the Repatriation Act, granted leave of absence to a commissioner or an acting commissioner for a period ending on or after the commencing date, that grant of leave of absence has effect, on and after that date, as if it were a grant of leave of absence made by the Minister under section 186 of the Veterans' Entitlements Act.

### **52 Acting members of the Commission**

- (1) An appointment of a person made under subsection 8C(1) of the Repatriation Act to act in the office of a commissioner, being an appointment that had not been terminated by the Minister or by reason of the person's resignation before the commencing date, continues in force, subject to the Veterans' Entitlements Act, on and after that date as if it had been made under section 191 of the Veterans' Entitlements Act.
- (2) An appointment of a person made under section 8B of the Repatriation Act to act in the office of Chairman of the Commission and also in the office under the *Public Service Act 1922* of Secretary to the Department, being an appointment that had not been terminated by the Governor-General or by reason of

the person's resignation before the commencing date, continues in force, subject to the Veterans' Entitlements Act, on and after that date as if it were an appointment made under section 193 of the Veterans' Entitlements Act, to act in the office of President of the Commission and also in the office, under the *Public Service Act 1922*, of Secretary to the Department.

### **53 Trusts**

The repeals effected by subsection 3(1) of the Veterans' Entitlements Act do not affect the powers or duties of the Commission as a trustee of a trust accepted by the Commission under section 114A of the Repatriation Act but, on and after the commencing date, section 201 of the Veterans' Entitlements Act applies to and in relation to the trust as if the Commission had accepted the trust under that section.

### **54 Trusts in respect of pensions and allowances**

- (1) Where, immediately before the commencing date:
- (a) payment of a pension or allowance under a repealed Act was being made to a person other than the pensioner by virtue of an authorisation under regulation 9 of the Repatriation Regulations;
  - (b) a person was exercising the powers of trustee in respect of a pension or allowance payable under a repealed Act by virtue of an appointment under that regulation; or
  - (c) the Commission was exercising the powers of trustee in respect of a pension or allowance payable under a repealed Act by virtue of having assumed the office of trustee under that regulation (including under that regulation in its application by virtue of subsection 3(2), (3), (4) or (5) of the *Repatriation Amendment Act 1982*);

on and after that date, payment of that pension or allowance shall continue to be made to that person, and that person or the Commission shall continue to exercise the powers of trustee in respect of that pension or allowance, as the case may be, as if the authorisation, appointment or assumption of office had been

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effected under section 202 of the Veterans' Entitlements Act, and all moneys and investments held by the person or Commission as trustee immediately before the commencing date shall continue to be held by that person or the Commission as trustee and to be so held upon the trusts set out in section 202 of the Veterans' Entitlements Act.

- (2) Where the Commission held, immediately before the commencing date, any moneys or property in respect of pension payable to a person that had been retained by it under section 49 of the *Repatriation Act 1920* as in force immediately before 3 May 1982, the Commission shall:
- (a) upon proof being furnished to it of the recovery of the person from his or her affliction, pay to the person; or
  - (b) upon the death of the person before an amount has been paid to the person under paragraph (a), pay to:
    - (i) the legal personal representative of the deceased person; or
    - (ii) if there is no legal personal representative of the deceased person and the Commission is satisfied that application will not be made for probate of the will or letters of administration of the estate of the deceased person—the person whom the Commission determines to be best entitled to receive it;
- an amount equal to the amount applied by it in relation to the person for the purpose specified in paragraph 49(2)(c) of that Act as so in force.
- (3) In this section, a reference to regulation 9 of the Repatriation Regulations shall be read as including:
- (a) a reference to that regulation in its application by virtue of subsection 3(3) of this Act;
  - (b) a reference to regulation 8 of the Repatriation (Far East Strategic Reserve) Regulations; and
  - (c) a reference to regulation 8 of the Repatriation (Far East Strategic Reserve) Regulations.

**55 Recovery of overpayments**

- (1) Subject to subsection (2) of this section, section 205 of the Veterans' Entitlements Act extends to and in relation to a false statement or representation that was made, an omission that occurred, a pension or allowance that became payable, or became payable at a higher rate, or an amount that was paid before the commencing date, and, for the purpose of its application accordingly:
  - (a) references in that section to the Veterans' Entitlements Act shall be read as including references to the repealed Acts; and
  - (b) references in that section to the Regulations shall be read as including references to regulations under a repealed Act.
- (2) Subsection (1) does not authorise the recovery of an amount under the Veterans' Entitlements Act and also under a repealed Act.

**56 Arrangements with other countries**

The repeals effected by subsection 3(1) of the Veterans' Entitlements Act do not affect the continued operation, on and after the commencing date, of any arrangements with the Government of another country entered into in pursuance of the Repatriation Act and in force immediately before the commencing date, and any such arrangements have effect according to their tenor, but only to the extent to which they are not inconsistent with the provisions of the Veterans' Entitlements Act, on and after that date as if they were arrangements entered into under section 203 of the Veterans' Entitlements Act, but may be varied or terminated by further arrangements entered into under that section.

**57 Pension payable to person suffering from mental incapacity**

Notwithstanding the repeals effected by subsection 3(1) of the Veterans' Entitlements Act, subsections 3(2), (3), (4), (5), (6) and (8) of the *Repatriation Amendment Act 1982* continue to apply to and in relation to moneys or investments held by the Commission to which those subsections applied immediately before the commencing date.

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**58 Local Committees**

- (1) Subject to this section, sections 110, 110A and 115 of the Repatriation Act, and Part X of the Repatriation Regulations continue in force, notwithstanding the repeals effected to subsection 3(1) of the Veterans' Entitlements Act, in relation to a Local Committee established under section 110 of the Repatriation Act that was in existence immediately before the commencing date.
- (2) A Local Committee to which subsection (1) applies does not, on or after the commencing date, have power to raise funds for the district for which it was established.
- (3) The power to make regulations under the Veterans' Entitlements Act extends to making regulations, not inconsistent with sections 110, 110A and 115 of the Repatriation Act, amending Part X of the Repatriation Regulations in their application by virtue of subsection (1) of this section and, where any such regulations are made, Part X of the Repatriation Regulations has effect as so amended.
- (4) Subsection (1) ceases to apply in relation to a Local Committee when the Committee ceases to have any funds under its control and the books and accounts of the Committee relating to those funds have been audited as required by section 115 of the Repatriation Act.
- (5) In subsection (3), the reference to the amendment of Part X of the Repatriation Regulations shall be read as including a reference to:
  - (a) the repeal of a regulation included in that Part, either with or without the substitution of another regulation in its place;
  - (b) the omission of a part of a regulation included in that Part, either with or without the substitution of another provision in its place; and
  - (c) the insertion of a new provision in that Part.

## **Part V—Consequential amendments of Acts and Regulations**

### **59 Amendments of Acts**

The Acts specified in the Schedule are amended as set out in that Schedule.

### **60 Income Tax Regulations**

- (1) Regulation 54A of the Income Tax Regulations is amended by omitting subparagraphs (b)(i) to (vi) (inclusive) of the definition of ***prescribed non-resident*** in subregulation (1) and substituting the following subparagraphs:
  - “(i) the *Veterans’ Entitlements Act 1986*;
  - (ii) subsection 4(6) of the *Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;
  - (iii) the *Social Security Act 1947*; or
  - (iv) the *Tuberculosis Act 1948*.”
- (2) The amendment of the Income Tax Regulations effected by subsection (1) does not prevent the amendment or repeal, by regulations, of regulation 54A of the Income Tax Regulations as amended by subsection (1).
- (3) The amendment of the Income Tax Regulations effected by subsection (1) applies in relation to the year of income commencing on 1 July 1986, and all subsequent years of income.
- (4) The Income Tax Regulations apply in relation to the year of income that commenced on 1 July 1985 as if the amendment referred to in subsection (3) had not been made but, in the definition of ***prescribed non-resident*** in subregulation 54A(1), the following subparagraphs were inserted after subparagraph (b)(iv):
  - “(iva) the *Veterans’ Entitlements Act 1986*;

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(ivb) subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

## **Part VI—Transitional provisions relating to consequential amendments**

### **61 Appropriation—transitional**

For the purpose of the operation, on and after the commencing date, of section 199 of the Veterans' Entitlements Act:

- (a) instruments may be made under subsection 32(1) of the *Audit Act 1901*;
- (b) certificates may be given under subsection 32(2) of that Act; and
- (c) warrants may be issued under subsection 32(3) of that Act; on or after the day on which this Act receives the Royal Assent as if the Veterans Entitlements Act had come into operation on that last-mentioned day.

### **62 Income Tax (Rates) Act**

- (1) The amendment of the *Income Tax (Rates) Act 1982* effected by the Schedule applies in relation to the year of income commencing on 1 July 1986, and all subsequent years of income.
- (2) The *Income Tax (Rates) Act 1982* applies in relation to the year of income and commenced on 1 July 1985 as if the amendment referred to in subsection (1) of this section had not been made but, in the definition of **prescribed non-resident** in subsection 3(1), the following subparagraphs were inserted after subparagraph (b)(iv):
  - “(iva) the Veterans' Entitlements Act 1986;
  - (ivb) subsection 4(6) of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986;”.

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**63 Savings—Compensation (Commonwealth Government Employees Act)**

Section 119A of the *Compensation (Commonwealth Government Employees) Act 1971*, as amended by this Act, applies to and in relation to an amount that became recoverable under subsection (1) of that section before the commencing date as if:

- (a) the references in paragraph (2)(a) to the *Veterans' Entitlements Act 1986* included references to the *Repatriation Act 1920*;
- (b) the reference in paragraph (2)(c) to Part IV of the *Veterans' Entitlements Act 1986* included a reference to "Division 10 of Part III of the *Repatriation Act 1920*"; and
- (c) the reference in paragraph (2)(d) to section 74 of the *Veterans' Entitlements Act 1986* included a reference to section 107R of the *Repatriation Act 1920*.

**64 Transitional—Australian mariners**

- (1) Where, under the *Seamen's War Pensions and Allowances Act 1940*:
  - (a) a pension has been granted to a person as an Australian mariner before the commencing date in respect of the incapacity of the person;
  - (b) a gratuity under Schedule 5 to that Act has been paid, or has become payable, to a person as an Australian mariner before the commencing date;
  - (c) a lump sum payment has been made, or has become payable, under subsection 23(3) of that Act to a person as an Australian mariner before the commencing date; or
  - (d) a pension has been granted before the commencing date, in respect of the death of a person, to a dependant of the person, on the basis that the person had been an Australian mariner;then, for all purposes of the *Seamen's War Pensions and Allowances Act 1940* on and after the commencing date, that person shall be taken to be and have been an Australian mariner.

- (2) Subject to subsection (3) of this section, subsection 15(1) of the *Seamen's War Pensions and Allowances Act 1940* as amended by this Act does not apply to a determination of the degree of incapacity of an Australian mariner made before 1 July 1986.
- (3) Where, on or after the commencing date and before 1 July 1986, the Commission, a Pensions Committee, the Board or the Administrative Appeals Tribunal is making a determination of the degree of incapacity of an Australian mariner as a direct result of having sustained a war injury:
- (a) in the case of a pilot—while on pilot duty; or
  - (b) in every other case—in the course of employment as an Australian mariner;
- it shall make its determination having regard to the material before it and, if it is of the opinion that the material before it is sufficient to enable it to do so, it may make its decision according to the provisions of the Guide to the Assessment of Rates of Veterans' Pensions as from time to time approved and in force under section 29 of the Veterans' Entitlements Act.

### **65 Pensions-re-marriage or marriage of widow**

- (1) Where:
- (a) a person, being the widow of a deceased Australian mariner, has re-married or married after 28 May 1984 and before the commencing date; and
  - (b) the person was, immediately before her re-marriage or marriage, in receipt of a pension under the *Seamen's War Pensions and Allowances Act 1940* as a dependant of the mariner;
- notwithstanding the provisions of that Act, the pension, and any domestic allowance payable to her under regulation 37 of the Seamen's War Pensions and Pensions—re-marriage or marriage of widow to her by reason of her re-marriage or marriage, and, subject to subsection (2) of this section, instalments of that pension, and of that allowance (if payable), shall be paid to her:
- (a) under the *Seamen's War Pensions and Allowances Act 1940* and under the Seamen's War Pensions and Allowances

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- Regulations (if applicable), as in force before the commencing date, in respect of the period commencing on the date of her re-marriage or marriage and ending on the date immediately before the commencing date; and
- (b) under the *Seamen's War Pensions and Allowances Act 1940*, as amended by this Act, and under the Seamen's War Pensions and Allowances Regulations (if Pensions-re-marriage or marriage of widow
- (2) Where instalments of pension become payable to a person by reason of the application of subsection (1):
- (a) if the person has been paid a gratuity before the commencing date under section 28A of the *Seamen's War Pensions and Allowances Act 1940*—an amount equal to the amount of that gratuity shall be deducted from the instalments of pension that so become payable;
- (b) if the person has not been paid a gratuity under section 28A of the *Seamen's War Pensions and Allowances Act 1940*—that gratuity shall be deemed not to be payable to the person; and
- (c) subsection 55A(2) of the *Seamen's War Pensions and Allowances Act 1940* applies as if the pension that is to be deemed by subsection (1) not to have ceased to be payable were a new pension that became payable to the person under that Act upon the commencing date in respect of the period commencing on the date of the marriage or re-marriage and ending immediately before the commencing date.
- (3) Where:
- (a) a person, being the widow of a deceased Australian mariner, makes a claim for a pension as a dependant of the mariner, or for a gratuity under section 28A of the *Seamen's War Pensions and Allowances Act 1940*, within 12 months after her re-marriage or marriage; and
- (b) a pension would have been granted to her if her claim had been determined before her marriage or re-marriage;

the person shall be deemed, for the purposes of subsection (1) of this section, to have been in receipt of that pension immediately before her re-marriage or marriage.

(4) In this section:

- (a) ***Australian mariner*** has the same meaning as it has in the *Seamen's War Pensions and Allowances Act 1940*; and
- (b) ***widow*** has the same meaning as it has in the *Seamen's War Pensions and Allowances Act 1940*, and includes a de facto wife within the meaning of that Act.

## Schedule

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### *Air Accidents (Commonwealth Government Liability) Act 1963*

#### **Subsection 6(2):**

Omit “the *Repatriation Act 1920* (other than Division 10 of Part III), the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Repatriation (Special Overseas Service) Act 1962*”, substitute “the *Veterans’ Entitlements Act 1986* (other than Part IV)”.

#### **Paragraph 10(2)(b):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

#### **Paragraph 10(3)(b):**

Omit the paragraph, substitute the following paragraph:

(b) section 74 of the *Veterans’ Entitlements Act 1986*;

#### **Subsection 11(3):**

Omit “the *Repatriation Act 1920* (other than Division 10 of Part III), the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Repatriation (Special Overseas Service) Act 1962*”, substitute “the *Veterans’ Entitlements Act 1986* (other than Part IV)”.

#### **Paragraph 15(2)(b):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

#### **Paragraph 15(3)(b):**

Omit the paragraph, substitute the following paragraph:

(b) section 74 of the *Veterans’ Entitlements Act 1986*;

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***Albury-Wodonga Development Act 1973*****Subsection 12(3):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

***Compensation (Commonwealth Government Employees) Act 1971*****Subsection 7(8):**

Omit “the *Repatriation Act 1920* (other than Division 10 of Part III), the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962*, the *Interim Forces Benefits Act 1947*”, substitute “the *Veterans’ Entitlements Act 1986* (other than Part IV)”.

**Paragraph 52(4)(da):**

Omit “Division 10 of Part III of the *Repatriation Act 1920*”, substitute “Part IV of the *Veterans’ Entitlements Act 1986*”.

**Subsection 98(1):**

Omit “the *Repatriation Act 1920* (other than Division 10 of Part III), the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962*, the *Interim Forces Benefits Act 1947*”, substitute “the *Veterans’ Entitlements Act 1986* (other than Part IV)”.

**Subsection 98(2):**

Omit “the *Repatriation Act 1920* (other than Division 10 of Part III), the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962*, the *Interim Forces Benefits Act 1947*”, substitute “the *Veterans’ Entitlements Act 1986* (other than Part IV)”.

**Subsection 98(3):**

Omit “the *Repatriation Act 1920*, the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962*, the *Interim Forces Benefits Act 1947*”, substitute “the *Veterans’ Entitlements Act 1986*”.

**Subsection 98A(1):**

Omit “under Division 10 of Part III of the *Repatriation Act 1920*”, substitute “for the purposes of Part IV of the *Veterans’ Entitlements Act 1986*”.

**Subsection 99(10):**

Omit “section 107T of the *Repatriation Act 1920*”, substitute “section 76 of the *Veterans’ Entitlements Act 1986*”.

**Subsection 100(7):**

Omit “section 107T of the *Repatriation Act 1920*”, substitute “section 76 of the *Veterans’ Entitlements Act 1986*”.

**Subsection 102(6):**

Omit “section 107T of the *Repatriation Act 1920*”, substitute “section 76 of the *Veterans’ Entitlements Act 1986*”.

**Paragraph 119A(1)(a):**

- (a) Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.
- (b) Omit “Division 10 of Part III”, substitute “Part IV”.

**Paragraph 119A(1)(b):**

Omit “section 107R”, substitute “section 74”.

**Paragraph 119A(2)(a):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

**Paragraph 119A(2)(c):**

Omit “Division 10 of Part III”, substitute “Part IV”.

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**Paragraph 119A(2)(d):**

Omit “section 107R”, substitute “section 74”.

***Defence Force Discipline Act 1982*****Paragraph 3(7)(c):**

Omit “Division 10 of Part III of the *Repatriation Act 1920*”, substitute “Part IV of the *Veterans’ Entitlements Act 1986*”.

***Defence Service Homes Act 1918*****Subsection 4(1) (definition of *Australian soldier*):**

Omit paragraph (g) of the definition, substitute the following paragraph:

- (g) a person who, as a member of the Defence Force, rendered continuous full-time service outside Australia:
  - (i) as a member of a unit of the Defence Force that was allotted for duty; or
  - (ii) while the person was allotted for duty;
    - in an operational area described in item 4, 5, 6, 7 or 8 in Schedule 2 to the *Veterans’ Entitlements Act 1986* during the period specified in that item;

**Paragraph 4(2)(a):**

Omit “the date of commencement of the *Repatriation (Far East Strategic Reserve) Act 1956*”, substitute “1 September 1957”.

**Paragraph 4(2)(b):**

Omit “after the commencement of the *Repatriation (Far East Strategic Reserve) Act 1956* and before the commencement of the *Repatriation (Special Overseas Service) Act 1962*”, substitute “after 1 September 1957 and before 28 May 1963”.

**Paragraph 4(3)(a):**

Omit the paragraph, substitute the following paragraph:

- (a) a person described in paragraph (g) of the definition of *Australian soldier* in subsection 4(1); or

**Subsection 20(4):**

Omit “who is a person entitled to the special rate of pension payable under the first paragraph of the Second Schedule of the *Repatriation Act 1920–1973*”, substitute “who is in receipt of, or is eligible to receive, a pension under Part II of the *Veterans’ Entitlements Act 1986* and is a person to whom section 24 of that Act applies”.

***Health Insurance Act 1973***

**Paragraph 3(10)(b):**

Omit the paragraph, substitute the following paragraph:

- (b) a service pension, a wife’s service pension or a carer’s service pension under the *Veterans’ Entitlements Act 1986*;
- or

**Paragraph 5B(12) (definition of *income*):**

Omit paragraph (b), substitute the following definition:

- (b) a pension payable under the *Veterans’ Entitlements Act 1986*;

***Income Tax (Rates) Act 1982***

**Subsection 3(1) (definition of *prescribed non-resident*):**

Omit subparagraphs (b)(i) to (vi) (inclusive), substitute the following subparagraphs:

- (i) the *Veterans’ Entitlements Act 1986*;
- (ii) subsection 4(6) of the *Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;
- (iii) the *Social Security Act 1947*; or
- (iv) the *Tuberculosis Act 1948*;

***National Health Act 1953***

**Subsection 4(1) (definition of *pensioner*):**

Omit paragraph (b), substitute the following paragraph:

- (b) a person to whom, or in respect of whom, there is being paid a service pension, a wife’s service pension or a carer’s

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service pension under Part III of the *Veterans' Entitlements Act 1986*, other than such a person who is a prescribed person within the meaning of section 82 of that Act; or

**Subsection 4(1) (definition of *Repatriation nursing home patient*):**

Omit the definition, substitute the following definition:

*Repatriation nursing home patient* means a patient who is receiving nursing home care in an approved nursing home in accordance with arrangements entered into:

- (a) under paragraph 89(1)(b) or (c) of the *Veterans' Entitlements Act 1986*; or
- (b) in pursuance of regulations in force under the *Seamen's War Pensions and Allowances Act 1940*;

**Paragraph 4(3)(b):**

Omit the paragraph, substitute the following paragraph:

- (b) a service pension, a wife's service pension or a carer's service pension under the *Veterans' Entitlements Act 1986*;  
or

**Paragraph 4AA(11)(b):**

Omit "the *Repatriation Act 1920*", substitute "the *Veterans' Entitlements Act 1986*".

**Subsection 84(1) (definition of *concessional beneficiary*):**

Omit paragraph (b), substitute the following paragraph:

- (b) a person to whom, or in respect of whom, there is being paid a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*; or

## ***Public Service Act 1922***

### **Subsection 7(1) (definition of *returned soldier*):**

Omit all words from and including “*Re-establishment and Employment Act 1945–1951*” to the end of the definition, substitute “*Re-establishment and Employment Act 1945* and any other person who, as a member of the Defence Force, rendered continuous full-time service outside Australia:

- (e) as a member of a unit of the Defence Force that was allotted for duty; or
- (f) while the person was allotted for duty; in an operational area described in item 4, 5, 6, 7 or 8 in Schedule 2 to the *Veterans’ Entitlements Act 1986* during the period specified in that item;”.

## ***Re-Establishment and Employment Act 1945***

### **Subsection 91(1) (definition of *eligible person*):**

- (a) Omit from subparagraph (b)(i) “the *Australian Soldiers’ Repatriation Act 1920–1945*”, substitute “Part II of the *Veterans’ Entitlements Act 1986*”.
- (b) Omit from subparagraph (b)(i) “war pension” (wherever occurring), substitute “pension”.

### **Subsection 101(4):**

Omit “war pension payable to a person or a dependant of that person under the *Repatriation Act 1920–1956* or of a pension payable to a person or a dependant of that person under the *Repatriation (Far East Strategic Reserve) Act 1956–1962* or under the *Repatriation (Special Overseas Service) Act 1962*”, substitute “pension payable to a person or a dependant of a person under Part II of the *Veterans’ Entitlements Act 1986*”.

## ***Sales Tax (Exemptions and Classifications) Act 1935***

### **First Schedule (item 135):**

Omit paragraphs (a) and (b), substitute the following paragraphs:

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- 
- (a) has lost a leg or both arms or has had a leg, or both arms, rendered permanently and wholly useless; or
  - (b) is in receipt of a pension under Part II of the *Veterans' Entitlements Act 1986* and is a veteran (within the meaning of that Part) to whom section 24 of that Act applies.

### ***Seamen's War Pensions and Allowances Act 1940***

#### **Subsection 3(1) (definition of *Australian mariner*):**

- (a) Omit from paragraph (aa) "or whose dependants were", substitute "or whose wife or child was".
- (b) Omit from paragraph (f) "the Minister", substitute "the Commission".

#### **Subsection 3(1) (definition of *Board*):**

Omit the definition, substitute the following definition:

***Board*** means the Veterans' Review Board continued in existence by subsection 134(1) of the *Veterans' Entitlements Act 1986*;

#### **Subsection 3(1) (definition of *de facto wife*):**

Omit the definition, substitute the following definitions:

***child*** means:

- (a) a person who has not attained the age of 16 years; or
- (b) a person who:
  - (i) has attained the age of 16 years but has not attained the age of 25 years;
  - (ii) is undertaking full-time education at a school, college or university; and
  - (iii) is not in receipt of a pension under Part III or IV, a benefit under Part IVAAA or VII or a rehabilitation allowance under Part VIII of the *Social Security Act 1947* or an allowance under section 9 of the *Tuberculosis Act 1948*;

***Commission*** means the Repatriation Commission continued in existence by subsection 179(1) of the *Veterans' Entitlements Act 1986*;

**Subsection 3(1) (definitions of *separated wife* and *separated widow*):**

Omit the definitions.

**Subsection 3(1) (definition of *the Commission*):**

Omit the definition.

**Subsection 3(1) (definition of *the present war*):**

Omit the definition, substitute the following definition:

*the present war* means the war that commenced on 3 September 1939 (including any other war in which the Crown became engaged after that date and before 3 September 1945) and is to be deemed to have ended on 28 April 1952, being the date on which the Treaty of Peace with Japan came into force;

**Subsection 3(1C):**

Omit the subsection, insert the following subsection:

(1C) In this Act:

- (a) a reference to the wife of a person shall be read as a reference:
  - (i) to a woman who is legally married to the person; or
  - (ii) if the person is a man—to a woman who is living with the person as her husband on a bona fide domestic basis although not legally married to the person, whether or not the person is legally married to another person who is still alive; and
- (b) a reference to the widow of a deceased person shall be read as a reference to a woman who was the wife of the person immediately before the person's death.

**After section 3, insert the following section in Part I:**

**3A Child of Australian mariner**

- (1) In this Act, unless the contrary intention appears, a reference to a child of an Australian mariner, or of a deceased Australian mariner, shall be read as a reference to:

- 
- (a) a child of whom the mariner is the father or mother or a child adopted by the mariner or the mariner and the mariner's spouse; or
  - (b) any other child who is, or was immediately before the death of the mariner, wholly or substantially dependent on the mariner.
- (2) For the purposes of subsection (1), where an Australian mariner is, under a law of the Commonwealth or of a State or Territory, liable to maintain a child, the child shall be deemed to be wholly or substantially dependent on that mariner.

**Section 14:**

Repeal the section.

**Section 15:**

Repeal the section, substitute the following section:

**15 Assessment of degree of incapacity**

- (1) Where the Commission or the Pensions Committee determines that an Australian mariner has become incapacitated as a direct result of having sustained a war injury:
- (a) in the case of a pilot—while on pilot duty; or
  - (b) in every other case—in the course of employment as an Australian mariner;
- the Commission, or the Pensions Committee, shall, subject to subsections (2) and (3), determine the degree of incapacity of the mariner according to the provisions of the Guide to the Assessment of Rates of Veterans' Pensions as from time to time approved and in force under section 29 of the *Veterans' Entitlements Act 1986*.
- (2) Subject to subsection (3), the degree of incapacity shall be determined as 10 per centum or a multiple of 10 per centum, but not exceeding 100 per centum.
- (3) The Commission or the Pensions Committee, as the case requires, may determine that the degree of incapacity of an Australian mariner from a war injury sustained by the mariner is less than 10 per centum (including nought per centum).

**Paragraph 17A(1)(a):**

Omit the paragraph, substitute the following paragraph:

- (a) a pension calculated under section 22A on the basis that, if the mariner had been a veteran entitled in respect of incapacity from war injury to a pension under Part II of the *Veterans' Entitlements Act 1986*, section 24 of that Act would have applied to the mariner;

**Paragraph 17A(1)(b):**

Omit "paragraph 1 of Schedule 5 to the *Repatriation Act 1920*", substitute "subsection 27(1) of the *Veterans' Entitlements Act 1986*".

**Subsection 18(2):**

Omit "the widow of an Australian mariner in the case of his death", substitute "a dependant of a deceased Australian mariner, being a person who is the widow of the mariner,".

**Subsection 18(4):**

Omit "in the case of his total incapacity is", substitute "is, if the degree of the incapacity is 100 per centum,".

**Paragraph 18(4A)(b):**

Omit the paragraph, substitute the following paragraph:

- (b) the Commission or a Pensions Committee is satisfied that, if the mariner were a veteran entitled, in respect of incapacity from war injury, to a pension under Part II of the *Veterans' Entitlements Act 1986*, section 23 of that Act would apply to the mariner;

**Subsection 18(7):**

Omit "children of an Australian mariner", substitute "dependants of a deceased Australian mariner, being dependants who are children of the mariner".

**Sections 19 and 20:**

Repeal the sections.

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**Subsection 21(1):**

After “Commission”, insert “or a Pensions Committee”.

**Subsection 21(2):**

Omit the subsection, substitute the following subsections:

(2) Where:

- (a) an Australian mariner is being paid a pension under this Act in respect of incapacity:
  - (i) from a war injury affecting the cerebro-spinal system; or
  - (ii) from a war injury that has caused a condition similar in effect or severity to an injury or disease affecting the cerebro-spinal system; and
- (b) the Commission or a Pensions Committee is of the opinion that the mariner has a need for the services of an attendant to assist the mariner;

the Commission or a Pensions Committee may grant to the mariner an allowance, called attendant allowance, at the rate of \$57.40 per fortnight, for or towards the cost of the services of an attendant to assist the mariner.

- (3) For the purposes of the application of Schedule 2 to and in relation to an Australian mariner:
  - (a) a leg, foot, hand or arm that has been rendered permanently and wholly useless shall be treated as having been amputated; and
  - (b) where an Australian mariner has lost an eye or the Commission or a Pensions Committee is of the opinion that the eyesight of an Australian mariner is so defective that the mariner has no useful sight in that eye, the mariner shall be deemed to have been blinded in that eye.
- (4) Where the Commission or a Pensions Committee makes a decision with respect to an application for an allowance under this section, section 8A applies to and in relation to the decision in like manner as it applies to and in relation to a decision relating to a prescribed matter within the meaning of that section.

**Section 22:**

Repeal the section.

**Section 22A:**

Repeal the section, substitute the following section:

**22A Special rate of pension**

Where the Commission or a Pensions Committee is satisfied that, if an Australian mariner were a veteran entitled, in respect of the incapacity from war injury sustained by the mariner, to a pension under Part II of the *Veterans' Entitlements Act 1986*, section 24, 25 or 27 of that Act would apply to the mariner, it may assess the rate at which pension under this Act is payable to the mariner at the rate that would, in its opinion, be the rate at which pension would be payable to the mariner under that Act in respect of the incapacity if the mariner were a veteran so entitled to be paid pension.

**Subsection 23(1):**

Omit the subsection, substitute the following subsection:

- (1) Where the degree of the incapacity of an Australian mariner from a war injury is determined under section 15 at 10 per centum or more but not more than 90 per centum, the rate of pension payable in respect of the incapacity shall be a rate per fortnight that constitutes the same percentage of the rate specified in column 3 of Schedule 1 as the percentage so determined to be the degree of the incapacity of the mariner from war injury.

**Subsection 23(2):**

Omit "of less than 20%", substitute "assessed at 10 per centum".

**Subsection 23(3):**

Omit "of less than 20%", substitute "assessed at 10 per centum".

**After subsection 23(3):**

Insert the following subsection:

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- (3A) Where the degree of incapacity of an Australian mariner from a war injury sustained by the mariner is assessed at less than 10 per centum (including nought per centum), the Commission or the Pensions Committee, as the case requires, shall not assess a rate of pension, but shall refuse to grant a pension to the mariner on the ground that the extent of the incapacity of the mariner from war injury sustained by the mariner is insufficient to justify the grant of a pension.

**Subsection 26(2):**

Omit “member”, substitute “mariner”.

**Subsection 26AA(1):**

Omit “claim”, substitute “apply for”.

**Subsection 26AA(2):**

Omit “a claim”, substitute “an application”.

**Subsection 26AA(3):**

- (a) Omit “A claim”, substitute “An application”.
- (b) Omit paragraph (b), substitute the following paragraph:  
“(b) shall be accompanied by such evidence available to the applicant as the applicant considers may support the application; and”.
- (c) Omit “the claim” from paragraph (c), substitute “the application”.
- (d) Omit “his claim” from paragraph (c), substitute “the application”.

**Subsection 26AA(4):**

- (a) Omit “a claim”, substitute “an application”.
- (b) Omit “the claim”, substitute “the application”.

**Subsection 26AA(5):**

- (a) Omit “a claim” (twice occurring), substitute “an application”.
- (b) Omit “claim” (third, fourth and fifth occurring), substitute “application”.

**After section 26AA:**

Insert the following section:

**26AAA Who may make claim or application**

A claim under subsection 26(1) for a pension for an Australian mariner or for a dependant of a deceased Australian mariner, an application under subsection 26AA(1) for an increase in the rate of pension payable to an Australian mariner or an application under subsection 26AA(2) for a pension for an Australian mariner may be made:

- (a) by the mariner or dependant, as the case may be;
- (b) with the approval of the mariner or dependant, as the case may be, by another person on behalf of the mariner or dependant;
- (c) in the case of a mariner or dependant, as the case may be, who is unable, by reason of physical or mental incapacity, to approve a person to make the claim or application on his or her behalf—by another person, being a person approved by the Commission or a Pensions Committee, on behalf of the mariner or dependant; or
- (d) in the case of a dependant who is under the age of 18 years:
  - (i) by a parent or guardian of the dependant;
  - (ii) by another person approved by a parent or guardian of the dependant; or
  - (iii) if there is not a parent or guardian of the dependant alive, or willing and able to make or approve a person to make, such a claim or application on behalf of the dependant—by another person, being a person approved by the Commission or a Pensions Committee;  
on behalf of the dependant.

**Subsection 26AB(1):**

- (a) After “claimant”, insert “or applicant”.
- (b) After “claim” (wherever occurring), insert “or application”.
- (c) Omit “for a pension”.

**Subsection 26AB(2):**

Omit the subsection, substitute the following subsection:

- (2) The withdrawal of a claim or application does not prevent the claimant from subsequently making another claim under section 26, or the applicant from subsequently making another application under section 26AA.

**Subsection 26A(1):**

Omit the subsection, substitute the following subsection:

- (1) Where a claim is made for a pension under subsection 26(1), or an application is made for an increased pension under subsection 26AA(1) or for a pension under subsection 26AA(2), the Secretary shall cause an investigation to be made into the matters to which the claim or application relates.

**Subsection 26A(2):**

After “claim” (wherever occurring), insert “or application”.

**Subsection 26A(3):**

- (a) After “claim” (wherever occurring), insert “or application”.
- (b) After “claimant” (in paragraph (a)), insert “or applicant”.

**Section 28:**

Repeal the section.

**Sections 28A, 29, 30 and 31:**

Repeal the sections, substitute the following sections:

**29 Power to obtain information**

- (1) The Secretary must serve on:
  - (a) a person to whom a pension, allowance or other benefit under this Act is being paid, including a person to whom the whole or a part of such a pension, allowance or benefit is being paid for the purpose of being applied for the benefit of the pensioner;

- (b) a person whose claim or application for a pension or attendant allowance under this Act is under consideration by the Commission, a Pensions Committee, the Board or the Administrative Appeals Tribunal;
  - (c) a person who is being provided with treatment under the Regulations; or
  - (d) a person whose application to be provided with treatment under the Regulations is under consideration by the Commission;
- a notice, in writing:
- (e) requiring the person, if an event or change of circumstances specified in the notice occurs or the person becomes aware that an event or change of circumstances so specified is likely to occur, to notify the Secretary, or the officer specified in the notice, of the occurrence, or likely occurrence, of that event or change of circumstances within such period after the occurrence of that event or change of circumstances or after the person becomes aware that that event or change of circumstances is likely to occur, as the case may be, as is specified in the notice; or
  - (f) requiring the person to furnish to the Secretary, or to an officer specified in the notice, within the period specified in the notice, a statement, in accordance with a form approved by the Commission, relating to any matter specified in the notice, being a matter that might affect the payment of that pension, allowance or other pecuniary benefit under this Act or the provision of treatment under the Regulations.
- (2) An event or change of circumstances shall not be specified in a notice referred to in paragraph (1)(e) unless the occurrence of that event or change of circumstances might affect the payment of a pension, allowance or other pecuniary benefit under this Act or the provision of treatment under the Regulations.
  - (3) The period for compliance specified in a notice in accordance with subsection (1) shall not be less than 14 days.

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- (4) A person to whom a notice has been given in accordance with subsection (1) shall not refuse or fail to comply with the notice to the extent that the person is capable of complying with it.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (5) A person to whom a notice has been given in accordance with subsection (1) shall not, in purported compliance with the notice, knowingly furnish information that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

### **30 Secretary may obtain information**

- (1) Where the Secretary has reason to believe that a person is capable of furnishing information, producing documents or giving evidence in relation to any matter that might affect, or might have affected, the grant or payment of a pension, allowance or other pecuniary benefit under this Act to that person or any other person, or the provision of treatment under the Regulations for that person or any other person, the Secretary may, by notice, in writing, served on that person, require that person:

- (a) to furnish, within the period and in the manner specified in the notice (being a period that ends not less than 14 days after the date of service of the notice), any such information specified in the notice to the officer specified in the notice;
- (b) to produce, within the period and in the manner specified in the notice (being a period that ends not less than 14 days after the date of service of the notice), any such documents specified in the notice to the officer specified in the notice; or
- (c) to appear on a date, and at a time and place, specified in the notice (being a date not less than 14 days after the date of service of the notice), before the officer specified in the notice, to give any such evidence, either orally or in writing, and to produce any such documents specified in the notice.

- (2) The officer specified in a notice given in pursuance of paragraph (1)(c) may require any evidence that is given to the officer in compliance with the notice to be given on oath or affirmation and, for that purpose, the officer may administer an oath or affirmation.

- (3) The oath or affirmation to be taken by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.
- (4) A person shall not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with it.
- Penalty: \$1,000 or imprisonment for 6 months, or both.
- (5) A person shall not, in purported compliance with a notice under subsection (1), knowingly furnish information or give evidence that is false or misleading in a material particular.
- Penalty: \$2,000 or imprisonment for 12 months, or both.
- (6) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.
- (7) This section does not require a person to furnish information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

### **31 Self-incrimination**

A person is not excused from furnishing information, producing a document or giving evidence in pursuance of a notice under section 30 on the ground that the information or evidence, or the production of the document, may tend to incriminate the person, but any information furnished, evidence given or document produced in pursuance of a notice under section 30 is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection 30(4) or (5).

### **32 Furnishing of information**

Nothing in a law of a State or Territory shall operate so as to prevent a person from furnishing any information, producing any documents or giving any evidence to an officer for the purposes of this Act.

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### 32A Interpretation

In sections 30 to 32 (inclusive), unless the contrary intention appears:

*officer* means a person performing duties, or exercising powers or functions, under, or in relation to, this Act;

*person* includes an unincorporated body.”

### Section 34 (definition of *reviewable decision*):

(a) Omit paragraph (a), substitute the following paragraph:

“(a) in relation to the Commission—means a decision of the Commission under section 6, 21 or 22A, subsection 23(3) or section 53A or 55; and”.

(b) Insert “means” in paragraph (b) after “Committee”.

### Subsection 35(3):

Insert “, or cancelling or suspending a pension,” after “pension” (second occurring).

### Section 37:

Repeal the section, substitute the following section:

### 37 Application of certain provisions of Part IX of Veterans’ Entitlements Act

- (1) Part IX (other than section 135, subsections 136(3) and 138(1), section 139 and paragraph 140(3)(b)) of the *Veterans’ Entitlements Act 1986* applies to, and in relation to, an application under section 35 of this Act as if the application were an application under Part IX of the *Veterans’ Entitlements Act 1986*.
- (2) For the purpose of the application, by virtue of subsection (1), of the provisions of Part IX of the *Veterans’ Entitlements Act 1986*:
  - (a) a reference in those provisions to the Commission shall be read as including a reference to a Pensions Committee;
  - (b) a reference in those provisions to a pension shall be read as a reference to a pension under this Act;

- (c) a reference in those provisions to a decision of a Pensions Committee (by virtue of the application of paragraph (a) of this subsection) shall be read as including a reference to a determination of a Pensions Committee and an assessment made by a Pensions Committee;
- (d) a reference in those provisions to section 135, or to a subsection of that section, of the *Veterans' Entitlements Act 1986* shall be read as a reference to section 35 of this Act, or to the corresponding subsection of section 35 of this Act, as the case may be;
- (e) a reference in those provisions to a review under section 31 of the *Veterans' Entitlements Act 1986* shall be read as a reference to a review under section 55 of this Act;
- (f) a reference in those provisions to an application under subsection 15(1) or (2) of the *Veterans' Entitlements Act 1986* shall be read as a reference to an application under subsection 26AA(1) or (2) of this Act;
- (g) a reference in those provisions to a decision of a kind referred to in paragraph 135(5)(a), (b), (c) or (d) of the *Veterans' Entitlements Act 1986* shall be read as a reference to a decision:
  - (i) assessing a rate of pension or increased rate of pension;
  - (ii) refusing to grant a pension on the ground that the extent of the incapacity of the Australian mariner is insufficient to justify the grant of a pension;
  - (iii) refusing to increase the rate of a pension; or
  - (iv) reducing the rate of a pension;
- (h) a reference in those provisions to Part IX of the *Veterans' Entitlements Act 1986* shall be read as a reference to the provisions of Part IX of that Act that apply to an application under section 35 of this Act by virtue of subsection (1) of this section;
- (j) a reference in those provisions to an application under Part IX of the *Veterans' Entitlements Act 1986* shall be read as a reference to an application under section 35 of this Act; and
- (k) a reference in those provisions to a veteran shall be read as a reference to an Australian mariner.

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**Section 40:**

Repeal the section, substitute the following section:

**40 Application of certain provisions of Part X of the Veterans' Entitlements Act**

- (1) Part X (other than sections 174, 175 and 176 and subsection 177(5)) of the *Veterans' Entitlements Act 1986* applies to, and in relation to, an application under section 39 of this Act as if the application were an application under Part X of the *Veterans' Entitlements Act 1986*.
- (2) For the purpose of the application, by virtue of subsection (1), of the provisions of Part X of the *Veterans' Entitlements Act 1986*:
  - (a) a reference in those provisions to a reviewable decision shall be read as a reference to a reviewable decision as defined by section 38 of this Act;
  - (b) a reference in those provisions to a pension shall be read as a reference to a pension under this Act;
  - (c) a reference in those provisions to the Commission shall be read as including a reference to a Pensions Committee;
  - (d) a reference in those provisions to an application made under subsection 175(1) of the *Veterans' Entitlements Act 1986* shall be read as a reference to an application made under section 39 of this Act;
  - (e) a reference in those provisions to a claim in accordance with section 14 of the *Veterans' Entitlements Act 1986* shall be read as a reference to a claim in accordance with subsection 26(1) of this Act;
  - (f) a reference in those provisions to an application in accordance with section 15 of the *Veterans' Entitlements Act 1986* shall be read as a reference to an application in accordance with section 26AA of this Act; and
  - (g) a reference to a decision of a kind described in subsection 175(7) or (8) of the *Veterans' Entitlements Act 1986* shall be read as a reference to a decision of a kind described in subsection 41(7) of this Act.

**Section 41:**

Add at the end the following subsection:

- (7) Notwithstanding subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, where the Administrative Appeals Tribunal sets aside a decision under subsection 55(5A) to cancel or suspend, or reduce the rate of, a pension or a decision under subsection 55(5C) to increase the rate of a pension, being:
- (a) a decision of the Commission or a Pensions Committee that has been affirmed by the Board; or
  - (b) a decision of the Board that was made in substitution for a decision of the Commission or a Pensions Committee;
- the Administrative Appeals Tribunal need not make another decision in substitution for the decision so set aside.

**Subsections 49(2) and (3):**

Omit the subsections.

**Sections 51, 52 and 53:**

Repeal the sections.

**Sections 54 and 54A:**

Repeal the sections, substitute the following section:

**54 Payment of pensions**

- (1) Subject to subsection (2), a pension shall be paid to the pensioner.
- (2) The Commission may, if it thinks it proper to do so in the circumstances of a particular case:
  - (a) approve payment of a pension to such person, other than the pensioner, and for such period, as the Commission, from time to time, determines, to be applied by that person for the benefit of the pensioner; or
  - (b) approve:
    - (i) payment to that pensioner of such part of the pension as the Commission, from time to time, determines; and
    - (ii) payment to such other person as the Commission so determines for such period as the Commission so

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determines of the balance of the pension to be applied by that other person for the benefit of the pensioner.

- (3) Where a pension has been granted to a person, a payment of that pension made to another person in accordance with paragraph (2)(a), or a payment of a part of that pension made to another person in accordance with subparagraph (2)(b)(ii), shall, for all purposes, be deemed to be a payment of the pension or a payment of that part of the pension, as the case may be, to the pensioner, and neither the Commonwealth nor the Commission is bound to oversee the application of the payment by the person to whom it is paid.
- (4) A pension shall be paid in such manner as the Commission determines.
- (5) Where, by reason of a public holiday or a bank holiday, or for any other reason, an instalment of, or the amount of, a pension cannot be paid on the day on which it would normally be paid, the instalment or amount of the pension may be paid on an earlier day.
- (6) In this section, *pension* means a pension, allowance or other pecuniary benefit payable under this Act or the Regulations, and includes an instalment of such a pension, allowance or other benefit.

**Subsection 55(1):**

Omit the subsection, substitute the following subsection:

- (1) Where:
  - (a) the time has not expired for making application to the Board under section 35 for a review of a decision of the Commission or a Pensions Committee with respect to:
    - (i) a claim for a pension in accordance with section 26; or
    - (ii) an application for an increased pension, or for a pension, in accordance with section 26AA; or

- (b) an application has been duly made to the Board under section 35 for a review of such a decision of the Commission or a Pensions Committee but has not been determined by the Board;

the Commission may, in its discretion, review that decision and, if it varies that decision, it may approve as the date as from which the variation shall operate a date not earlier than the earliest date as from which the decision as so varied could have operated if it had been made by the Board, in substitution for the original decision, upon a review of the original decision.

**Subsection 55(2):**

Insert “and, with the consent of the applicant, vary that decision” after “review that decision”.

**Subsection 55(5):**

- (a) Omit “or (2)”.
- (b) Omit “or (2) (a)”.
- (c) Omit “or Administrative Appeals Tribunal, as the case may be,”.

**After subsection 55(5):**

Insert the following subsections:

(5A) Where the Commission is satisfied that:

- (a) having regard to any matter that affects the payment of a pension, being a matter that was not before the Commission, a Pensions Committee, the Board or the Administrative Appeals Tribunal, as the case requires, where the decision to grant the pension or a decision to vary the rate of the pension, was made; or
- (b) by reason of a refusal or failure of any person to comply with a provision of this Act;

a pension should be cancelled or suspended, or the rate of a pension is higher than it should be, the Commission may, by determination in writing, cancel or suspend, or decrease the rate of, the pension with effect, subject to subsection (5B), from the date of the determination or such later date as is specified in the determination.

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- (5B) Where a determination is made under subsection (5A):
- (a) by reason of the refusal or failure of a person to comply with a provision of this Act other than:
    - (i) subsection 29(4) in relation to a notice under paragraph 29(1)(f); or
    - (ii) subsection 30(4); or
  - (b) by reason that an amount has been paid by way of pension that, but for the false statement or misrepresentation of any person, would not have been paid;
- a date earlier than the date of the determination may be specified in the determination as the date as from which the cancellation, suspension or decrease, as the case may be, is to take effect.
- (5C) Where the Commission is satisfied that, having regard to any matter that affects the payment of a pension, the rate of the pension is less than it should be, the Commission may, by determination in writing, increase the rate of the pension with effect from the date of the determination, or such earlier date (not being a date more than 3 months before the date of the determination), or later date, as is specified in the determination.

**Subsections 55(7), (8), (9) and (10):**

Omit the subsections, substitute the following subsections:

- (7) A decision of the Commission upon its review under this section of a decision in relation to a pension is not subject to review by the Board or the Administrative Appeals Tribunal unless the Commission cancels, suspends or varies the decision reviewed by the Commission.
- (8) This section applies to and in relation to a decision made before the commencement of this subsection but does not apply to or in relation to a decision of the Board referred to in subsection 154(1) of the *Veterans' Entitlements Act 1986*, in its application to pensions under this Act, that is binding on the Commission by reason that the period specified in that subsection has not expired.

**Section 57A:**

Omit “*Repatriation Act 1920*” (wherever occurring), substitute “*Veterans’ Entitlements Act 1986*”.

**Section 58:**

Repeal the section, substitute the following sections:

**58 Offences**

- (1) A person shall not:
  - (a) make, either orally or in writing, a false or misleading statement:
    - (i) in connection with, or in support of, a claim or application made under this Act, or the Regulations, by that person or by another person for a pension, allowance or other benefit or for an increased pension, allowance or other benefit;
    - (ii) to deceive an officer doing duty in relation to this Act; or
    - (iii) to affect the rate of a pension, allowance or other pecuniary benefit payable under this Act or the Regulations;
  - (b) obtain a payment of a pension, allowance or other pecuniary benefit under this Act or the Regulations, or an instalment of such a pension, allowance or other benefit, that is not payable;
  - (c) obtain payment of a pension, allowance or other pecuniary benefit under this Act or the Regulations, or an instalment of such a pension, allowance or other benefit, by means of a false or misleading statement or of impersonation or a fraudulent device; or
  - (e) make or present to the Commission or an officer, a statement or document that is false in a material particular.
- (2) A person shall not forge the signature of another person on a claim or application under this Act or the Regulations for a pension, allowance or other benefit, or for an increased pension, allowance or other pecuniary benefit, or on any other document connected with, or in support of, such a claim or application, or connected

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with payment of a pension, allowance or other pecuniary benefit under this Act or the Regulations, or the provision of any other benefit under the Regulations.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (3) A person shall not sign his or her name on a document intended to be presented to an officer for the purposes of this Act or the Regulations as his or her signature to the document unless the document has been completely filled in so as to be ready to be presented to an officer without further addition.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- “(4) A person to whom assistance by way of a gift or loan of goods has been granted under the Regulations for any purpose shall not, without having first obtained the consent of the Commission:

- (a) use the goods for any other purpose; or
- (b) sell or otherwise dispose of, or pledge, mortgage or deposit by way of security any of those goods.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (5) An offence against subsection (1) is an indictable offence and, subject to subsection (7), is punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.
- (6) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (7) Where, in accordance with subsection (6), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

**58AA Multiple offences**

- (1) Charges against the same person for any number of offences against section 58, may be joined in one complaint or information if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.
- (2) Where 2 or more charges are included in the same complaint or information, particulars of each offence charged shall be set out in a separate paragraph.
- (3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.
- (4) If a person is convicted of more than one offence against section 58, the court may, if it thinks fit, impose one penalty in respect of all the offences of which the person is convicted, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.

**58AB Time for prosecuting offences**

- (1) Subject to subsection (2), proceedings for an offence against section 58 may be commenced at any time within 3 years after the commission of the offence.
- (2) Proceedings for an offence against subsection (1) or (2) may be commenced at any time within 5 years after the commission of the offence.
- (3) An offence against this Act shall not be prosecuted without the written consent of the Minister, the Secretary, the Director of Public Prosecutions or a person authorised in writing by the Secretary or the Director of Public Prosecutions to consent to prosecutions for offences against this Act.

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**58AC Order for repayment of pension, &c.**

- (1) Where:
- (a) a person is convicted of an offence against subsection 58(1) or (2); or
  - (b) a person is charged before a court with an offence against subsection 58(1) or (2) but the court, being satisfied that the charge has been proved, dismisses the charge or discharges the person without proceeding to a conviction, the court may (in the case of a person convicted of the offence, in addition to imposing a penalty in respect of the offence) order the person to repay to the Commonwealth an amount equal to the amount paid by way of pension, allowance or other pecuniary benefit under this Act or the Regulations in consequence of the act, failure or omission in respect of which the person was charged with the offence.
- (2) For the purposes of subsection (1), a certificate, under the hand of the Secretary, that an amount specified in the certificate is the amount that has been paid to a person by way of pension, allowance or other pecuniary benefit in consequence of any act, failure or omission specified in the certificate is prima facie evidence of the matters specified in the certificate.

**Paragraph 59(1)(e):**

Omit “Schedule 5 of the *Repatriation Act 1920*”, substitute “section 27 of the *Veterans’ Entitlements Act 1986*”.

**Schedule 1:**

Omit from the heading to column 1 “to widow on death of Australian mariner”, substitute “to a dependant of a deceased Australian mariner, being the widow of the mariner”.

Schedule

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**Schedule 2:**

Repeal the Schedule, substitute the following Schedule:

**Schedule 2—Attendant allowance**

Section 21

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Column 1	Column 2
Description of disability	Rate per fortnight of Attendant allowance
	\$
1. Blinded in both eyes	53.80
2. Blinded in both eyes together with total loss of speech or total deafness	107.60
3. Both arms amputated	107.60
4. Both legs amputated and one arm amputated	53.80
5. Both legs amputated at the hip or one leg amputated at the hip and the other leg amputated in the upper third	53.80

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**Schedules 3 and 4:**

Repeal the Schedules.

***Social Security Act 1947***

**Subsection 6(1) (definition of *income*):**

- (a) Omit paragraph (q), substitute the following paragraph:  
“(q) a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*.”.
- (b) Omit from subparagraph (r)(ii) “member of the Forces” (wherever occurring), substitute “veteran”.
- (c) Omit from paragraph (s) “member of the Forces”, substitute “veteran”.
- (d) Omit from paragraph (s) “member” (second occurring), substitute “veteran”.

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**Subsection 6(1) (definition of *member of the Forces*):**

Omit the definition.

**Subsection 6(1) (definition of *prescribed pension*):**

Omit paragraph (e), substitute the following paragraph:

- (e) a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*; or

**After the definition of *unmarried person* in subsection 6(1):**

Insert the following definition:

*veteran* means a person who is a veteran for the purposes of any of the provisions of the *Veterans' Entitlements Act 1986*;

**Subparagraph 6AC(10)(b)(i):**

Omit "a service pension under the *Repatriation Act 1920*", substitute "a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*".

**Subparagraph 6AC(10)(b)(iii):**

Omit "section 123AB of the *Repatriation Act 1920*", substitute "section 82 of the *Veterans' Entitlements Act 1986*".

**Subparagraph 6AC(11)(b)(i):**

Omit "a service pension under the *Repatriation Act 1920*", substitute "a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*".

**Subparagraph 6AC(11)(b)(iii):**

Omit "section 123AB of the *Repatriation Act 1920*", substitute "section 82 of the *Veterans' Entitlements Act 1986*".

**Subsection 6AC(13):**

Omit "a service pension under the *Repatriation Act 1920*", substitute "a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*".

**After subsection 6A(3):**

Insert the following subsection:

- (3A) The reference in paragraph (3)(b) to a service pension under the *Repatriation Act 1920* that a person has continued to receive since 1 November 1984 shall, on and after the date of commencement of the *Veterans' Entitlements Act 1986*, be read as a reference to such a pension that the person continued to receive during the period from and including 1 November 1984 to and including the day immediately before that date of commencement and that the person has continued to receive on and after that date of commencement as if that pension were a service pension, a wife's service pension or a carer's service pension, as the case requires, granted under Part III of the *Veterans' Entitlements Act 1986*.

**Paragraph 17D(1)(a):**

Omit "an allowance under section 98AA of the *Repatriation Act 1920*", substitute "remote area allowance under section 57 of the *Veterans' Entitlements Act 1986*".

**Subsection 28(1C):**

- (a) Omit "service pension under the *Repatriation Act 1920*", substitute "service pension under Part III of the *Veterans' Entitlements Act 1986*".
- (b) Omit "that subsection", substitute "paragraph 47(3)(b) of that Act".

**Subsection 28(1EA):**

Omit ", an allowance under Part VIII the annual rate of which is determined by reference to this Part or a service pension under the *Repatriation Act 1920*", substitute "or an allowance under Part VIII the annual rate of which is determined by reference to this Part".

**Subsection 28A(6):**

Omit ", or instalments of service pension under the *Repatriation Act 1920*;".

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**Paragraph 29(a):**

- (a) Omit “a service pension under the *Repatriation Act 1920*”, substitute “a service pension, a wife’s service pension or a carer’s service pension under the *Veterans’ Entitlements Act 1986*”.
- (b) Omit “the *Repatriation Act 1920*” (second occurring), substitute “the *Veterans’ Entitlements Act 1986*”.

**Paragraph 29(b):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

**Subparagraph 30A(3C)(b)(ii):**

Omit the subparagraph, substitute the following subparagraph:

- (ii) an allowance by way of rent assistance under section 55 of the *Veterans’ Entitlements Act 1986*;

**Subsection 30B(2):**

Omit “a service pension under the *Repatriation Act 1920–1958*”, substitute “a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*”.

**Subsection 31(1):**

Omit “, an invalid pensioner or a service pensioner under the *Repatriation Act 1920*”, substitute “or an invalid pensioner”.

**Subsection 31(1A):**

Omit “or a service pensioner under the *Repatriation Act 1920*”.

**Subsection 33(1):**

Omit “, an invalid pensioner or a person who is receiving a service pension under the *Repatriation Act 1920*”, substitute “or an invalid pensioner”.

**Subsection 33(2):**

Omit “, a person who is receiving a rehabilitation allowance under Part VIII or a service pensioner under the *Repatriation Act 1920*”, substitute “or a person who is receiving a rehabilitation allowance under Part VIII”.

**Subparagraph 61B(1)(b)(ii):**

Omit the paragraph, substitute the following paragraph:

- (ii) a wife’s service pension under Part III of the *Veterans’ Entitlements Act 1986*; and

**Paragraph 64(a):**

Omit “the *Repatriation Act 1920*”, substitute “the *Veterans’ Entitlements Act 1986*”.

**Section 81:**

Repeal the section, substitute the following section:

**81 Restrictions as to dual pensions**

A woman is not entitled to receive, at the same time, a pension under this Part and under Part III.

**Subsection 83AAA(1) (definition of *supporting parent*):**

Omit from paragraph (a) “, a service pension under the *Repatriation Act 1920*”.

**Subsection 83AF(1):**

Omit “a service pension under the *Repatriation Act 1920*”, substitute “a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*”.

**Paragraph 83B(3)(b):**

Omit “the *Repatriation Act 1920*”, substitute “section 38 or 39 of the *Veterans’ Entitlements Act 1986*”.

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**Paragraph 83CA(1)(b):**

Omit “a service pension under the *Repatriation Act 1920*”, substitute “a service pension or a wife’s service pension under Part III of the *Veterans’ Entitlements Act 1986*”.

**Subsection 83CA(6) (definition of *income*):**

Omit from paragraph (b) “Division 5 of Part III of the *Repatriation Act 1920*”, substitute “Part III of the *Veterans’ Entitlements Act 1986*”.

**Subsection 83D(1):**

Omit “the *Repatriation Act 1920*”, substitute “Part VI of the *Veterans’ Entitlements Act 1986*”.

**Subsection 105B(2):**

Omit “Table A in Schedule 3 to the *Repatriation Act 1920*”, substitute “Part II or IV of the *Veterans’ Entitlements Act 1986*”.

**Paragraph 106(1AA)(a):**

Omit “the *Repatriation Act 1920*, the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Repatriation (Special Overseas Service) Act 1962*”, substitute “the *Veterans’ Entitlements Act 1986*”.

**Subsection 107(1):**

Omit “, a benefit under Part IVAAA or a service pension under the *Repatriation Act 1920*”, substitute “or a benefit under Part IVAAA”.

**Subsection 108(1):**

Omit “, an allowance under Part VIIA, or a service pension under the *Repatriation Act 1920*”, substitute “or an allowance under Part VIIA”.

**Subparagraph 112A(3C)(b)(ii):**

Omit the subparagraph, substitute the following subparagraph:

- (ii) an allowance by way of rent assistance under section 55 of the *Veterans’ Entitlements Act 1986*;

**Subparagraph 119(5)(b)(vi):**

Omit the subparagraph, substitute the following subparagraph:

- (vi) a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*; or

**Paragraph 124(1)(a):**

Omit "or a service pension under the *Repatriation Act 1920*".

**Section 133P:**

Repeal the section.

**Subsection 133RB(3):**

Omit "under the scheme administered by the Commonwealth known as the gift car scheme", substitute "under the Vehicle Assistance Scheme prepared in accordance with section 105 of the *Veterans' Entitlements Act 1986*".

**Section 135BB:**

Repeal the section.

**Subsection 135TBA(1) (definition of *war pension*):**

Omit the definition, substitute the following definition:

*war pension* means a pension under Part II or IV of the *Veterans' Entitlements Act 1986*, an amount in respect of a pension and an allowance (not being attendant allowance) payable under the *Veterans' Entitlements Act 1986*.

**Subparagraph 135TBA(10)(b)(i):**

Omit "specified in Schedule 2 to the *Repatriation Act 1920* as the rate for special pensions" (twice occurring), substitute "specified in subsection 24(4) of the *Veterans' Entitlements Act 1986*".

**Subsection 135U(1) (definition of *pension*):**

- (a) Omit paragraph (d), substitute the following paragraph:

"(d) a service pension, a wife's service pension or a carer's service pension under Part III of the *Veterans' Entitlements Act 1986*; or".

- 
- (b) Omit “section 98AA of the *Repatriation Act 1920*”, substitute “section 57 of the *Veterans’ Entitlements Act 1986*”.

**Subsection 135U(1) (definition of *pensioner*):**

- (a) Omit paragraph (c), substitute the following paragraph:  
“(c) a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*.”
- (b) Omit “paragraph 86(1)(ba) of the *Repatriation Act 1920*”, substitute “paragraph 42(1)(c) of the *Veterans’ Entitlements Act 1986*”.

**Subsection 135U(1) (definition of *prescribed pensioner*)**

Omit “a service pension under the *Repatriation Act 1920*”, substitute “a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*”.

**Paragraph 140(2)(b):**

Omit the paragraph, substitute the following paragraph:

- (b) an amount has been paid by way of service pension, wife’s service pension or carer’s service pension under the *Veterans’ Entitlements Act 1986* that should not, by reason of subsection 42(1) of that Act, have been paid;

**Subsection 143A(3):**

Omit the subsection, substitute the following subsection:

- (3) In this section, ‘war pension’ means a pension (including a service pension, a wife’s service pension and a carer’s service pension), an amount in respect of a pension and an allowance (not being attendant allowance) payable under the *Veterans’ Entitlements Act 1986*.

***War Gratuity Act 1945***

**Section 2 (definition of *death due to war service*):**

Omit “war pension under the Australian Soldiers’ *Repatriation Act 1920–1945*”, substitute “pension under Part II of the *Veterans’ Entitlements Act 1986*”.

**Section 28:**

Omit “the *Invalid and Old-age Pensions Act 1908–1945*, the *Australian Soldiers’ Repatriation Act 1920–1945* or the *Widows’ Pensions Act 1942–1944*”, substitute “the *Social Security Act 1947* or the *Veterans’ Entitlements Act 1986*”.

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[*Minister’s second reading speech made in—  
House of Representatives on 16 October 1985  
Senate on 13 November 1985*]