



Veterans' Affairs Legislation Amendment Act 1990

No. 2 of 1991

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CONSEQUENTIAL AND MINOR AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918



Veterans' Affairs Legislation Amendment Act 1990

No. 2 of 1991

**An Act to amend the law relating to veterans' affairs, and
for related matters**

[Assented to 8 January 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Veterans' Affairs Legislation Amendment Act 1990*.

Commencement: Day of Royal Assent

Commencement

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

Commencement: Day of Royal Assent

Application

3. (1) The amendments of section 19 and Schedule 2 to the *Seamen's War Pensions and Allowances Act 1940* made by this Act apply to payments under that Act that fall due on or after 20 September 1990.

(2) The amendments of subsection 5 (14) and section 121 of the *Veterans' Entitlements Act 1986* made by this Act apply to payments under that Act that fall due on or after 28 December 1989, other than payments in relation to periods ending before that day.

(3) The amendments of sections 27, 97, 98 and 104 of the *Veterans' Entitlements Act 1986* made by this Act apply to payments under that Act that fall due on or after 20 September 1990.

(4) The amendments of sections 35, 37, 37C, 37D, 37E, 37G, 37H, 37J, 47, 50 and 64 of the *Veterans' Entitlements Act 1986* made by this Act apply to payments under that Act that fall due on or after the day on which this Act receives the Royal Assent.

(5) The amendments of paragraph 36 (1) (b) of the *Veterans' Entitlements Act 1986* made by this Act apply to decisions made on or after the day on which this Act receives the Royal Assent.

(6) The amendment of section 55 of the *Veterans' Entitlements Act 1986* made by this Act applies to payments under that Act that fall due on or after 20 March 1991.

(7) The amendment of section 70 of the *Veterans' Entitlements Act 1986* made by this Act applies to all claims for pension under Part IV of the *Veterans' Entitlements Act 1986* that:

- (a) are made on or after the day on which this Act receives the Royal Assent; or
- (b) were made before the day on which this Act receives the Royal Assent but were not finally determined at that date.

(8) The amendments of subsection 198B (4) of the *Veterans' Entitlements Act 1986* made by this Act apply to payments under that Act that fall due on or after 1 July 1991.

Commencement: Day of Royal Assent

PART 2—AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

Principal Act

4. In this Part, “**Principal Act**” means the *Defence Service Homes Act 1918*¹.

Commencement: Day of Royal Assent

Interpretation

5. In this Part, “**amending agreement**” means the agreement a copy of which is set out in Schedule 1.

Commencement: Day of Royal Assent

Approval of amending agreement

6. The amending agreement and its execution on behalf of the Commonwealth are approved.

Commencement: Day of Royal Assent

Interpretation

7. Section 4 of the Principal Act is amended:

(a) by omitting “in force from time to time” from the definition of “agreement” in subsection (1) and substituting “amended by the agreement a copy of which is set out in Schedule 1A”;

Commencement: Day of Royal Assent

(b) by omitting “while the person” from subparagraph (g) (ii) of the definition of “Australian Soldier” in subsection (1) and substituting “as a person who”;

Commencement: Immediately after the commencement of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986

(c) by omitting paragraph (ga) of the definition of “Australian Soldier” in subsection (1) and substituting the following paragraph:

“(ga) a person who, as a member of the Defence Force or as a member of a unit of the Defence Force, was allotted for duty within the meaning of subsection 5 (12) of the *Veterans' Entitlements Act 1986* in the operational area described in item 9 of Schedule 2 to that Act during the period specified in that item;”;

Commencement: 18 February 1989

(d) by inserting the following paragraph after paragraph (ga) of the definition of “Australian Soldier” in subsection (1):

“(gb) a person who, as a member of the Defence Force or as a member of a unit of the Defence Force, was allotted for duty within the meaning of subsection 5 (12) of the *Veterans' Entitlements Act 1986* in the operational area described in item 10 of Schedule 2 to that Act during the period specified in that item and whose first service in the Defence Force began on or before 14 May 1985;”;

Commencement: 2 August 1990

(e) by inserting “(other than a widow’s advance or an advance for essential repairs)” after “subsidised advance” in the definition of “further advance” in subsection (1);

Commencement: Day of Royal Assent

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- (f) by omitting “otherwise than merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined” from paragraph (a) of the definition of “further advance” in subsection (1) and substituting:

“otherwise than:

- (i) merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined; or
- (ii) merely because the person is or was a joint purchaser or borrower as so defined with the person’s spouse and became such a purchaser or borrower on the basis that the person’s spouse was an eligible person;”;

Commencement: Day of Royal Assent

- (g) by omitting “otherwise than merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined” from the definition of “initial advance” in subsection (1) and substituting:

“otherwise than:

- (a) merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined; or
- (b) merely because the person is or was a joint purchaser or borrower as so defined with the person’s spouse and became such a purchaser or borrower on the basis that the person’s spouse was an eligible person;”;

Commencement: Day of Royal Assent

- (h) by inserting in subsection (1) the following definitions:

“**‘approved’** means approved by the Minister in writing for the purposes of this Act;

‘balance’ has the same meaning as in the agreement;

‘limit’ has the same meaning as in the agreement;

‘retirement village’ means:

- (a) a retirement village registered under an approved law of a State or Territory; or
- (b) in the case of a State or Territory that has no approved law—a retirement village within the meaning of the *Veterans’ Entitlements Act 1986*;”;

Commencement: Day of Royal Assent

- (j) by inserting in paragraph (2)(a) “within the meaning of subsection 5 (12) of the *Veterans’ Entitlements Act 1986*” after “operational area”.

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Commencement: Immediately after the commencement of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986

(k) by adding at the end the following subsections:

“(6) For the purposes of this Act a person is taken, subject to subsection (7), to have a **right of residence in a retirement village** if the person has a right of permanent residence in the retirement village, subject to any contractual conditions governing the person's residence.

“(7) For the purposes of this Act a person is not taken to have a right of residence in a retirement village if the person's right of residence is derived from the person's interest in a holding of the person.

“(8) In this Act, a reference to a person's **retirement village accommodation** means that part of a retirement village in which the person has, or the person and the person's spouse have, obtained a right of residence.”.

Commencement: Day of Royal Assent

Regular Serviceman

8. Section 4AAA is amended by omitting “but does not include a person whose first service in the Defence Force began after 14 May 1985” and substituting “but not if the person's first service in the Defence Force began after 14 May 1985”.

Commencement: Day of Royal Assent

Criteria for issue of certificate of entitlement: advances other than widows' advances and advances for essential repairs

9. Section 18 of the Principal Act is amended:

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

“; and (b) the person:

(i) is neither the owner of any dwelling-house;
nor

(ii) has a right of residence in a retirement village;

other than the dwelling-house or right of residence, as the case may be, in respect of which the advance is payable; and”;

(b) by adding at the end of paragraph (1)(c) “and”;

(c) by omitting paragraph (1)(e) and substituting the following word and paragraph:

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- “; and (e) if the person has a husband or wife (other than a husband or wife from whom he or she is permanently separated)—the husband or wife:
- (i) is neither the owner of any dwelling-house; nor
 - (ii) has a right of residence in a retirement village; other than the dwelling-house or right of residence, as the case may be, in respect of which the advance is payable; and”;
- (d) by inserting “or retirement village accommodation” after “dwelling-house” in paragraph (1) (f);
- (e) by adding at the end of paragraph (2) (a) “or”;
- (f) by omitting paragraphs (2) (b) to (e) and substituting the following paragraphs:
- “(b) to purchase a holding and build a dwelling-house on the holding; or
 - (c) to purchase a dwelling-house together with the holding on which it is built; or
 - (d) to complete a partially built dwelling-house on a holding owned by the person; or
 - (e) to enlarge a dwelling-house on a holding owned by the person; or”;
- (g) by adding at the end of subsection (2) the following word and paragraphs:
- “; or (g) to obtain a right of residence in a retirement village; or
 - (h) to complete the person’s partially-built retirement village accommodation; or
 - (j) to enlarge the person’s retirement village accommodation; or
 - (k) to discharge any debt owed by the person in relation to obtaining the person’s right of residence in a retirement village.”;
- (h) by omitting paragraph (3) (a) and substituting the following paragraph:
- “(a) to enlarge:
 - (i) a dwelling-house on a holding owned by the person; or
 - (ii) a person’s retirement village accommodation; to the extent necessary to provide essential extra sleeping accommodation or to install essential utility services; or”;
- (j) by adding at the end of paragraphs (3) (b) and (c) “or”;

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

“(d) to raise:

(i) a dwelling-house on a holding owned by the person;
or

(ii) a person's retirement village accommodation;
above the level of periodic flooding; or”;

(m) by adding at the end of subsection (3) the following word and paragraph:

“; or (f) to discharge any debt owed by the person in relation to obtaining the person's right of residence in a retirement village.”;

(n) by omitting from subsection (4) “The” and substituting “Subject to subsection (5A), the”;

(p) by inserting after subsection (4) the following subsection:

“(4A) The Secretary must not issue a certificate of entitlement in relation to subsidy on an initial advance, an additional advance or a further advance that a person may seek from the Bank for the purposes referred to in paragraph (2)(k) or (3)(f) unless satisfied that:

(a) the debt was incurred by the person with the approval of the Secretary; or

(b) the terms for repayment of the debt are onerous and having regard to the person's income, compliance with those terms is causing the person serious financial hardship; or

(c) the person is suffering serious financial hardship for other reasons beyond the control of the person.”;

(q) by inserting after subsection (5) the following subsections:

“(5A) The Secretary may issue a certificate of entitlement in relation to subsidy on an initial advance, an additional advance or a further advance for the purposes referred to in paragraphs (2)(f) or (g) or (3)(e) or (f) if the Secretary considers it necessary to do so to give effect:

(a) to a decision made by a person under subsection 43(6);
or

(b) to a direction of the Administrative Appeals Tribunal.

“(5B) In deciding whether a person is suffering serious financial hardship for the purposes of paragraph (4)(c) or (d) or (4A)(b) or (c), the Secretary is to have regard to any guidelines approved by the Minister under subsection (5C).

“(5C) The Minister may approve guidelines setting out matters to be taken into account in deciding whether a person

is suffering serious financial hardship for the purposes of this Act.

“(5D) Guidelines approved by the Minister in accordance with this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(5E) For the purposes of this section, the terms of a mortgage, charge or encumbrance are onerous if the interest rate under the mortgage, charge or encumbrance is not less than 120% of the Benchmark rate as calculated under the agreement.”.

Commencement: Day of Royal Assent

10. (1) Section 19 of the Principal Act is repealed and the following section is substituted:

Criteria for issue of certificate of entitlement: further advance

“19. The Secretary must not issue a certificate of entitlement in relation to subsidy on a further advance to a person unless the person is or was a purchaser or borrower in relation to a Corporation advance, a subsidised advance or a contract of sale on or after 9 December 1987.”.

(2) Where:

- (a) a person is a prescribed person within the meaning of subsection 19 (2) of the Principal Act as in force immediately before the commencement of this subsection; and
- (b) the person had, before the commencement of subsection (1), applied for a certificate of entitlement in relation to a subsidy on a subsidised advance; and
- (c) the application has not been finally determined at the commencement of this subsection;

the Secretary is to determine the person's application as if section 19 of the Principal Act as in force immediately before the commencement of this section had not been repealed.

(3) If:

- (a) the Minister has, before the commencement of this section, approved the issue to a person of a certificate of entitlement under section 19 of the Principal Act as in force immediately before the commencement of this section; and
- (b) the person applies for the certificate of entitlement before the end of 12 months after the commencement of this section;

the Secretary may issue the certificate of entitlement to the person but must not do so otherwise.

(4) A certificate of entitlement issued by the Secretary under subsection (3) is taken to have been issued under section 19 of the

Principal Act as in force immediately before the commencement of this section.

Commencement: Day of Royal Assent

Criteria for issue of certificate of entitlement: widows' advances

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

“(3) In deciding whether a person is suffering financial hardship for the purposes of paragraph (2) (a) or (b), the Secretary is to have regard to any guidelines approved by the Minister under subsection (4).

“(4) The Minister may approve guidelines setting out matters to be taken into account in deciding whether a person is suffering financial hardship for the purposes of this Act.

“(5) Guidelines approved by the Minister in accordance with this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Commencement: Day of Royal Assent

Criteria for issue of certificate of entitlement: advances made for essential repairs

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

“(2) In deciding whether a person is suffering serious financial hardship for the purposes of paragraph (1) (d), the Secretary is to have regard to any guidelines approved by the Minister under subsection (3).

“(3) The Minister may approve guidelines setting out matters to be taken into account in deciding whether a person is suffering serious financial hardship for the purposes of this Act.

“(4) Guidelines approved by the Minister in accordance with this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Commencement: Day of Royal Assent

Certificate of entitlement: transfer of property subject to specified portfolio asset or advance

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

(a) by omitting from subsection (3) “to a proposed transferee who is not an eligible person” and substituting “only to a proposed transferee who is an eligible person”;

(b) by omitting from subsection (6) “is” (first occurring) and substituting “has been”.

(2) Where:

- (a) the Secretary had, before the commencement of this section, given written notice to a proposed transferee that the Secretary would, in the absence of a significant change in the proposed transferee's circumstances, issue a certificate of entitlement under subsection 22 (2) of the Principal Act as in force immediately before the commencement of this section; and
- (b) the proposed transferee applies for the certificate of entitlement before the end of 12 months after the commencement of this section;

the Secretary may issue the certificate of entitlement but must not do so otherwise.

Commencement: Day of Royal Assent

Certificate of entitlement: instalment relief

14. Section 23 of the Principal Act is amended by adding at the end the following subsections:

“(5) In deciding whether a person is suffering financial hardship for the purposes of subsection (1), the Secretary is to have regard to any guidelines approved by the Minister under subsection (6).

“(6) The Minister may approve guidelines setting out matters to be taken into account in deciding whether a person is suffering financial hardship for the purposes of this Act.

“(7) Guidelines approved by the Minister in accordance with this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Commencement: Day of Royal Assent

Maximum amounts for which subsidy is payable

15. Section 25 of the Principal Act is amended by omitting paragraph (1) (d) and substituting the following paragraph:

“(d) in the case of a further advance—an amount equal to:

- (i) the limit of the last Corporation advance, subsidised advance or contract of sale in relation to which the person was a borrower or purchaser; or

- (ii) \$25,000;

whichever is less.”.

Commencement: Day of Royal Assent

16. Section 34 of the Principal Act is repealed and the following section is substituted:

Rate of interest on further advances

“34. The rate of interest that is to be specified under paragraph 17 (3) (d) in a certificate of entitlement in relation to a further advance that a person may seek from the Bank is 6.85% per year.”.

Commencement: Day of Royal Assent

Maximum terms of advances

17. Section 36 of the Principal Act is amended:

- (a) by omitting paragraph (1) (c);
- (b) by omitting from paragraph (1) (d) “to which paragraph (c) does not apply”.

Commencement: Day of Royal Assent

Review of decisions by Administrative Appeals Tribunal

18. Section 44 of the Principal Act is amended:

- (a) by omitting from subsection (1) all words to and including “as the case may be”, and substituting “Where a person makes a decision under subsection 43 (6) affirming or varying a reviewable decision, the person”;
- (b) by omitting from subsection (3) “or a decision by the Minister refusing to give an approval under section 19”.

Commencement: Day of Royal Assent

19. The Principal Act is amended by inserting after Schedule 1 the Schedule set out in Schedule 1 to this Act.

Commencement: Day of Royal Assent

Consequential and minor amendments

20. The Principal Act is further amended as set out in Schedule 2.

Commencement: Day of Royal Assent

Savings

21. (1) Where the Secretary issues a certificate of entitlement to a person under section 19 of the Principal Act as in force immediately before the commencement of this section (see subsections 10 (2) and (3) of this Act), sections 25 and 34 and subparagraph 36 (1) (c) (ii) of the Principal Act as in force immediately before the commencement of sections 15, 16 and 17 of this Act apply in relation to the certificate of entitlement.

(2) Where:

- (a) section 19 of the Principal Act as in force immediately before the commencement of section 18 of this Act applies to a person's application for a certificate of entitlement (see subsections 10 (2) and (3) of this Act); and
- (b) the Minister makes a decision in relation to the application refusing to give an approval under that section of the Principal Act;

section 44 of the Principal Act as in force immediately before the commencement of section 18 applies in relation to the Minister's decision.

Commencement: Day of Royal Assent

PART 3—AMENDMENTS OF THE PUBLIC SERVICE ACT 1922

Interpretation

22. Section 7 of the *Public Service Act 1922*² is amended:

- (a) by omitting “while the person” from paragraph (f) of the definition of “Returned Soldier” in subsection (1) and substituting “as a person who”;

Commencement: Immediately after the commencement of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986

- (b) by omitting “or 8” from the definition of “Returned Soldier” in subsection (1) and substituting “, 8 or 9”;

Commencement: 18 February 1989

- (c) by omitting “or 9” from the definition of “Returned Soldier” in subsection (1) and substituting “, 9 or 10”.

Commencement: 2 August 1990

PART 4—AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Principal Act

23. In this Part, “Principal Act” means the *Seamen's War Pensions and Allowances Act 1940*³.

Commencement: Day of Royal Assent

Pensions to dependants of certain deceased Australian mariners

24. Section 17A of the Principal Act is amended:

- (a) by adding at the end of subsection (1) the following word and paragraph:

“or (c) a pension, the rate of which had been increased under subsection 18 (4AA).”;

- (b) by omitting from paragraph (3)(a) “(1)(a) or (b)” and substituting “(1)(a), (b) or (c)”.

Commencement: 22 December 1988

25. (1) The Principal Act is amended by inserting after section 18A the following section:

Clothing allowance

“19. (1) The Commission may grant to an Australian mariner who is receiving a pension in respect of a disability described in Column 2 of the following table a clothing allowance at the rate specified, in relation to that disability, in Column 3 of the table:

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Column 1	Column 2	Column 3
Item	Description of disability	Rate per fortnight
		\$
1	One leg and one arm amputated	7.20
2	Both legs or both arms amputated	4.60
3	One leg amputated (causing essential hip disarticulation)	4.60
4	One leg or one arm amputated	3.30
5	Blindness of both eyes	3.30

“(2) Where an Australian mariner has been granted a clothing allowance in respect of a disability referred to in item 2, 3 or 4 (in Column 1) of the table in subsection (1), the Commission may, if it is satisfied that it is necessary for the mariner to use a crutch or crutches in addition to another artificial aid, increase the rate of that allowance to an amount per fortnight equal to the amount specified in item 1 (in Column 3) of the table in subsection (1).

“(3) Where an Australian mariner is receiving a pension in respect of a disability, other than a disability referred to in subsection (1), that results in exceptional wear and tear or damage to the mariner’s clothing, the Commission may grant to the mariner a clothing allowance of such an amount, or at such a rate, as it determines.

“(4) The amount payable under subsection (3), whether paid in a lump sum or by instalments, must not, in any 12 month period, exceed an amount equal to the sum of 26 fortnightly instalments of the amount specified in item 4 (in Column 3) of the table in subsection (1).

“(5) An allowance under subsection (3) may be granted to an Australian mariner entitled to an allowance in respect of a disability referred to in subsection (1) in addition to the allowance payable under subsection (1) or (2).

“(6) For the purposes of this section:

- (a) an Australian mariner who has had a hand amputated is taken to have had an arm amputated; and
- (b) an Australian mariner who has had a foot amputated is taken to have had a leg amputated; and
- (c) an Australian mariner is taken to be blind where the Commission is of the opinion that the mariner’s eyesight in the eye is so defective that the mariner has no useful sight in that eye.

“(7) An application for an allowance under this section:

- (a) must be in accordance with a form approved by the Commission; and

- (b) must be accompanied by such certificates and other evidence (relevant to the applicant's entitlement to the allowance) as are required to be provided by this Act or the form of application; and
- (c) must be made by sending the application to the Secretary at an address of the Department in Australia together with any certificates and evidence referred to in paragraph (b).

“(8) 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 (9), by another person on behalf of that person.

“(9) Where a person eligible to be granted an allowance under this section is unable, because 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.

“(10) 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, is to be treated as the applicant.

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

- (a) a person makes a written application for an allowance under this section, but otherwise than in accordance with a form approved for the purposes of subsection (7); 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 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.

“(12) An allowance under this section payable to an Australian mariner because 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 payday 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.

“(13) Where the Commission makes a decision with respect to an application for an allowance under this section, section 8A applies to the decision in the same way that it applies to a decision relating to a prescribed matter within the meaning of that section.”.

(2) A person who has applied for a clothing allowance under the Seamen's War Pensions and Allowances Regulations made under the Principal Act but whose application has not been finally determined before the commencement of this section is taken, after the commencement of this section, to have applied for a clothing allowance under section 19 of the Principal Act.

(3) Where a person was, immediately before the commencement of this section, receiving a clothing allowance under the Seamen's War Pensions and Allowances Regulations made under the Principal Act, the Principal Act applies to the person after the commencement of this section as if the person had been receiving a clothing allowance under section 19 of the Principal Act.

Commencement: 20 September 1990

Allowance for attendant

26. Section 21 of the Principal Act is amended by omitting from subsection 21 (2) “\$78.20 per fortnight” and substituting “an amount per fortnight equal to the amount specified in item 1 (in Column 2) of the table in Schedule 2”.

Commencement: 20 September 1990

27. The Principal Act is amended by inserting after section 21 the following section:

Variation of rate of certain allowances

“22. (1) In this section, unless the contrary intention appears: ‘**index number**’, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Statistician in respect of that quarter;

‘**relevant rate**’ means:

- (a) the rate specified in item 1, 2, 3, 4 or 5 (in Column 3) of the table in subsection 19 (1); or
- (b) the rate specified in item 1, 2, 3, 4 or 5 (in Column 2) of Schedule 2;

‘**relevant year**’ means:

- (a) the year commencing on 20 September 1991; or
- (b) any later year commencing on 20 September;

'Statistician' means the Australian Statistician.

“(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

“(3) If at any time, whether before or after the commencement of this section, the Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of this section after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

“(4) Where the factor ascertained, in relation to a relevant year, in accordance with subsection (5) is greater than 1, this Act has effect as if for each relevant rate there were substituted, on the first day of that year:

- (a) subject to paragraph (b)—a rate calculated by multiplying by that factor:
 - (i) in a case to which subparagraph (ii) does not apply—the relevant rate; or
 - (ii) if, by virtue of another application or several other applications of this section, this Act has had effect as if another rate were substituted, or other rates were successively substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or
- (b) where the rate so calculated (in this paragraph referred to as the **'calculated rate'**) 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 or more per fortnight—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—that next lower rate.

“(5) The factor to be ascertained for the purposes of subsection (4) in relation to a relevant year:

- (a) is the number, calculated to 3 decimal places, ascertained by dividing:
 - (i) if the relevant year commences on 20 September 1991—the index number for the last preceding June quarter; or
 - (ii) if the relevant year commences on 20 September in a later year—the index number for the last preceding June quarter;

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by the highest index number in respect of a June quarter that preceded that quarter, not being a June quarter that occurred before the June quarter 1990; or

- (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—is the number so ascertained increased by 0.001.

“(6) Where, by virtue of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a relevant year, the substitution, in so far as it affects instalments of allowances, has effect in relation to every instalment of such an allowance that falls due on or after the first day of that year.”.

Commencement: Day of Royal Assent

Provision of tax file numbers

28. Section 32AA of the Principal Act is amended by adding at the end the following subsections:

“(3) The Secretary may waive the requirement for a statement of the qualified person’s spouse’s tax file number if satisfied that the person:

- (a) does not know that number; and
- (b) can obtain none of the following from the spouse:
 - (i) that number;
 - (ii) a statement of that number;
 - (iii) a declaration by the spouse under paragraph (2) (a).

“(4) In this section:

‘tax file number’ has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.”.

Commencement: Immediately after the commencement of section 31 of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1990

Tax file numbers

29. Section 32AB of the Principal Act is repealed.

Commencement: Immediately after the commencement of Parts 7 and 8 of the Social Security Legislation Amendment Act 1990

Review of decisions etc.

30. Section 37A of the Principal Act is amended:

- (a) by inserting in subsection (1) “this Act or” after “given under”;
- (b) by inserting in subsection (3) “this Act or” after “in accordance with”.

Commencement: 20 September 1990

Recovery of overpayments

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

- (a) by omitting from paragraph (1) (b) “prescribed” and substituting “prescribed”;
- (b) by inserting in subsection (8) the following definition:
 - “‘prescribed educational scheme’ means:
 - (a) the Aboriginal Overseas Study Assistance Scheme; or
 - (b) the ABSTUDY Scheme; or
 - (c) the Assistance for Isolated Children Scheme; or
 - (d) the AUSTUDY Scheme; or
 - (e) the English as a Second Language Allowance Scheme; or
 - (f) the Post-graduate Awards Scheme; or
 - (g) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
 - (h) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
 - (j) a scheme prescribed for the purposes of this definition;”.

Commencement: Day of Royal Assent

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

32. Section 55AA of the Principal Act is amended by omitting from paragraph (c) “or” (fourth occurring) and substituting “of”.

Commencement: Day of Royal Assent

Regulations

33. Section 59 of the Principal Act is amended by omitting paragraph (1) (ea).

Commencement: 20 September 1990

Schedule 2

34. Schedule 2 to the Principal Act is amended:

- (a) by omitting “78.20” (wherever occurring) and substituting “84.30”;
- (b) by omitting “156.40” (wherever occurring) and substituting “168.60”.

Commencement: 20 September 1990

PART 5—AMENDMENT OF THE SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT ACT (NO. 4) 1989

Principal Act

35. Section 81 of the *Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989*⁴ is amended by omitting “Act” (first occurring) and substituting “Part”.

Commencement: Immediately after the commencement of section 81 of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989

PART 6—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Principal Act

36. In this Part, “**Principal Act**” means the *Veterans' Entitlements Act 1986*⁵.

Commencement: Day of Royal Assent

Interpretation

37. Section 5 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“**tax file number**” has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*”;

Commencement: Immediately after the commencement of section 24 of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1990

(b) by omitting from subsection (12) “to a person, or unit of the Defence Force”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

(c) by omitting paragraphs (12) (a) and (b) and substituting the following paragraphs:

“(a) in the case of duty that was carried out in an operational area described in items 1, 2, 3, 4, 5, 6, 7 or 8 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act; or

(b) to a person, or unit of the Defence Force, that is, by written instrument signed by the Minister for Defence, taken to have been allotted for duty in an operational area described in item 4 or 8 in Schedule 2 (in column 1).”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

(d) by adding at the end of subsection (12) the following word and paragraph:

“; or (c) in the case of duty that was carried out in an operational area described in item 9 of Schedule 2 (in column 1)—to a person, or unit of the Defence

Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act.”;

Commencement: 18 February 1989

(e) by adding at the end of subsection (12) the following word and paragraph:

“; or (d) in the case of duty that was carried out in an operational area described in item 10 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act.”;

Commencement: 2 August 1990

(f) by inserting in subsection (14) “(other than temporary incapacity allowance under section 107 or loss of earnings allowance under section 108)” after “allowance” (first occurring).

Commencement: Immediately after the commencement of paragraph 90 (c) of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989

Operational service

38. Section 6 of the Principal Act is amended:

(a) by inserting “2 or” after “item” in paragraph (1) (e);

Commencement: Immediately after the commencement of section 5 of the Veterans' Affairs Legislation Amendment Act 1987

(b) by omitting from subparagraph (1) (e) (ii) “while the person” and substituting “as a person who”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

(c) by omitting from paragraph (1) (e) “while the person was so rendering continuous full-time service” and substituting “during the period in which the person was so allotted for duty”.

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

Eligibility for pension

39. Section 13 of the Principal Act is amended by inserting in subparagraph (2) (c) (i) “subsection 22 (4) or” after “whom”.

Commencement: 22 December 1988

Increased rates of pension in certain cases

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

- (a) omit "104.40", substitute "112.50";
- (b) omit "70.40", substitute "75.90";
- (c) omit "60.50" (wherever occurring), substitute "65.20";
- (d) omit "30.20" (wherever occurring), substitute "32.60";
- (e) omit "15.90" (wherever occurring), substitute "17.10";
- (f) omit "23.40", substitute "25.20".

Commencement: 20 September 1990

Interpretation

41. Section 35 of the Principal Act is amended:

- (a) by omitting "37C or 37D" from the definition of "income" in subsection (1) and substituting "37C, 37D, 50B or 52A";

Commencement: 22 August 1990

- (b) by inserting ", 50C" after "50B" in the definition of "income" in subsection (1);

Commencement: 1 March 1991

- (c) by omitting "37C or 37D" from paragraph (aa) of the definition of "income" in subsection (1) and substituting "37C, 37D, 50B or 52A";

Commencement: 22 August 1990

- (d) by inserting ", 50C" after "50B" in paragraph (aa) of the definition of "income" in subsection (1);

Commencement: 1 March 1991

- (e) by inserting the following paragraph after paragraph (f) of the definition of "income" in subsection (1):

“(fa) a payment by a State or Territory for the purpose of assisting the person to purchase, or build, his or her own home;”;

Commencement: Day of Royal Assent

- (f) by inserting "VI," after "Part" in subparagraph (ma) (iii) of the definition of "income" in subsection (1);

Commencement: Day of Royal Assent

- (g) by inserting the following paragraph after paragraph (v) of the definition of "income" in subsection (1):

“(va) a payment towards the costs of personal care support services for the person being a payment under a scheme approved under section 12AAA of the *Social Security Act 1947*.”;

Commencement: Day of Royal Assent

Meaning of qualifying service

42. Section 36 of the Principal Act is amended:

- (a) by omitting from subparagraphs (1) (a) (iii) and (iv) “while the person” and substituting “as a person who”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

- (b) by omitting from subparagraph (1) (a) (iii) “or 8” and substituting “, 8 or 9”;

Commencement: 18 February 1989

- (c) by omitting from subparagraph (1) (a) (iii) “or 9” and substituting “, 9 or 10”;

Commencement: 2 August 1990

- (d) by omitting subparagraph (1) (a) (v);

Commencement: 18 February 1989

- (e) by inserting in paragraph (1) (b) “in the area described in item 3 of Schedule 2 (in column 1) during the period specified in column 2 of that Schedule opposite to that description” after “British Commonwealth Far East Strategic Reserve”.

Commencement: Day of Royal Assent

Method of calculation of income

43. Section 37 of the Principal Act is amended:

- (a) by inserting in paragraphs (1) (a) and (b) “an aboriginal study assistance scheme,” before “the AUSTUDY scheme”;

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

“(5) In this section:

‘aboriginal study assistance scheme’ means:

- (a) the ABSTUDY Scheme; or
(b) the Aboriginal Overseas Study Assistance Scheme; or
(c) a scheme prescribed for the purposes of this definition.”.

Commencement: Day of Royal Assent

Accruing return investments

44. Section 37C of the Principal Act is amended:

- (a) by omitting from subsection (1) “, or makes” and substituting “or acquired, or makes or acquires”;

Commencement: Day of Royal Assent

- (b) by adding at the end of subsection (1) “, or acquired by the person”;

Commencement: Day of Royal Assent

- (c) by inserting in subsection (2) “or acquires,” after “makes,”;

Commencement: Day of Royal Assent

- (d)** by inserting in paragraph (2) (b) “, or acquired, by the person” after “made”;

Commencement: Day of Royal Assent

- (e)** by adding at the end of subsection (2) “, or acquired by the person”;

Commencement: Day of Royal Assent

- (f)** by inserting in subsection (3) “or acquired,” after “made,”;

Commencement: Day of Royal Assent

- (g)** by inserting in paragraph (3) (b) “, or acquired, by the person” after “made”;

Commencement: Day of Royal Assent

- (h)** by omitting from subsection (3) “becomes entitled to receive” (first occurring) and substituting “realises the investment and receives”;

Commencement: Day of Royal Assent

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

“(3A) For the purposes of subsection (3), a person realises an investment if, and only if:

- (a) all or part of the amount of the investment is withdrawn;
or
- (b) all or part of the return on the investment is paid to another person; or
- (c) the investment matures; or
- (d) the investment is assigned by the person to another person; or
- (e) the investment is disposed of by the person otherwise than in the way referred to in paragraph (d).

“(3B) For the purposes of subsection (3), where a person assigns or otherwise disposes of an investment, the person is taken to receive by way of a return on the investment the amount of the return at the date of the disposal.

“(3C) For the purposes of subsection (3), where a person realises an investment in circumstances where the return on the investment is paid to another person, the return is taken to be received by the person realising the investment.

“(3D) For the purposes of subsection (3), where a person’s investment matures, the person is taken to receive by way of return on the investment the amount of the return at the date of the maturity.”;

Commencement: Day of Royal Assent

- (k)** by omitting from subsection (4) “section 37B” and substituting “subsection 35 (1)”;

Commencement: 19 December 1989

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

“(5) A person receives an amount for the purposes of subsection (3) if the person receives an amount under an arrangement of the kind referred to in the definition of ‘accruing return investment’ in subsection 35(1) to the extent that subsection (1) or (2) does not apply to the receipt.”

Commencement: Day of Royal Assent

Market-linked investments

45. Section 37D of the Principal Act is amended:

- (a) by inserting in subsection (1) “or acquires” after “makes”;
- (b) by inserting in paragraph (1)(a) “, or acquired, by the person” after “made”;
- (c) by adding at the end the following subsections:

“(3) Where a person:

(a) made or acquired a market-linked investment before 9 September 1988; and

(b) either:

(i) realised the investment before the commencement of this subsection; or

(ii) realises the investment after that commencement; so as to receive an amount by way of return on that investment;

the person is taken, for the purposes of this Act, to receive 1/52 of that amount as income of the person during each week in the period of 12 months commencing on the day on which the person receives the amount.

“(4) For the purposes of subsection (3), a person realises an investment if, and only if:

(a) all or part of the amount invested is withdrawn; or

(b) all or part of the return on the investment is paid to another person; or

(c) the investment matures; or

(d) the investment is assigned by the person to another person; or

(e) the investment is disposed of by the person otherwise than in the way referred to in paragraph (d).

“(5) For the purposes of subsection (3), where a person assigns or otherwise disposes of an investment, the person is taken to receive by way of a return on the investment the amount of the return at the date of the disposal.

“(6) For the purposes of subsection (3), where a person

realises an investment in circumstances where the return on the investment is paid to another person, the return is taken to be received by the person realising the investment.

“(7) For the purposes of subsection (3), where a person’s investment matures, the person is taken to receive by way of return on the investment the amount of the return at the date of the maturity.”.

Commencement: Day of Royal Assent

Special provisions about certain investments made or acquired before 9 September 1988

46. Section 37E of the Principal Act is amended:

- (a) by inserting in paragraph (1) (a) “or acquired” after “made”;
- (b) by inserting in subsection (1) “, or acquired, by the person” after “made” (last occurring);
- (c) by inserting in paragraph (2) (b) “, or acquired, by the person” after “made” (wherever occurring).

Commencement: Day of Royal Assent

Determinations of entitlement of persons holding market-linked investments

47. Section 37G of the Principal Act is amended by inserting in subsection (1) “or acquired” after “made” (second occurring).

Commencement: Day of Royal Assent

Treatment of costs of investment

48. Section 37H of the Principal Act is amended by inserting “, or acquired,” after “made” in the definition of “investment costs” in subsection (3).

Commencement: Day of Royal Assent

Certain capital amounts taken to be received over 12 months

49. Section 37J of the Principal Act is amended:

- (a) by omitting from subsection (1) “being an amount of a capital nature”;
- (b) by inserting before paragraph (1) (a) the following paragraph:
“(aa) income by way of periodic payments; or”;
- (c) by inserting at the end of paragraph (1) (a) “or”;
- (d) by inserting in paragraph (1) (c) “, or acquired, by the person” after “made”;
- (e) by omitting subsection (2) and substituting the following subsection:

“(2) A person receives an amount for the purposes of subsection (1) if the person receives an amount under an

arrangement of the kind referred to in the definition of "accruing return investment" in subsection 35 (1) to the extent that subsection 37C (1) or (2) does not apply to the receipt."

Commencement: Day of Royal Assent

Rate of veteran's service pension

50. Section 47 of the Principal Act is amended by inserting after subsection (3) the following subsection:

"(3A) If:

- (a) a veteran who has a child is entitled to claim maintenance from another person for the child; and
- (b) the Commission considers it reasonable that the veteran should take action to obtain the maintenance; and
- (c) the veteran does not take the action that the Commission considers reasonable to obtain the maintenance;

paragraphs (3) (a), (b) and (c) do not apply in relation to the child."

Commencement: Day of Royal Assent

Earnings credit

51. Section 49B of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of "earnings credit" and substituting the following definition:

"'earnings credit', in relation to a person receiving a pension and to a fortnight beginning on variation day or a later fortnight, means:

- (a) in the case of the fortnight in which the person commences to receive the pension (if commencing on or after variation day)—the credit amount (if any) of the person for that fortnight; or
- (b) in the case of any other fortnight—the amount of the earnings credit (if any) of the person for the fortnight immediately before the relevant fortnight increased by the credit amounts (if any) of the person for the relevant fortnight and decreased by the amount (if any) by which the person's earnings credit was reduced in the relevant fortnight because of subsection (3);

or \$1,000, whichever is the lesser amount;";

(b) by inserting in subsection (1) the following definitions:

"'pensioner couple' means:

- (a) 2 service pensioners each of whom is a married person because of being the spouse of the other person; or
- (b) a service pensioner and a social security pensioner within the meaning of the *Social Security Act 1947*, each of whom is a married person because of being the spouse of the other person;

'service pensioner' means a person in receipt of a pension;
'service pensioner couple' means a couple, both of whose members are service pensioners;

'social security-service pensioner couple' means a pensioner couple, one of whose members is not a service pensioner;

'social security earnings credit' means an earnings credit within the meaning of section 12A of the *Social Security Act 1947*;

'variation day' means the earliest pension pay day on or after 1 October 1990;

'variation earnings credit', in relation to a person, means the person's earnings credit (within the meaning of this section as in force immediately before the commencement of this definition) for the fortnight immediately before variation day;"

(c) by omitting subsection (1A) and substituting the following subsections:

“(1A) For the purposes of this section, the earnings credit of a service pensioner for the fortnight immediately before variation day is:

(a) in the case of a person who is not a member of a pensioner couple—the person's variation earnings credit; or

(b) in the case of a person who is a member of a service pensioner couple—an amount equal to one-half of the sum of the person's variation earnings credit and the person's spouse's variation earnings credit; or

(c) in the case of a person who is a member of a social security-service pensioner couple—an amount equal to one-half of the sum of the person's variation earnings credit and the person's spouse's variation earnings credit within the meaning of section 12A of the *Social Security Act 1947*.

“(1B) A service pensioner has a credit amount for the purposes of this section in relation to a fortnight beginning on a pension pay day if the person's annual permissible income in that fortnight equals or exceeds the person's annual rate of income in that fortnight, and the amount of that credit amount is 1/26 of the person's annual permissible income.

“(1C) A service pensioner who is a member of a service pensioner couple has a credit amount for the purposes of this section in relation to a fortnight beginning on a pension pay day if the person's spouse's annual permissible income in that fortnight equals or exceeds the person's spouse's annual rate of income in that fortnight, and the amount of that credit amount is 1/26 of the person's spouse's annual permissible income.

“(1D) A service pensioner who is a member of a social security-service pensioner couple has a credit amount for the purposes of this section in relation to a fortnight beginning on a pension pay day if the person’s spouse’s annual permissible income (within the meaning of section 12A of the *Social Security Act 1947*) in that fortnight equals or exceeds the person’s spouse’s annual rate of income within the meaning of that section in that fortnight and the amount of that credit amount is 1/26 of that annual permissible income of the spouse.

“(1E) For the purposes of this section, where a service pensioner who is a member of a pensioner couple becomes entitled to a payment for remunerative work undertaken by the person during a particular fortnight:

- (a) only half of the payment is taken to be income of the person; and
- (b) half of the payment is taken to be income of the person’s spouse.

“(1F) For the purposes of this section, where the member of a social security-service pensioner couple who is not a service pensioner becomes entitled to a payment for remunerative work undertaken by the member during a particular fortnight, half of the payment is taken to be income of the member’s spouse.”;

- (d) by inserting in subsection (4) “subparagraph 47 (4) (a) (ii) or” after “under”.

Commencement: Immediately after the commencement of section 12 of the Social Security Legislation Amendment Act 1990

Calculation of value of property

52. Section 50 of the Principal Act is amended by omitting paragraph (8) (b) and substituting the following paragraphs:

- “(b) so much of any period during which the person resides in a nursing home as is not later than 2 years after the start of the period; and
- (c) any period during which:
 - (i) the person resides in a nursing home; and
 - (ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person’s spouse; and
- (d) any period:
 - (i) during which the person resides in a nursing home; and
 - (ii) where the person’s spouse died while paragraph (c) applied and while a resident of a nursing home—within the 2 years immediately after the person’s spouse became such a resident; and

- (e) any period:
 - (i) during which the person resides in a nursing home; and
 - (ii) where the person's spouse died while paragraph (c) applied but not while a resident of a nursing home—within the 2 years immediately after the death.”.

Commencement: Day of Royal Assent

Income from loans

53. Section 50B of the Principal Act is amended:

- (a) by inserting in subsection (1) the following definitions:
 - “**‘account’**, in relation to a financial institution, means an account maintained by a person with the institution to which is credited money received on deposit by the institution from that person;
 - ‘entry contribution’** has the same meaning as in section 50A;
 - ‘financial institution’** means a bank, building society, credit union or other institution that receives money on deposit;”;
- (b) by omitting from subsection (3) “bank, building society or credit union” and substituting “financial institution”;
- (c) by inserting after subsection (3) the following subsection:
 - “(3A) For the purposes of this section, a person's entry contribution in relation to a retirement village is not a loan by the person.”;
- (d) by inserting after subsection (4) the following subsection:
 - “(4A) The Minister may, by written notice, determine that this section does not apply to a specified loan or class of loans.”.

Commencement: 22 August 1990

54. (1) After section 50B of the Principal Act the following section is inserted:

Income from certain money

- “50C. (1) In this section:
- ‘account’**, in relation to a financial institution, means an account maintained by a person with the institution to which is credited money received on deposit by the institution from that person;
 - ‘assumed rate’** means 10% or, if there is a lower rate determined under subsection 4D (7) of the *Social Security Act 1947*, that lower rate;
 - ‘available money’**, in relation to a person, means money held by, or on behalf of, the person, but does not include deposit money or money to which section 50B applies;
 - ‘deposit money’**, in relation to a person, means the person's money that is deposited in an account with a financial institution;

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'financial institution' means a bank, building society, credit union or other institution that receives money on deposit;

'income money', in relation to a person at any time, means so much of:

(a) the person's deposit money; or

(b) the person's available money;

at that time as exceeds \$2,000.

“(2) For the purposes of this section, a person's deposit money on which interest is paid is not to be treated as income money of the person at a particular time unless such of:

(a) the person's deposit money on which a lower, or no interest, is paid; and

(b) the person's available money;

as does not exceed \$2,000 has not been so treated at that time.

“(3) For the purposes of this Act, where interest is not paid on income money of a person, the person is taken to receive interest on that money at the rate per year of the assumed rate.

“(4) Subject to subsection (5), for the purposes of this Act, where the rate of interest paid on income money of a person is less than the assumed rate, the person is taken to be paid interest on that money at the rate per year of the assumed rate.

“(5) The Minister may, by written notice, determine that this section does not apply to specified income money of a person or class of persons.

“(6) For the purposes of this section, where interest paid on deposit money is not received, or accounted for, at least as frequently as each anniversary of the making of the deposit, interest on the money is taken to be received by the depositor on each such anniversary.

“(7) Where this section applies, Division 1A of Part III does not apply.”.

(2) Where a person:

(a) was not a prescribed person within the meaning of section 82 of the Principal Act on 28 February 1991; and

(b) would have been a prescribed person on that day if the amendments made by subsection (1) had been in force on that day;

then, for the purposes of this Act and other laws of the Commonwealth, the person does not become a prescribed person unless and until he or she would have become so if the amendments had not been made.

Commencement: 1 March 1991

Rent assistance

55. Section 55 of the Principal Act is amended by omitting from paragraph (1) (a) "\$1,040" and substituting "\$1,300".

Commencement: 20 March 1991

Remote area allowance

56. Section 57 of the Principal Act is amended:

- (a) by adding "and" at the end of paragraph (a) of the definition of "remote area" in subsection (1);
- (b) by inserting after paragraph (a) of the definition of "remote area" in subsection (1) the following paragraphs:
 - “(aa) those parts of Australia referred to in Part II of that Schedule to that Act that are further than 250 kilometres by the shortest practicable surface route from the nearest urban centre with a census population (within the meaning of that Act) of 2,500 or more; and
 - (ab) those places in Australia that, for the purposes of that Act, are treated as if they were in a part of Australia referred to in paragraph (a) or (aa); and”.

Commencement: 1 January 1991

57. Section 64 of the Principal Act is repealed.

Commencement: Day of Royal Assent

Interpretation

58. Section 68 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘hazardous service’ has the same meaning as in subsection 120 (7);”.

Commencement: Day of Royal Assent

Application of Part to members of the Forces

59. Section 69 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (1) (c) and (d) "or";
- (b) by inserting after paragraph (1) (e) the following paragraph:
 - “(ea) if the person has rendered hazardous service as a member of the Defence Force; or”.

Commencement: Day of Royal Assent

Eligibility for pension under this Part

60. Section 70 of the Principal Act is amended:

- (a) by inserting in subparagraph (2) (c) (i) "subsection 22 (4) or" after "whom";

Commencement: 22 December 1988

- (b) by inserting in subsection (5) "(other than a member to whom

this Part applies solely because of paragraph 69 (1) (ea))” after “member of the Forces”;

Commencement: Day of Royal Assent

(c) by inserting after subsection (5) the following subsections:

“(5A) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in paragraph 69 (1) (ea), the death of the member is taken to be defence-caused, an injury suffered by such a member is taken to be a defence-caused injury or a disease contracted by such a member is taken to be a defence-caused disease if:

- (a) the death, injury or disease, as the case may be, arose out of, or was attributable to, the hazardous service of the member; or
- (b) subject to subsection (8), the death, injury or disease, as the case may be, resulted from an accident that occurred while the member was travelling, during any hazardous service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place upon having ceased to perform duty; or
- (c) the death is to be deemed by subsection (6) to be defence-caused, the injury is to be deemed by subsection (7) to be a defence-caused injury or the disease is to be deemed by subsection (7) to be a defence-caused disease, as the case may be; or
- (d) the injury or disease from which the member died or has become incapacitated:
 - (i) was suffered or contracted during any hazardous service of the member but did not arise out of that service; or
 - (ii) was suffered or contracted before the commencement of the hazardous 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, the hazardous service rendered by the member, being service rendered after the member suffered that injury or contracted that disease;

but not otherwise.

“(5B) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in paragraph 69 (1) (ea), subsections (6) and (7) apply to the person as if references in those subsections to ‘defence service or peacekeeping service, as the case may be’ were references to ‘hazardous service’.”;

Commencement: Day of Royal Assent

- (d) by omitting from subsection (8) "Paragraph (5) (b) does not apply" and substituting "Neither paragraph (5) (b) nor (5A) (b) applies";

Commencement: Day of Royal Assent

- (e) by inserting in paragraph (9) (a) "or in paragraph (5A) (a), (b) or (c)" after "(5) (a), (b) or (c)";

Commencement: Day of Royal Assent

- (f) by inserting in paragraph (9) (b) "or (5A) (d)" after "(5) (d)";

Commencement: Day of Royal Assent

- (g) by inserting in subparagraph (9) (b) (ii) "the veteran has rendered hazardous service or" after "unless".

Commencement: Day of Royal Assent

Veterans eligible to be provided with treatment

61. Section 85 of the Principal Act is amended by omitting from subparagraph (9) (a) (ii) "while" and substituting "as a person who was".

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

Dependants eligible to be provided with treatment

62. Section 86 of the Principal Act is amended by inserting in paragraphs (2) (a) and (b) "22 (4) or" after "sub-section".

Commencement: 22 December 1988

Clothing allowance

63. Section 97 of the Principal Act is amended:

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

(i) omit "6.70", substitute "7.20";

(ii) omit "3.10" (wherever occurring), substitute "3.30";

(iii) omit "4.30" (wherever occurring), substitute "4.60";

- (b) by omitting from subsection (2) "\$6.70 per fortnight" and substituting "an amount per fortnight equal to the amount specified in item 1 (in column 2) of that table";

- (c) by omitting from subsection (3) "\$3.10 per fortnight" and substituting "an amount per fortnight equal to the amount specified in item 2 (in column 2) of that table".

Commencement: 20 September 1990

Attendant allowance

64. Section 98 of the Principal Act is amended:

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

(i) omit "78.20" (wherever occurring), substitute "84.30";

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- (ii) omit "156.40" (wherever occurring), substitute "168.60";
- (b) by omitting from subsection (2) "\$78.20 per fortnight" and substituting "an amount per fortnight equal to the amount specified in item 1 (in column 2) of the table in subsection (1)".

Commencement: 20 September 1990

Funeral benefits—veterans

65. Section 99 of the Principal Act is amended by omitting from subsection (6) "person" and substituting "veteran".

Commencement: Day of Royal Assent

Recreation transport allowance

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

- (a) omit "41.60" (wherever occurring), substitute "44.80";
- (b) omit "20.80" (wherever occurring), substitute "22.40".

Commencement: 20 September 1990

Interpretation

67. Section 116 of the Principal Act is amended:

- (a) by inserting "22 (4) or" after "subsection" in subparagraph (a) (ii) of the definition of "eligible child of a member of the Forces, or of a member of a Peacekeeping Force" in subsection (1);
- (b) by inserting in subsection (2) "22 (4) or" after "subsection";
- (c) by inserting in subsection (3) "22 (4) or" after "subsection".

Commencement: 22 December 1988

Part heading

68. The heading to Part VIIA of the Principal Act is amended by adding at the end "AND ALLOWANCE".

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Interpretation

69. Section 118A of the Principal Act is amended:

- (a) by omitting the definition of "disqualified advance pensioner";
- (b) by omitting "this Act" from subparagraph (a) (ii) of the definition of "eligible pensioner" and substituting "section 47 or 48";
- (c) by inserting the following definitions:
 - "'pharmaceutical allowance' means the allowance payable under section 118JA;
 - 'special wife service pensioner' means a woman who:

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- (a) is either:
- (i) in receipt of wife's service pension; and
 - (ii) legally married to a veteran but living separately and apart from him on a permanent basis; and
 - (iii) not living with a man who is an eligible pensioner within the meaning of either section 118A of this Act or section 151A of the *Social Security Act 1947* as husband and wife on a *bona fide* domestic basis; or
- (b) is:
- (i) in receipt of a wife's service pension because of section 66; and
 - (ii) is not living with a man who is an eligible pensioner within the meaning of either section 118A of this Act or section 151A of the *Social Security Act 1947* as husband and wife on a *bona fide* domestic basis.”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Rate of pharmaceutical supplements

70. Section 118D of the Principal Act is amended by inserting in subsection (2) “(other than a special wife service pensioner)” after “person”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Advance pharmaceutical supplements for advance pensioners A

71. Section 118F of the Principal Act is amended by omitting from subsection (2) “married person” and substituting “person (other than a special wife service pensioner)”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Further advance pharmaceutical supplements for continuing advance pensioners A

72. Section 118G of the Principal Act is amended by omitting from subsection (4) “married person” and substituting “person (other than a special wife service pensioner)”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Advance pharmaceutical supplements for advance pensioners B

73. Section 118H of the Principal Act is amended by omitting from subsection (5) "married person" and substituting "person (other than a special wife service pensioner)".

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Pharmaceutical supplements not additional to advance pharmaceutical supplements

74. Section 118J of the Principal Act is amended:

- (a) by omitting from subparagraph (3) (b) (i) "2.50" and substituting "5";
- (b) by omitting from subparagraph (3) (b) (ii) "married person" and substituting "person (other than a special wife service pensioner)".

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

75. After section 118J of the Principal Act the following sections are inserted:

Qualification for pharmaceutical allowance

"118JA. Subject to sections 118K and 118L, a person is eligible to receive a pharmaceutical allowance if he or she is in receipt of:

- (a) a service pension under section 38 or 39, a wife's service pension under section 40 or a carer's service pension under section 41; or
- (b) a pension whose rate is specified under subsection 30 (1) or (2).

Rate of pharmaceutical allowance

"118JB. (1) Subject to subsection (2), the rate of a pharmaceutical allowance for a person is \$5 per fortnight.

"(2) The rate of a pharmaceutical allowance for a person (other than a special wife service pensioner) in receipt of a pension at the rate specified in paragraph 47 (1) (b) is \$2.50 per fortnight.

Payment of pharmaceutical allowance

"118JC. Subject to sections 118K and 118L, a person's pharmaceutical allowance is payable on each pension pay day on which the person is eligible for the allowance."

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Pharmaceutical allowances not payable to advance pensioners A during advance payment period

76. Section 118K of the Principal Act is amended:

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

“(1) If an advance pensioner A has received at least one advance pharmaceutical supplement under section 118G, pharmaceutical allowance is not payable to the pensioner during his or her advance payment period.”;

- (b) by omitting from paragraph (2) (a) “1 November 1991” and substituting “20 March 1991”;

- (c) by omitting from subparagraph (2) (b) (ii) “married pensioner” and substituting “person (other than a special wife service pensioner)”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Pharmaceutical allowances not payable to advance pensioners B during advance payment period

77. Section 118L of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) If an advance pensioner B has received at least one advance pharmaceutical supplement under section 118H, pharmaceutical allowance is not payable to the pensioner during his or her advance payment period.”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Advances and eligibility for entitlement card

78. Section 118M of the Principal Act is amended:

- (a) by omitting all words from and including “by the excess” and substituting the following:

“in accordance with the following formula:

$$APS - (E - X)$$

where:

‘APS’ means the amount of the advance pharmaceutical supplement the person is qualified to receive;

‘E’ means the amount of the excess;

‘X’ means:

- (a) except where paragraph (b) applies—5; or
(b) in the case of a person (other than a special wife service pensioner) to whom paragraph 47 (1) (b) applies—2.5.”;

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

“(2) If a person’s advance pharmaceutical supplement is reduced under subsection (1), no further advance pharmaceutical supplement is payable to the person.”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Maximum benefit

79. Section 118N of the Principal Act is amended:

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

“(b) pharmaceutical allowances;”;

(b) by omitting from paragraphs (1) (d) and (2) (e) “married pensioner” and substituting “pensioner (other than a special wife service pensioner)”;

(c) by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) pharmaceutical allowances;”.

Commencement: Immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Instalments of pension

80. Section 121 of the Principal Act is amended by adding at the end of the definition of “pension” in subsection (5) “under section 103, temporary incapacity allowance under section 107 or loss of earnings allowance under section 108”.

Commencement: Immediately after the commencement of section 120 of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989

Power to obtain information

81. Section 127 of the Principal Act is amended by inserting in paragraphs (1) (e) and (f) “in the manner and” before “within”.

Commencement: Day of Royal Assent

Provision of tax file numbers

82. Section 128A of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“ ‘**employment declaration**’ has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*;”;

(b) by inserting after subsection (4) the following subsection:

“(5) The Secretary may waive the requirement for a

statement of the qualified person's spouse's tax file number if satisfied that the person:

- (a) does not know that number; and
- (b) can obtain none of the following from the spouse:
 - (i) that number;
 - (ii) a statement of that number;
 - (iii) a declaration by the spouse under paragraph (4) (a)."

Commencement: Immediately after the commencement of section 24 of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1990

Tax file numbers

83. Section 128B of the Principal Act is repealed.

Commencement: Immediately after the commencement of Parts 7 and 8 of the Social Security Legislation Amendment Act 1990

Statements of decisions of the Board etc.

84. Section 140 of the Principal Act is amended by omitting from paragraph (2) (b) "it".

Commencement: Day of Royal Assent

Procedure of Board

85. Section 148 of the Principal Act is amended:

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

"(3A) If:

- (a) no date, time and place has been fixed at the end of 2 years after the day on which an application for review was received at an office of the Department in Australia; and
- (b) the Principal Member considers that the applicant should be ready to proceed at a hearing;

the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member within 28 days after receipt of the notice:

- (c) a written statement indicating that the applicant is ready to proceed at a hearing; or
- (d) a written statement explaining why the applicant is not ready to proceed at a hearing.

"(3B) If the applicant does not provide a written statement under paragraph (3A) (c) or (d) within 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission accordingly.

“(3C) If:

- (a) the applicant provides a written statement under paragraph (3A) (d) within 28 days; and
 - (b) the Principal Member considers that the applicant has provided a reasonable explanation in the statement for the applicant's failure to be ready to proceed at a hearing;
- the Principal Member must notify the applicant and the Commission accordingly.

“(3D) If:

- (a) the applicant provides a written statement under paragraph (3A) (d) within 28 days; and
 - (b) the Principal Member considers that the applicant has provided no reasonable explanation in the statement for the applicant's failure to be ready to proceed at a hearing;
- the Principal Member must dismiss the application and must notify the applicant and the Commission accordingly.

“(3E) If no date, time and place for a hearing has been fixed at the end of 3 months after the date on which the Principal Member notified the applicant under subsection (3C), the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member within 28 days after receipt of the notice:

- (a) a written statement indicating that the applicant is ready to proceed at a hearing; or
- (b) a written statement explaining why the applicant is not ready to proceed at a hearing;

and subsections (3B), (3C), (3D) and this subsection apply to the statements under paragraphs (a) and (b) as if they were statements under paragraphs (3A) (c) and (d).”;

- (b) by inserting after subsection (6) the following subsection:

“(6A) The Principal Member may, in relation to a review, request the Secretary:

- (a) to give to the Principal Member further documents in the Secretary's custody; or
- (b) to obtain, and give to the Principal Member, further documents; or
- (c) to arrange for the making of any investigation or medical examination and to give to the Principal Member a report of the investigation or examination.”;

- (c) by inserting in subsection (7) “or making a request” after “direction”.

Commencement: Day of Royal Assent

86. After section 155 of the Principal Act the following section is inserted in Division 5:

Review by Administrative Appeals Tribunal

“155A. (1) Application may be made to the Administrative Appeals Tribunal, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, for review of the following decisions of the Principal Member:

- (a) the decision to dismiss an application under subsection 148 (3B);
- (b) the decision under paragraph 148 (3C) (b) that an applicant has provided a reasonable explanation for the applicant's failure to be ready to proceed at a hearing;
- (c) the decision under paragraph 148 (3D) (b) that an applicant has provided no reasonable explanation for the applicant's failure to be ready to proceed at a hearing.

“(2) Where a decision of a kind referred to in subsection (1) is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision and, except where subsection 28 (4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

“(3) A failure to comply with subsection (2) does not affect the validity of the decision.”.

Commencement: Day of Royal Assent

Applications for review

87. Section 175 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Where the Commission, under section 59, affirms a decision or sets aside a decision and substitutes another decision, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the affirmed or substituted decision.”.

Commencement: Day of Royal Assent

Variation of rates of certain pensions

88. Section 198 of the Principal Act is amended by omitting subsections (5G) to (5P).

Commencement: Immediately after the commencement of section 17 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Indexation of income test “free area”

89. Section 198B of the Principal Act is amended:

- (a) by omitting from subsection (2) “commencment” and substituting “commencement”;

- (b) by omitting from paragraph (4) (b) "\$1" and substituting "\$26";
- (c) by omitting from subparagraphs (4) (b) (i) and (ii) "50 cents" and substituting "\$13".

Commencement: Day of Royal Assent

90. The Principal Act is amended by inserting after section 198C the following section:

Variation of rates of certain allowances etc.

"198D. (1) In this section, unless the contrary intention appears: **'index number'**, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for that quarter;

'relevant rate' means the rate specified in:

- (a) item 7, 8, 9, 10, 11, 12, 13, 14 or 15 in the table in subsection 27 (1) (in column 2); or
- (b) item 1, 2, 3, 4 or 5 in the table in subsection 97 (1) (in column 2); or
- (c) item 1, 2, 3, 4 or 5 in the table in subsection 98 (1) (in column 2); or
- (d) item 1, 2, 3, 4, 5, 6, 7, 8, 9 or 10 in the table in subsection 104 (1) (in column 2);

'year to which this section applies' means:

- (a) the year commencing on 20 September 1991; or
- (b) any later year commencing on 20 September.

"(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

"(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

"(4) Where the factor worked out under subsection (5) in relation to a relevant rate in relation to a year to which this section applies is greater than 1, this Act, and any Act that refers to this Act, have effect as if for that relevant rate there were substituted, on the first day of that year:

- (a) subject to paragraph (b)—the rate worked out by multiplying by that factor:

- (i) where subparagraph (ii) does not apply—the relevant rate; or
 - (ii) if, because of another application or other applications of this section, this Act has had effect as if another rate was substituted, or other rates were successively substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or
- (b) where the rate worked out under paragraph (a) is not a multiple of 10 cents per fortnight—a rate equal to:
- (i) if the rate so worked out exceeds the next lower rate that is such a multiple of 5 cents per fortnight or more—the next highest rate that is such a multiple; or
 - (ii) if the rate so worked out exceeds the next lower rate that is such a multiple by less than 5 cents per fortnight—that next lower rate.

“(5) The factor to be worked out for the purposes of subsection (4) in relation to a year to which this section applies is:

- (a) in relation to the year commencing on 20 September 1991—the number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 1991 by the index number for the June quarter 1990; or
- (b) in relation to each subsequent year—the number calculated to 3 decimal places, worked out by dividing the index number for the last preceding June quarter by the highest index number in respect of an earlier June quarter, not being a June quarter that occurred before 1991; or
- (c) if the number worked out under paragraph (a) or (b) would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so worked out increased by 0.001.

“(6) Where, because of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a year to which this section applies, the substitution, in so far as it effects instalments of pensions and allowances under this Act, has effect in relation to every instalment of such a pension or an allowance that falls due on or after the first day of that year.”.

Commencement: Day of Royal Assent

Recovery of overpayments

91. Section 205 of the Principal Act is amended by inserting in subsection (8) the following definition:

“ ‘prescribed educational scheme’ means:

- (a) the Aboriginal Overseas Study Assistance Scheme; or
- (b) the ABSTUDY Scheme; or
- (c) the Assistance for Isolated Children Scheme; or

- (d) the AUSTUDY Scheme; or
- (e) the English as a Second Language Allowance Scheme; or
- (f) the Post-graduate Awards Scheme; or
- (g) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (h) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (j) a scheme prescribed for the purposes of this definition;”.

Commencement: Day of Royal Assent

Schedule 2

92. Schedule 2 to the Principal Act is amended:

- (a) by omitting from item 6 “The period from and including 31 July 1962 to and including 11 January 1973” and substituting “The period from and including 8 December 1962 to and including 30 September 1967”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

- (b) by omitting from item 7 “The period from and including 31 July 1962 to and including 11 January 1973” and substituting “The period from and including 7 July 1965 to and including 30 September 1967”;

Commencement: Immediately after the commencement of the Veterans' Entitlements Act 1986

- (c) by adding at the end of item 9 “to and including 10 April 1990”;

Commencement: Day of Royal Assent

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

“10. The area comprising the following countries and sea areas: The period from and including 2 August 1990”.

- (i) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Island of Cyprus;
- (ii) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;
- (iii) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next:
 - (A) 20° 30' N 70° 40' E;

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- (B) 14° 30' N 67° 35' E;
- (C) 8° 30' N 60° 00' E;
- (D) 6° 20' N 53° 52' E;
- (E) 5° 48' N 49° 02' E;
- (iv) the sea area contained within the Suez Canal and the Mediterranean Sea east of 30° E.

Commencement: 2 August 1990

PART 7—TRANSITIONAL

Certain claims and applications made on or before 8 November 1990

93. (1) If:

- (a) a person has made a claim under the *Veterans' Entitlements Act 1986* or an application under the *Defence Service Homes Act 1918*; and
- (b) the claim or application was granted on or before 8 November 1990 on the basis that the person was allotted for duty in an operational area or was a member of a unit of the Defence Force that was allotted for duty in an operational area;

subsection 5 (12) of the *Veterans' Entitlements Act 1986* continues to apply in relation to the person as if the amendments made by paragraphs 37 (b) and (c) of this Act had not been made.

(2) If:

- (a) a person has made a claim under the *Veterans' Entitlements Act 1986* or an application under the *Defence Service Homes Act 1918* on or before 8 November 1990; and
- (b) the claim or application has not been finally determined before 9 November 1990;

the claim or application is to be determined as if the amendments made by paragraphs 37 (b) and (c) of this Act had not been made.

Commencement: Day of Royal Assent

SCHEDULE 1

Section 19

“SCHEDULE 1A

**AGREEMENT BETWEEN THE COMMONWEALTH OF
AUSTRALIA AND WESTPAC BANKING CORPORATION**

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6. Adoption and Application of the Agreement
7. Non-merging on Settlement and Severability
8. Stamp Duty
9. Applicable Law
10. Waiver
11. Amendments or Variation
12. Assignment

Schedule of Amendments to Principal Agreement

AN AGREEMENT made the fifth day of November 1990

BETWEEN

the **COMMONWEALTH OF AUSTRALIA**

(hereinafter referred to as “the Commonwealth”) of the one part

and

WESTPAC BANKING CORPORATION

of 60 Martin Place, Sydney
in the State of New South Wales

(hereinafter referred to as “the Bank”) of the other part.

SCHEDULE 1—continued

WHEREAS:

- A. Under the Agreement between the Commonwealth and the Bank dated 9 November 1988 pursuant to the Amending Act the Bank acquired from the Commonwealth the interests of the Defence Service Homes Corporation (“the Corporation”) in the Portfolio Assets and the exclusive right to provide Subsidised Advances and other benefits upon which subsidy is payable to all persons satisfying the tests of eligibility and entitlement under the Amended Act.
- B. The Commonwealth proposes to introduce legislation to vary the categories of Subsidised Advances provided pursuant to the Amended Act by varying the Subsidy Scheme so as to introduce the Variation Advances.
- C. The Bank wishes to acquire from the Commonwealth the exclusive right to provide the Variation Advances to all persons who satisfy the tests of eligibility and entitlement in respect of same under the Amended Act.
- D. The Commonwealth is willing to provide to the Bank the exclusive right to provide the Variation Advances to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans' Affairs Legislation Amendment Bill 1990.
- E. The Commonwealth is willing to pay to the Bank a Subsidy in respect of the Variation Advances granted to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans' Affairs Legislation Amendment Bill 1990.
- F. The Bank is willing to pay to the Commonwealth a fee in respect of each Subsidised Advance which is a Variation Advance granted by the Bank.
- G. In order to give effect to this Supplementary Agreement the Commonwealth and the Bank agree to amend the Agreement in the manner set out in the Schedule to this Supplementary Agreement and for the purposes of this Supplementary Agreement and its construction to abide by and act in accordance with the provisions of the Agreement as so amended.
- H. The Commonwealth and the Bank acknowledge that this Supplementary Agreement is dependent upon the passage of legislation governing same, by the Parliament of the Commonwealth of Australia.

SCHEDULE 1—continued

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement except where the context otherwise requires:

1.1 Definitions

- Amended Agreement—** means the Agreement as amended by the Supplementary Agreement.
- Further Amending Act—** means Part 2 of the Veterans' Affairs Legislation Amendment Act 1990.
- Retirement Village—** has the same meaning as in the Further Amending Act.
- Retirement Village Accommodation—** has the same meaning as in the Further Amending Act.
- Right of residence in a retirement village—** has the same meaning as in the Further Amending Act.
- Supplementary Agreement—** means this Agreement.
- Unit Fee—** means the fee payable by the Bank to the Commonwealth for each Variation Advance granted pursuant to this Supplementary Agreement.
- Unit Fee Claim Period—** means the twelve month period immediately preceding the date of the invoice referred to in Sub-clause 3.3. of this Supplementary Agreement and, for the period preceding 1 May 1991, the period between the date of execution of this Supplementary Agreement and 1 May 1991.
- Variation Advance—** means—
- (a) (i) a Subsidised Advance made by the Bank in accordance with a Certificate of Entitlement issued under Subsection 18 (2) (g), (h), (j) and (k) of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990;
 - (ii) a Subsidised Advance made by the Bank in accordance with a Certificate of Entitlement relating to a person's retirement village

SCHEDULE 1—continued

accommodation or right of residence in a retirement village issued under Subsection 18 (3) (a) (ii), (d) (ii) and (f), Subsection 20 (2) (a) and (b) and Subsection 21 (c) of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990; and

- (b) a Further Advance made by the Bank in accordance with a Certificate of Entitlement issued under Section 19 of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990 to a person who is or was a purchaser or borrower in relation to a Corporation advance, a Subsidised Advance or a Contract of Sale on 9 December 1987.

- 1.2.1 Where this Supplementary Agreement includes a reference to a term which is defined in the Agreement the definition in the Agreement as amended by this Supplementary Agreement is to be applied except where the contrary intention is expressed.

1.3 Interpretation

- 1.3.1 Words importing one gender shall include the other gender.
- 1.3.2 Words importing the singular shall include the plural and vice-versa.
- 1.3.3 A reference to a Clause shall be a reference to all of its Sub-clauses, and a reference to a Sub-clause shall be a reference to all its Sub-sub-clauses unless the context otherwise admits.
- 1.3.4 The Clause headings in this Supplementary Agreement are for reference only and have no effect on the construction, interpretation or meaning of the Clauses.
- 1.3.5 The Schedule referred to herein forms part of and is subject to the terms of this Supplementary Agreement.
- 1.3.6 Where in this Supplementary Agreement any period of time dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned inclusive of such day or of the day of such act or event.

SCHEDULE 1—continued

- 1.3.7 Where the last day of any period prescribed or allowed by this Supplementary Agreement for the doing of anything falls on a Saturday, or on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, or Sunday or public holiday or bank holiday in that place.
- 1.3.8 Where in this Supplementary Agreement any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.
- 1.3.9 A reference to a Clause shall be a reference to a Clause in this Supplementary Agreement unless otherwise specified.
- 1.3.10 A reference to the parties shall be a reference to the parties to this Supplementary Agreement.
- 1.3.11 All sums of money and all payments made under this Supplementary Agreement shall be in Australian dollars.

2. AGREEMENT

- 2.1 The Bank agrees to provide Variation Advances in the same manner as prescribed with respect to Subsidised Advances under the provisions of the Amended Agreement.
- 2.2 The Commonwealth agrees to grant the Bank the exclusive right to receipt of Subsidy in respect of each Variation Advance pursuant to Clause 5 hereof.
- 2.3 The Commonwealth further agrees to pay to the Bank a Subsidy with respect to each Variation Advance in accordance with the provisions of Clause 11 of the Amended Agreement.
- 2.4 The Bank further agrees that with respect to each Variation Advance it shall be bound by and act at all times in accordance with this Supplementary Agreement and the Amended Agreement.
- 2.5 The Commonwealth and the Bank agree that in order to give effect to this Supplementary Agreement the provisions of the Agreement are to be amended in accordance with the provisions of the Schedule to this Supplementary Agreement.

3. UNIT FEE

- 3.1 The Bank agrees to pay to the Commonwealth
 - (a) a minimum Unit Fee of four hundred dollars (\$400.00) for each advance falling within paragraphs (a) (i) and (b) of the definition of Variation Advance which it grants pursuant to this Supplementary Agreement; and

SCHEDULE 1—continued

- (b) in each Unit Fee Claim Period, a further amount equivalent to the product of:
 - (i) the minimum Unit Fee; and
 - (ii) the number of Borrowers the sum total of whose first advance being an advance falling within paragraphs (a) (i) or (b) of the definition of Variation Advance and any other unsubsidised loan funds from the Bank provided to the Borrowers at the same time and for the same purpose as such Variation Advance exceeds sixty thousand dollars (\$60,000.00); and
 - (iii) the fraction the numerator of which is the average amount by which each of the borrowings referred to in Sub-clause 3.1 (b) (ii) exceeds sixty thousand dollars (\$60,000.00) and the denominator of which is sixty thousand dollars (\$60,000.00).
 - (c) In the event that the Commonwealth or any State or Territory legislature enacts legislation which restricts the Bank's ability to set its Establishment Fees as the Bank determines and as a result the Bank receives less by way of Establishment Fees than would otherwise have been the case the Bank shall have the right to reduce the amount payable to the Commonwealth pursuant to Sub-clause 3.1 (b) by the difference between what it would have received in Establishment Fees and what it has in fact received and in the event of a dispute or disagreement arising between the Commonwealth and the Bank as to the amount of the reduction, the provisions of Sub-clause 3.6 shall apply.
- 3.2 For the purposes of this Clause the Bank shall be taken to have granted a Variation Advance to an Entitled Applicant upon the execution by the Entitled Applicant of all necessary mortgage or security documentation, or if mortgage or security documentation does not exist or is not required by the Bank, the date on which the Borrower first draws upon the Variation Advance.
- 3.3 On or after 1 May of each year commencing on 1 May 1991 the Commonwealth shall provide to the Bank a written invoice detailing its claim for payment of the Unit Fee referred to in Sub-clause 3.1 in respect of the Unit Fee Claim Period.
- 3.4 The Bank shall pay the Commonwealth the total amount by way of Unit Fee which the Bank has verified by 11:00 am. on the day which is thirty (30) days after receipt of the Commonwealth's invoice pursuant to Sub-clause 3.3.
- 3.5 Payment shall be made by depositing a cheque for the relevant amount with the Receiver of Public Monies, Department of Veterans' Affairs, Sydney, New South Wales or in such other manner as the Commonwealth may from time to time advise.

SCHEDULE 1—continued

- 3.6 In the event of a dispute or disagreement arising between the Commonwealth and the Bank as to the amount payable to the Commonwealth by the Bank in accordance with this Supplementary Agreement the following provisions shall apply:
- 3.6.1 In the event that any such dispute or disagreement cannot be resolved between the Commonwealth and the Bank within a period of seven (7) days after first occurring, the dispute or disagreement is to be referred to arbitration in accordance with the procedure outlined in Clause 26 of the Agreement, except that the Commonwealth and the Bank agree that for the purpose of such dispute/disagreement the arbitrator shall be appointed by the President for the time being of the Australian Institute of Chartered Accountants.
- 3.6.2 Upon resolution of such dispute or disagreement in the event that there has been an overpayment by the Bank to the Commonwealth of the amount of the Unit Fee the Commonwealth shall pay to the Bank within seven (7) days of such resolution by way of adjustment the amount of such overpayment.
- 3.6.3 The Commonwealth and the Bank agree that the amount of adjustment shall bear interest at the Benchmark rate fixed in accordance with Sub-clause 11.10 of the Agreement.

4. FURTHER AMENDING ACT

- 4.1 This Supplementary Agreement is binding on the parties but, except for this Clause, is subject to and conditional upon Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 being passed by Parliament in the form of the draft Bill initialled on behalf of the parties at the time of execution of this Supplementary Agreement with such amendments only as are agreed in writing by the parties.
- 4.2 In the event that Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 passed by Parliament should contain any amendments from the draft Bill referred to in Sub-clause 4.1 the Commonwealth shall within two (2) days of the passage of the Veterans' Affairs Legislation Amendment Act 1990 give notice to the Bank of the amendments together with such information relating to those amendments as it wishes to provide.
- 4.3 If in the opinion of the Bank, such amendments:
- (a) alter the obligations of the Bank set out in the Agreement, the Supplementary Agreement or the draft Bill;
 - (b) alter the arrangements for the payment of Subsidy set out in the Agreement, the Supplementary Agreement or the draft Bill;

SCHEDULE 1—continued

- (c) reduce or restrict the entitlements of persons set out in the Agreement, the Act or the draft Bill in a way which is likely to reduce, from levels applying in recent years, the number of Entitled Applicants for advances;
- (d) alter the obligations of the Commonwealth set out in the Agreement, the Supplementary Agreement, the Amended Act or the draft Bill; or
- (e) result in any financial consequences which are adverse to the Bank,

and are unacceptable to the Bank, the Bank shall notify the Commonwealth of such opinion within seven (7) days of receipt of the notice under Sub-clause 4.2, or such further period as may be agreed upon by the parties, and upon receipt of such notice this Supplementary Agreement shall terminate.

- 4.4 In the event that the Bank does not give notice under Sub-clause 4.3, it shall be taken to have agreed to such amendments for the purposes of Sub-clause 4.1.
- 4.5 The Commonwealth agrees that Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990 referred to in Sub-clause 4.1 which is submitted to Parliament shall have only such amendments as may be agreed in writing between the parties.
- 4.6 In the event that Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 is not passed in the form of the draft Bill referred to in Sub-clause 4.1 and, as a result, the condition contained in Sub-clause 4.1 is not met and this Supplementary Agreement is terminated or has no force or effect, neither the Bank nor the Commonwealth will have any right to claim compensation, losses, expenses, costs or damages arising or resulting from this Supplementary Agreement against the other.

5. GRANT OF EXCLUSIVE RIGHT

- 5.1 The Commonwealth hereby grants to the Bank on the terms set out in this Supplementary Agreement the exclusive right to provide the first twenty five thousand dollars (\$25,000.00), or such other amount as may be agreed upon by the parties, of the Variation Advances upon which Subsidy is payable to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans' Affairs Legislation Amendment Bill 1990.
- 5.2 The Commonwealth agrees to notify all persons who seek Subsidised Advances in accordance with the Variation Advances under Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 that the Bank has the exclusive right to grant these Variation Advances.

SCHEDULE 1—continued

6. ADOPTION AND APPLICATION OF AGREEMENT

The Commonwealth and the Bank agree that they will adopt, apply, read and construe this Supplementary Agreement in accordance with the provisions of the Agreement as amended by the Schedule to this Supplementary Agreement.

7. NON-MERGING ON SETTLEMENT AND SEVERABILITY

Any provision in this Supplementary Agreement which is to take effect after the last date of commencement of Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990, shall not merge on settlement but rather shall continue in full force and effect.

8. STAMP DUTY

Any stamp duty arising out of this Supplementary Agreement or its implementation shall be borne by the Bank.

9. APPLICABLE LAW

This Supplementary Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties hereto agree to submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory.

10. WAIVER

Failure by either party at any time to enforce any of the provisions of this Supplementary Agreement or any amendments pursuant thereto by the other party shall not be construed as a waiver by such party of such provision or in any way affect the validity of this Supplementary Agreement or any part thereof, or the rights of the other party thereafter to enforce each and every such provision. The waiver by either party of any provision of this Supplementary Agreement shall not constitute a waiver of any future obligation to comply with such provision.

11. AMENDMENTS OR VARIATION

No variation, modification or waiver of any provision of this Supplementary Agreement nor consent to any departure by any party therefrom shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by all the parties hereto, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

SCHEDULE 1—continued

12. ASSIGNMENT

This Supplementary Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

IN WITNESS WHEREOF the parties have executed this Agreement as at the day and year first before written:

Signed for and on behalf of the
COMMONWEALTH OF
AUSTRALIA by The
Honourable Benjamin Charles
Humphreys, Minister for
Veterans' Affairs
in the presence of:
R J Bernau

BEN HUMPHREYS

R. J. BERNAU

SIGNED for and on behalf of
WESTPAC BANKING
CORPORATION
by LANCE HAROLD JOHN
BAUER
and GRAHAME RALSTON
HERRON
its duly constituted
Attorneys who are personally
known to me
K. S. ANDERSON

WESTPAC BANKING
CORPORATION by its Attorneys
who hereby respectively state that
at the time of their executing this
instrument they have no notice of
the revocation of the Power of
Attorney registered in the Office of
the Registrar General Numbered
643 Book 3585 under the authority
of which they have executed this
instrument
L. H. J. BAUER
CHIEF MANAGER
CONSUMER BANKING
G. R. HERRON
ACTING CHIEF MANAGER
LEGAL ADMINISTRATION

SCHEDULE OF AMENDMENTS TO AGREEMENT

Clause 1

Amend the following definitions:

Establishment Fees:

Insert the words "or applications for retirement village accommodation" after the words "secured by first mortgage".

SCHEDULE 1—continued

Housing Loan Customer: Insert the words “or retirement village accommodation” after the words “or refinance of a dwelling”.

Portfolio Arrears: Insert the words “on the last day of the month immediately preceding the month in which a Subsidy payment is being calculated” after the words “and all Subsidised Advances”.

Insert the following new definitions:

Amended Agreement: means the Agreement between the Commonwealth and the Bank signed on 9 November 1988 as amended by the Supplementary Agreement between the parties signed on fifth day of November 1990.

Further Amending Act: has the same meaning as in the Supplementary Agreement.

Retirement Village: has the same meaning as in the Further Amending Act.

Retirement Village Accommodation: has the same meaning as in the Further Amending Act.

Right of residence in a retirement village: has the same meaning as in the Further Amending Act.

Supplementary Agreement: means the Agreement signed by the Commonwealth and the Bank on the fifth day of November 1990.

Variation Advance: has the same meaning as in the Supplementary Agreement.

Clause 5

5.1.2 Insert “unless the Commonwealth and the Bank otherwise agree” after the words “any such application”.

Clause 7

7.3 Insert “or such other security” after the words “first mortgage”. Insert “(if any)” after the words “and documentation”.

Clause 8

8.3 Insert after Sub-clause 8.3 (b) the word “or”.

Insert a new Sub-clause 8.3 (c) after Sub-clause 8.3 (b):

SCHEDULE 1—continued

“(c) where the Borrower has been granted an advance falling within paragraph (a) of the definition of Variation Advance the Bank shall not be required to take any security.”

8.8 Insert the words “or any other security, if any, which the Bank deems appropriate.” at the end of the Sub-clause.

Clause 9

9.4.3 Insert the words “or other mortgage or security documentation, if any,” after the words “by the first mortgage”.

Clause 10

10.1 (b) Insert the words: “or retirement village accommodation” after the words “or land and dwelling house”.

10.1 (e) Insert the words “or retirement village accommodation” after the word “land and dwelling house.”

10.1 (f) Insert the words “or retirement village accommodation” after the words “any other dwelling house;”

10.1 (g) Insert the words “or retirement village accommodation” after the words “occupation of dwelling house,” and delete the word “and” at the end of this paragraph.

10.1(h) Insert the word “; and” at the end of this paragraph.

Insert a new Sub-clause **10.1 (i)** after Sub-clause 10.1 (h) in the following terms:

“written notice that the Entitled Applicant’s right of residence in a retirement village has been terminated.”

Clause 11

Delete Sub-clause 11.5 and insert the following:

11.5.1 Except where the provisions of Sub-clause 11.5.2 apply upon receipt by the Commonwealth of the invoice and information referred to in Sub-clause 10.5 the Commonwealth shall pay the Bank the amount of Subsidy which the

SCHEDULE 1—continued

Commonwealth has verified by 11:00 am. on the eighteenth day of the month to which such invoice and information refers.

11.5.2

If the Bank has not complied with the requirements of Clause 11.4 in respect of its claim for Subsidy on certain Specified Portfolio Assets and Subsidised Advances, but subsequently provides the invoice and information referred to in Sub-clause 10.5, the Commonwealth shall pay to the Bank the amount of Subsidy which it has verified by 11 am on the day which is seven (7) business days after the date on which the Bank provides the said invoice and information. The Commonwealth will promptly pay to the Bank claims verified after that date.

Clause 22

Delete the Commonwealth's Fax number recorded as: (062) 813 822

Insert the following new Fax numbers for the Commonwealth:

(06) 282 3672 and/or
(06) 285 2608

Insert the following after the words "For attention the Secretary":

"Notices issued to the Commonwealth should also be addressed to:
State Manager
Defence Service Homes

in the State/Territory in which the Westpac account is held."

Insert: "Notices issued to the Bank should be addressed to:

Delete the words: "66 Pitt Street, Sydney".

Insert the words:

"Australian Marketing Group
P.O. Box H258
Australia Square
Sydney, N.S.W. 2001"

Schedule D

E. REPORT—INDIVIDUAL ADVICE

Insert the words "or retirement village accommodation" after "dwelling house" wherever the latter appears."

SCHEDULE 2

Section 20

**CONSEQUENTIAL AND MINOR AMENDMENTS OF THE
DEFENCE SERVICE HOMES ACT 1918**

Paragraph 20 (1) (b):

Omit "to land or land and a dwelling-house", substitute:

"to:

- (i) land; or
- (ii) land and a dwelling-house; or
- (iii) a right of residence in a retirement village".

Paragraph 20 (1) (c):

Omit "or land and dwelling-house", substitute ", land and dwelling-house or right of residence".

Paragraph 20 (2) (a):

Insert "or of the person's retirement village accommodation" after "on the relevant land".

Paragraph 20 (2) (b):

Omit "or land and dwelling-house", substitute ", land and dwelling-house or right of residence in a retirement village".

Paragraph 21 (a):

Omit "to land or land and a dwelling-house", substitute:

"to:

- (i) land; or
- (ii) land and a dwelling-house; or
- (iii) a right of residence in a retirement village".

Paragraph 21 (b):

Omit "or land and dwelling-house", substitute ", land and dwelling-house or right of residence".

Paragraph 21 (c):

Insert "or of that person's retirement village accommodation" after "on the land".

Subsection 22 (1):

Omit the subsection, substitute the following subsections:

"(1) While any land, land and dwelling-house or right of residence in a retirement village is subject to:

- (a) a specified portfolio asset which vests in the Bank under section 6B; or

SCHEDULE 2—continued

(b) a mortgage or other security securing a subsidised advance; a transfer of the estate, interest or right of the purchaser or borrower in that land or land and dwelling-house, or in relation to that right of residence, being a transfer subject to that specified portfolio asset, mortgage or other security, has no effect unless the Secretary has issued a certificate of entitlement to the proposed transferee in relation to the transfer.

“(1A) If:

- (a) a person has obtained a right of residence in a retirement village; and
- (b) the person is a borrower in relation to that right of residence and is liable to pay the outstanding amount of a subsidised advance in respect of which subsidy is payable; and
- (c) the Bank has no security for the subsidised advance;

a transfer of the person's right of residence, while the person's liability under paragraph (b) remains, has no effect unless the Secretary has issued a certificate of entitlement to the proposed transferee in relation to the transfer.”.

Subsection 22 (7):

- (a) Omit “or land and a dwelling-house” (wherever occurring), substitute “land and a dwelling-house or right of residence in a retirement village”.
- (b) Add at the end the following word and paragraph:
“; or (c) a transfer of a person's right of residence in a retirement village to the owner or owners of the retirement village.”.

Subsection 24 (2):

Omit “or land and dwelling-house”, substitute “land and dwelling-house or right of residence in a retirement village”.

Paragraph 26 (2) (b):

- (a) Omit “or land and dwelling-house”, substitute “land and dwelling-house or right of residence in a retirement village”.
- (b) Omit “to that specified portfolio asset or the mortgage securing that advance,”, substitute:
“to:
 - (i) that specified portfolio asset; or
 - (ii) the mortgage securing that advance; or
 - (iii) in the case of a right of residence in a retirement village—any other security that the Bank has in relation to that advance;”.

SCHEDULE 2—continued

Subsection 26 (2):

After the subsection, insert the following subsection:

“(2A) If:

- (a) a person has obtained a right of residence in a retirement village; and
- (b) the person is a borrower in relation to that right of residence and is liable to pay the outstanding amount of a subsidised advance in respect of which subsidy is payable; and
- (c) the Bank has no security for the subsidised advance; and
- (d) the Secretary is satisfied that the person has agreed or arranged to transfer the right of residence, while the person’s liability under paragraph (b) remains, to a person who is not a transferee;

the Secretary may, by notice of cancellation given to the first-mentioned person, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.”.

Subsection 26 (3):

Omit “to enforce the asset or the mortgage securing the advance”, substitute:

“to enforce:

- (i) the asset; or
- (ii) the mortgage securing the advance; or
- (iii) in the case of a right of residence in a retirement village—any other security that the Bank has in relation to that advance;”.

Section 26:

Add at the end the following subsections:

“(7) Where:

- (a) the Commonwealth is paying subsidy on a subsidised advance to a person in relation to the person’s retirement village accommodation; and
- (b) the person’s right of residence in the retirement village is terminated for any reason and the person ceases to reside in the retirement village accommodation;

the Secretary may cancel the subsidy by written notice given to the person.

“(8) The cancellation takes effect on the date specified in the notice, being a date not earlier than the date of the notice.

“(9) If:

- (a) the person’s right of residence is terminated; and

SCHEDULE 2—continued

- (b) the person has a right of review of, or appeal against, the decision to terminate;

the termination is taken, for the purposes of subsection (7), not to occur until:

- (c) the review or appeal has been finally determined and the person has ceased to reside in the retirement village accommodation; or
- (d) the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted and the person has ceased to reside in the retirement village accommodation.”.

Subsection 29 (1):

After “26 (2)” insert “or (7)”.

Paragraph 29 (2) (a):

Add at the end “or”.

Subsection 29 (2):

Add at the end the following word and paragraph:

“or (d) where subsection 26 (7) applied—the whole of the amount of subsidy paid in respect of the person since the day on which the person’s right of residence was terminated and the person has ceased to reside in the retirement village accommodation;”.

Paragraph 29 (5) (a):

Omit “enforcing a specified portfolio asset or a mortgage securing a subsidised advance”, substitute:

“enforcing:

- (i) a specified portfolio asset; or
- (ii) a mortgage securing a subsidised advance; or
- (iii) in the case of a right of residence in a retirement village—any other security that the Bank has in relation to that advance”.

Subsection 29 (6):

Omit “or mortgage”, substitute “, mortgage or other security”.

Section 38:

After “dwelling-houses,” insert “rights of residence in retirement villages,”.

SCHEDULE 2—continued

Section 38C:

Insert the following subsections after subsection (2):

“(2A) The Commonwealth may undertake insurance of, or in relation to:

- (a) a right of residence in a retirement village, being a right in respect of which a subsidised advance has been made; or
- (b) a right of residence in a retirement village in respect of which a person has applied for a certificate of entitlement, being a right the person has obtained; or
- (c) a right of residence in a retirement village in relation to which a subsidised advance was made but in relation to which there is no outstanding amount to be paid by the borrower; or
- (d) building materials on the site of a retirement village:
 - (i) in respect of which a subsidised advance has been or will be made; or
 - (ii) in respect of which a person has applied for a certificate of entitlement;being materials used in the building of, or otherwise in relation to, the retirement village; or
- (e) any permanent domestic improvement of a structural kind that has been made to a retirement village referred to in paragraph (a), (b), (c) or (d) and any building materials on the site of, and used in the building of, or in relation to, such an improvement.

“(2B) The Commonwealth may undertake insurance against risks related to the land on which a retirement village referred to in paragraph (2A) (a) or (b) is built or on which a retirement village referred to in paragraph (2A) (c) is being, or is to be, built.”.

Section 38F:

Before the section insert the following new section:

Application of section 38E in relation to retirement village accommodation

“38FA. Section 38E applies in relation to retirement village accommodation as it applies in relation to dwelling-houses.”.

Section 45:

Omit “, as executed on 9 November 1988,”.

Subsection 45A (1):

Omit “or land and dwelling-house”, substitute “, land and dwelling-house or right of residence in a retirement village”.

SCHEDULE 2—continued

Subsection 45A (2):

Omit “or land and a dwelling-house”, substitute “, land and a dwelling-house or a right of residence in a retirement village.”.

NOTES

1. No. 43, 1918, as amended. For previous amendments, see No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 26, 1925; No. 47, 1926; No. 17, 1927; No. 13, 1929; Nos. 6 and 68, 1932; No. 63, 1934; No. 54, 1935; No. 25, 1937; No. 1, 1941; No. 8, 1946; Nos. 1, 38 and 71, 1947; No. 67, 1948; No. 24, 1949; No. 74, 1951; No. 69, 1954; No. 69, 1955; No. 100, 1956; No. 73, 1961; Nos. 2 and 93, 1962; Nos. 65 and 93, 1966; No. 3, 1967; No. 99, 1968; No. 120, 1971; Nos. 31 and 216, 1973; No. 125, 1974; No. 25, 1975; No. 185, 1976; No. 79, 1977; Nos. 36 and 137, 1978; Nos. 4 and 128, 1980; No. 80, 1982; No. 70, 1983; No. 72, 1984; Nos. 28 and 29, 1986; No. 124, 1988; and Nos. 86 and 93, 1989.
2. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 61, 1981; Nos. 26, 80 and 111, 1982; Nos. 39, 56 and 92, 1983; Nos. 63 and 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29, 76 and 153, 1986; Nos. 92, 99 and 141, 1987; Nos. 75, 87, 99 and 109, 1988; and Nos. 150 and 153, 1989.
3. 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. 93 and 97, 1984; Nos. 90, 95 and 127, 1985; Nos. 28, 29 and 106, 1986; Nos. 78, 88 and 130, 1987; Nos. 35 and 134, 1988; and Nos. 163 and 164, 1989.
4. No. 164, 1989, as amended. For previous amendments, see No. 56, 1990.
5. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; Nos. 78, 88 and 130, 1987; Nos. 13, 35, 75, 99, 134 and 135, 1988; Nos. 59, 83, 84, 93, 163 and 164, 1989; and No. 56, 1990.

*[Minister's second reading speech made in—
House of Representatives on 8 November 1990
Senate on 26 November 1990]*