



Veterans' Affairs Legislation Amendment Act 1988

No. 134 of 1988

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Application

PART II—AMENDMENTS OF VETERANS' ENTITLEMENTS ACT 1986

4. Principal Act
5. Interpretation
6. Interpretation
7. Eligibility for pension
8. Claim for pension
9. Application for increase in pension
10. Repeal of section 19 and insertion of new sections:
 19. Determination of claims and applications
 - 19A. Refusal to undergo medical examination etc. may delay consideration of claim or application
11. Date of operation of grant of claim for pension
12. Date of operation of grant of application under section 15
13. Repeal of section 22 and insertion of new sections:
 - 21A. Determination of degree of incapacity
 22. General rate of pension and extreme disablement adjustment
14. Intermediate rate of pension
15. Special rate of pension
16. Increased rates of pension in certain cases
17. Treatment of certain income
18. Eligibility for carer's service pension
19. Restrictions on dual pensions
20. Rate of veteran's service pension
21. Veterans eligible to be provided with treatment
22. Knowingly making false statements relating to treatment
23. Clothing allowance

TABLE OF PROVISIONS—continued

Section	
24.	Attendant allowance
25.	Recreation transport allowance
26.	Insertion of new section: 132A. Advance of travelling expenses
27.	Decision of Board
28.	Variation of rates of certain pensions
29.	Commission may administer trusts
30.	Trustees for pensioners
31.	Insertion of new sections: 202A. Commission or public servant acting as trustee 202B. Other person acting as trustee
32.	Recovery of overpayments
33.	Insertion of new section: 205AA. Recovery of overpayment by deduction from other pension, benefit or allowance
34.	Insertion of new section: 205B. Certain decisions of Commission reviewable under Social Security Act etc.
35.	Repeal of section 210
36.	Amendments to correct references to provisions of the <i>Social Security Act 1947</i> as re-numbered

PART III—AMENDMENTS OF SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

37.	Principal Act
38.	Interpretation
39.	Determinations and assessments by Commission
40.	Insertion of new section: 17C. Eligibility for pension after re-marriage or marriage
41.	Rates of pension on death or total incapacity
42.	Allowance for attendant
43.	Claim for pension
44.	Application for increase in pension
45.	Insertion of new section: 26AC. Determination of claims and applications
46.	Recovery of overpayments
47.	Insertion of new section: 55AA. Recovery of overpayment by deduction from other pension, benefit or allowance
48.	Insertion of new section: 55D. Certain decisions of Commission reviewable under Social Security Act etc.
49.	Repeal of section 58AB
50.	Schedule 2—Attendant allowance

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

51.	Principal Act
52.	Existing pensions, other than service pensions
53.	Retrospective operation of decisions
54.	Repeal of section 55 and insertion of new section: 55. Recovery of overpayments
55.	Amendments to correct references to provisions of the <i>Social Security Act 1947</i> as re-numbered

SCHEDULE 1

AMENDMENTS TO CORRECT REFERENCES TO PROVISIONS OF THE SOCIAL SECURITY ACT 1947 AS RE-NUMBERED



Veterans' Affairs Legislation Amendment Act 1988

No. 134 of 1988

**An Act to amend the law relating to veterans' entitlements
and other related matters**

[Assented to 22 December 1988]

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 1988*.

Commencement: Day of Royal Assent

Commencement

2. Each provision of this Act commences, or shall be taken to have commenced, as the case requires, on the day shown by the note in italics at the foot of that provision.

Commencement: Day of Royal Assent

Application

3. (1) The amendments made by sections 5, 6, 7, 10, 11, 12, 13, 14, 15, 27 and 28 apply to determinations made under the *Veterans' Entitlements Act 1986* on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(2) The amendments made by sections 8 and 9 operate to prevent the making of claims and applications on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(3) The amendments made by section 16, paragraphs 20 (a) and (b) and sections 23, 24 and 25 apply to payments under the *Veterans' Entitlements Act 1986* that fall due on or after 15 December 1988.

Commencement: 15 December 1988

(4) The amendments made by paragraphs 20 (c) and (d) apply to payments under the *Veterans' Entitlements Act 1986* that fall due on or after 1 January 1989.

Commencement: 1 January 1989

(5) The amendments made by sections 29, 30 and 31 apply to:

(a) trusts that are in existence immediately before the day on which this Act receives the Royal Assent; and

(b) trusts that are established on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(6) The amendment made by section 34 applies to decisions of the Commission made on or after 1 September 1987.

Commencement: 1 September 1987

(7) The repeal effected by section 35 does not apply in relation to an offence committed on or before the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(8) The amendments made by sections 38, 39, 40, 41, 45 and 52 apply to determinations made under the *Seamen's War Pensions and Allowances Act 1940* on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(9) The amendments made by sections 42 and 50 apply to payments under the *Seamen's War Pensions and Allowances Act 1940* that fall due on or after 15 December 1988.

Commencement: 15 December 1988

(10) The amendments made by sections 43 and 44 operate to prevent the making of claims and applications on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(11) The amendment made by section 48 applies to decisions of the Commission made on or after 1 September 1987.

Commencement: 1 September 1987

(12) The repeal effected by section 49 does not apply in relation to an offence committed on or before the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(13) The amendments made by section 53 apply in relation to decisions made on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

PART II—AMENDMENTS OF VETERANS' ENTITLEMENTS ACT 1986

Principal Act

4. In this Part, "Principal Act" means the *Veterans' Entitlements Act 1986*.

Commencement: Day of Royal Assent

Interpretation

5. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definition:

"'general rate' means the maximum rate per fortnight specified in subsection 22 (3);".

Commencement: Day of Royal Assent

Interpretation

6. Section 12 of the Principal Act is amended by omitting the definition of "application day".

Commencement: Day of Royal Assent

Eligibility for pension

7. Section 13 of the Principal Act is amended:

(a) by inserting after subsection (8) the following subsection:

"(8A) Where a dependant of a deceased veteran (not being a child of the veteran) has re-married or married after the death of the veteran but on or before 28 May 1984:

(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension was made before the commencement of section 7 of the *Veterans' Affairs Legislation Amendment Act 1988*; and

Veterans' Affairs Legislation Amendment No. 134, 1988

(b) a decision granting a pension to the dependant under this section made after the commencement referred to in paragraph (a) by the Commission, the Board or the Administrative Appeals Tribunal (including a decision granting such a pension as from a date before that commencement) is void and of no effect.”;

(b) by inserting in subsection (11) “(8A),” after “(8),”.

Commencement: Day of Royal Assent

Claim for pension

8. Section 14 of the Principal Act is amended by omitting subsections (5) and (6) and substituting the following subsections:

“(5) Where:

(a) a veteran has made a claim for a pension under this section in respect of incapacity from a particular injury or disease; and

(b) the claim has not been finally determined;

the veteran is not empowered to make another claim for a pension under this section in respect of incapacity from that injury or disease.

“(6) Where:

(a) a person has made a claim for a pension under this section in respect of the death of a veteran; and

(b) the claim has not been finally determined;

the person is not empowered to make another claim for a pension under this section in respect of the death of that veteran.

“(7) For the purposes of this section, a claim is finally determined when either:

(a) a decision that has been made in respect of the claim is not subject to any form of appeal or review; or

(b) a decision that has been made in respect of the claim was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.”.

Commencement: Day of Royal Assent

Application for increase in pension

9. Section 15 of the Principal Act is amended by adding at the end the following subsections:

“(5) Where:

(a) a person has made an application under this section for a pension at an increased rate, or for a pension; and

(b) the application has not been finally determined;

the person is not empowered to make another application under this section.

Veterans' Affairs Legislation Amendment No. 134, 1988

“(6) For the purpose of subsection (5), an application is finally determined when either:

- (a) a decision that has been made in respect of the application is not subject to any form of appeal or review; or
- (b) a decision that has been made in respect of the application was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.”.

Commencement: Day of Royal Assent

10. Section 19 of the Principal Act is repealed and the following sections are substituted:

Determination of claims and applications

“19. (1) Where a claim or application is submitted to the Commission in accordance with subsection 17 (2), the Commission shall:

- (a) consider all matters that, in the Commission’s opinion, are relevant to the claim or application; and
- (b) subject to this section, determine the claim as provided by subsection (3) or the application as provided by subsection (4).

“(2) Without limiting the generality of paragraph (1) (a), the matters that the Commission may consider include:

- (a) the evidence and documents that were submitted with the claim or application in accordance with subsection 17 (3);
- (b) any evidence subsequently submitted to the Commission in relation to the claim or application; and
- (c) any evidence, documents or other material furnished to the Commission under section 32.

“(3) The Commission shall determine a claim for a pension as follows:

- (a) first, the Commission shall determine whether the claimant is entitled to be granted a pension in respect of:
 - (i) the incapacity of a veteran from war-caused injury or war-caused disease, or both; or
 - (ii) the death of a veteran that was war-caused;
- (b) then, if the Commission determines that the claimant is so entitled, the Commission shall proceed as set out in subsection (5).

“(4) The Commission shall determine an application for a pension at an increased rate in accordance with subsection (5).

“(5) Where paragraph (3) (b) applies in respect of a claim or subsection (4) applies in respect of an application, the Commission shall assess, in accordance with whichever of sections 22, 23, 24, 25, 27 and 30 are applicable:

- (a) the rate or rates at which the pension would have been payable from time to time during the assessment period; and

- (b) subject to subsection (6), the rate at which the pension is payable from the date of the determination;

and shall make a determination approving the payment of pension in accordance with that assessment.

“(6) Where the Commission has, pursuant to paragraph (5) (a), assessed that the pension was payable at some time during the assessment period at the rate provided by section 23 or 24 then, subject to section 24A, the rate at which the pension is payable from the date of the determination shall not be lower than the rate provided by whichever of those sections applied, or applied most recently, during the assessment period.

“(7) Where:

- (a) the Commission, upon considering a claim for a pension in respect of the incapacity of a veteran from injury or disease determines, or is satisfied, that the veteran suffered the injury or contracted the disease as claimed and that the injury is a war-caused injury or the disease is a war-caused disease, as the case may be; and

- (b) the Commission is also satisfied a determination under this Act is in force determining that the veteran has suffered an injury or contracted a disease (not being the injury or disease referred to in paragraph (a)) and that:

- (i) that injury is a war-caused injury, or is, in accordance with subsection 70 (3), a defence-caused injury for the purposes of subsection 70 (1); or
- (ii) that disease is a war-caused disease, or is, in accordance with subsection 70 (3), a defence-caused disease for the purposes of subsection 70 (1);

as the case may be, whether or not a pension under Part II or Part IV, as the case requires, has been granted in respect of that injury or disease;

the Commission shall not, in a case where the claimant is in receipt of a pension under Part II or Part IV in respect of incapacity resulting from the injury or disease referred to in paragraph (b), grant a separate and additional pension to the claimant in respect of incapacity resulting from the injury or disease referred to in paragraph (a), but the Commission shall, having regard to any incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such defence-caused injury as war-caused injury and any such defence-caused disease as war-caused disease:

- (c) if the claimant is not in receipt of a pension under Part II or Part IV—determine whether the claimant is entitled to be granted a pension under Part II and, if it determines that the claimant is entitled to be granted such a pension, assess the rate of the pension to be granted to the claimant in accordance with the preceding provisions of this section; or

- (d) if the claimant is in receipt of a pension under Part II or Part IV—re-assess the rate of that pension in accordance with the preceding provisions of this section.

“(8) Where the Commission grants the whole or a part of a claim or application, the Commission may pay to the claimant or applicant an amount, calculated in accordance with a scale approved by the Commission, in respect of the expenses (if any) incurred by the claimant or applicant in providing for the production of relevant documentary medical evidence.

“(9) In this section:

‘application’ means an application made in accordance with section 15;
‘application day’, in relation to a person who has made a claim or application or on whose behalf a claim or application has been made, means:

- (a) the day on which the claim or application was received at an office of the Department in Australia; or
- (b) if subsection 20 (2) or 21 (2) applies to the person—the day on which the claim or application referred to in paragraph 20 (2) (a) or 21 (2) (a) was so received;

‘assessment period’, in relation to a claim or application relating to a pension, means the period starting on the application day and ending when the claim or application is determined;

‘claim’ means a claim made in accordance with section 14;

‘relevant documentary medical evidence’, in relation to a claim or application referred to in subsection (8), means certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which the claimant or applicant had received medical treatment, in support of the claim or application, being certificates, reports or documents reasonably used:

- (a) in support of the claim or application; or
- (b) if a part only of the claim or application was granted—in support of that part of the claim or application.

Refusal to undergo medical examination etc. may delay consideration of claim or application

“19A. (1) Where:

- (a) a claimant, being a veteran, has refused or failed to undergo a medical examination for the purpose of the investigation of the claim or the consideration of the claim by the Commission; or
- (b) a claimant has refused or failed:
 - (i) to consent to the release to the Secretary, or to the Commission, of information concerning a veteran for the purpose of the investigation or consideration of the claim; or
 - (ii) to comply with a request under paragraph 32 (1) (c) to furnish material to the Commission;

Veterans' Affairs Legislation Amendment No. 134, 1988

the Commission may, if it is of the opinion that that medical examination, information or material is likely to affect the decision it will make in respect of the claim, defer further consideration of the claim until the veteran has undergone the medical examination, or the claimant has consented to the release of the information or furnished the material, as the case may be, and, if it does so, the Commission shall serve on the claimant a notice, in writing, informing the claimant that the claim has been so deferred.

“(2) If, at the expiration of 6 months after a claimant has been informed under subsection (1) that a claim has been deferred by reason of the refusal or failure of a veteran to undergo a medical examination, the veteran has not undergone the medical examination, the claim shall, by force of this subsection, be deemed to have been refused.

“(3) If, at the expiration of 6 months after a claimant has been informed under subsection (1) that a claim has been deferred by reason that the claimant has refused or failed to consent to the release of information or to furnish material:

- (a) the claimant has not consented to the release of the information; or
- (b) the claimant has not furnished the material or satisfied the Commission that the material is not in the claimant's possession or under the claimant's control;

as the case may be, the claim shall, by force of this subsection, be deemed to have been refused.

“(4) In this section:

‘claimant’ means a person who has made a claim under section 14 or an application under section 15.”.

Commencement: Day of Royal Assent

Date of operation of grant of claim for pension

11. Section 20 of the Principal Act is amended by adding at the end the following subsection:

“(3) Nothing in this section empowers the Commission to approve payment of a pension to a person from a date before the person became eligible to be granted the pension.”.

Commencement: Day of Royal Assent

Date of operation of grant of application under section 15

12. Section 21 of the Principal Act is amended by adding at the end the following subsection:

“(3) Nothing in this section empowers the Commission to approve payment of an increased pension, or a pension, to a person from a date before the person became eligible to be granted the increased pension, or the pension, as the case may be.”.

Commencement: Day of Royal Assent

13. Section 22 of the Principal Act is repealed and the following sections are substituted:

Determination of degree of incapacity

“21A. (1) The Commission shall, subject to subsections (2) and (3), determine the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, according to the provisions of the approved Guide to the Assessment of Rates of Veterans' Pensions.

“(2) Subject to subsection (3), the degree of incapacity shall be determined as 10% or a multiple of 10%, but not exceeding 100%.

“(3) The Commission may determine that the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, is less than 10% (including 0%), and, where it does so, it shall not assess a rate of pension, but shall refuse to grant a pension to the veteran on the ground that the extent of the incapacity of the veteran from that war-caused injury or war-caused disease, or both, is insufficient to justify the grant of a pension.

General rate of pension and extreme disablement adjustment

“22. (1) This section applies to a veteran who is being paid, or is eligible to be paid, a pension under this Part, other than a veteran to whom section 23, 24 or 25 applies.

“(2) Subject to this Division, the rate at which pension is payable to a veteran to whom this section applies in respect of the incapacity of the veteran from war-caused injury or war-caused disease, or both, is the rate per fortnight that constitutes the same percentage of the general rate as the percentage determined by the Commission in accordance with section 21A to be the degree of incapacity of the veteran from that war-caused injury or war-caused disease, or both, as the case may be.

“(3) For the purposes of this section, the maximum rate per fortnight is \$143.50 per fortnight.

“(4) Where:

(a) either:

(i) the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be 100% or has been so determined by a determination that is in force; or

(ii) a veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the maximum rate per fortnight specified in subsection (3);

(b) the veteran has attained the age of 65;

(c) the veteran has an impairment rating of at least 70 points and a lifestyle rating of at least 6 points, each determined in accordance

Veterans' Affairs Legislation Amendment No. 134, 1988

with the approved Guide to the Assessment of Rates of Veterans' Pensions; and

- (d) the veteran is not receiving a pension at a rate provided for by section 23, 24 or 25;

the rate at which pension is payable to the veteran is increased by 50% of the maximum rate set out in subsection (3).

“(5) For the purpose of subsection (4), a veteran who has been granted a pension at a rate specified in subsection (3) or provided for by section 23, 24 or 25 shall be taken to be receiving a pension at the rate specified in, or provided for by, the provision concerned even if:

- (a) the rate has been reduced, or the pension is not payable, because of section 26 or 74;
- (b) amounts are being deducted from the pension under section 79 or 205; or
- (c) the pension has been suspended under subsection 31 (6).”

Commencement: Day of Royal Assent

Intermediate rate of pension

14. Section 23 of the Principal Act is amended:

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) either:

- (i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be 100% or has been so determined by a determination that is in force; or
- (ii) the veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the general rate;”

Commencement: 22 May 1986

- (b) by omitting from subparagraph (1) (a) (i) “100%” and substituting “at least 70%”.

Commencement: Day of Royal Assent

Special rate of pension

15. Section 24 of the Principal Act is amended:

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) either:

- (i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be 100% or has been so determined by a determination that is in force; or

Veterans' Affairs Legislation Amendment No. 134, 1988

- (ii) the veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the general rate;";

Commencement: 22 May 1986

- (b) by omitting from subparagraph (1) (a) (i) "100%" and substituting "at least 70%".

Commencement: Day of Royal Assent

Increased rates of pension in certain cases

16. Section 27 of the Principal Act is amended by altering the table in subsection (1) as follows:

- (a) omit "91.00", substitute "96.90";
- (b) omit "61.40", substitute "65.40";
- (c) omit "52.80" (wherever occurring), substitute "56.20";
- (d) omit "26.30" (wherever occurring), substitute "28.00";
- (e) omit "13.90" (wherever occurring), substitute "14.80";
- (f) omit "20.40", substitute "21.70".

Commencement: 15 December 1988

Treatment of certain income

17. Section 35A of the Principal Act is amended by omitting from the definition of "return" in subsection (1) "fixed" and substituting "accruing".

Commencement: 13 December 1987

Eligibility for carer's service pension

18. Section 41 of the Principal Act is amended by omitting paragraphs (a), (b) and (c) of the definition of "severely handicapped veteran" in subsection (3) and substituting the following paragraphs:

- "(a) has a physical, intellectual or psychiatric disability; and
 - (b) because of that disability, requires:
 - (i) frequent attention in connection with the veteran's bodily functions; or
 - (ii) constant supervision to prevent injury to the veteran or to another person;
- permanently or for an extended period."

Commencement: Day of Royal Assent

Restrictions on dual pensions

19. Section 42 of the Principal Act is amended:

- (a) by adding at the end of paragraph (1) (b) "and";
- (b) by omitting paragraph (1) (c).

Commencement: Day of Royal Assent

Rate of veteran's service pension

20. Section 47 of the Principal Act is amended:

- (a) by omitting from paragraph (3) (a) "\$1,144" and substituting "\$1,248";

Commencement: 15 December 1988

- (b) by omitting from paragraph (3) (b) "\$1,456" and substituting "\$1,612";

Commencement: 15 December 1988

- (c) by adding at the end of paragraph (3) (c) "and";

Commencement: 1 January 1989

- (d) by omitting paragraph (3) (d).

Commencement: 1 January 1989

Veterans eligible to be provided with treatment

21. Section 85 of the Principal Act is amended:

- (a) by omitting from paragraphs (3) (a) and (7) (a) "the rate specified in subsection 22 (7)" and substituting "the general rate";

- (b) by omitting from paragraph (4) (b) "detained by the enemy" and substituting "a prisoner of war".

Commencement: Day of Royal Assent

Knowingly making false statements relating to treatment

22. Section 93C of the Principal Act is amended by omitting subsection (4).

Commencement: Day of Royal Assent

Clothing allowance

23. Section 97 of the Principal Act is amended:

- (a) by altering the table in subsection (1) as follows:

(i) omit "5.80", substitute "6.20";

(ii) omit "2.70" (wherever occurring), substitute "2.90";

(iii) omit "3.80" (wherever occurring), substitute "4.00";

- (b) by omitting from subsection (2) "\$5.80" and substituting "\$6.20";

- (c) by omitting from subsection (3) "\$2.70" and substituting "\$2.90".

Commencement: 15 December 1988

Attendant allowance

24. Section 98 of the Principal Act is amended:

- (a) by altering the table in subsection (1) as follows:

(i) omit "68.20" (wherever occurring), substitute "72.60";

(ii) omit "136.40" (wherever occurring), substitute "145.20";

- (b) by omitting from subsection (2) "\$68.20" and substituting "\$72.60".

Commencement: 15 December 1988

Recreation transport allowance

25. Section 104 of the Principal Act is amended by altering the table in subsection (1) as follows:

- (a) omit "36.20" (wherever occurring), substitute "38.60";
- (b) omit "18.10" (wherever occurring), substitute "19.30".

Commencement: 15 December 1988

26. After section 132 of the Principal Act the following section is inserted in Part VIII:

Advance of travelling expenses

"132A. (1) Where the Commission is satisfied:

- (a) that a person may reasonably be expected to become entitled to be paid travelling expenses under subsection 132 (5) or (6) or under subsection 132 (9) by virtue of paragraph (d) of that subsection; and
- (b) that it is in all the circumstances appropriate for the person to be paid an advance on account of the travelling expenses that the person is expected to become entitled to be paid;

the Commission may authorise a payment to the person of an advance on account of the travelling expenses that the person is expected to become entitled to be paid.

"(2) If the amount of the advance paid to a person on account of any travelling expenses in respect of any travel of the person exceeds the amount of travelling expenses that become payable to the person in respect of that travel, the person is liable to repay an amount equal to the excess to the Commonwealth."

Commencement: Day of Royal Assent

Decision of Board

27. Section 139 of the Principal Act is amended by inserting in subsection (4) "or rates" after "rate" (wherever occurring).

Commencement: Day of Royal Assent

Variation of rates of certain pensions

28. Section 198 of the Principal Act is amended by omitting paragraph (a) of the definition of "relevant rate" in subsection (1) and substituting the following paragraph:

- "(a) the general rate;"

Commencement: Day of Royal Assent

Commission may administer trusts

29. Section 201 of the Principal Act is amended:

- (a) by inserting after subsection (3) the following subsections:

"(3A) Where the Commission is a trustee of 2 or more trusts under this section, the Commission may, subject to subsection (3B),

Veterans' Affairs Legislation Amendment No. 134, 1988

for the purpose of investing the trust funds, pool the trust funds in respect of those trusts.

“(3B) The Commission shall not pool trust funds under subsection (3A), or invest trust funds pooled under that subsection, in a way that prevents the trust funds held in respect of each trust being identified sufficiently to enable the Commission properly to perform its functions as trustee.

“(3C) The Commission may:

- (a) make an arrangement with another person for the other person to manage the trust funds; and
- (b) for the purposes of such an arrangement, transfer the trust funds to the other person;

but the making of such an arrangement, or the transferring of the trust funds, does not relieve the Commission of any duties or liabilities as trustee.”;

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

“(5) In this section:

‘trust funds’, in relation to a trust of which the Commission is the trustee, means moneys vested in the Commission as trustee;

‘veteran’ means:

- (a) a veteran as defined by subsection 35 (1); or
- (b) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68 (1).”.

Commencement: Day of Royal Assent

Trustees for pensioners

30. Section 202 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) “by the trustee” (third occurring);
- (b) by omitting from subparagraph (2) (b) (i) “subsection (3)” and substituting “subsections 202A (2) and 202B (2)”;
- (c) by omitting from subparagraph (2) (b) (ii) “by the trustee”;
- (d) by omitting subsections (3), (8) and (9).

Commencement: Day of Royal Assent

31. After section 202 of the Principal Act the following sections are inserted:

Commission or public servant acting as trustee

“202A. (1) This section applies where, by virtue of an instrument in force under subsection 202 (1), the trustee of instalments of the pension or allowance payable to a pensioner is:

- (a) the Commission; or

(b) an officer of the Australian Public Service appointed as trustee in his or her capacity as such an officer.

“(2) The trustee may:

- (a) accumulate so much of the instalments of the pension or allowance received by the trustee as is not required for application in accordance with subparagraph 202 (2) (b) (i); and
- (b) invest any trust funds so accumulated in any manner prescribed by the regulations.

“(3) Where the trustee is a trustee of instalments of pensions or allowances payable to 2 or more pensioners, the trustee may, subject to subsection (4), for the purposes of investing the trust funds as mentioned in paragraph (2) (b), pool the trust funds in respect of those pensioners.

“(4) The trustee shall not pool trust funds under subsection (3), or invest trust funds pooled under that subsection, in a way that prevents the trust funds held in respect of each individual pensioner being identified sufficiently to enable paragraph 202 (2) (b) to be complied with.

“(5) The trustee may:

- (a) make an arrangement with another person for the other person to manage the trust funds; and
- (b) for the purposes of such an arrangement, transfer the trust funds to the other person;

but the making of such an arrangement, or the transferring of the trust funds, does not relieve the trustee of any duties or liabilities as trustee.

“(6) The Commission:

- (a) may charge such fees, whether by way of commission or otherwise, as are determined in accordance with the regulations in respect of services rendered by the trustee; and
- (b) is entitled to reasonable expenses incurred by the trustee in rendering services as trustee.

“(7) The fees and expenses payable under subsection (6) in respect of services rendered by the trustee as trustee of a pension or allowance may be paid from the trust funds.

“(8) In this section:

‘trust funds’, in relation to the trustee of instalments of the pension or allowance payable to a pensioner, means the instalments of the pension or allowance received by the trustee, investments representing those instalments and returns received on those investments.

Other person acting as trustee

“202B. (1) This section applies where, by virtue of an instrument in force under subsection 202 (1), the trustee of instalments of the pension or allowance payable to a pensioner is a person other than:

- (a) the Commission; or

- (b) an officer of the Australian Public Service appointed as trustee in his or her capacity as such an officer.

“(2) The trustee may:

- (a) accumulate so much of the instalments of the pension or allowance received by the trustee as is not required for application in accordance with subparagraph 202 (2) (b) (i); and
- (b) invest any trust funds so accumulated in any investments authorised for the investment of trust funds by the law of the State or Territory where the pensioner resides.”.

Commencement: Day of Royal Assent

Recovery of overpayments

32. Section 205 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) This section applies where:

- (a) in consequence of a false statement or representation, or of a failure or omission to comply with a provision of this Act or of the Regulations, an amount has been paid by way of pension, allowance or other pecuniary benefit under this Act that would not have been paid but for the false statement or representation or but for the failure or omission;
- (b) an amount has been paid to a person under a prescribed educational scheme that was not lawfully so payable;
- (c) an amount has purported to have been paid by way of pension, allowance or other pecuniary benefit under this Act, the *Social Security Act 1947* or the *Seamen's War Pensions and Allowances Act 1940* that was not lawfully so payable; or
- (d) an amount has been paid, whether before or after the commencement of section 32 of the *Veterans' Affairs Legislation Amendment Act 1988*, by way of pension, allowance or other pecuniary benefit under this Act, the *Social Security Act 1947* or the *Seamen's War Pensions and Allowances Act 1940*, and the payment of that amount has since become an unauthorised payment.

“(1A) Where this section applies, the recoverable amount shall, subject to section 205AA and unless the Commission takes action under paragraph 206 (1) (a) or (b) in respect of that amount, be recovered as provided in subsections (1B) and (1C).

“(1B) A recoverable amount may be recovered by deductions under subsection (2).

“(1C) A recoverable amount, other than an excluded amount, may be recovered:

Veterans' Affairs Legislation Amendment No. 134, 1988

- (a) 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; or
- (b) partly by proceedings referred to in paragraph (a) and partly by deductions under subsection (2).”;
- (b) by omitting from subsection (2) “(aa) or (b)” and substituting “(b), (c) or (d)”;
- (c) by omitting subsections (4) and (4A) and substituting the following subsection:

“(4) This section does not permit the recovery of an amount in respect of an amount of pension to which subsection 65 (7) applies.”;

- (d) by adding at the end the following subsections:

“(7) The payment of an amount paid by way of pension, allowance or other pecuniary benefit becomes an unauthorised payment if:

- (a) the decision pursuant to which the payment was made is:
 - (i) set aside; or
 - (ii) varied, so that a lesser amount, or no amount, is payable by way of pension, allowance or other pecuniary benefit;
- by any person, body, tribunal or court; and
- (b) the setting aside or variation has effect from the date, or from a date earlier than the date, of the payment.

“(8) In this section:

‘excluded amount’ means:

- (a) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1) (b); or
- (b) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1) (c) or (d) under the *Social Security Act 1947*;

‘recoverable amount’ means:

- (a) where an amount has been paid as mentioned in paragraph (1) (a), (b) or (c)—an amount equal to that amount;
- (b) where an amount has been paid as mentioned in paragraph (1) (d) pursuant to a decision that is set aside as mentioned in subsection (7)—an amount equal to that amount; or
- (c) where an amount has been paid as mentioned in paragraph (1) (d) pursuant to a decision that is varied as mentioned in subsection (7)—an amount equal to the amount by which the amount paid exceeded the amount payable under the decision as varied.”.

Commencement: Day of Royal Assent

Veterans' Affairs Legislation Amendment No. 134, 1988

33. After section 205 of the Principal Act the following section is inserted:

Recovery of overpayment by deduction from other pension, benefit or allowance

“205AA. Where:

- (a) a pension or allowance (in this section called the ‘new pension or allowance’) becomes payable, or becomes payable at an increased rate, to a person under this Act from a date (in this section called 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 section called 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 section called 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.”

Commencement: Day of Royal Assent

34. After section 205A of the Principal Act the following section is inserted:

Certain decisions of Commission reviewable under Social Security Act etc.

“205B. (1) This section applies to the following decisions of the Commission made in relation to an amount paid, or purported to have been paid, by way of pension, allowance or other pecuniary benefit under the *Social Security Act 1947* (in this section called the ‘social security amount’):

Veterans' Affairs Legislation Amendment No. 134, 1988

- (a) a decision to recover a recoverable amount in relation to the social security amount by deductions under subsection 205 (2);
- (b) a decision to give a notice to a person under section 205A in respect of a debt due to the Commonwealth in relation to the payment of the social security amount.

“(2) A decision to which this section applies shall be taken for the purposes of the *Social Security Act 1947* to be a decision made under that Act by an officer (other than the Secretary) of the Department administered by the Minister administering that Act.”.

Commencement: 1 September 1987

Repeal of section 210

35. Section 210 of the Principal Act is repealed.

Commencement: Day of Royal Assent

Amendments to correct references to provisions of the *Social Security Act 1947* as re-numbered

36. The Principal Act is amended as provided in Part I of Schedule 1.

Commencement: 16 December 1987

PART III—AMENDMENTS OF SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Principal Act

37. In this Part, “Principal Act” means the *Seamen's War Pensions and Allowances Act 1940*².

Commencement: Day of Royal Assent

Interpretation

38. Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “application day”.

Commencement: Day of Royal Assent

Determinations and assessments by Commission

39. Section 6 of the Principal Act is amended by omitting subsection (2).

Commencement: Day of Royal Assent

40. After section 17B of the Principal Act the following section is inserted:

Eligibility for pension after re-marriage or marriage

“17C. (1) Where a dependant of a deceased Australian mariner (not being a child of the Australian mariner) re-marries or marries after the death of the Australian mariner and on or after 22 May 1986:

Veterans' Affairs Legislation Amendment No. 134, 1988

- (a) the Commonwealth is not liable to pay a pension to the dependant under section 12 or 17A unless the decision by the Commission, the Pensions Committee, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension:
 - (i) was made before 22 May 1986; or
 - (ii) was or is made after 22 May 1986, upon consideration or re-consideration of a claim for that pension that was duly made (whether before or after that date) before the re-marriage or marriage occurred; and
- (b) a decision granting a pension to the dependant under section 12 or 17A made on or after 22 May 1986 by the Commission, the Pensions Committee, the Board or the Administrative Appeals Tribunal after that re-marriage or marriage occurred (including a decision granting such a pension as from a date before that re-marriage or marriage occurred) is void and of no effect unless the decision was made upon consideration or re-consideration of a claim for that pension made as described in subparagraph (a) (ii).

“(2) Where a dependant of a deceased Australian mariner (not being a child of the Australian mariner) has re-married or married after the death of the Australian mariner but on or before 28 May 1984:

- (a) the Commonwealth is not liable to pay a pension to the dependant under section 12 or 17A unless the decision by the Commission, the Pensions Committee, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension was made before the commencement of section 40 of the *Veterans' Affairs Legislation Amendment Act 1988*; and
- (b) a decision granting a pension to the dependant under section 12 or 17A made after the commencement referred to in paragraph (a) by the Commission, the Pensions Committee, the Board or the Administrative Appeals Tribunal (including a decision granting such a pension as from a date before that commencement) is void and of no effect.”.

Commencement: Day of Royal Assent

Rates of pension on death or total incapacity

41. Section 18 of the Principal Act is amended by inserting after subsection (4) the following subsections:

“(4AA) Where:

- (a) the degree of incapacity of an Australian mariner from a war injury is determined under section 15 to be 100% or has been so determined by a determination that is in force;
- (b) the Australian mariner has attained the age of 65;
- (c) the Australian mariner has an impairment rating of at least 70 points and a lifestyle rating of at least 6 points, each determined in accordance with the Guide to the Assessment of Rates of Veterans’

Veterans' Affairs Legislation Amendment No. 134, 1988

Pensions as from time to time approved and in force under section 29 of the *Veterans' Entitlements Act 1986*; and

- (d) the Australian mariner is not receiving a pension at a rate provided for by subsection 18 (4A) or section 22A;

the rate at which pension is payable to the Australian mariner is increased by 50% of the maximum rate provided for by subsection (4).

“(4AB) For the purpose of subsection (4AA), an Australian mariner who has been granted a pension at a rate provided for by subsection 18 (4A) or section 22A shall be taken to be receiving a pension at the rate provided for by the provision concerned even if:

- (a) the rate has been reduced, or the pension is not payable, because of section 53A; or
(b) amounts are being deducted from the pension under section 55A.”.

Commencement: Day of Royal Assent

Allowance for attendant

42. Section 21 of the Principal Act is amended by omitting “\$68.20” and substituting “\$72.60”.

Commencement: 15 December 1988

Claim for pension

43. Section 26 of the Principal Act is amended by adding at the end the following subsections:

“(3) Where:

- (a) an Australian mariner has made a claim for a pension under this section in respect of incapacity from a particular war injury; and
(b) the claim has not been finally determined;

the Australian mariner is not empowered to make another claim for a pension under this section in respect of incapacity from that war injury.

“(4) Where:

- (a) a person has made a claim for a pension under this section in respect of the death of an Australian mariner; and
(b) the claim has not been finally determined;

the person is not empowered to make another claim for a pension under this section in respect of the death of that Australian mariner.

“(5) For the purposes of this section, a claim is finally determined when either:

- (a) a decision that has been made in respect of the claim is not subject to any form of appeal or review; or
(b) a decision that has been made in respect of the claim was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.”.

Commencement: Day of Royal Assent

Application for increase in pension

44. Section 26AA of the Principal Act is amended by adding at the end the following subsections:

- (a) by omitting from subsection (4) "Commissioner" and substituting "Commission";
- (b) by adding at the end the following subsections:

“(6) Where:

(a) an Australian mariner has made an application under this section for a pension at an increased rate, or for a pension; and

(b) the application has not been finally determined;

the Australian mariner is not empowered to make another application under this section.

“(7) For the purpose of subsection (6), an application is finally determined when either:

- (a) a decision that has been made in respect of the application is not subject to any form of appeal or review; or
- (b) a decision that has been made in respect of the application was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.”.

Commencement: Day of Royal Assent

45. After section 26AB of the Principal Act the following section is inserted:

Determination of claims and applications

“26AC. (1) A Pensions Committee, or the Commission, (in this section called ‘the determining body’) shall determine a claim for a pension as follows:

- (a) first, the determining body shall determine whether the claimant is entitled to be granted a pension;
- (b) then, if the determining body determines that the claimant is so entitled, the determining body shall proceed as set out in subsection (3).

“(2) A Pensions Committee, or the Commission, (in this section also called ‘the determining body’) shall determine an application for an increased pension in accordance with subsection (3).

“(3) Where paragraph (1) (b) applies in respect of a claim or subsection (2) applies in respect of an application, the determining body shall assess, in accordance with whichever of sections 18, 22A and 23 are applicable:

Veterans' Affairs Legislation Amendment No. 134, 1988

- (a) the rate or rates at which the pension would have been payable from time to time during the assessment period; and
 - (b) subject to subsection (4), the rate at which the pension is payable from the date of the determination;
- and shall make a determination approving the payment of pension in accordance with that assessment.

“(4) Where the determining body has, pursuant to paragraph (3) (a), assessed that the pension was payable at some time during the assessment period at the rate provided by subsection 18 (4A) or section 22A then, subject to section 24A, the rate at which the pension is payable from the date of the determination shall not be lower than the rate provided by whichever of those provisions applied, or applied most recently, during the assessment period.

“(5) In this section:

‘application’ means an application made in accordance with section 26AA;

‘application day’, in relation to a person who has made a claim or application or on whose behalf a claim or application has been made, means:

- (a) the day on which the claim or application was received at an address of the Department; or
- (b) if subsection 12 (3) or 26AA (5) applies to the person—the day on which the claim or application referred to in paragraph 12 (3) (a) or 26AA (5) (a) was so received;

‘assessment period’, in relation to a claim or application relating to a pension, means the period starting on the application day and ending when the claim or application is determined;

‘claim’ means a claim made in accordance with section 26.”.

Commencement: Day of Royal Assent

Recovery of overpayments

46. Section 55A of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) This section applies 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;
- (b) an amount has been paid to a person under a prescribed educational scheme that was not lawfully so payable;

Veterans' Affairs Legislation Amendment No. 134, 1988

- (c) an amount has purported to have been paid by way of pension, allowance or other pecuniary benefit under this Act or the Regulations, or under the *Social Security Act 1947* or the *Veterans' Entitlements Act 1986*, that was not lawfully so payable; or
- (d) an amount has been paid, whether before or after the commencement of section 46 of the *Veterans' Affairs Legislation Amendment Act 1988*, by way of pension, allowance or other pecuniary benefit under this Act, the Regulations, the *Social Security Act 1947* or the *Veterans' Entitlements Act 1986*, and the payment of that amount has since become an unauthorised payment.

“(1A) Where this section applies, the recoverable amount shall, subject to section 55A and unless the Commission takes action under paragraph 55B (1) (a) or (b) in respect of that amount, be recovered as provided in subsections (1B) and (1C).

“(1B) A recoverable amount may be recovered by deductions under subsection (2).

“(1C) A recoverable amount, other than an excluded amount, may be recovered:

- (a) 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; or
- (b) partly by proceedings referred to in paragraph (a) and partly by deductions under subsection (2).”;
- (b) by omitting from subsection (2) “(aa) or (b)” and substituting “(b), (c) or (d)”;
- (c) by omitting subsection (4);
- (d) by adding at the end the following subsections:

“(7) The payment of an amount paid by way of pension, allowance or other pecuniary benefit becomes an unauthorised payment if:

- (a) the decision pursuant to which the payment was made is:
 - (i) set aside; or
 - (ii) varied, so that a lesser amount, or no amount, is payable by way of pension, allowance or other pecuniary benefit;by any person, body, tribunal or court; and
- (b) the setting aside or variation has effect from the date, or from a date earlier than the date, of the payment.

“(8) In this section:

‘excluded amount’ means:

Veterans' Affairs Legislation Amendment No. 134, 1988

- (a) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1) (b); or
- (b) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1) (c) or (d) under the *Social Security Act 1947*;

'recoverable amount' means:

- (a) where an amount has been paid as mentioned in paragraph (1) (a), (b) or (c)—an amount equal to that amount;
- (b) where an amount has been paid as mentioned in paragraph (1) (d) pursuant to a decision that is set aside as mentioned in subsection (7)—an amount equal to that amount; or
- (c) where an amount has been paid as mentioned in paragraph (1) (d) pursuant to a decision that is varied as mentioned in subsection (7)—an amount equal to the amount by which the amount paid exceeded the amount payable under the decision as varied.”.

Commencement: Day of Royal Assent

47. After section 55A of the Principal Act the following section is inserted:

Recovery of overpayment by deduction from other pension, benefit or allowance

“55AA. Where:

- (a) a pension or allowance (in this section called 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 section called 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 section called 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 section called 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

Veterans' Affairs Legislation Amendment No. 134, 1988

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 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.”

Commencement: Day of Royal Assent

48. After section 55C of the Principal Act the following section is inserted:

Certain decisions of Commission reviewable under Social Security Act etc.

“55D. (1) This section applies to the following decisions of the Commission made in relation to an amount paid, or purported to have been paid, by way of pension, allowance or other pecuniary benefit under the *Social Security Act 1947* (in this section called the ‘social security amount’):

- (a) a decision to recover a recoverable amount in relation to the social security amount by deductions under subsection 55A (2);
- (b) a decision to give a notice to a person under section 55C in respect of a debt due to the Commonwealth in relation to the payment of the social security amount.

“(2) A decision to which this section applies shall be taken for the purposes of the *Social Security Act 1947* to be a decision made under that Act by an officer (other than the Secretary) of the Department administered by the Minister administering that Act.”

Commencement: 1 September 1987

Repeal of section 58AB

49. Section 58AB of the Principal Act is repealed.

Commencement: Day of Royal Assent

Schedule 2—Attendant allowance

50. Schedule 2 of the Principal Act is amended:

- (a) by omitting “68.20” (wherever occurring) and substituting “72.60”;
- (b) by omitting “136.40” (wherever occurring) and substituting “145.20”.

Commencement: 15 December 1988

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

Principal Act

51. In this Part, "Principal Act" means the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

Commencement: Day of Royal Assent

Existing pensions, other than service pensions

52. Section 4 of the Principal Act is amended by omitting from subsection (9) "the maximum rate specified in subsection 22 (7) of the Veterans' Entitlements Act" and substituting "the general rate".

Commencement: Day of Royal Assent

Retrospective operation of decisions

53. Section 21 of the Principal Act is amended:

- (a) by omitting from subsection (1) "including a decision so made by virtue of a provision of this Act," and substituting "other than a decision referred to in subsection (1A),";
- (b) by inserting after subsection (1) the following subsection:

"(1A) Where:

- (a) a decision is made by the Commission, the Board or the Administrative Appeals Tribunal in this subsection called the determining body under the Veterans' Entitlements Act to grant a pension, to increase or reduce the rate of a pension or to grant an allowance or other pecuniary benefit; and
- (b) the determining body, would not have had power to make that decision but for the operation of a provision of this Act whether that provision conferred power on the determining body directly or indirectly;

then a date, which may be a date before the commencement date, may, subject to subsection (3), be fixed as the date from which payment of a pension at a reduced or increased rate or payment of an allowance or other benefit is approved.";

- (c) by adding at the end the following subsections:

"(3) The date which may be fixed under subsection (1A) in relation to a decision referred to in that subsection is:

- (a) where the initiating action in relation to the decision was the making of an application as mentioned in paragraph (h) of the definition of 'initiating action' in subsection (5)—the date of that initiating action; or

- (b) in any other case—a date that is not earlier than 3 months before the date of the initiating action in relation to the decision.

“(4) For the purposes of the application of the Veterans' Entitlements Act pursuant to this section, section 19 of that Act has effect as if the reference, in the definition of 'assessment period' in subsection 19(9) of that Act, to the period starting on the application day were a reference to the period starting on the date of the initiating action in relation to the decision concerned.

“(5) In this section:

'initiating action', in relation to a decision mentioned in subsection (1A), means whichever of the following events and actions operated, whether of its own force or because of another provision, to confer power to make the decision on the person or body that made it or, where 2 or more of the following events and actions so operated, the later or latest of those events or actions:

- (a) the making of a claim or application to which subsection 51 (1) or (2) of the 1984 Act applied;
- (b) the institution of an appeal to which section 52 of the 1984 Act applied;
- (c) the making of an application to which subsection 55 (1) of the 1984 Act applied, or of an application permitted to be made by subsection 55 (2) of the 1984 Act;
- (d) the submission of further evidence with respect to a claim as mentioned in section 107VM of the *Repatriation Act 1920* as in force immediately before 1 January 1985, being a claim to which subsection 57 (1) of the 1984 Act applied;
- (e) the making of an application permitted to be made by subsection 57 (2) of the 1984 Act;
- (f) the directing of a review to which subsection 58 (1) of the 1984 Act applied;
- (g) the reference of an assessment back to the Commission under section 107VH of the *Repatriation Act 1920* as in force on or after 1 January 1985 which resulted in:
 - (i) a review referred to in subsection 18 (1) of this Act;
 - (ii) an application referred to in subsection 19 (1) or (2) of this Act; or
 - (iii) an application made under subsection 20 (1) or (9) of this Act;

Veterans' Affairs Legislation Amendment No. 134, 1988

(h) the making of a claim or application under the *Repatriation Act 1920* as in force on or after 1 January 1985;

'the 1984 Act' means the *Repatriation Legislation Amendment Act 1984*."

Commencement: Day of Royal Assent

54. Section 55 of the Principal Act is repealed and the following section is substituted:

Recovery of overpayments

"55. (1) Subject to subsection (3) of this section, section 205 of the Veterans' Entitlements Act extends to and in relation to:

- (a) a false statement or representation that was made;
- (b) an omission that occurred;
- (c) an amount that was paid; or
- (d) a payment that became an unauthorised payment;

before the commencing date and, for the purpose of its application accordingly:

- (e) references in that section to the Veterans' Entitlements Act shall be read as including references to the repealed Acts; and
- (f) references in that section to the Regulations shall be read as including references to regulations under a repealed Act.

"(2) Subject to subsection (3) of this section, section 205AA of the Veterans' Entitlements Act extends to and in relation to a pension, benefit or allowance that:

- (a) became payable; or
- (b) became payable at an increased rate;

before the commencing date and, for the purposes of its application accordingly, references in that section to the Veterans' Entitlements Act shall be read as including references to the repealed Acts.

"(3) This section does not authorise the recovery of an amount under the Veterans' Entitlements Act and also under a repealed Act."

Commencement: Day of Royal Assent

Amendments to correct references to provisions of the *Social Security Act 1947* as re-numbered

55. The Principal Act is amended as provided in Part II of Schedule 1.

Commencement: 16 December 1987

SCHEDULE 1

Sections 36 and 55

**AMENDMENTS TO CORRECT REFERENCES TO PROVISIONS OF
THE SOCIAL SECURITY ACT 1947 AS RE-NUMBERED**

**PART I—AMENDMENTS OF VETERANS' ENTITLEMENTS ACT
1986**

Subsection 5 (1) (definition of "child"):

- (a) Omit "Part III or IV", substitute "Part IV or V".
- (b) Omit "Part IVAAA or VII", substitute "Part VI or XIII".

Subsection 47 (4):

- (a) Omit "Part XVI" (first occurring), substitute "Part XIV".
- (b) Omit "Part IV" (second occurring), substitute "Part XVI".

Paragraph 55 (1) (b):

Omit "142", substitute "143".

Subsection 65 (1) (definition of "pension"):

Omit "142", substitute "143".

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

Omit "of section 143, subsection 149 (2) or 167 (2)", substitute "section 144 or subsection 150 (2)".

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

Paragraph 23 (1) (b):

Omit "Subsection 149 (2)", substitute "subsection 150 (2)".

Paragraph 23 (3) (b):

Omit "subsection 149 (2)", substitute "subsection 150 (2)".

Veterans' Affairs Legislation Amendment No. 134, 1988

NOTES

1. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; Nos. 78, 88 and 130, 1987; and Nos. 13, 35 and 75, 1988.
2. 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; Nos. 28, 29 and 106, 1986; Nos. 78, 88 and 130, 1987; and No. 35, 1988.
3. No. 28, 1986, as amended. For previous amendments, see Nos. 29, 106 and 130, 1986; and Nos. 78 and 130, 1987.

*[Minister's second reading speech made in—
House of Representatives on 20 October 1988
Senate on 9 November 1988]*