



# Veterans' Affairs Legislation Amendment Act 1987

No. 78 of 1987

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# Veterans' Affairs Legislation Amendment Act 1987

No. 78 of 1987

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**An Act relating to veterans' entitlements and other matters**

*[Assented to 5 June 1987]*

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

## **PART I—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Veterans' Affairs Legislation Amendment Act 1987*.

### **Commencement**

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 4, 5 and 6, subsection 9 (2), sections 11 and 12, subsection 22 (1), sections 23, 30, 31 and 32, subsection 37 (1), sections 41, 42, 43, 44,

46 and 47, subsection 49 (1), sections 51 and 53, subsections 54 (1), 55 (2) and 56 (2), sections 57 and 58, subsection 59 (1), sections 60, 67 and 70, subsection 72 (1) and sections 78 and 80 shall be deemed to have come into operation on 22 May 1986.

(3) Sections 61 and 63 shall be deemed to have come into operation immediately before the provisions of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than section 61 of that Act) came into operation.

(4) Section 16 shall be deemed to have come into operation immediately after subsection 73 (2) of the *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986* came into operation.

(5) Subsection 22 (2) shall be deemed to have come into operation on 1 January 1987.

(6) Subsections 10 (2) and 13 (2), sections 14, 17 and 19, subsection 20 (1), sections 24 and 25, subsections 49 (2) and 59 (3) and sections 82 and 83 shall come into operation on 2 July 1987.

(7) Section 65 shall come into operation immediately before subsection 72 (3) of the *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986* comes into operation.

## **PART II—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986**

### **Principal Act**

3. The *Veterans' Entitlements Act 1986*<sup>1</sup> is in this Part referred to as the Principal Act.

### **Interpretation**

4. Section 5 of the Principal Act is amended by omitting from subsection (1) the definition of "child" and substituting the following definition:

" '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; and
  - (ii) is undertaking full-time education at a school, college or university;

other than such a person who is 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*;"

### **Operational service**

5. Section 6 of the Principal Act is amended by inserting in paragraph (1) (e) "(not being service rendered, as a member of the Naval Forces in the complement of a sea-going vessel, in the area described in item 3 of Schedule 2 (in column 1) while that area was an operational area)" after "operational area".

### **War-caused injuries or diseases**

6. Section 9 of the Principal Act is amended by omitting paragraph (1) (e) and substituting the following paragraph and words:

- "(e) the injury suffered, or disease contracted, by the veteran:
- (i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or
  - (ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease;

but not otherwise."

### **Duties of Commission in relation to pensions**

7. Section 18 of the Principal Act is amended by adding at the end the following subsection:

"(2) Where the Board, the Administrative Appeals Tribunal or a court makes a decision remitting to the Commission a matter, being:

- (a) the assessment of the rate, or increased rate, at which a pension is to be payable under this Part; or
- (b) the fixing of the date as from which a decision of the Board, the Administrative Appeals Tribunal or the court is to operate;

it is the duty of the Commission to determine that matter having regard to the provisions of this Act and the reasons of the Board, the Administrative Appeals Tribunal or the court, as the case may be, for that decision."

### **Review by Commission**

8. Section 31 of the Principal Act is amended:

- (a) by inserting after subsection (5) the following subsection:

"(5A) The Commission may, for the purpose of reviewing a decision under this section, of exercising its powers under subsection (6) for a reason specified in paragraph (6) (a) or (b) or of exercising its powers under subsection (8), by notice in writing served on a veteran who is in receipt of a pension under this Part, request the veteran:

- (a) to undergo, as provided in the notice, a medical examination for the purpose of the review, or the exercise of those powers, as the case may be; or
- (b) to consent to the release to the Commission of information concerning the veteran of a kind described in the notice, being information that, in the opinion of the Commission, may be relevant to the review, or the exercise of those powers, as the case may be.”;
- (b) by omitting from paragraph (6) (a) “or” (last occurring);
- (c) by inserting after paragraph (6) (b) the following word and paragraph:
  - “; or (c) by reason of a refusal or failure of a veteran to comply with a notice served on the veteran under subsection (5A) or with a request made under paragraph 32 (1) (c);”;
- (d) by inserting after subsection (6) the following subsections:
  - “(6A) Where the Commission is, under subsection (6), satisfied that the rate of a pension payable to a veteran is higher than it should be by reason that the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is less than 10 per centum (including nought per centum), it shall cancel the pension that was payable to the veteran.
  - “(6B) The cancellation of a pension payable to a veteran under subsection (6A) does not affect any decision of the Commission, the Board or the Administrative Appeals Tribunal that is in force determining that the veteran is suffering from a war-caused injury or a war-caused disease, or both.”; and
- (e) by inserting after subsection (7) the following subsection:
  - “(7A) Subsection (7) does not apply to a determination made under subsection (6) for a reason set out in paragraph (6) (c).”.

### **Interpretation**

9. (1) Section 35 of the Principal Act is amended by omitting paragraph (a) of the definition of “income” in subsection (1) and substituting the following paragraph:

“(a) a payment under this Part, a payment under the *Social Security Act 1947* or the value of any treatment, training or goods provided under that Act;”.

(2) Section 35 of the Principal Act is amended by omitting from paragraph (d) of the definition of “period of hostilities” in subsection (1) “30 August” and substituting “31 August”.

### **Method of calculation of income**

10. (1) Section 37 of the Principal Act is amended:

- (a) by inserting in subsection (1) “and is wholly or substantially dependent on the veteran” after “dependant of the veteran”;

- (b) by omitting from paragraph (1) (a) “, under the *Social Security Act 1947* or under the *Tuberculosis Act 1948*” and substituting “or under the *Social Security Act 1947* or a payment in the nature of family allowance”;
  - (c) by omitting from paragraph (1) (b) “, under the *Social Security Act 1947* or under the *Tuberculosis Act 1948*” and substituting “or under the *Social Security Act 1947* or a payment in the nature of family allowance”;
  - (d) by inserting after subsection (1) the following subsections:
    - “(1A) In subsection (1), a reference to a payment in the nature of family allowance, in relation to a payment received in respect of a child, shall be read as a reference to a payment that is similar to family allowance payable under Part VI of the *Social Security Act 1947*, being a payment that, by virtue of subsection 96 (6) of that Act, prevents a family allowance from being payable under that Act in respect of that child.
    - “(1B) For the purposes of subsection (1), where a veteran 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 veteran.”;
  - (e) by inserting after paragraph (4) (a) the following paragraph:
    - “(aa) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable by virtue of subsection 4 (6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*”; and
  - (f) by omitting from paragraph (4) (c) “paragraph (a) or (b)” and substituting “paragraph (a), (aa) or (b)”.
- (2) Section 37 of the Principal Act is amended:
- (a) by omitting from paragraph (1) (a) “\$312” and substituting “\$624”; and
  - (b) by omitting from paragraph (1) (b) “\$156” and substituting “\$312”.

### **Eligibility for wife's service pension**

11. Section 40 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this Part:

- (a) the wife of a veteran, being a veteran who is in receipt of a service pension, is eligible to receive a wife's service pension under this Part;
- (b) the widow of a deceased veteran is eligible to continue to receive a wife's service pension under this Part after the death of the veteran if she was in receipt of a wife's service pension under this Part immediately before the death of the veteran; and
- (c) the widow of a deceased veteran, being a widow who made a claim for the grant of a wife's service pension before the death of the



veteran, is eligible to be granted, and to receive, after the death of the veteran, a wife's service pension under this Part:

- (i) if the veteran was, immediately before his death, in receipt of a service pension; or
- (ii) if the veteran had made a claim for a service pension before the veteran died and the Commission determines that a service pension would have been granted to the veteran if the veteran had not died."

**Claim for service pension etc.**

**12.** Section 43 of the Principal Act is amended:

- (a) by omitting from subsection (2) "or widow";
- (b) by omitting from paragraph (3) (b) "or widow" (twice occurring);
- (c) by omitting from paragraph (5) (a) "or widow";
- (d) by inserting in paragraph (6) (a) "subject to paragraph (aa)," before "the claim";
- (e) by inserting after paragraph (6) (a) the following paragraph:

"(aa) subsection (4) does not apply to or in relation to the claim;"; and
- (f) by omitting from paragraph (6) (c) ", the Board".

**Rate of veteran's service pension**

**13. (1)** Section 47 of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsections:

"(1A) Subject to subsections (1B) and (1C), a dependent child of a wife, being a married person within the meaning of paragraph 35 (6) (f), shall, for the purposes of this section, be deemed to be a dependent child of her husband and not of the wife.

"(1B) Where a husband, being a married person within the meaning of paragraph 35 (6) (f), is not in receipt of and is not eligible to receive:

- (a) a service pension; or
- (b) an age pension, an invalid pension, a supporting parent's benefit or an allowance under Part VIIA or VIII of the *Social Security Act 1947*;

then, for the purposes of the application of this section in relation to his wife (being a veteran):

- (c) subsection (1A) of this section does not apply; and
- (d) a dependent child of the husband shall be deemed to be a dependent child of his wife and not of the husband.

"(1C) For the purpose of the application of this section in relation to a veteran in respect of whom a direction under subsection (2) is in force, being a veteran who is in receipt of, or is eligible to receive, a service pension, and in relation to the spouse of the veteran:

- (a) if:

- (i) the spouse of the veteran is in receipt of, or is eligible to receive, a service pension or a carer's service pension, or is in receipt of, or is eligible to receive, an age pension, an invalid pension or a carer's pension under the *Social Security Act 1947*; and
    - (ii) the direction under subsection (2) of this section was given by reason of the illness or infirmity of the husband;

a dependent child of the husband shall be deemed to be a dependent child of his wife and not of the husband; and
  - (b) if:
    - (i) the spouse of the veteran (being the husband of the veteran) is in receipt of, or is eligible to receive, a carer's service pension, or is in receipt of, or is eligible to receive, a carer's pension under the *Social Security Act 1947*; and
    - (ii) the direction under subsection (2) of this section was given by reason of the illness or infirmity of the wife; subsection (1B) of this section does not apply.”;
  - (b) by omitting subparagraphs (1) (a) (i), (ii) and (iii) and substituting the following subparagraphs:
    - “(i) a pension under this Part; or
    - (ii) a pension under Part III, a benefit under Part VII, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*.”;
  - (c) by inserting in subparagraph (3) (a) (i) “, is wholly or substantially dependent on the veteran” after “dependant of the veteran”;
  - (d) by inserting in subparagraph (3) (a) (ii) “, is wholly or substantially dependent on the veteran” after “dependant of the veteran”;
  - (e) by inserting in subparagraph (3) (b) (i) “, is wholly or substantially dependent on the veteran” after “dependant of the veteran”;
  - (f) by inserting in subparagraph (3) (b) (ii) “, is wholly or substantially dependent on the veteran” after “dependant of the veteran”;
  - (g) by omitting from subsection (7) “where a child is a dependant of a veteran who is permanently blinded in both eyes” and substituting “where a dependant of a veteran (being a veteran who is permanently blinded in both eyes) is a child who is wholly or substantially dependent on the veteran”; and
  - (h) by inserting in paragraph (8) (a) “and is wholly or substantially dependent on the veteran” after “veteran”.
- (2) Section 47 of the Principal Act is amended:
- (a) by adding at the end of subsection (1) “of this section and by section 55”;
  - (b) by omitting from subparagraph (4) (a) (i) “\$1,300” and substituting “\$1,820”;

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- (c) by omitting from subparagraph (5) (a) (i) "\$1,560" and substituting "\$2,080";
- (d) by omitting from subparagraph (5) (a) (ii) "\$1,300" and substituting "\$1,820";
- (e) by omitting subsection (6) and substituting the following subsection:
  - "(6) In the case of a veteran who is permanently blinded in both eyes:
    - (a) the rate of service pension shall not be increased by virtue of subsection (3) of this section or of section 55 unless the veteran would be eligible to receive a service pension under section 39 if:
      - (i) the veteran were not permanently blinded in both eyes; and
      - (ii) the veteran were permanently incapacitated for work; and
    - (b) if the veteran would be so eligible to receive a service pension under section 39, the amount of any increase under subsection (3) of this section or under section 55 shall not exceed the maximum amount that could be included in that pension by virtue of that subsection or section, as the case may be."; and
- (f) by adding at the end the following subsection:
  - "(14) Where:
    - (a) the rate of service pension applicable to a veteran is increased under this section, under section 55 or under this section and under section 55; and
    - (b) the rate of that service pension is also to be reduced under subsection (5) of this section;that subsection shall be applied first to the rate of that pension apart from any increase under this section or under section 55, then to the amount of any increase under section 55 and then to the amount of any increase under this section."

**Rate of wife's service pension**

**14. Section 48 of the Principal Act is amended:**

- (a) by adding at the end of subsection (1) "or by section 55";
- (b) by omitting from paragraph (4) (a) "\$1,300" and substituting "\$1,820"; and
- (c) by adding at the end the following subsection:
  - "(8) Where:
    - (a) the rate of wife's service pension is increased under this section, under section 55 or under this section and under section 55; and
    - (b) the rate of that pension is to be reduced under subsection (4) of this section;

that subsection shall be applied first to the rate of that pension apart from any increase under this section or under section 55, then to the amount of any increase under section 55 and then to the amount of any increase under this section.”.

15. Section 49 of the Principal Act is repealed and the following sections are substituted:

**Rate of carer's service pension**

“49. (1) Subject to subsections (2), (3) and (4), the rate of a carer's service pension payable to a person is a rate equal to the rate of service pension that would be payable to the person if the person were a veteran who:

- (a) was qualified to receive a service pension; and
- (b) was under the age of 70 years and was not permanently blind;

and, for the purpose of the calculation of that rate of carer's service pension in accordance with section 47, that section shall be read as if references to a veteran were read as references to a person in receipt of a carer's service pension and references to a service pension, in relation to a veteran, were read, in relation to the person, as references to a carer's service pension.

“(2) Section 47 applies, in accordance with subsection (1) of this section, to and in relation to the calculation of the rate of a carer's service pension as if subsections 47 (1B) and (1C) were omitted and subsection 47 (1A) applies subject to subsections (3) and (4) of this section.

“(3) Where:

- (a) a carer's service pension is payable to a husband, being a married person within the meaning of paragraph 35 (6) (f), and his wife is in receipt of, or is eligible to receive:
  - (i) a service pension under this Act; or
  - (ii) an age pension or an invalid pension under the *Social Security Act 1947*, being a pension the rate of which is, or is to be, calculated on the basis that a child who is a dependant of the husband is to be deemed to be a dependant of his wife; or
- (b) a carer's service pension is payable to a wife and her husband is not in receipt of, or eligible to receive:
  - (i) a service pension under this Act; or
  - (ii) an age pension, an invalid pension or a carer's pension under the *Social Security Act 1947*;

for the purpose of calculating the rate of carer's service pension payable to the husband or to his wife, as the case may be:

- (c) subsection 47 (1A) does not apply; and
- (d) a dependent child of the husband shall be deemed to be a dependent child of his wife and not of the husband.

“(4) Where a direction under subsection 47 (2) of this Act or under subsection 28 (1AAA) of the *Social Security Act 1947* is in force in respect of a husband or his wife, for the purpose of the application of section 47 of this Act in accordance with subsection (1) of this section:

(a) if:

- (i) the wife is in receipt of, or is eligible to receive, a carer's service pension;
- (ii) her husband is in receipt of, or is eligible to receive, a service pension, or is in receipt of, or is eligible to receive, an age pension, an invalid pension or a carer's pension under the *Social Security Act 1947*; and
- (iii) that direction was given by reason of the illness or infirmity of her husband;

a dependent child of her husband shall be deemed to be a dependent child of the wife and not of her husband; and

(b) if:

- (i) the husband is in receipt of, or is eligible to receive, a carer's service pension;
- (ii) his wife is in receipt of, or is eligible to receive, a service pension, or is in receipt of, or is eligible to receive, an age pension, an invalid pension or a carer's pension under the *Social Security Act 1947*; and
- (iii) that direction was given by reason of the illness or infirmity of his wife;

subsection (3) of this section does not apply.

#### **Reduction of service pension when in receipt of other pension**

“49A. (1) Where, immediately before 1 November 1986, a woman was receiving:

- (a) a prescribed pension; and
- (b) a service pension;

the rate of the service pension shall not, on or after 1 November 1986 and while she continues to receive the prescribed pension:

- (c) in a case where she was receiving the service pension immediately before 1 November 1986 at a rate less than \$3,122.60 per annum—be increased under, or by the virtue of the operation of, this Act to a rate greater than \$3,122.60 per annum; or
- (d) in any other case—be increased under, or by virtue of the operation of, this Act to a rate greater than the rate at which it was payable immediately before 1 November 1986.

“(2) Where, on or after 1 November 1986:

- (a) a woman who is receiving a prescribed pension commences to receive payments of a service pension; or
- (b) a woman who is receiving a service pension commences to receive payments of prescribed pension;

the rate of the service pension payable to her shall not, while she continues to receive the prescribed pension, exceed:

- (c) except in a case to which paragraph (d) applies—\$3,122.60 per annum; or
- (d) in a case where she was receiving the service pension immediately before 1 November 1986 at a rate greater than \$3,122.60 per annum—the rate at which that pension was payable at that time.

“(3) For the purposes of this section:

- (a) a woman who would, but for the operation of subsection 30 (3), be receiving a pension under Part II as the widow of a veteran, or a pension under Part IV as the widow of a member of the Forces or of a member of a Peacekeeping Force shall be deemed to be receiving a prescribed pension; and
- (b) a woman who would, but for the operation of section 53A of the *Seamen's War Pensions and Allowances Act 1940*, be receiving a pension under that Act as the widow of an Australian mariner shall be deemed to be receiving a prescribed pension.

“(4) For the purposes of this section, a woman shall be taken to be receiving payments of a pension from the earliest day on which she became entitled to receive the pension, notwithstanding that the first instalment of the pension is not paid until a later day.

“(5) In this section:

‘prescribed pension’ means:

- (a) a pension payable under Part II to the widow of a veteran at a rate determined under or by reference to subsection 30 (1);
- (b) a pension payable under Part IV to the widow of a member of the Forces, or of a member of a Peacekeeping Force, at a rate determined under or by reference to subsection 30 (1); or
- (c) a pension payable under the *Seamen's War Pensions and Allowances Act 1940* to the widow of an Australian mariner at a rate determined under or by reference to subsection 18 (2) of that Act;

‘service pension’ means a service pension or a carer’s service pension, but does not include a wife’s service pension;

‘widow’ means a woman who is a widow for the purposes of Part III.”.

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

**16.** Section 50 of the Principal Act is amended:

- (a) by omitting from subsection (10) “if” and substituting “to the extent that”; and
- (b) by omitting from paragraph (10) (b) “wholly or substantially”.

17. Sections 55 and 56 of the Principal Act are repealed and the following section is substituted:

**Rent assistance**

“55. (1) Subject to this Part, this section applies to a service pensioner in respect of any period during which:

- (a) the pensioner pays, or is liable to pay, rent at a rate exceeding \$780 per year;
- (b) if the pensioner is a married person who is living with his or her spouse in their home, the pensioner's spouse is not eligible to receive an incentive allowance under section 26 or 133JA of the *Social Security Act 1947*; and
- (c) the pensioner is in Australia.

“(2) In applying this section to and in relation to a service pensioner who is a married person:

- (a) if the service pensioner and the spouse of the service pensioner are living together in their home—any rent that the spouse pays, or is liable to pay, in respect of that home shall be deemed to be paid, or payable, by the service pensioner; and
- (b) if a direction under subsection 47 (2) is in force in respect of the service pensioner—any rent that the spouse of the service pensioner pays, or is liable to pay, in respect of the premises occupied by the service pensioner as his or her home shall be deemed to be paid, or payable, by the service pensioner.

“(3) Where this section applies to a service pensioner, the rate of the service pension, wife's service pension or carer's service pension, as the case may be, applicable to the pensioner shall, subject to this section and to subsection 47 (14) or 48 (8), whichever is applicable to that pension, be increased or further increased:

- (a) unless paragraph (b) applies—by an amount per year equal to:
  - (i) one-half of the amount by which the amount of the annual rent paid, or payable, by the pensioner exceeds \$780; or
  - (ii) \$780;

whichever is the lesser amount; or

- (b) if the service pensioner is a married person who is living with his or her spouse in their home and there is payable to the spouse of the service pensioner:
  - (i) a service pension, a wife's service pension or a carer's service pension;
  - (ii) a pension under Part III or IV of the *Social Security Act 1947*;
  - (iii) a benefit under Part IVAAA or VII of that Act;
  - (iv) an allowance under Part VIIA of that Act; or
  - (v) a rehabilitation allowance under Part VIII of that Act;

being a pension, benefit or allowance the rate of which is increased by reference to an amount of rent paid, or payable, by the service pensioner—by an amount per year equal to one-half the amount per year that would be the amount per year of the increase or further increase under paragraph (a) of this subsection if this paragraph did not apply.

“(4) Where a service pensioner is in receipt of a prescribed pension or is a married person whose spouse is in receipt of a prescribed pension, the annual rate that would, but for this subsection, be the rate of increase or further increase, in the rate of a service pension, wife’s service pension or carer’s service pension applicable to a service pensioner by virtue of subsection (3) shall be reduced:

- (a) if the pensioner is a married person or is an unmarried person who is in receipt of a wife’s service pension—by one-half of the amount (if any) by which the rate per year of the pension income of the pensioner (within the meaning of subsection (5)) exceeds the rate per year specified in subparagraph 47 (5) (a) (ii); or
- (b) if the pensioner is an unmarried person (other than an unmarried person who is in receipt of a wife’s service pension)—by one-half of the amount (if any) by which the rate per year of the pension income of the pensioner (within the meaning of subsection (5)) exceeds the rate per year specified in subparagraph 47 (5) (a) (i).

“(5) Subject to subsection (6), for the purpose of subsection (4):

- (a) the rate per year of the pension income of a service pensioner who is a married person is the rate ascertained in accordance with the formula:

$$\frac{A + B}{2},$$

where:

**A** is the rate per year at which a prescribed pension is payable to the service pensioner or, if 2 or more prescribed pensions are payable to the service pensioner, the sum of the rates per year at which those pensions are payable to the service pensioner; and

**B** is the rate per year at which a prescribed pension (if any) is payable to the spouse of the service pensioner or, if 2 or more prescribed pensions are payable to the spouse of the service pensioner, the sum of the rates per year at which those pensions are payable to the spouse of the service pensioner; and

- (b) the rate per year of the pension income of a service pensioner who is an unmarried person is the rate per year at which a prescribed pension is payable to the service pensioner or, if 2 or more service pensions are payable to the service pensioner, the sum of the rates per year at which those pensions are payable to the service pensioner.



“(6) In calculating, for the purposes of subsection (5), the rate per year of the pension income of a service pensioner (being a veteran who is in receipt of a service pension or a person, whether or not a veteran, who is in receipt of a carer’s service pension), where a child is a dependant of the service pensioner and is wholly or substantially dependent on the service pensioner, the rate per year of the pension income of the service pensioner shall be reduced:

- (a) if the service pensioner is an unmarried person or a married person whose spouse is not in receipt of a service pension, a wife’s service pension or a carer’s service pension, or a pension under Part III or IV, a benefit under Part IVAAA or VII, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*—by \$624 per year less the annual amount of any payment, not being a payment under Part III of this Act or under the *Social Security Act 1947* or a payment in the nature of family allowance, received by the service pensioner, or, if the service pensioner is a married person, by the spouse of the service pensioner, for or in respect of the child; or
- (b) if the service pensioner is a married person whose spouse is in receipt of a pension, benefit or allowance referred to in paragraph (a)—by \$312 per year less one-half of the annual amount of any payment, not being a payment under Part III of this Act or under the *Social Security Act 1947* or a payment in the nature of family allowance, received by the service pensioner, or by the spouse of the service pensioner, for or in respect of the child.

“(7) In calculating, for the purposes of subsection (5), the rate per year of the pension income of the spouse of a service pensioner, if, by virtue of paragraph (6) (b), the rate per year of the pension income of the service pensioner is required to be reduced by an amount, the rate per year of the pension income of the spouse of the service pensioner shall be reduced by an amount equal to that amount.

“(8) For the purposes of subsection (6), where a service pensioner 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 service pensioner.

“(9) In this section:

- (a) a reference to a married person shall be read as a reference to a married person within the meaning of paragraph 35 (6) (f), including a married person in respect of whom a direction under subsection 47 (2) is in force;
- (b) a reference to a prescribed pension shall be read as a reference to:
  - (i) a pension under Part II or IV of this Act;
  - (ii) temporary incapacity allowance under Part VI of this Act;
  - (iii) a pension (other than a pension payable in respect of a child) payable by virtue of subsection 4 (6) or (8B) of the

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

- (iv) a pension under the *Seamen's War Pensions and Allowances Act 1940*;
  - (v) temporary incapacity allowance under regulation 38B of the *Seamens' War Pensions and Allowances Regulations*; or
  - (vi) a payment, other than a pension referred to in paragraph (a) or (c) of this definition, that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged; and
- (c) a reference in subsection (6) to a payment in the nature of family allowance, in relation to a payment received in respect of a child, shall be read as a reference to a payment that is similar to family allowance payable under Part VI of the *Social Security Act 1947*, being a payment that, by virtue of subsection 96 (6) of that Act, prevents a family allowance from being payable under that Act in respect of that child.

“(10) For the purposes of this section, where payment of a service pension, a wife's service pension or a carer's service pension is approved from and including a date earlier than the date on which the claim for that pension was granted, the person to whom that pension is payable shall be deemed to have been a service pensioner from and including that earlier date.”.

**Remote area allowance**

18. Section 57 of the Principal Act is amended by omitting from subparagraph (5) (a) (ii) “, an allowance under Part IIA of the *Social Security Act 1947* or an allowance under the *Tuberculosis Act 1948*” and substituting “or an allowance under Part IIA of the *Social Security Act 1947*”.

**Right to be paid service pension outside Australia**

19. Section 63 of the Principal Act is amended:

- (a) by omitting from subsection (4) “(excluding any rent assistance for which the person is eligible)”; and
- (b) by inserting after subsection (5) the following subsection:

“(5A) Nothing in this section shall be taken to entitle a person to be paid a service pension at a rate increased by virtue of section 55 at any time while the person is not physically present in Australia.”.

**Special temporary allowance**

20. (1) Section 65 of the Principal Act is amended by omitting from subsection (1) the definition of “pension” and substituting the following definition:

“ ‘pension’ means:

- (a) a service pension, a wife’s service pension, a carer’s service pension or a remote area allowance;
- (b) a pension under Part III or a benefit under Part IVAAA of the *Social Security Act 1947*; or
- (c) an allowance under Part VIIA or a rehabilitation allowance under Part VIII of that Act;

and includes an allowance under section 133JA and a remote area allowance under Part IIA of that Act;”.

(2) Section 65 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) Where the amount per fortnight payable to a person under subsection (3) is less than the amount per fortnight (in this subsection referred to as the ‘relevant amount’) of pension that would, if this section did not apply to the person, be payable to the person, the amount per fortnight payable to the person under subsection (3) is the relevant amount.”.

#### **Payment of wife’s service pension after death of veteran**

**21.** Section 66 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

“(3) Subject to subsection (4), the rate at which wife’s service pension is payable to the widow of a veteran after the death of the veteran shall be calculated in accordance with section 48, but subsections 48 (2), (3) and (6) shall be disregarded.

“(4) Subsection 37 (4) applies, but the other subsections of section 37 do not apply, to or in relation to the calculation of the income of the widow of a veteran for the purpose of assessing the rate at which wife’s service pension is payable to her under subsection (1) of this section.”.

#### **Eligibility for pension under this Part**

**22. (1)** Section 70 of the Principal Act is amended:

(a) by omitting paragraph (5) (d) and substituting the following paragraph and words:

“(d) the injury or disease from which the member died, or has become incapacitated:

- (i) was suffered or contracted during any defence service or peacekeeping service of the member, but did not arise out of that service; or
- (ii) was suffered or contracted before the commencement of the period, or the last period, of defence service or peacekeeping service of the member, but not during such a period of service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service or peacekeeping service rendered by

the member, being service rendered after the member suffered that injury or contracted that disease;

but not otherwise.”; and

(b) by inserting after subsection (10) the following subsection:

“(10A) The Commonwealth is not liable to pay a pension to a dependant of a member of the Forces, or of a member of a Peacekeeping Force, being a child of the member, under subsection (1) or (2) if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:

- (a) under the scheme known as the Tertiary Education Assistance Scheme;
- (b) under the scheme known as the Secondary Education Assistance Scheme;
- (c) under the scheme known as the Aboriginal Study Grants Scheme;
- (d) under the scheme known as the Post-Graduate Awards Scheme; or
- (e) under the scheme known as the Veterans' Children Education Scheme.”.

(2) Section 70 of the Principal Act is amended by omitting subsection (10A) and substituting the following subsection:

“(10A) The Commonwealth is not liable to pay a pension to a dependant of a member of the Forces, or of a member of a Peacekeeping Force, being a child of the member, under subsection (1) or (2) if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:

- (a) under the scheme known as the AUSTUDY Scheme;
- (b) under the scheme known as the Assistance for Isolated Children Scheme;
- (c) under the scheme known as the Aboriginal Secondary Assistance Scheme or the scheme known as the Aboriginal Study Assistance Scheme;
- (d) under the scheme known as the Post-Graduate Awards Scheme; or
- (e) under the scheme known as the Veterans' Children Education Scheme.”.

### **Overpayments of pension**

23. Section 79 of the Principal Act is amended by inserting in subsection (1) “, and may be so recovered, either in whole or in part,” after “from the member or dependant”.

**Prescribed persons**

**24.** Section 82 of the Principal Act is amended by adding at the end the following subsection:

“(3) Section 37 applies to the calculation of the annual rate of a person’s income for the purposes of subsection (1) of this section as if the amendments of that section made by subsection 10 (2) of the *Veterans' Affairs Legislation Amendment Act 1987* had not been made.”.

**Veterans eligible to be provided with treatment**

**25.** Section 85 of the Principal Act is amended by inserting after subsection (5) the following subsection:

“(5A) Section 37 applies to the calculation of the annual rate of a veteran’s income for the purpose of subsection (5) of this section as if the amendments of that section made by subsection 10 (2) of the *Veterans' Affairs Legislation Amendment Act 1987* had not been made.”.

**26.** After section 93A of the Principal Act the following sections are inserted in Part V:

**False statements relating to treatment**

“93B. (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is:

- (a) false or misleading in a material particular; and
- (b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: \$2,000.

“(2) Where:

- (a) a person (in this subsection referred to as the ‘principal’) makes a statement (in this subsection referred to as the ‘principal’s statement’), whether oral or in writing, that is false or misleading in a material particular;
- (b) the principal’s statement is capable of being used in connection with a claim for payment for treatment provided under this Part;
- (c) the material particular in respect of which the principal’s statement is false or misleading is substantially based upon a statement (in this subsection referred to as the ‘associate’s statement’) made, either orally or in writing, to the principal or to the agent of the principal, by another person (in this subsection referred to as the ‘associate’) who is an employee or agent of the principal; and
- (d) the associate’s statement is false or misleading in a material particular;

the associate is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

“(3) In subsection (2), a reference to an employee of a person shall, in a case where the person is a corporation, be read as a reference to:

- (a) a director, secretary, manager or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

“(4) Notwithstanding section 21 of the *Crimes Act 1914*, a prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.

“(5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was:

- (a) false or misleading in a material particular; or
- (b) capable of being used in connection with a claim for payment for treatment provided under this Part.

“(6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

#### **Knowingly making false statements relating to treatment**

“93C. (1) A person shall not make, or authorise the making of, a statement, whether oral or in writing, if the person knows that the statement is:

- (a) false or misleading in a material particular; and
- (b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: \$10,000 or imprisonment for 5 years, or both.

“(2) Where:

- (a) a person (in this subsection referred to as the ‘principal’) makes a statement (in this subsection referred to as the ‘principal’s statement’), whether oral or in writing, that is false or misleading in a material particular;
- (b) the principal’s statement is capable of being used in connection with a claim for payment for treatment provided under this Part;
- (c) the material particular in respect of which the principal’s statement is false or misleading is substantially based upon a statement (in this subsection referred to as the ‘associate’s statement’) made, either orally or in writing, to the principal or to an agent of the principal by another person (in this subsection referred to as the ‘associate’) who is an employee or agent of the principal;
- (d) the associate knew that the associate’s statement was false or misleading in a material particular; and

- (e) the associate knew, or had reasonable grounds to suspect, that the associate's statement would be used in the preparation of a statement of the kind referred to in paragraph (b);

the associate is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both.

“(3) In subsection (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to:

- (a) a director, secretary, manager or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

“(4) Where, on the trial of a person for an offence against subsection (1) or (2), the jury, or, where the offence is prosecuted summarily, the court, is not satisfied that the person is guilty of that offence but is satisfied that the person is guilty of an offence against subsection 93B (1) or (2), it may find the person not guilty of the offence charged but guilty of an offence against subsection 93B (1) or (2), as the case may be.

“(5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

#### **Bribery etc.**

“93D. (1) In this section:

‘dental practitioner’ means a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists;

‘eligible person’ means a person eligible under section 85, 86, 87 or 88 to be provided with treatment under this Part;

‘in-patient’, in relation to a private hospital, means a person who occupies a bed in the hospital;

‘medical practitioner’ means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners;

‘officer’, in relation to a corporation, includes:

- (a) a director, secretary, manager or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up;

'pathology service' means a procedure of a kind described in an item in the table of medical services set out in Schedule 1A to the *Health Insurance Act 1973*;

'patient' means an eligible person who is provided with treatment under this Part;

'practitioner' means:

- (a) a medical practitioner; or
- (b) a dental practitioner;

'proprietor' means:

- (a) in relation to premises—the person, authority or body of persons having effective control of the premises, whether or not that person, authority or body is the holder of an estate or interest in the premises; and
- (b) in relation to a private hospital—the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital;

'private hospital' means premises that are a private hospital for the purposes of section 3 of the *Health Insurance Act 1973*.

“(2) A person who:

- (a) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered, directly or indirectly offers any inducement (whether by way of money, property or other benefit or advantage), or threatens any detriment or disadvantage:
  - (i) to a practitioner as defined in subsection (1) in order to encourage the practitioner to request the rendering of a pathology service or of pathology services; or
  - (ii) to a person (other than a practitioner as defined in subsection (1)) in order to encourage such a practitioner to request the rendering of a pathology service or of pathology services;
- (b) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered:
  - (i) directly or indirectly invites a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or
  - (ii) does any act or thing that the person knows, or ought reasonably to know, is likely to have the effect of directly or indirectly encouraging a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or
- (c) being a practitioner as defined in subsection (1) who provides treatment for eligible persons under this Part, without reasonable excuse, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself, or



for any other person, from a person carrying on the business of rendering pathology services or from a person acting on behalf of a person carrying on such a business;

is guilty of an offence against this section.

“(3) In subsection (2):

- (a) a reference to requesting the rendering of a pathology service shall be read as a reference to requesting the rendering of a pathology service or of pathology services for a person who is eligible to be provided with that service or those services under this Part;
- (b) a reference to requesting the rendering of pathology services shall be read as a reference to requesting the rendering of pathology services for persons who are eligible to be provided with those services under this Part; and
- (c) a reference to a person carrying on the business of rendering pathology services shall be read as a reference to a person who carries on a business in the course of which any pathology services are rendered.

“(4) A person who, being a practitioner as defined in subsection (1), without reasonable excuse, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself or for any other person from a proprietor of a private hospital or from a person acting on behalf of such a proprietor on the understanding that the first-mentioned person will, in any manner, do any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, is guilty of an offence against this section.

“(5) A person who, being a proprietor or one of the proprietors of a private hospital or a person acting on behalf of such a proprietor, in order to influence or affect a practitioner as defined in subsection (1) in the doing of any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, without reasonable excuse, gives or confers, or agrees to give or confer, to or on the practitioner or any other person any property, benefit or advantage of any kind, is guilty of an offence against this section.

“(6) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.

“(7) A reference in subsection (6) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who wilfully authorises or permits the commission of the offence.

“(8) A person who is convicted of an offence against this section is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years.

“(9) In a prosecution of a person for an offence against this section, it is a defence if the person proves that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

“(10) Where a person is convicted of an offence against this section by virtue of subsection (4) or (5) in relation to the admission of a person as an in-patient in a hospital, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commonwealth an amount equal to the sum of any amounts paid by the Commonwealth in respect of treatment provided under this Part for the in-patient of the private hospital concerned.

“(11) For the purpose of the definition of ‘pathology service’ in subsection (1), Schedule 1A of the *Health Insurance Act 1973* shall be read as if the following symbols were omitted, namely, ‘(S.P.)’ and ‘(O.P.)’.

#### **Prohibited practices in relation to the rendering of pathology services**

“93E. (1) An approved pathology practitioner who accedes to a request from a practitioner as defined in subsection 93D (1) (in this subsection referred to as ‘the requesting practitioner’) to provide pathology services to an eligible person, being services that the person is eligible to be provided with under this Part, shall not make a payment, directly or indirectly, to the requesting practitioner for the services provided by the requesting practitioner to that eligible person in connection with the making of that request and, in particular, shall not make a payment, directly or indirectly, to the requesting practitioner in respect of any use of the staff of the requesting practitioner for the purpose of taking pathology specimens from that eligible person.

“(2) Where an approved pathology practitioner has entered into an arrangement with a practitioner as defined in subsection 93D (1) under which there are shared between the 2 practitioners the cost to them of employing staff or of buying, renting or maintaining items of equipment, whether or not the arrangement involves the payment of money or the provision of other consideration, the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from that other practitioner to provide pathology services to an eligible person, being services that the eligible person is eligible to be provided with under this Part.

“(3) An approved pathology practitioner shall not provide, at the premises of a practitioner as defined in subsection 93D (1), nursing or other staff to take pathology specimens for use in rendering pathology services from eligible persons who are eligible to be provided with those services

under this Part, whether the staff is stationed on those premises full-time or part-time or visits those premises from time to time.

“(4) Where:

- (a) there is in force between an approved pathology practitioner and another practitioner, being a practitioner as defined in subsection 93D (1), an arrangement under which:
  - (i) the 2 practitioners share a particular space in a building; or
  - (ii) one practitioner provides space in a building for the use or occupation of the other practitioner or permits the other practitioner to use or occupy space in a building; and
- (b) the charges payable under the arrangement are not charges fixed at normal commercial rates;

the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from the other practitioner to provide pathology services to an eligible person who is eligible to be provided with those services under this Part.

“(5) A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence against this section.

“(6) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.

“(7) A reference in subsection (6) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who wilfully authorises or permits the commission of the offence.

“(8) A person who is convicted of an offence against this section is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years.

“(9) In this section:

‘approved pathology practitioner’ has the same meaning as it has in section 129AAA of the *Health Insurance Act 1973*;

‘eligible person’, ‘officer’ and ‘pathology service’ have the same respective meanings as they have in section 93D.

### **Offences against 2 or more provisions**

“93F. (1) Where the act or omission of a person is an offence against a provision of this Act and is also an offence against another provision of this Act, the person may be prosecuted and convicted for either of those offences, but the person is not liable to be punished more than once in respect of the same act or omission.

“(2) A reference in subsection (1) to an offence against a provision of this Act includes a reference to an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;  
being an offence that relates to an offence against a provision of this Act.

**Statements inadmissible in evidence**

“93G. (1) Where a person who has provided treatment for an eligible person under this Part (in this subsection referred to as the ‘provider of the treatment’) has been counselled by an officer of the Department with respect to the provision of treatment to eligible persons under this Part, a statement made by the provider of the treatment in the course of the counselling is inadmissible as evidence against the provider of the treatment in proceedings for the prosecution of the provider of the treatment for a relevant offence unless:

- (a) the provider of the treatment has consented to the admission of the statement as evidence in the proceedings; or
- (b) evidence of the statement is adduced to refute evidence of another statement made by the provider of the treatment in the course of being so counselled, where evidence of that other statement has been admitted in the proceedings on behalf of the provider of the treatment.

“(2) In subsection (1), ‘relevant offence’ means:

- (a) an offence against section 93B, 93C, 93D or 93E of this Act; or
- (b) an offence against:
  - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (ii) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

being an offence that relates to an offence referred to in paragraph (a) of this subsection.

**Recovery of amounts paid because of false statements**

“93H. (1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of payment for treatment provided under this Part for an eligible person, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the estate of that person, whether or not the amount was paid to that person and whether or not any person has been convicted of an offence in relation to the making of the statement.

“(2) Where:

- (a) an amount (in this subsection referred to as the ‘principal sum’) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under subsection (1);
- (b) the Commission has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and

- (c) either of the following conditions is satisfied:
- (i) an arrangement has been entered into between the Commission and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the Commission allows (which period or longer period is in this section referred to as the 'relevant period'), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or
  - (ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid;

then, from the day after the end of the relevant period, interest, at the rate prescribed from time to time for the purposes of subsection 129AC (2) of the *Health Insurance Act 1973*, becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

“(3) Notwithstanding subsection (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under subsection (2), the court may order that the interest payable under that subsection shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that subsection.

“(4) Notwithstanding any other provision of this Act, where an amount paid to a person, purportedly by way of payment for treatment provided for an eligible person under this Part, exceeds the amount (if any) that should have been paid to that person (which excess is referred to in this subsection as the 'excess amount'), the Commission may, if the person so agrees, reduce the amount of any payment that subsequently becomes payable to that person under this Act by an amount not exceeding the amount by which the sum of the excess amount and any excess amounts previously paid to that person is greater than the sum of any amounts recovered by the Commission by one or more previous applications of this subsection or under subsection (1).

### **Prosecution of offences**

“93J. (1) Subject to subsection (2), an offence against section 93C, 93D or 93E is an indictable offence.

“(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection,

the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.”.

**Funeral benefits—service pensioners**

27. Section 101 of the Principal Act is amended:

- (a) by omitting from subsection (1) paragraphs (b) and (c) of the definition of “deceased pensioner” and substituting the following word and paragraph:

“or (b) who had, before his or her death, made a claim for a service pension under section 43 and would, but for his or her death, have been granted a service pension under section 38 or 39;”;

- (b) by omitting from subsection (1) the definition of “pensioner” and substituting the following definition:

“‘pensioner’ means a person (not being a person who is a prescribed person) who is in receipt of a service pension under section 38 or 39.”; and

- (c) by omitting from subsection (8) “deceased person” and substituting “deceased pensioner”.

**Loss of earnings allowance**

28. Section 108 of the Principal Act is amended by omitting from paragraph (3) (a) “, or a dependant of a veteran,”.

**Application**

29. Section 111 of the Principal Act is amended by adding at the end the following subsections:

“(7) An applicant for a benefit to which this section applies may, at any time before the application is determined by the Commission, by notice in writing forwarded to the Commission at an office of the Department in Australia, withdraw the application.

“(8) The withdrawal of an application for a benefit to which this section applies does not prevent the applicant from subsequently making another application for such a benefit.”.

**Time for applying for funeral benefit**

30. Section 113 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Where, after the death of a veteran, a decision is made under this Act:

- (a) determining that the death was war-caused;
- (b) granting a pension under Part II in respect of the veteran, as from a date before the death of the veteran:
- (i) at a rate assessed on the basis that the veteran was a veteran to whom section 24 applied; or

- (ii) at a rate that had been increased under section 27 by reason that the veteran was incapacitated from a war-caused injury or a war-caused disease of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in subsection 27 (1); or
- (c) increasing the rate of the pension granted to the veteran under Part II as from a date before the death of the veteran:
  - (i) to a rate assessed as provided in subparagraph (b) (i); or
  - (ii) under section 27 for the reason set out in subparagraph (b) (ii) of this section;

application for the grant of a funeral benefit under section 99 in respect of the funeral of the veteran may be made to the Commission within the period of 12 months after the date on which that decision was made or within the period of 3 months after the date on which the *Veterans' Affairs Legislation Amendment Act 1987* received the Royal Assent, whichever last expires.”.

### **Interpretation**

**31. Section 116 of the Principal Act is amended:**

- (a) by omitting paragraphs (a), (b) and (c) of the definition of “eligible child of a member of the Forces, or of a member of a Peacekeeping Force” and substituting the following paragraphs:
  - “(a) a child of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, being a member:
    - (i) whose death was defence-caused;
    - (ii) who was, immediately before his or her death, in receipt of a pension under Part IV at the rate specified in subsection 24 (4) by reason of having been such a member to whom section 24 applied; or
    - (iii) who was, immediately before his or her death, in receipt of a pension under Part IV in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1); or
  - (b) a child of a member of the Forces, or of a member of a Peacekeeping Force, being a member who is in receipt of a pension under Part IV:
    - (i) at the rate specified in subsection 24 (4) by reason of being such a member to whom section 24 applies; or
    - (ii) in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1);”;
- (b) by omitting paragraphs (a), (b) and (c) of the definition of “eligible child of a veteran” and substituting the following paragraphs:
  - “(a) a child of a deceased veteran, being a veteran:
    - (i) whose death was war-caused;

- (ii) who was, immediately before his or her death, in receipt of a pension under Part II at the rate specified in subsection 24 (4) by reason of having been a veteran to whom section 24 applied; or
  - (iii) who was, immediately before his or her death, in receipt of a pension under Part II in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1); or
- (b) a child of a veteran, being a veteran who is in receipt of a pension under Part II:
  - (i) at the rate specified in subsection 24 (4) by reason of being a veteran to whom section 24 applies; or
  - (ii) in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1); or”;
- (c) by adding at the end the following subsections:

“(2) Where, after the death of a member of the Forces, or of a member of a Peacekeeping Force:

- (a) a pension is granted in respect of the member under Part IV; or
- (b) the rate of the pension granted to the member under Part IV is increased;

as from a date before the death of the member, and the rate of the pension so granted or the increased rate of the pension, as the case may be, is assessed at the rate specified in subsection 24 (4) by reason that section 24 applied to the member or on the basis that the member was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1), then, the member shall be deemed, for the purpose of the definition of ‘eligible child of a member of the Forces, or of a member of a Peacekeeping Force’ in subsection (1), to have been in receipt of that pension or of pension at that increased rate, as the case may be, immediately before his or her death.

“(3) Where, after the death of a veteran:

- (a) a pension is granted in respect of the veteran under Part II; or
- (b) the rate of the pension granted to the veteran under Part II is increased;

as from a date before the death of the veteran, and the rate of the pension so granted or the increased rate of the pension, as the case may be, is assessed at the rate specified in subsection 24 (4) by reason that section 24 applied to the veteran or on the basis that the veteran was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27 (1), then, the veteran shall be deemed, for the purpose of the definition of ‘eligible



child of a veteran' in subsection (1), to have been in receipt of that pension or of pension at that increased rate, as the case may be, immediately before his or her death.

“(4) Where:

- (a) before an eligible child attains the age of 25 years, approval is given under the Veterans' Children Education Scheme for the child to undertake a course of education or training;
- (b) the child attains the age of 25 years before completing that course; and
- (c) the child continues, after attaining the age of 25 years, to undertake that course for the purpose of completing it;

this Part applies to and in relation to the continued undertaking of that course by the child after he or she attained the age of 25 years as if he or she were under the age of 25 years.”.

#### **Commission not bound by technicalities**

32. Section 119 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) “or” (last occurring); and
- (b) by inserting after paragraph (1) (e) the following word and paragraph:

“; or (ee) a review, under subsection 115 (1), of a decision of the Commission in respect of an application for an allowance or benefit specified in that subsection;”.

#### **Pensions etc. absolutely inalienable**

33. Section 125 of the Principal Act is amended by omitting from subsection (3) all words from and including “Defence Service Homes Corporation” to the end of the subsection and substituting “Defence Service Homes Corporation:

- (a) under a mortgage securing a loan made by that Corporation to the pensioner or to the pensioner and the spouse of the pensioner; or
- (b) under a contract for the purchase of land and a dwelling house from that Corporation by the pensioner or by the pensioner and the spouse of the pensioner.”.

#### **Power to obtain information**

34. Section 127 of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) A notice under subsection (1) may specify an event or change of circumstances by referring to an event or change of circumstance set out in a document referred to in the notice (being a document a copy of which is served on the person with the notice) and, if the notice does so, the event or change of circumstances shall be deemed, for the purposes of this section, to be specified in the notice.

“(3B) Where a notice under subsection (1) specifies an event or change of circumstances by referring to an event or change of circumstances set out in a document, it may specify the period within which notification of the occurrence, or likely occurrence, of the event or change of circumstances is to be furnished to the Department by reference to the period set out in that document in respect of that event or change of circumstances and, if the notice does so, the period shall be deemed, for the purposes of this section, to be specified in the notice.”

#### **Payment of travelling expenses in certain cases**

35. Section 132 of the Principal Act is amended by omitting paragraph (11) (d) and substituting the following paragraph:

“(d) shall be made:

- (i) by forwarding to, or delivering at, an office of the Department in Australia the application and the evidence referred to in paragraph (c); or
- (ii) if the application is in respect of travel referred to in subsection (5) or (6)—by forwarding the application and the evidence referred to in paragraph (c) to, or delivering the application and the evidence so referred to at, an office of the Board or an office of the Department in Australia; and”

#### **Review of decisions in respect of pensions**

36. Section 135 of the Principal Act is amended:

- (a) by omitting from subsection (4) “subsection (5)” and substituting “subsections (5) and (5A)”; and
- (b) by inserting after subsection (5) the following subsection:

“(5A) An application by a person under subsection (1) to the Board to review a decision of the Commission, whether the decision was made before or is made after the commencement of this subsection, refusing to grant an application for attendant allowance under section 98 may be made within a period of 3 months after service on the person of notice of the decision or within a period of 3 months after the commencement of this subsection, whichever last expires, but not otherwise.”

#### **Statements of decisions of the Board etc.**

37. (1) Section 140 of the Principal Act is amended by inserting in paragraph (1) (d) “, the decision of the Commission as varied by that decision of the Board” after “that decision of the Board”.

(2) Section 140 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) The copies of a decision and statement that are required by subsection (1) to be served on the Commission in respect of a review of a decision by the Board shall be served on the Commission by forwarding them to, or delivering them at, the prescribed address of the Commission (addressed to the Commission).”

**Procedure of Board**

**38. (1)** Section 148 of the Principal Act is amended:

(a) by omitting subsection (5) and substituting the following subsection:

“(5) The Principal Member:

(a) may give general directions, not inconsistent with subsections (1), (2), (3) and (4) as to the procedure of the Board with respect to reviews before it, including reviews the hearings of which have not been commenced; and

(b) may give directions, not inconsistent with subsections (1), (2), (3) and (4), as to the procedure of the Board with respect to a particular review before the Board, either before or after the hearing of the review has commenced.”; and

(b) by adding at the end of subsection (6) “, either before or after the hearing of the review has commenced”.

(2) Directions given by the Principal Member of the Veterans' Review Board under subsection 148 (5) of the Principal Act have effect, after the commencement of this subsection, as if they were general directions given under paragraph 148 (5) (a) of the Principal Act as amended by this Act, but may be amended or revoked by general directions given under that paragraph.

**39.** Section 156 of the Principal Act is repealed and the following section is substituted:

**Date of operation of decision by Board**

“156. (1) Except where:

(a) the Board affirms the decision under review; or

(b) the Board sets aside the decision under review and makes a decision in substitution for the decision set aside that has the effect only of revoking a decision of the Commission to cancel or suspend a pension;

the Board shall specify in its decision on a review under this Part the date from which its decision is to operate, being a date fixed in accordance with section 157.

“(2) Where the Board sets aside the decision under review and makes, in substitution for the decision set aside, a decision that has the effect only of revoking a decision of the Commission to cancel or suspend a pension, the decision to cancel or suspend the pension shall be deemed never to have had any force or effect.”

**40.** Section 157 of the Principal Act is repealed and the following section is substituted:

**Dates that may be specified**

“157. (1) In this section:

‘Board’s decision’, in relation to a review by the Board of a Commission’s decision, means the decision of the Board, upon its review of the

Commission's decision, setting aside the Commission's decision and substituting another decision for it or varying the Commission's decision, but does not include a decision of the Board affirming the Commission's decision;

'Commission's decision', in relation to a review by the Board, means a decision of the Commission that has been reviewed by the Board;

'substituted decision' means a decision made by the Board in substitution for a decision of the Commission that has been set aside by the Board upon its review of that decision of the Commission;

'varied decision' means a decision of the Commission as varied by a decision of the Board upon its review of that decision of the Commission.

“(2) Where the Board, upon its review of a decision of the Commission, sets aside that decision and substitutes another decision for it, or varies that decision:

- (a) if the effect of the substituted decision, or the varied decision, as the case may be, is to grant a pension or attendant allowance to a person, the Board may fix, as the date from which the Board's decision is to operate:
  - (i) if the person made application for the review within 3 months after service on the person of a copy of the Commission's decision—a date not earlier than the earliest date as from which the Commission could, if it had not refused to grant a pension or attendant allowance, as the case may be, to the person, have approved payment of a pension or of attendant allowance to the person; or
  - (ii) in any other case—a date not more than 6 months before the date on which the person's application for review of the Commission's decision was received at an office of the Department in Australia;
- (b) if the substituted decision, or the varied decision, as the case may be, is a decision of a kind specified in subsection (3)—the Board shall remit the matter to the Commission to fix the date as from which the Board's decision is to operate, being—
  - (i) if the Board's decision was made for a reason set out in subsection 31 (7)—the date on which the Board's decision was made or an earlier or later date; or
  - (ii) in any other case—the date of the first available pension pay-day occurring after the date on which a copy of the Board's decision is served on the Commission under section 140;
- (c) if the substituted decision, or the varied decision, as the case may be, has the effect of altering the description or nature of the war-caused injury or war-caused disease from which a veteran is suffering, or the description or nature of the defence-caused injury or defence-

caused disease from which a member of the Forces or a member of a Peacekeeping Force is suffering—the Board may fix, as the date as from which that alteration is to operate, such date, being the date on which its decision is made or an earlier or later date, as it determines is fair and reasonable in all the circumstances; or

- (d) in any other case—the Board may fix, as the date as from which the Board's decision is to operate, a date not earlier than the earliest date that the substituted decision, or varied decision, could have operated if it had been made by the Commission in place of the Commission's decision.

“(3) The kinds of decisions specified in this subsection are:

- (a) a substituted decision or a varied decision that has the effect of reducing the rate at which a pension is to be paid (not being a pension that is suspended);
- (b) a substituted decision that has the effect of suspending a pension (not being a pension that has been cancelled or is suspended); and
- (c) a substituted decision that has the effect of cancelling a pension (not being a pension that is suspended).

“(4) Where a Board's decision that sets aside a Commission's decision and substitutes another decision for it, or that varies a Commission's decision, is to operate as from a particular date, the substituted decision or the varied decision, as the case may be, shall operate as from the same date.

“(5) In this section, a reference to the cancellation of a pension shall be read as including a reference to the cancellation of a pension for the reason that the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, or the degree of incapacity of the member of the Forces or of the member of a Peacekeeping Force, from defence-caused injury or defence-caused disease, or both, is less than 10 per centum (including nought per centum).”

#### **Applications for review**

**41.** Section 175 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, varied” after “affirmed” (first occurring); and
- (b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:
  - “(a) of the decision of the Commission that was so affirmed;
  - (b) of the decision of the Commission as so varied; or
  - (c) of the decision made by the Board in substitution for the decision so set aside;”.

**Application of Administrative Appeals Tribunal Act**

**42.** Section 176 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

“(2) For the purposes of the application of section 27 of the *Administrative Appeals Tribunal Act 1975* to and in relation to a reviewable decision:

- (a) if that decision is a decision of the Commission as varied by the Board—the Commission shall be taken to be a person whose interests are affected by that reviewable decision; and
- (b) if the Board has set aside a decision of the Commission under section 19 or 31 of this Act and made another decision in substitution for the decision so set aside—the Commission shall be taken to be a person whose interests are affected by the decision of the Board to set aside the decision of the Commission and by the decision of the Board made in substitution for the decision so set aside.

“(3) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to or in relation to a person whose interests are affected by a reviewable decision:

- (a) in the case of a decision of a kind referred to in paragraph 175 (1) (a) or (c) or in subsection 175 (2) or (4)—if the person has been served with a copy of that decision and with the statement related to that decision in accordance with section 34, 62 or 140 of this Act, whichever was applicable; or
- (b) in the case of a decision of a kind referred to in paragraph 175 (1) (b)—if the person has been served with copies of the decision made by the Commission and of the decision made by the Board varying that decision made by the Commission, and with the respective statements related to those decisions, in accordance with section 34 or 140 of this Act, whichever was applicable.”.

**Effective dates of payment of pension or increased pension**

**43.** Section 177 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) Where the Administrative Appeals Tribunal, upon application made under subsection 175 (1) for a review of a decision of the Commission that has been affirmed or varied by a decision of the Board or a decision of the Board made in substitution for a decision of the Commission, grants a pension (not being a service pension) or attendant allowance, or increases the rate at which a pension (not being a service pension) is to be paid, the Tribunal may approve payment of the pension or of attendant allowance, or payment of the pension at the increased rate, as the case may be:

- (a) if the application is made within 3 months after service on the applicant of a document setting out the terms of that decision of the Board—from a date not earlier than the

earliest date as from which the Board could, if it had granted a pension or attendant allowance or increased the rate of the pension, have approved payment of the pension or attendant allowance, or payment of the pension at an increased rate, as the case may be; or

(b) in any other case:

(i) if the review relates to a claim in accordance with section 14—from a date not more than 6 months before the date on which the application under subsection 175 (1) was made; or

(ii) if the review relates to an application in accordance with section 15, or to an application for attendant allowance—from the date on which the application under subsection 175 (1) was made.”; and

(b) by omitting subsection (5) and substituting the following subsection:

“(5) Where the Administrative Appeals Tribunal, upon application made under subsection 175 (2) for a review of a decision of the Commission under section 59, grants a service pension or increases the rate at which a service pension is to be paid, the Tribunal may approve payment of the service pension, or payment of the service pension at the increased rate, as the case may be:

(a) if the application is made within 3 months after the service on the applicant of a document setting out the terms of that decision of the Commission made under section 59—from a date not earlier than the earliest date as from which the Commission could, if it had, on its review under section 59, granted a service pension or increased the rate of the service pension, have approved payment of the service pension, or payment of the service pension at the increased rate, as the case may be; or

(b) in any other case—from the date on which the application under subsection 175 (2) was made.”.

#### **Commissioner to disclose any interest in claims for pensions etc.**

44. Section 189 of the Principal Act is amended by omitting from paragraph (3) (a) “is, or is to, consider or review” and substituting “is considering or reviewing, or is to consider or review.”.

#### **Repeal of section 197A**

45. Section 197A of the Principal Act is repealed.

#### **Variation of rates of certain pensions**

46. Section 198 of the Principal Act is amended:

(a) by inserting in paragraph (4) (a) “or (c)” after “paragraph (b)”;

(b) by omitting from paragraph (4) (a) “or” (last occurring);

- (c) by omitting paragraph (4) (b) and substituting the following paragraphs:
- “(b) where a relevant rate calculated in accordance with paragraph (a) (in this paragraph referred to as the ‘calculated rate’) is a rate per fortnight and is not a multiple of \$0.10 per fortnight—a rate equal to:
    - (i) if the calculated rate exceeds the next lower rate that is such a multiple by \$0.05 per fortnight or more—the next higher rate that is such a multiple; or
    - (ii) if the calculated rate exceeds the next lower rate that is such a multiple by less than \$0.05 per fortnight—the next lower rate; or
  - (c) in the case of a relevant rate specified in paragraph 83 (1) (a) or (b)—if that rate, calculated in accordance with paragraph (a) of this subsection is not a multiple of \$52 per year—a rate equal to the next higher rate that is a multiple of \$52 per year.”; and
  - (d) by adding at the end of subsection (10) “, but, if a pension is granted, or the rate of a pension is increased, after the first day of that period or year as from a date before the first day of that period or year, the substitution, in so far as it affects instalments of that pension, does not have effect in relation to an instalment of that pension in respect of a period that commenced before the first day of that period or year”.

### **Recovery of overpayments**

47. Section 205 of the Principal Act is amended:

- (a) by omitting from subsection (1) all words after “so paid” to the end of the subsection and substituting “shall, subject to subsection (4) and unless the Commission takes action under paragraph 206 (1) (a) or (b) in respect of that amount, be recovered:
  - (c) by proceedings in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth;
  - (d) by deductions under subsection (2); or
  - (e) partly by proceedings referred to in paragraph (c) and partly by deductions under subsection (2).”; and
- (b) by omitting subsections (2) and (3) and substituting the following subsections:
  - “(2) Where an amount (in this subsection referred to as the ‘overpayment’) has been paid as described in paragraph (1) (a) or (b) to a person, amounts not exceeding in the aggregate the amount of the overpayment may, whether or not proceedings have been



instituted in a court to recover the overpayment, be recovered by deduction:

- (a) from a pension, allowance or pecuniary benefit payable to that person under this Act;
- (b) from any amount payable under section 123 on the death of that person; or
- (c) with the consent of another person, from any pension, allowance or pecuniary benefit payable to that other person under this Act;

but the sum of the amounts so recovered by deduction when aggregated with any amount recovered by proceedings in a court shall not exceed the overpayment.

“(3) Where deductions have commenced to be made under subsection (2) to recover an amount (in this subsection referred to as the ‘overpayment’) but the whole of the overpayment has not been recovered at the end of the period applicable under subsection 206 (2) or (3), as the case requires, to the institution of proceedings to recover the overpayment, deductions may continue to be made under subsection (2) of this section until the balance of the overpayment has been recovered, notwithstanding that the period during which proceedings may be instituted to recover the balance of the overpayment has expired.

“(4) Where:

- (a) a pension or allowance (in this sub-section referred to as the ‘new pension or allowance’) becomes payable, or becomes payable at an increased rate, to a person under this Act as from a date (in this subsection referred to as the ‘operative date’), being the date on which the decision to grant the new pension or allowance, or to increase the rate of the new pension or allowance, is made (in this subsection referred to as the ‘date of the decision’), or a date before or after the date of the decision;
  - (b) the person has been paid before, or is paid on or after, the date of the decision:
    - (i) a pension or allowance under this Act or under the provisions of any other Act administered by the Minister; or
    - (ii) a pension, benefit or allowance under the *Social Security Act 1947*;
- (in this subsection referred to as the ‘existing pension, benefit or allowance’) in respect of a period commencing on or after the operative date; and
- (c) an amount, or amounts, of the existing pension, benefit or allowance has or have been paid, in respect of a period commencing on or after the operative date, that would not

have been paid if the new pension or allowance had then been payable, or payable at the higher rate, as the case may be;

an amount equal to the amount, or sum of the amounts, of the existing pension, benefit or allowance paid to the person that would not have been paid to the person shall, unless the Commission takes action under paragraph 206 (1) (a) or (b) in respect of that amount, be deducted, either in a lump sum or by instalments, as the Commission determines, from amounts of the new pension or allowance payable to the person.”.

### **Delegation by Commission**

48. Section 213 of the Principal Act is amended by omitting from subsection (1) “or under the regulations” and substituting “, under the regulations, under the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* or under any of the provisions of an Act repealed by subsection 3 (1) of this Act in their application, notwithstanding their repeal, by virtue of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*”.

### **Minor amendments**

49. (1) The Principal Act is amended as set out in Schedule 1.

(2) The Principal Act is amended in relation to payment of rent assistance as set out in Schedule 2.

## **PART III—AMENDMENTS OF THE VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1986**

### **Principal Act**

50. The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*<sup>2</sup> is in this Part referred to as the Principal Act.

### **Existing pensions, other than service pensions**

51. Section 4 of the Principal Act is amended:

(a) by adding at the end of subsection (6) “, and, without limiting the generality of the foregoing but subject to subsections (7) and (8) of this section, action by way of:

(a) reviewing a decision with respect to that pension whether made before, on or after the commencing date;

(b) re-assessing the rate of that pension; or

(c) suspending or cancelling that pension;

may be taken in accordance with the provisions of the repealed Acts as if they had not been repealed and the amendments and repeals previously referred to had not been made”;

- (b) by omitting subsection (7) and substituting the following subsections:
- “(7) Where a pension is payable by virtue of subsection (6), the rate at which it is payable is, subject to subsections (7A) and (8), the rate at which it was payable immediately before the commencing date.
- “(7A) Where a pension is payable by virtue of subsection (6) and, immediately before the commencing date, the pension was payable at a rate that had been reduced, but had not been reduced to nil, in consequence of the operation of section 107R of the Repatriation Act, the rate at which that pension is payable is:
- (a) subject to paragraph (b) of this subsection, the rate at which, immediately before the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985*, that pension would have been payable but for the operation of section 107R of the Repatriation Act; or
- (b) if that section did not then apply to the rate of that pension, the rate at which, immediately before the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985*, that pension was payable;
- reduced to the extent (if any) required from time to time by reason of the operation of section 107R of the Repatriation Act;”;
- (c) by omitting from subsection (8) “Subsection (7) does not apply” and substituting “Subsections (7) and (7A), and paragraph (8B) (b), do not apply”;
- (d) by inserting after subsection (8) the following subsections:
- “(8A) Subsection (8B) applies to a pension that had been granted to a person as a dependant of a member of the Forces or of a member of a Peacekeeping Force before the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985* if, immediately before the commencing date, the dependant would have been in receipt of that pension but for the fact that the rate of that pension had been reduced to nil, whether before or after the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985*, in consequence of the operation of section 107R of the Repatriation Act.
- “(8B) Where this subsection applies to a pension, then, notwithstanding the repeals effected by subsection 3 (1) of the Veterans' Entitlements Act:
- (a) that pension continues to be payable under and in accordance with the provisions of the Repatriation Act as if the amendments and repeals referred to in subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985* had not been made;
- (b) the rate at which the pension is so payable shall not exceed:
- (i) except where subparagraph (ii) applies—the rate at which that pension was payable immediately before

the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985*; or

- (ii) if, immediately before the commencement of subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985*, the rate of that pension had been reduced (including reduced to nil) by reason of the operation of section 107R of the Repatriation Act—the rate at which that pension would, immediately before the commencement of that subsection, have been payable but for the operation of section 107R of the Repatriation Act;  
reduced to the extent (if any) required from time to time by reason of the operation of section 107R of the Repatriation Act; and
- (c) without limiting the generality of the foregoing, action by way of:
  - (i) reviewing a decision with respect to that pension whether made before, on or after the commencing date;
  - (ii) reassessing the rate of that pension; or
  - (iii) suspending or cancelling that pension;

may be taken in accordance with the provisions of the Repatriation Act as if they had not been repealed and the amendments and repeals referred to in subsection 66 (2) of the *Repatriation Legislation Amendment Act 1985* had not been made.

“(8C) The Veterans’ Review Board continued in existence by section 134 of the *Veterans’ Entitlements Act 1986* continues, notwithstanding the repeals effected by section 3 of that Act, to have, in relation to decisions made under the repealed Acts with respect to pensions to which subsection (6) or (8B) of this section applies, all the powers, and may exercise the jurisdiction, conferred on it by the repealed Acts.”; and

- (e) by omitting subsection (11) and substituting the following subsection:

“(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:
  - (i) granting a pension to the member in respect of incapacity from an injury or 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."

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

**52.** Section 5 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) "and"; and
- (b) by inserting after paragraph (2) (b) the following paragraph:

"(ba) if the person was, immediately before the commencement of this paragraph, in receipt of a pension under a repealed Act by virtue of subsection 4 (6) of this Act—that pension ceases to be payable to the person on the commencement of this paragraph; and"

**Persons deemed to be in receipt of pensions etc.**

**53.** Section 13 of the Principal Act is amended by omitting from subsection (3) "Repatriation (Far East Strategic Reserve) Regulations" (second occurring) and substituting "Repatriation (Special Overseas Service) Regulations".

**Allowances and other benefits**

**54. (1)** Section 16 of the Principal Act is amended by omitting from subsection (3) "being the widowed mother or the widowed step-mother of an unmarried member of the Forces who died before the commencing date" and substituting "who is the widowed mother or the widowed step-mother of an unmarried member of the Forces, being a member who died before the commencing date,".

**(2)** Section 16 of the Principal Act is amended by inserting after subsection (10) the following subsection:

"(10A) Subsection (10) does not authorise the making of a request under section 115 of the Veterans' Entitlements Act in respect of a decision of the Commission made before the commencing date."

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

**55. (1)** Section 20 of the Principal Act is amended:

- (a) by omitting from subsection (6) "or an application made under subsection (2) for a review of a decision of the Commission,"; and
- (b) by inserting after subsection (6) the following subsection:

"(6A) An application under subsection (2) for a review of a decision of the Commission may be made within the period of 3 months after service on the person to whom the decision relates of

notice of the decision or within the period of 3 months after the date of commencement of this subsection, whichever last expires, but not otherwise.”.

(2) Section 20 of the Principal Act is amended by omitting from subsection (10A) “paragraph 175 (4) (a) of the Veterans’ Entitlements Act, be made to the Administrative Appeals Tribunal, under section 174” and substituting “paragraph 176 (4) (a) of the Veterans’ Entitlements Act, be made to the Administrative Appeals Tribunal, under section 175”.

### **Rent assistance**

**56. (1)** Section 32 of the Principal Act is amended by omitting subsections (1), (2), (3) and (4).

(2) Section 32 of the Principal Act is amended by omitting from paragraph (6) (b) “subsection (1)” and substituting “subsection (5)”.

**57.** After section 32 of the Principal Act the following section is inserted:

### **Payments by way of compensation or damages**

“32A. (1) Where:

- (a) a member of the Forces or a member of a Peacekeeping Force is in receipt of a pension under Part IV of the Veterans’ Entitlements Act;
- (b) a pension continues to be payable to a dependant of the member in accordance with the repealed Acts in pursuance of subsection 4 (6) or (8B) of this Act; and
- (c) the rate of a pension that so continues to be payable is required to be reduced (including reduced to nil) by virtue of section 107R of the Repatriation Act in relation to compensation that is payable in respect of injury to the member;

section 74 of the Veterans’ Entitlements Act applies to and in relation to the pension payable to the member as if the rate, or sum of the rates, per fortnight at which compensation is payable in respect of the injury for the purposes of that section were the amount per fortnight ascertained in accordance with the formula:

$$A - B,$$

where:

**A** is the amount that is, or the sum of the amounts that are, paid per fortnight, for the purposes of section 107R of the Repatriation Act, by way of compensation in respect of the injury; and

**B** is:

- (d) the amount per fortnight by which the rate per fortnight of the pension payable to a dependant of the member has been reduced in pursuance of section 107R of the Repatriation Act; or

- (e) if pensions payable to 2 or more dependants of the member have been so reduced—the sum of the amounts per fortnight by which the rates of those pensions have been so reduced.

“(2) Where:

- (a) a dependant of a member of the Forces or of a member of a Peacekeeping Force, being a dependant in receipt of a pension in accordance with the repealed Acts in pursuance of subsection 4 (6) of this Act, elects to commute payments of that pension in accordance with section 6 of this Act;
- (b) immediately before the pension that is to be commuted is cancelled by force of paragraph 6 (4) (a), that pension was payable at a rate that had been reduced by virtue of section 107R of the Repatriation Act in relation to compensation that was paid or is payable in respect of injury to that member; and
- (c) upon the cancellation of that pension, a pension continues to be payable under Part IV of the Veterans' Entitlements Act to that member or a pension continues to be payable to another dependant of that member in pursuance of subsection 4 (6) or (8B);

the rate of a pension referred to in paragraph (c) shall be assessed, in relation to the compensation that was paid or is payable in respect of that injury to that member, as if instalments of the pension referred to in paragraph (b) continued to be paid to the dependant on each of the 78 pension pay-days next following the cancellation of that pension.”.

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

58. Section 37 of the Principal Act is amended by adding at the end of subsection (1) “and any compensation so recovered or received before the commencing date had been so recovered or received on that date”.

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

59. (1) Section 45 of the Principal Act is amended by adding at the end the following subsection:

“(3) Subsections 124 (4) and (5) of the Veterans' Entitlements Act apply to a person who is in receipt of a pension under Part II, III or IV of that Act, or of rent assistance under that Act, until a notice is served on the person under section 127 of that Act:

- (a) as if a reference in those subsections to the notification of the occurrence of an event or change of circumstances in accordance with a notice under subsection 127 (1) of that Act were read as a reference to the notification of the occurrence of an event or change of circumstances in accordance with the provisions of section 40AA or 96, or of subsection 98A (8), (9) or (10), of the Repatriation Act, whichever is applicable by virtue of subsections (1), (2), (4) and (5) of this section; and
- (b) a reference in subsection 124 (4) and (5) of the Veterans' Entitlements Act to the time within which such a notification is to

be made shall be read as a reference to the time within which notification of the occurrence of the event or change of circumstances is required to be made by whichever of the provisions referred to in paragraph (a) of this subsection is so applicable.”.

(2) Section 45 of the Principal Act is amended by adding at the end the following subsection:

“(4) Subsections 98A (8), (9) and (10) of the Repatriation Act apply, notwithstanding the repeals effected by subsection 3 (1) of the Veterans' Entitlements Act, to and in relation to a person who was in receipt of an allowance under section 98A of the Repatriation Act immediately before the commencing date, and to and in relation to the husband or wife of such a person, until a notice is served on that person under section 127 of the Veterans' Entitlements Act.”.

(3) Section 45 of the Principal Act is amended:

(a) by omitting from subsection (3) “, or of rent assistance,”; and

(b) by adding at the end the following subsection:

“(5) After the commencement of this section:

(a) section 96 of the Repatriation Act applies by virtue of subsection (2) of this section; and

(b) subsections 98A (8), (9) and (10) of the Repatriation Act apply by virtue of subsection (4) of this section;

as if a reference in that section or those subsections to an allowance under section 98A of the Repatriation Act were read as a reference to a service pension, wife's service pension or carer's service pension the rate of which has been increased in pursuance of section 55 of the Veterans' Entitlements Act.”.

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

60. Section 54 of the Principal Act is amended by omitting from paragraph (3) (c) “Far East Strategic Reserve” and substituting “Special Overseas Service”.

### **Schedule**

61. The Schedule to the Principal Act is amended:

(a) by omitting the amendments of the following provisions of the *Social Security Act 1947*:

Subsection 33 (1)

Subsection 33 (2)

Subparagraph 119 (5) (b) (vi)

Subsection 143A (3); and

(b) by omitting from the amendment of subsection 28A (6) of the *Social Security Act 1947* “pension” and substituting “pensions”.



**PART IV—AMENDMENT OF THE VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) AMENDMENT ACT 1986**

**Principal Act**

62. The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986*<sup>3</sup> is in this Part referred to as the Principal Act.

**Commencement**

63. Section 2 of the Principal Act is amended by omitting “the Principal Act comes” and substituting “the provisions of the Principal Act (other than section 61) come”.

**PART V—AMENDMENTS OF THE SOCIAL SECURITY AND VETERANS' AFFAIRS (MISCELLANEOUS AMENDMENTS) ACT 1986**

**Principal Act**

64. The *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986*<sup>4</sup> is in this Part referred to as the Principal Act.

**Rate of veteran's service pension**

65. Section 72 of the Principal Act is amended:

(a) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:

“(a) by omitting paragraph (3) (a) and substituting the following paragraph:

‘(a) in the case of an unmarried veteran or a married veteran in relation to whom a direction under subsection (2) is in force—by \$624 per year, and by a further \$884 per year in respect of each child who is a dependant of the veteran, is wholly or substantially dependent on the veteran and is not a prescribed student child of the veteran; or’;

(b) by omitting from paragraph (3) (b) all the words after ‘in any other case’ and substituting ‘—by \$884 per year in respect of each child who is a dependant of the veteran, is wholly or substantially dependent on the veteran and is not a prescribed student child of the veteran.’;”;

(b) by omitting paragraph (3) (d) and substituting the following paragraph:

“(d) by inserting in subsection (7) ‘and is not a prescribed student child of the veteran’ after ‘on the veteran’; and”.

**PART VI—AMENDMENTS OF THE SEAMEN'S WAR PENSIONS  
AND ALLOWANCES ACT 1940**

**Principal Act**

66. The *Seamen's War Pensions and Allowances Act 1940*<sup>s</sup> is in this Part referred to as the Principal Act.

**Interpretation**

67. Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of "child" and substituting the following definition:

" '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; and
  - (ii) is undertaking full-time education at a school, college or university;

other than such a person who is 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*;"

**Allowance for attendant**

68. Section 21 of the Principal Act is amended by adding at the end the following subsections:

"(5) An application for an allowance under this section:

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such certificates and other evidence (relevant to the applicant's entitlement to the allowance) as are required to be furnished by this Act, the regulations or the form of application; and
- (c) shall be made by forwarding the application to the Secretary at an address of the Department in Australia together with any certificates and evidence referred to in paragraph (b).

"(6) An application for an allowance under this section may be made:

- (a) by the person eligible to be granted the allowance; or
- (b) with the approval of that person or of the Commission under subsection (7), by another person on behalf of that person.

"(7) Where a person eligible to be granted an allowance under this section is unable, by reason of physical or mental ailment, to approve a person to make an application for that allowance on his or her behalf, the Commission may approve a person to make the application on his or her behalf.

“(8) Where an application for an allowance under this section is made by a person on behalf of another person, the other person on whose behalf the application is made, and not the person making the application on behalf of that other person, shall be treated as the applicant.

“(9) For the purposes of this section, where:

- (a) a person makes an application in writing for an allowance under this section, but otherwise than in accordance with a form approved for the purposes of subsection (5); and
- (b) the person subsequently makes an application for the allowance in accordance with a form so approved:
  - (i) at a time when the person had not been notified by the Department, in writing, that it would be necessary to make the application in accordance with a form so approved; or
  - (ii) within 3 months after the person had been so notified;

the Commission or a Pensions Committee may treat the application referred to in paragraph (b) as having been received at an address of the Department in Australia on the date on which the application referred to in paragraph (a) was so received.

“(10) An allowance under this section payable to an Australian mariner by reason that the mariner is suffering incapacity from a war injury is payable:

- (a) if application for the allowance is made within 3 months after the date on which the determination was made under this Act determining that the injury was a war injury—as from the date on which that determination was made; or
- (b) in any other case—as from the first pension pay-day after the date on which the mariner's application for the allowance in respect of that war injury is received at an address of the Department in Australia.”.

#### **Application for review**

**69.** Section 35 of the Principal Act is amended:

- (a) by omitting from subsection (2) “subsection (3)” and substituting “subsections (3) and (4)”; and
- (b) by adding at the end the following subsection:

“(4) An application by a person under subsection (1) to the Board to review a reviewable decision of the Commission or a Pensions Committee, whether made before or after the commencement of this subsection, refusing to grant attendant allowance under section 21 may be made within a period of 3 months after service on the person of a copy of the decision or within a period of 3 months after the commencement of this subsection, whichever last expires, but not otherwise.”.

**Application of certain provisions of Part IX of Veterans' Entitlements Act**

**70.** Section 37 of the Principal Act is amended:

(a) by inserting after paragraph (2) (c) the following paragraph:

“(ca) a reference in those provisions to a war-caused injury or a war-caused disease, in relation to a veteran, shall be read, in relation to an Australian mariner, as a reference to a war injury;”; and

(b) by omitting paragraph (2) (e) and substituting the following paragraph:

“(e) a reference in those provisions to section 31, or to a subsection of that section, of the *Veterans' Entitlements Act 1986* shall be read as a reference to section 55 of this Act, or to the corresponding subsection of section 55 of this Act, as the case may be;”.

**71.** After section 37 of the Principal Act the following Part is inserted:

**“PART IVA—REVIEW OF CERTAIN DECISIONS BY  
REPATRIATION COMMISSION**

**Review of decisions etc.**

“37A. (1) Subject to subsection (2), a person who is dissatisfied with a decision of the Commission, given under the regulations after the commencement of this section, in respect of an application for:

- (a) temporary incapacity allowance;
- (b) loss of earnings allowance;
- (c) clothing allowance; or
- (d) a funeral benefit;

may request the Commission, in writing, to review the decision, and, where such a request is duly made, the Commission shall review the decision, or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

“(2) A request under subsection (1) to review a decision shall set out particulars of the grounds on which the request is made, and may be made within 3 months after service on the person to whom the decision relates of notice of the decision, but not otherwise.

“(3) Where the Commission reviews a decision under subsection (1), the Commission may affirm or set aside the decision and, if it sets aside the decision, it shall make such other decision as it considers to be in accordance with the Regulations.

“(4) Where the Commission makes a decision, in substitution for the decision set aside, granting an application for an allowance specified in subsection (1), it may approve payment of the allowance as from a date

not earlier than the date as from which payment of the allowance could have been approved if the substituted decision had been made in place of the original decision.

**Powers of Commission on reviews under section 37A**

“37B. (1) The Commission, or a person to whom the Commission has delegated its powers under section 37A, may:

- (a) take evidence on oath or affirmation for the purposes of a review;  
or
- (b) adjourn a hearing of a review from time to time.

“(2) Where the Commission is itself conducting a review, the presiding member of the Commission may, for the purposes of the review:

- (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons;
- (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
- (c) administer an oath or affirmation to a person so appearing.

“(3) Where a person to whom the Commission has delegated its powers under section 37A is conducting a review, the person may, for the purposes of the review:

- (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons;
- (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
- (c) administer an oath or affirmation to a person so appearing.

“(4) The applicant for a review by the Commission under section 37A is a competent and compellable witness upon the hearing of the review.

“(5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

“(6) The power conferred by paragraph (1) (a) on the Commission to take evidence on oath or affirmation for the purposes of a review may be exercised on behalf of the Commission by the presiding member in relation to the review or by another person (whether a member or not) authorised by the presiding member, and that power may be so exercised within or outside Australia, but the Commission may direct that the power is to be so exercised subject to limitations specified by the Commission.

“(7) Where a person other than the presiding member in relation to a review is authorised, in accordance with subsection (6), to take evidence for

the purposes of the review, the first-mentioned person has, for the purposes of taking that evidence, all the powers of the Commission under subsection (1) and all the powers of the presiding member under subsection (2).

“(8) The power conferred by paragraph (1) (a) on a person to whom the Commission has delegated its powers under section 37A to take evidence on oath or affirmation for the purposes of a review may be exercised by that person or by another person authorised by that person and that power may be so exercised within or outside Australia, but the Commission may direct that the power is to be so exercised subject to limitations specified by the Commission.

“(9) Where a person is authorised, in accordance with subsection (8), to take evidence for the purposes of a review, the person has, for the purposes of taking the evidence, all the powers conferred, by subsections (1) and (3), on the person to whom the Commission has delegated its powers under section 37A.

#### **Reasons for decision to be given**

“37C. (1) Where the Commission makes a decision upon a review of a decision under section 37A, the Commission shall make a written record of its decision together with a statement, in writing, setting out its findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving its reasons for the decision.

“(2) As soon as practicable after the Commission makes a decision referred to in subsection (1), the Commission shall, subject to subsection (3), cause to be served on the person who requested the review or other person to whom the decision relates, a copy of its decision and of the statement relating to its decision made by it in accordance with subsection (1), together with particulars of any right of the person on whom it is served to have the decision reviewed by the Administrative Appeals Tribunal.

“(3) Where the statement prepared by the Commission in pursuance of subsection (1) upon the making of a decision referred to in that subsection contains or refers to any information, opinion or other matter:

- (a) that, in the opinion of the Commission, is of a confidential nature; or
- (b) that, in the opinion of the Commission, it might be prejudicial to the physical or mental health or well-being of the person on whom a copy of the statement is required to be served to communicate to the person;

the document served on the person in pursuance of subsection (2) shall not contain or refer to that information, opinion or other matter.”

#### **Application for review**

72. (1) Section 39 of the Principal Act is amended:

- (a) by inserting “, varied” after “affirmed” (first occurring); and
- (b) by omitting paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) of the decision of the Commission or Pensions Committee that was so affirmed;
- (b) of the decision of the Commission or Pensions Committee as so varied; or
- (c) of the decision made by the Board in substitution for the decision so set aside;”.

(2) Section 39 of the Principal Act is amended by adding at the end the following subsection:

“(2) Where the Commission, under section 37A, affirms a decision of the Commission in respect of an application for an allowance or benefit referred to in subsection 37A (1), or sets aside such a decision and substitutes another decision for it, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review:

- (a) of the decision so affirmed; or
- (b) of the decision made by the Commission under section 37A in substitution for the decision so set aside.”.

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

73. Section 40 of the Principal Act is amended:

- (a) by omitting from subsection (1) “subsection 177 (5)” and substituting “subsections 177 (5) and (6)”;
- (b) by inserting after paragraph (2) (b) the following paragraphs:
  - “(ba) a reference in those provisions to attendant allowance shall be read as a reference to attendant allowance under section 21 of this Act;
  - (bb) a reference in those provisions to a veteran shall be read as a reference to an Australian mariner;”;
- (c) by omitting from paragraph (2) (d) “section 39” and substituting “subsection 39 (1)”.

74. After section 41 of the Principal Act the following section is inserted in Part V:

#### **Effective date of payment of certain allowances**

“42. Where the Administrative Appeals Tribunal, upon application made under subsection 39 (2) for a review of a decision (in this section referred to as the ‘original decision’) made by the Commission with respect to an application for an allowance of a kind referred to in subsection 37A (1), grants the allowance, or increases the rate at which the allowance is to be paid, the Tribunal may approve payment of the allowance, or of the allowance at the increased rate, as the case may be:

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—

from a date not earlier than the earliest date as from which payment of the allowance, or payment of the allowance at the increased rate, could have been approved if the original decision had been the same as the decision made by the Tribunal; or

- (b) in any other case—from the date on which the application under subsection 39 (2) was made.”.

### **Review by Commission**

**75.** Section 55 of the Principal Act is amended:

- (a) by inserting after subsection (5) the following subsection:

“(5AA) The Commission may, for the purpose of reviewing a decision under this section, of exercising its powers under subsection (5A) for a reason specified in paragraph (5A) (a) or (b) or of exercising its powers under subsection (5C), by notice in writing served on an Australian mariner who is in receipt of a pension under this Act, request the mariner:

- (a) to undergo, as provided in the notice, a medical examination for the purpose of the review, or the exercise of those powers, as the case may be; or
- (b) to consent to the release to the Commission of information concerning the Australian mariner of a kind described in the notice, being information that, in the opinion of the Commission, may be relevant to the review, or the exercise of those powers, as the case may be.”;

- (b) by omitting from paragraph (5A) (a) “or” (last occurring);
- (c) by inserting after paragraph (5A) (b) the following word and paragraph:

“; or (c) by reason of a refusal or failure of an Australian mariner to comply with a notice served on the mariner under subsection(5AA);”;

- (d) by inserting after subsection (5A) the following subsections:

“(5AB) Where the Commission is, under subsection (5A), satisfied that the rate of a pension payable to an Australian mariner is higher than it should be by reason that the degree of incapacity of the mariner from war injury is less than 10 per centum (including nought per centum), it shall cancel the pension that was payable to the mariner.

“(5AC) The cancellation of a pension payable to an Australian mariner under subsection(5AB) does not affect any decision of the Commission, a Pensions Committee, the Board or the Administrative Appeals Tribunal that is in force determining that the mariner is suffering from a war injury.”; and

- (e) by inserting after subsection (5B) the following subsection:



“(5BA) Subsection (5B) does not apply to a determination under subsection (5A) for a reason set out in paragraph (5A) (c).”.

**76.** Section 55A of the Principal Act is repealed and the following section is substituted:

**Recovery of overpayments**

“55A. (1) Where:

- (a) in consequence of a false statement or representation, or of a failure or omission to comply with a provision of this Act, of the Regulations or of the *Veterans' Entitlements Act 1986* in its application by virtue of this Act, an amount has been paid by way of pension, allowance or other pecuniary benefit under this Act, or under the Regulations, that would not have been paid but for the false statement or representation or but for the failure or omission; or
- (b) an amount has purported to have been paid by way of pension, allowance or other pecuniary benefit under this Act or the Regulations that was not lawfully so payable;

an amount equal to the amount so paid shall, subject to subsection (4) and unless the Commission takes action under paragraph 55B (1) (a) or (b) in respect of that amount, be recovered:

- (c) by proceedings in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth;
- (d) by deductions under subsection (2); or
- (e) partly by proceedings referred to in paragraph (c) and partly by deductions under subsection (2).

“(2) Where an amount (in this subsection referred to as the ‘overpayment’) has been paid as described in paragraph (1) (a) or (b) to a person, amounts not exceeding in the aggregate the amount of the overpayment may, whether or not proceedings have been instituted in a court to recover the overpayment, be recovered by deduction:

- (a) from a pension, allowance or pecuniary benefit payable to the person under this Act or the Regulations;
- (b) from any amount payable under the Regulations on the death of that person; or
- (c) with the consent of another person, from any pension, allowance or pecuniary benefit payable to that other person under this Act or the Regulations;

but the sum of the amounts so recovered by deduction when aggregated with any amount recovered by proceedings in a court shall not exceed the overpayment.

“(3) When deductions have commenced to be made under subsection (2) to recover an amount (in this subsection referred to as the ‘overpayment’) but the whole of the overpayment has not been recovered at the end of the

period applicable under subsection 55B (2) or (3), as the case requires, to the institution of proceedings to recover the overpayment, deductions may continue to be made under subsection (2) of this section until the balance of the overpayment has been recovered, notwithstanding that the period during which proceedings may be instituted to recover the balance of the overpayment has expired.

“(4) Where:

- (a) a pension or allowance (in this subsection referred to as the ‘new pension or allowance’) becomes payable, or becomes payable at an increased rate, to a person under this Act or the Regulations from a date (in this subsection referred to as the ‘operative date’), being the date on which the decision to grant the new pension or allowance, or to increase the rate of the new pension or allowance, is made (in this subsection referred to as the ‘date of the decision’), or a date before or after the date of the decision;
- (b) the person has been paid before, or is paid on or after, the date of the decision:
  - (i) a pension or allowance under this Act or the Regulations, or under the provisions of any other Act administered by the Minister; or
  - (ii) a pension, benefit or allowance under the *Social Security Act 1947*;(in this subsection referred to as the ‘existing pension, benefit or allowance’) in respect of a period commencing on or after the operative date; and
- (c) an amount, or amounts, of the existing pension, benefit or allowance has or have been paid, in respect of a period commencing on or after the operative date, that would not have been paid if the new pension or allowance had then been payable, or payable at the increased rate, as the case may be;

an amount equal to the amount, or the sum of the amounts, of the existing pension, benefit or allowance paid to the person that would not have been paid to the person shall, unless the Commission takes action under paragraph 55B (1) (a) or (b) in respect of that amount, be deducted, either in a lump sum or by instalments, as the Commission determines, from amounts of the new pension or allowance payable to the person.”.

## **PART VII—AMENDMENT OF THE PAPUA NEW GUINEA (MEMBERS OF THE FORCES BENEFITS) ACT 1957**

### **Principal Act**

77. The *Papua New Guinea (Members of the Forces Benefits) Act 1957*<sup>6</sup> is in this Part referred to as the Principal Act.

**Appropriation for pensions etc.**

78. Section 8A of the Principal Act is amended by omitting from paragraph (c) "regulations under the *Repatriation Act 1920*" and substituting "the *Veterans' Entitlements Act 1986*".

**PART VIII—AMENDMENT OF THE SOCIAL SECURITY AND REPATRIATION LEGISLATION AMENDMENT ACT (No. 2) 1984**

**Principal Act**

79. The *Social Security and Repatriation Legislation Amendment Act (No. 2) 1984* is in this Part referred to as the Principal Act.

**Interpretation**

80. Section 27 of the Principal Act is amended by omitting "at an institution established under section 120D of the *Repatriation Act 1920*" from the definition of "eligible person" and substituting "under section 85 or 86 of the *Veterans' Entitlements Act 1986*".

**PART IX—MISCELLANEOUS**

**Transitional—pensions (other than service pensions)**

81. The amendments of the *Veterans' Entitlements Act 1986* made by sections 5 and 6, and by subsection 22 (1), of this Act do not affect:

- (a) the operation, after the commencement of this section, of a decision of the Commission, of the Board or of the Administrative Appeals Tribunal made before the commencement of this section; or
- (b) the payment, after the commencement of this section, of instalments of a pension granted before the commencement of this section;

but the decision or pension may be reviewed under the *Veterans' Entitlements Act 1986* as amended by this Act, but not in consequence of the amendments made by those sections or that subsection.

**Transitional—service pensions**

82. (1) In this section:

"commencing date" means 2 July 1987;

"pension" means a service pension or a wife's service pension;

"pensioner" means a person in receipt of a pension;

"Principal Act" means the *Veterans' Entitlements Act 1986*;

"Transitional Provisions Act" means the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

(2) Subject to subsection (3), where, immediately before the commencing date, a pensioner was in receipt of rent assistance under subsection 32 (5) of the Transitional Provisions Act, the pensioner is eligible to receive an increase in his or her pension under section 55 of the Principal Act as

amended by this Act at a rate equal to the rate at which supplementary assistance allowance would be payable to the person, but for the repeals referred to in subsection 32 (5) of the *Transitional Provisions Act*, by virtue of, and in accordance with, subsection 92 (3) of the *Repatriation Acts Amendment Act 1981*.

- (3) Subsection (2) ceases to apply to a pensioner:
- (a) if the pensioner 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 under those sections; or
  - (b) if the rate of the increase in pension payable to the pensioner under section 55 of the *Principal Act* as amended by this Act but for this section exceeds the rate at which the increase is payable to the person in accordance with subsection (2) of this section.

**Transitional—notification of occurrences and events related to rent allowance**

83. (1) Where a person would, at any time on or after 22 May 1986 and before the commencement of this section, have been required to notify the Secretary of an occurrence or event if subsection 59 (2) of this Act had come into operation on 22 May 1986, the person shall notify the Department of that occurrence or event, in writing, within 28 days after the commencement of this section.

Penalty: \$40.

(2) Subsections 98A (8), (9) and (10) of the *Repatriation Act 1920*, in their application by virtue of subsection 45 (3) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*, extend to occurrences and events that occurred before the commencement of this section but a person shall not be convicted, in respect of failure to notify an occurrence or event that so occurred, of an offence against subsection 98A (8), (9) or (10), as the case may be, of the *Repatriation Act 1920* and also of an offence against subsection (1) of this section.

(3) Subsection (1) does not apply to a person in respect of an occurrence or event if the person had notified the Secretary of that occurrence or event before the commencement of this section.

(4) Subsection 45 (3) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* applies, on and after the commencement of this section, as if the reference in that subsection to the requirements of subsection 98A (8), (9) or (10) of the *Repatriation Act 1920* included a reference to the requirements of subsection (1) of this section.

**SCHEDULE 1**

Subsection 49 (1)

**Minor Amendments of *Veterans' Entitlements Act 1986***

**Subsection 29 (2):**

Omit " 'Guide to the Assessment of Rates of Veterans' Pensions' ", substitute "Guide to the Assessment of Rates of Veterans' Pensions".

**Subsection 29 (8):**

Omit " 'Guide to the Assessment of Rates of Veterans' Pensions' ", substitute "Guide to the Assessment of Rates of Veterans' Pensions".

**Subsection 51 (2):**

Omit "any office", substitute "an office".

**Paragraph 52 (8) (e):**

Omit "shall be calculated", substitute "shall be calculated".

**Subsection 60 (9):**

Omit "(2)", substitute "(3)".

**Subsection 63 (3):**

Omit "forseen", substitute "foreseen".

**Subsection 65 (1) (definition of "pensioner"):**

Omit from paragraph (c) "paragraph (b) of the definition of 'married person'", substitute "paragraph (d) of the definition of 'unmarried person'".

**Paragraph 70 (5) (c):**

Omit "be defence-caused injury", substitute "be a defence-caused injury".

**Subsection 90 (5):**

Omit "subsection (3)", substitute "subsection (4)".

**Subsection 98 (4):**

Omit "public hospital or other public institution", substitute "hospital or other institution".

**Subsection 102 (3):**

Omit "Australia or".

**Subsection 103 (3):**

Omit "Australia or".

**Paragraph 115 (1) (d):**

Omit "Allowance", substitute "allowance".

**Paragraph 127 (1) (e):**

Omit "Secretary", substitute "Department".

**Paragraph 127 (1) (f):**

Omit "Secretary", substitute "Department".

**Subsection 132 (1):**

Omit ", within Australia".

**SCHEDULE 1—continued**

**Paragraph 132 (1) (c):**

Before “for the purpose”, insert “within Australia.”.

**Paragraph 132 (1) (d):**

Before “for the purpose”, insert “within or outside Australia.”.

**Subsection 204 (2):**

Before “Peacekeeping”, insert “a”.

**Paragraph 212 (1) (b):**

After “section” insert “161 or”.

**Schedule 2 (item 2):**

Omit “30 August” (in Column 2), substitute “31 August”.

**Schedule 2 (item 6):**

After “territory” (in Column 1), insert “of”.

**Schedule 2 (item 7):**

Omit “that western, southern and eastern shores” (in Column 1), substitute “the western, southern and eastern shores”.

**Schedule 2 (item 8):**

(a) Omit “161 kilometres” (in Column 1), substitute “185.2 kilometres”.

(b) Omit “to the point of commencement” (in Column 1), substitute “; thence following the shore of Vietnam at high-water mark to the point of commencement”.

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**SCHEDULE 2**

Subsection 49 (2)

**Minor Amendments of *Veterans' Entitlements Act 1986* relating to rent assistance**

**Subsection 35 (1) (definition of “rent assistance”):**

Omit the definition.

**Subsection 58 (5):**

Omit “, rent assistance”.

**Subsection 59 (8):**

Omit “, rent assistance”.

**Subsection 67 (3):**

Omit “, rent assistance”.

**Subsection 124 (5):**

Omit “or rent assistance” (wherever occurring).

**Paragraph 124 (5) (a):**

Omit “or of rent assistance”.

**SCHEDULE 2—continued**

**Paragraph 124 (6) (a):**

Omit “rent assistance and”.

**Paragraph 199 (b):**

Omit “rent assistance and”.

**Subsection 207 (1) (definition of “service pension”):**

Omit “rent assistance and”.

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**NOTES**

1. No. 27, 1986, as amended. For previous amendments, see No. 106, 1986.
2. No. 28, 1986, as amended. For previous amendments, see Nos. 29 and 106, 1986.
3. No. 29, 1986.
4. No. 106, 1986.
5. No. 60, 1940, as amended. For previous amendments, see No. 77, 1946; No. 80, 1950; Nos. 17 and 75, 1952; No. 70, 1953; No. 32, 1954; No. 40, 1955; No. 45, 1957; No. 48, 1958; No. 59, 1959; No. 46, 1960; No. 47, 1961; Nos. 64 and 113, 1964; No. 65, 1965; No. 43, 1966; No. 102, 1967; No. 67, 1968; No. 96, 1969; No. 61, 1970; Nos. 18 and 69, 1971; Nos. 16 and 83, 1972; Nos. 6 and 106, 1973; Nos. 4, 25 and 90, 1974; Nos. 35 and 111, 1975; Nos. 27, 91 and 112, 1976; No. 56, 1977; No. 129, 1978; Nos. 18 and 124, 1979; No. 129, 1980; No. 160, 1981; Nos. 80 and 100, 1982; No. 70, 1983; Nos. 90 and 97, 1984; Nos. 90, 95 and 127, 1985; and Nos. 28, 29 and 106, 1986.
6. No. 89, 1957, as amended. For previous amendments, see No. 109, 1965; No. 93, 1966; No. 8, 1968; No. 138, 1972; No. 90, 1974; and No. 160, 1981.
7. No. 134, 1984.

[*Minister's second reading speech made in—  
House of Representatives on 18 March 1987  
Senate on 1 April 1987*]