



Veterans' Affairs Legislation Amendment Act 1992

No. 70 of 1992

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

3. Principal Act
4. Interpretation
5. Regular Serviceman
6. Election to surrender eligible status
7. Insertion of new section:
4BB. Revocation of election to surrender eligible status
8. Criteria for issue of certificate of entitlement: advances other than widow or widower advances and advances for essential repairs
9. Maximum amounts for which subsidy is payable
10. Defence Service Homes Insurance Trust Account
11. Certain provisions of agreement not to be revoked or amended

PART 3—AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Division 1—Preliminary

12. Principal Act

Division 2—Telephone allowance

13. Insertion of new Part:

TABLE OF PROVISIONS—*continued*

Section

PART IIIA—TELEPHONE ALLOWANCE

- 33A. Eligibility for telephone allowance
- 33B. Telephone allowance not payable in some circumstances
- 33C. Rate of telephone allowance
- 33D. Payment by instalments
- 33E. Calculation of amount of instalment
- 33F. Adjustment of telephone allowance

Division 3—Attendant allowance

- 14. Allowance for attendant

Division 4—Nomination of bank account etc.

- 15. Payment of pensions
- 16. Pension or allowance may be paid to bank etc.

Division 5—Automatic payment of pension

- 17. Insertion of new section:
 - 25A. Certain dependants to be automatically paid pension
- 18. Claim for a pension

PART 4—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT
1986

Division 1—Preliminary

- 19. Principal Act

Division 2—Telephone allowance

- 20. Insertion of new Part:

PART VIIB—TELEPHONE ALLOWANCE

Division 1—Eligibility for and payability of telephone allowance

- 118Q. Eligibility for telephone allowance
- 118R. Telephone allowance not payable in some circumstances

Division 2—Rate of telephone allowance

- 118S. Rate of telephone allowance

Division 3—Payment of telephone allowance

- 118T. Payment by instalments
- 118U. Calculation of amount of instalment
- 21. Insertion of new section:
 - 198F. Indexation of telephone allowance

Division 3—Veterans' Review Board

- 22. Parties to review before Board
- 23. Procedure of Board
- 24. Insertion of new sections:
 - 155AA. Power to dismiss application—initial consideration
 - 155AB. Power to dismiss application—subsequent consideration
- 25. Application of sections 155AA and 155AB

TABLE OF PROVISIONS—*continued*

Section

- 26. Insertion of new section:
 - 155AC. Representation of applicant where outcome could be dismissal of application
- 27. Application of section 155AC
- 28. Review by Administrative Appeals Tribunal
- 29. Saving and transitional
- 30. Delegation

Division 4—Cambodia service

- 31. *War and operational area* related definitions
- 32. Qualifying service
- 33. Schedule 2

Division 5—Automatic payment of pension and funeral benefit

- 34. Insertion of new section:
 - 13A. Certain dependants to be automatically paid pension
- 35. Claim for a pension
- 36. Funeral benefits—veterans
- 37. Insertion of new section:
 - 99A. Funeral benefits paid to estate of certain deceased veterans

Division 6—Assets test (primary production assets)

- 38. *Assets test* definitions
- 39. Effect of charge or encumbrance on value of assets
- 40. Insertion of new section:
 - 52CA. Effect of certain liabilities on value of assets used in primary production

Division 7—Certain unlisted property trusts

- 41. Market-linked investments made or acquired before 9 September 1988

Division 8—Special residences and special residents

- 42. *Income test* definitions
- 43. *Assets test* definitions
- 44. *Retirement villages* definitions
- 45. Insertion of new sections:
 - 5MA. *Granny flat* definitions
 - 5MB. *Sale leaseback* definitions
 - 5MC. *Special residence and resident* definitions
- 46. Determinations having interpretative effect
- 47. Certain assets to be disregarded in calculating the value of a person's assets
- 48. Effect of charge or encumbrance on value of assets
- 49. Disposal of assets
- 50. Repeal of heading and substitution of new heading:

Subdivision C—Provisions relating to special residences and special residents

- 51. Repeal of section 52K
- 52. Basis for different treatment
- 53. Entry contribution
- 54. Extra allowable amount
- 55. Residents who are not members of a couple
- 56. Members of couples
- 57. Members of illness separated couple (both in special residences)

TABLE OF PROVISIONS—*continued*

- Section
58. Members of illness separated couple (partner not in special residence and partner property owner)
59. Members of illness separated couple (partner not in special residence and partner not property owner)
60. Members of ordinary couple with different principal homes (both in special residences)
61. Members of ordinary couple with different principal homes (partner not in special residence and partner property owner)
62. Members of ordinary couple with different principal homes (partner not in special residence and partner not property owner)
63. Indexed and adjusted amounts
64. Adjustment of special illness separated special resident AVL

Division 9—Remote area allowance

65. General definitions
66. Determinations having interpretative effect
67. Rate of age, invalidity, partner and carer service pension (no dependent children)
68. Rate of age, invalidity, partner and carer service pension (dependent child or children)
69. Rate of age and invalidity service pension (blinded veterans)

Division 10—Investment income

70. *Investment income* definitions
71. Certain assets to be disregarded in calculating the value of a person's assets

Division 11—Cancellation or suspension determinations

72. Cancellation or suspension determination—general
73. Insertion of new section:
56EA. Cancellation or suspension determination for failure to comply with section 54A notice
74. Resumption of payment after suspension
75. Date of effect of adverse determination

Division 12—Rounding base for income free area

76. CPI Indexation Table

Division 13—Nomination of bank account etc.

77. Manner of payment
78. Payment into bank account etc.
79. Payment of pension
80. Pension or allowance may be paid to bank etc.

Division 14—Attendant allowance

81. Attendant allowance

Division 15—Veterans' Review Board—term of appointment of full-time members

82. Terms of appointment

Division 16—Saving and transitional

83. Certain veterans who are taken to be receiving fringe benefits are eligible for treatment under Part V
84. Eligibility for treatment at Departmental expense
85. Certain concessional beneficiaries are eligible for treatment under Part V

TABLE OF PROVISIONS—*continued*

Section

**PART 5—AMENDMENT OF THE VETERANS' ENTITLEMENTS
(REWRITE) TRANSITION ACT 1991**

86. Fringe benefits test—interest attributed to money not invested or invested at a low rate of interest (changes introduced on 1 March 1991)

PART 6—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

87. Interpretation

PART 7—FURTHER AMENDMENTS

88. Consequential, minor and technical amendments

SCHEDULE

CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS

PART 1—AMENDMENTS COMMENCING ON ROYAL ASSENT

Defence Force (Home Loans Assistance) Act 1990
Seamen's War Pensions and Allowances Act 1940
Veterans' Entitlements Act 1986

**PART 2—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT
1986 COMMENCING 1 JULY 1991, IMMEDIATELY AFTER THE
COMMENCEMENT OF THE VETERANS' ENTITLEMENTS
AMENDMENT ACT 1991**

**PART 3—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT
1986 COMMENCING 1 JULY 1991, IMMEDIATELY AFTER THE
COMMENCEMENT OF SECTION 19 OF THE VETERANS'
ENTITLEMENTS (REWRITE) TRANSITION ACT 1991**

**PART 4—AMENDMENTS COMMENCING 1 JULY 1991, IMMEDIATELY
AFTER THE COMMENCEMENT OF SECTION 22 OF THE VETERANS'
ENTITLEMENTS (REWRITE) TRANSITION ACT 1991**

Defence Service Homes Act 1918
Veterans' Entitlements Act 1986

**PART 5—AMENDMENT OF THE VETERANS' ENTITLEMENTS ACT
1986 COMMENCING 22 MAY 1986, IMMEDIATELY AFTER THE
COMMENCEMENT OF THAT ACT**

**PART 6—AMENDMENT OF THE VETERANS' ENTITLEMENTS ACT
1986 COMMENCING 23 FEBRUARY 1991**

**PART 7—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT
1986 COMMENCING 25 JUNE 1991**

PART 8—AMENDMENTS COMMENCING 20 OCTOBER 1991

Income Tax Assessment Act 1936
Public Service Act 1922

**PART 9—AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT
1936 COMMENCING 1 JULY 1992**



Veterans' Affairs Legislation Amendment Act 1992

No. 70 of 1992

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

[Assented to 26 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Veterans' Affairs Legislation Amendment Act 1992*.

Commencement

2.(1) The following provisions commence on the day on which this Act receives the Royal Assent:

(a) Part 1;

Veterans' Affairs Legislation Amendment No. 70, 1992

- (b) Part 2;
 - (c) Divisions 1, 3, 4 and 5 of Part 3;
 - (d) Divisions 1, 5, 6, 8, 9, 10, 13, 14 and 15 of Part 4;
 - (e) sections 22, 26, 27 and 29;
 - (f) Part 7; 5
 - (g) Part 1 of the Schedule.
- (2) Part 5 of the Schedule is taken to have commenced on 22 May 1986, immediately after the commencement of the *Veterans' Entitlements Act 1986*.
- (3) Sections 23, 24, 25, 28 and 30 are taken to have commenced on 8 January 1991, immediately after the commencement of section 85 of the *Veterans' Affairs Legislation Amendment Act 1990*. 10
- (4) Part 6 of the Schedule is taken to have commenced on 23 February 1991.
- (5) Part 6 is taken to have commenced on 1 March 1991. 15
- (6) Part 7 of the Schedule is taken to have commenced on 25 June 1991.
- (7) Division 11 of Part 4 and Part 2 of the Schedule are taken to have commenced on 1 July 1991, immediately after the commencement of the *Veterans' Entitlements Amendment Act 1991*. 20
- (8) The following provisions are taken to have commenced on 1 July 1991, immediately after the commencement of section 22 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*:
- (a) Division 12 of Part 4;
 - (b) Part 5; 25
 - (c) Part 4 of the Schedule.
- (9) Division 16 of Part 4 is taken to have commenced immediately after the commencement of Part 5.
- (10) Part 3 of the Schedule is taken to have commenced on 1 July 1991, immediately after the commencement of section 19 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*. 30
- (11) Division 7 of Part 4 is taken to have commenced on 24 July 1991.
- (12) Division 4 of Part 4 and Part 8 of the Schedule are taken to have commenced on 20 October 1991. 35
- (13) The following provisions commence on 1 July 1992:
- (a) Division 2 of Part 3;
 - (b) Division 2 of Part 4;
 - (c) Part 9 of the Schedule.

PART 2—AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

Principal Act

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

Interpretation

4. Section 4 of the Principal Act is amended by inserting before paragraph (a) of the definition of “reviewable decision” in subsection (1) the following paragraph:

10 “(aa) under subsection 4BB(2) (revocation of surrender election);”.

Regular Serviceman

5. Section 4AAA of the Principal Act is amended:

- 15 (a) by inserting in subsection (1) “, subject to subsection (5A),” after “but” (last occurring);
- (b) by inserting after subsection (5) the following subsections:

“First service after 14 May 1985

(5A) A person is a regular serviceman for the purposes of this Act if:

- 20 (a) the person is covered by paragraph (1)(b) or (c); and
- (b) the person’s first service in the Defence Force began after 14 May 1985; and
- (c) the person’s death or discharge from the Defence Force occurred before 19 December 1988; and
- 25 (d) a notice of eligibility or a certificate of eligibility has been issued to the person under this Act or regulations made under this Act.

“(5B) If a person to whom subsection (5A) applies is dead, the person is taken to have been a regular serviceman immediately before the person’s death.

Note: this subsection has the effect of making a widow, widower or dependent parent of the person an ‘eligible person’ (see definition of ‘eligible person’ in subsection 4(1)).

30 “(5C) Subsections (5A) and (5B) do not apply to a person who is or has been a subsidised borrower under the Home Loans Assistance Act.”.

Election to surrender eligible status

35 6. Section 4BA of the Principal Act is amended by omitting from subsection (3) “An” and substituting “Subject to section 4BB, an”.

7. After section 4BA of the Principal Act the following section is inserted:

Revocation of election to surrender eligible status

“Revocation of election before 1 July 1992

4BB.(1) A person who has elected to surrender his or her status as an eligible person under section 4BA may revoke that election (the ‘surrender election’) if:

- (a) the person is not and has not been a subsidised borrower under the Home Loans Assistance Act; and
- (b) the person gives the Secretary a written notice stating that the person wishes to revoke his or her surrender election; and
- (c) the notice is given to the Secretary before 1 July 1992.

“Revocation of election before 1 January 1993

(2) A person who has elected to surrender his or her status as an eligible person under section 4BA may revoke that election (the ‘surrender election’) if:

- (a) the person is not and has not been a subsidised borrower under the Home Loans Assistance Act; and
- (b) the person gives the Secretary a written notice stating that the person wishes to revoke his or her surrender election; and
- (c) the notice is given to the Secretary on or after 1 July 1992 and before 1 January 1993; and
- (d) the person satisfies the Secretary that:
 - (i) the person was not aware before 1 July 1992 that the person’s surrender election was revocable; and
 - (ii) the person would not have made the surrender election if the person had been aware of the matters announced in the statement made by the Minister on 22 August 1991 relating to pooling of entitlements under this Act.

“Date of effect of revocation

(3) If a person’s surrender election is revoked by a notice under subsection (1) or (2), the revocation takes effect on the day on which the notice is given to the Secretary.

“(4) If a person revokes his or her surrender election the Secretary must cause a copy of the notice that revoked the election to be given to the Secretary to the Department of Defence.”.

Criteria for issue of certificate of entitlement: advances other than widow or widower advances and advances for essential repairs

8. Section 18 of the Principal Act is amended:

- (a) by omitting from subsection (4) “subsection (5A)” and substituting “subsections (5A), (5AA) and (5AB)”; and
- (b) by omitting from subsection (4A) “The Secretary” and substituting “Subject to subsections (5A), (5AA) and (5AB), the Secretary”;

- (c) by omitting from subsection (5) "Subsection (4) does" and substituting "Subsections (4) and (4A) do";
- (d) by omitting from subsection (5A) "(g)" and substituting "(k)";
- (e) by inserting after subsection (5A) the following subsections:

5 “(5AA) The Secretary may issue a certificate of entitlement in relation to subsidy on an initial advance or a further advance for the purposes referred to in paragraphs (2)(f) or (2)(k) if:

- (a) the person concerned has, under section 4BB, revoked an election to surrender the person's eligible status; and
- 10 (b) the Secretary considers that the Secretary:
 - (i) would have given consent to the raising of the mortgage, charge or encumbrance had that consent been sought before the mortgage, charge or encumbrance was raised; or
 - 15 (ii) would have approved the incurring of the debt had that approval been sought before the debt was incurred.

20 “(5AB) The Secretary may issue a certificate of entitlement in relation to subsidy on an initial advance or a further advance for the purposes referred to in paragraph (2)(f) or (2)(k) if at the time when the mortgage, charge or encumbrance was raised or the debt incurred, an advance had already been made, and not fully repaid, in respect of the holding or right of residence concerned.”.

25 **Maximum amounts for which subsidy is payable**

9. Section 25 of the Principal Act is amended by inserting after subsection (1) the following subsection:

30 “(1A) In working out the limit of a person's last Corporation advance, subsidised advance or contract of sale under paragraph (1)(d), the amount of the person's last Corporation advance, subsidised advance or contract of sale is taken to include the amount of any additional advance that has subsequently been made to the person.”.

Defence Service Homes Insurance Trust Account

35 **10.(1)** Section 40 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

- “**(2)** To that Trust Account there must be credited all payments to the Commonwealth in connection with its activities:
 - (a) as an insurer under this Act, including a payment to it under a contract or arrangement referred to in section 38F; and
 - 40 (b) with respect to insurance, as an agent for an insurer.

- “(3) To that Trust Account there must be debited all payments by the Commonwealth in connection with its activities:
- (a) as an insurer under this Act, including:
 - (i) a payment by it under a contract or arrangement referred to in section 38F; and 5
 - (ii) a payment by it under section 38G; and
 - (iii) a payment by it that it is not legally required to make but that is of a kind that would be made by a person carrying on the business of insurance in accordance with sound commercial principles; and 10
 - (b) with respect to insurance, as an agent for an insurer.”.
- (2) Immediately after the commencement of this section:
- (a) any amount standing to the credit of the Defence Service Homes Contents Insurance Trust Account is payable to the Defence Service Homes Insurance Trust Account; and 15
 - (b) the Defence Service Homes Contents Insurance Trust Account is taken to be closed under subsection 62A(4) of the *Audit Act 1901*; and
 - (c) any investment that was held for the purposes of the Defence Service Homes Contents Insurance Trust Account immediately before the commencement of this section, becomes an investment held for the purposes of the Defence Service Homes Insurance Trust Account. 20
- Certain provisions of agreement not to be revoked or amended**
11. Section 45 of the Principal Act is amended by omitting “8.3,”. 25

PART 3—AMENDMENTS OF THE SEAMEN’S WAR PENSIONS AND ALLOWANCES ACT 1940

Division 1—Preliminary

Principal Act

12. In this Part, “Principal Act” means the *Seamen’s War Pensions and Allowances Act 1940*². 30

Division 2—Telephone allowance

13. After Part III of the Principal Act the following Part is inserted:

“PART IIIA—TELEPHONE ALLOWANCE

Eligibility for telephone allowance 35

“Australian mariners

- 33A.(1) A person is eligible for a telephone allowance if:
- (a) the person is an Australian mariner; and

(b) the person is eligible for a pension:

(i) at a rate worked out under subsection 18(4AA); or

5 (ii) at a rate worked out under section 22A by reference to section 24, 25 or subsection 27(2) (as far as that subsection relates to items 1 to 8 of the Table in subsection 27(1)) of the *Veterans' Entitlements Act 1986*; and

(c) the person is a telephone subscriber.

Note: for 'telephone subscriber' see subsection (3).

“Widows of Australian mariners

10 (2) A woman is eligible for a telephone allowance if:

(a) she is the widow of a deceased Australian mariner; and

(b) she is eligible for a pension at a rate worked out under subsection 18(2); and

(c) she is a telephone subscriber.

Note: for 'telephone subscriber' see subsection (3).

15 “(3) In this section:

'Australian resident' means a person who:

(a) resides in Australia; and

(b) is one of the following:

20 (i) an Australian citizen;

(ii) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent entry permit;

(iii) a person who has been granted, or who is included in, a return endorsement, or a resident return visa, in force under that Act;

25 (iv) a person who:

(A) is, for the purposes of that Act, an exempt non-citizen; and

(B) is likely to remain permanently in Australia;

Note: 'exempt non-citizen' is defined in section 4 of the *Migration Act 1958*: it covers non-citizens who are diplomats, members of armed forces, ships' crew members and others and, under section 15 of that Act, exempt non-citizens do not need an entry permit or entry visa to enter Australia.

'telephone subscriber' means a person:

30 (a) who is an Australian resident; and

(b) who has a telephone service connected to a home of the person in Australia; and

(c) whose telephone service is connected:

(i) in that person's name; or

35 (ii) in the name of the person's spouse.

“(4) In deciding for the purposes of this section whether or not a person resides in Australia, regard must be had to:

- (a) the nature of the accommodation used by the person in Australia; and
- (b) the nature and extent of the family relationships the person has in Australia; and 5
- (c) the nature and extent of the person’s employment, business or financial ties with Australia; and
- (d) any other matter relevant to determining whether the person intends to remain permanently in Australia. 10

Telephone allowance not payable in some circumstances

“33B. Even though a person is eligible for a telephone allowance, the allowance is not payable to the person if the person is eligible for a telephone allowance under the *Veterans' Entitlements Act 1986* or receiving a telephone allowance under the *Social Security Act 1991*. 15

Rate of telephone allowance

“33C. The rate of telephone allowance is \$51.80 per year.

Note: the amount specified in this section is adjusted annually (see section 33F).

Payment by instalments

“33D.(1) A full instalment of telephone allowance is payable to a person on each telephone allowance payday on which: 20

- (a) the person is eligible for the allowance; and
- (b) the allowance is payable to the person.

“(2) In this section:

‘**telephone allowance payday**’ means the first pension payday that falls on or after: 25

- (a) 1 January; and
- (b) 20 March; and
- (c) 1 July; and
- (d) 20 September.

Calculation of amount of instalment 30

“33E.(1) The amount of an instalment of telephone allowance is the amount worked out by dividing the amount of the annual rate of telephone allowance by 4.

“(2) If the amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is to be increased to the nearest multiple of 10 cents. 35

Adjustment of telephone allowance

“33F. This Act has effect as if, on 20 September each year, the amount specified in section 33C were replaced with the amount that is provided for under subsection 118S(1) of the *Veterans' Entitlements Act 1986* on that day.”

Note: subsection 118S(1) of the *Veterans' Entitlements Act 1986* specifies the basic rate of telephone allowance for that Act. The amount of that rate is indexed each year on 20 September in line with CPI increases.”.

Division 3—Attendant allowance

Allowance for attendant

14. Section 21 of the Principal Act is amended:

- (a) by inserting in subparagraph (11)(b)(i) “or 56EA” after “56E”;
- 10 (b) by inserting in subparagraph (11)(b)(i) “, 54A(6)” after “54(6)”;
- (c) by adding at the end the following subsection:

“(12) An allowance under this section is not payable to an Australian mariner if a carer pension under Part 2.5 of the *Social Security Act 1991*:

- 15 (a) is payable to a person because the person is caring for the Australian mariner; or
- (b) would be payable to a person because the person is caring for the Australian mariner, apart from action taken in relation to that pension:
 - 20 (i) under section 231 or 231A (cancellation or suspension) of that Act because the person has contravened a provision of that Act (other than section 233, 1304 or 1305); or
 - 25 (ii) under section 1231 or 1234A (deductions to recover debts and overpayments) of that Act.”.

Division 4—Nomination of bank account etc.

Payment of pensions

15. Section 54 of the Principal Act is amended by adding at the end of subsection (4) the following Note:

“Note: for the procedure to be followed if the Commission determines that a person’s pension is to be paid into an account with a bank, credit union or building society see section 54A.”.

30 **Pension or allowance may be paid to bank etc.**

16. Section 54A of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) If the person has not nominated an account for the purposes of subsection (1) the amount is not to be paid.

“(1B) If:

- (a) an amount has not been paid because of subsection (1A); and
- (b) the person nominates an account for the purposes of subsection (1);

the amount is to be paid under subsection (1).”

5

Division 5—Automatic payment of pension

17. After section 25 of the Principal Act the following section is inserted:

Certain dependants to be automatically paid pension

“25A.(1) If:

10

- (a) an Australian mariner dies; and
- (b) the Australian mariner is survived by a dependant of the deceased mariner; and
- (c) paragraph 17A(1)(a), (b) or (c) or subsection 17A(3) applies to the mariner;

15

the pension payable to the dependant in respect of the death of the mariner is payable:

- (d) without the dependant having to make a claim for the pension under section 26; and
- (e) without a Pensions Committee or the Commission having to make a determination under section 26AC.

20

Note: for the dependant's eligibility for pension see section 17A.

“(2) The pension is payable from and including the day after the mariner died.

Note: for the rate at which the pension is payable to the dependant see section 18.”

Claim for a pension

18. Section 26 of the Principal Act is amended by adding at the end of subsection (1) the following Notes:

25

“Note 1: some dependants do not have to make a claim (see section 25A).

Note 2: if it is uncertain whether a person is a dependant and as a result a pension is not payable to the person under section 25A, the person may make a claim for the pension under section 26. A Pensions Committee or the Commission will determine whether the dependant is entitled to be granted a pension (see subsection 26AC(1)).”

PART 4—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Division 1—Preliminary

Principal Act

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19. In this Part, “Principal Act” means the *Veterans' Entitlements Act 1986*³.

Division 2—Telephone allowance

20. Before Part VIII of the Principal Act the following Part is inserted:

“PART VIIB—TELEPHONE ALLOWANCE

5 **“Division 1—Eligibility for and payability of telephone allowance**

Eligibility for telephone allowance

“Service pensioners

118Q.(1) A person is eligible for a telephone allowance if:

- 10 (a) the person is a service pensioner; and
(b) the person is eligible for fringe benefits under section 53A; and
(c) the person is a telephone subscriber.

Note 1: for ‘telephone subscriber’ see subsection (4).

Note 2: paragraph (1)(b) extends to a person who is taken to be eligible for fringe benefits because of section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*.

“Certain Part II and Part IV pensioners

(2) A person is eligible for a telephone allowance if:

- 15 (a) the person is eligible for a pension under Part II or Part IV:
(i) at a rate specified in subsection 22(4) (extreme disablement adjustment rate); or
(ii) at the rate specified in section 24 (special rate); or
(iii) the rate of which is increased under subsection 27(2) by an amount specified in any of items 1 to 8 of the Table in subsection 27(1); or
20 (iv) at the rate specified in subsection 30(1) (certain war widows and war widowers rate); and
(b) the person is a telephone subscriber.

Note 1: for ‘telephone subscriber’ see subsection (4).

Note 2: the rate specified in section 24 is the rate for people to whom section 25 applies (temporary payment at special rate) as well as for people to whom section 24 applies (see subsection 25(2)).

“World War 1 veterans

25 (3) A person is eligible for a telephone allowance if:

- (a) the person is:
(i) a veteran who rendered eligible war service during World War 1; or
(ii) a Commonwealth veteran who rendered continuous full-time service during World War 1; or
30 (iii) an allied veteran who rendered continuous full-time service during World War 1; and

(b) the person is a telephone subscriber.

Note 1: for 'telephone subscriber' see subsection (4).

Note 2: for 'World War 1' see subsections 5B(1) and (3).

Note 3: in addition to the categories of eligibility described in subsections (1) to (3), World War 1 Australian mariners may be eligible for telephone allowance under a determination made under subsection 5R(1).

“(4) In this section:

'telephone subscriber' means a person:

- (a) who is an Australian resident; and
- (b) who has a telephone service connected to a home of the person in Australia; and 5
- (c) whose telephone service is connected:
 - (i) in that person's name; or
 - (ii) if subparagraph (i) does not apply to the person and the person is a non-illness separated spouse—in the name of the person to whom the person is legally married; or 10
 - (iii) if neither (i) nor (ii) applies to the person and the person is a member of a couple—in the name of the person's partner.

Note: for 'Australian resident' see section 5G.

Telephone allowance not payable in some circumstances 15

“118R. Even though a person is eligible for a telephone allowance, the allowance is not payable to the person:

- (a) if the person is receiving a telephone allowance under the Social Security Act or the *Seamen's War Pensions and Allowances Act 1940*; or 20
- (b) if:
 - (i) the person is a service pensioner; and
 - (ii) the person is a member of a couple; and
 - (iii) the person's partner is receiving a telephone allowance because of subsection 118Q(3) or a determination under subsection 5R(1). 25

Note 1: subsection 118Q(3) covers certain categories of World War 1 veterans.

Note 2: the relevant determination under subsection 5R(1) provides eligibility for telephone allowance to certain categories of World War 1 Australian mariners.

“Division 2—Rate of telephone allowance

Rate of telephone allowance

“118S.(1) Subject to subsections (2) and (3), the rate of telephone allowance is \$51.80 per year. 30

Note: the amount specified in subsection (1) is indexed annually in line with CPI increases under section 198F.

“(2) Subject to subsection (3), the rate of telephone allowance for a person is half the amount of the rate specified in subsection (1) if:

- (a) the person is a service pensioner; and
- (b) the person is eligible for fringe benefits under section 53A; and
- 5 (c) the person is a member of a couple; and
- (d) the person's partner is receiving a telephone allowance under:
 - (i) this Act; or
 - (ii) the Social Security Act; or
 - 10 (iii) the *Seamen's War Pensions and Allowances Act 1940*; and
- (e) the person is living with the person's partner in the same home.

Note: paragraph (2)(b) extends to a person who is taken to be eligible for fringe benefits because of section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*.

“(3) If a person is eligible for a telephone allowance because of subsection 118Q(3) or a determination under subsection 5R(1), the person's rate of telephone allowance per year is the amount equal to

15 the person's annual telephone rental charge for one telephone service.

Note 1: subsection 118Q(3) covers certain categories of World War 1 veterans.

Note 2: the relevant determination under subsection 5R(1) provides eligibility for telephone allowance to certain categories of World War 1 Australian mariners.

“Division 3—Payment of telephone allowance

Payment by instalments

“118T.(1) A full instalment of telephone allowance is payable to a person on each telephone allowance payday on which:

- 20 (a) the person is eligible for the allowance; and
- (b) the allowance is payable to the person.

“(2) In this section:

‘telephone allowance payday’ means the first pension payday that falls on or after:

- 25 (a) 1 January; and
- (b) 20 March; and
- (c) 1 July; and
- (d) 20 September.

Calculation of amount of instalment

“118U.(1) The amount of an instalment of telephone allowance is the amount worked out by dividing the amount of the annual rate of telephone allowance by 4.

“(2) If the amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is to be increased to the

35 nearest multiple of 10 cents.”.

21. After section 198E of the Principal Act the following section is inserted:

Indexation of telephone allowance

“198F.(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; 5

‘**relevant rate**’ means the rate specified in subsection 118S(1);

‘**year to which this section applies**’ means:

- (a) the year commencing on 20 September 1992; or 10
- (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 purpose of this section. 15

“(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. 20

“(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: 25

(a) subject to paragraph (b)—the rate worked out by multiplying by that factor: 30

(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 35

(b) where the amount of the rate worked out under paragraph (a) is not a multiple of 80 cents—a rate equal to that amount rounded up to the nearest multiple of 80 cents. 40

“(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 1992 the

number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 1992 by the index number for the June quarter 1991; or

5 (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 1992; or

10 (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.

15 “(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 affects instalments of telephone allowance under this Act, has effect in relation to every instalment of the allowance that falls due on or after the first day of that year.”.

Division 3—Veterans' Review Board

Parties to review before Board

20 22. Section 147 of the Principal Act is amended by adding at the end of subsection (2) the following Note:

“Note: if the Principal Member gives an applicant a notice under subsection 155AA(4) or 155AB(4) and the applicant wants to be represented by another person in relation to it, the applicant must so authorise the representative in writing after receiving the notice (see section 155AC).”.

Procedure of Board

23. Section 148 of the Principal Act is amended by omitting subsections (3A), (3B), (3C), (3D) and (3E).

25 24. The Principal Act is amended by inserting after section 155 the following sections:

Power to dismiss application—initial consideration

“155AA.(1) In this section:

30 ‘**standard review period**’, in relation to an application for review, means the period of 2 years after the day on which the application was received at an office of the Department in Australia.

“(2) This section applies to an application for review unless:

(a) the hearing of the review has finished within the standard review period; or

35 (b) as at the end of the standard review period, a date, time and place is fixed for the commencement or resumption of the hearing of the review.

“(3) For the purposes of paragraph (2)(a), the hearing of a review is taken to have finished when there are no further submissions to be made to the Board by any of the parties to the review.

“(4) If, at the end of the standard review period:

- (a) this section applies to an application for review; and 5
- (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 receiving the notice; 10

- (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.

“(5) If the applicant does not provide a written statement under paragraph (4)(c) or (d) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal. 15

“(6) If:

- (a) the applicant provides a written statement under paragraph (4)(d) within the 28 days; and 20
- (b) the Principal Member considers that the statement contains a reasonable explanation for the applicant's failure to be ready to proceed at a hearing;

the Principal Member must notify the applicant and the Commission of this. 25

“(7) If:

- (a) the applicant provides a written statement under paragraph (4)(d) within the 28 days; and
- (b) the Principal Member considers that the statement does not contain a reasonable explanation for the applicant's failure to be ready to proceed at a hearing; 30

the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

Power to dismiss application—subsequent consideration 35

“155AB.(1) In this section:

‘extended review period’, in relation to an extension notice, means the period of 3 months after the day on which the Principal Member has given the extension notice to the applicant for review;

‘extension notice’ means a notice under subsection 155AA(6) or subsection (6) of this section. 40

Veterans' Affairs Legislation Amendment No. 70, 1992

“(2) If the Principal Member has given an applicant for review an extension notice, this section applies to that application unless:

- (a) the hearing of the review has finished within the extended review period; or
- 5 (b) as at the end of the extended review period, a date, time and place is fixed for the commencement or resumption of the hearing of the review.

“(3) For the purposes of paragraph (2)(a), the hearing of a review is taken to have finished when there are no further submissions to be made to the Board by any of the parties to the review.

“(4) If this section applies to an application for review at the end of the extended review period, the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member, within 28 days after receiving the notice:

- 15 (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.

“(5) If the applicant does not provide a written statement under paragraph (4)(a) or (b) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

“(6) If:

- 25 (a) the applicant provides a written statement under paragraph (4)(b) within the 28 days; and
- (b) the Principal Member considers that the statement contains a reasonable explanation for the applicant's failure to be ready to proceed at a hearing;

the Principal Member must notify the applicant and the Commission of this.

“(7) If:

- (a) the applicant provides a written statement under paragraph (4)(b) within the 28 days; and
- 35 (b) the Principal Member considers that the statement does not contain a reasonable explanation 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 of the dismissal.”.

Application of sections 155AA and 155AB

40 25. Sections 155AA and 155AB of the Principal Act apply to applications for review lodged before, on or after the commencement of those sections.

26. The Principal Act is amended by inserting after section 155AB the following section:

Representation of applicant where outcome could be dismissal of application

“155AC.(1) An applicant for review may authorise another person to represent the applicant in relation to a notice under subsection 155AA(4) or 155AB(4). 5

“(2) An authorisation under subsection (1) must be in writing.

“(3) The applicant may authorise the representative only after the applicant has received the notice. 10

“(4) If the Principal Member has approved a form for the purposes of subsection (1), the applicant must authorise the representative in that form.

“(5) If the applicant does authorise a representative, the representation is to be at the applicant’s own expense.”. 15

Application of section 155AC

27.(1) Subsections 155AC(1) and 155AC(5) apply to notices under subsection 155AA(4) or 155AB(4) given by the Principal Member before, on or after the day on which this Act receives the Royal Assent.

(2) Subsections 155AC(2), 155AC(3) and 155AC(4) apply to notices under subsection 155AA(4) or 155AB(4) given by the Principal Member on or after the day on which this Act receives the Royal Assent. 20

Review by Administrative Appeals Tribunal

28. Section 155A of the Principal Act is amended:

(a) by omitting from paragraph (1)(a) “subsection 148(3B)” and substituting “subsection 155AA(5) or 155AB(5)”; 25

(b) by omitting from paragraph (1)(b) “paragraph 148(3C)(b)” and substituting “paragraph 155AA(6)(b) or 155AB(6)(b)”; 30

(c) by omitting from paragraph (1)(c) “paragraph 148(3D)(b)” and substituting “paragraph 155AA(7)(b) or 155AB(7)(b)”. 30

Saving and transitional

29.(1) In this section:

“**transition day**” means 8 January 1991, immediately after the commencement of section 85 of the *Veterans' Affairs Legislation Amendment Act 1990*. 35

(2) If the Principal Member has given a notice to an applicant in purported reliance on subsection 148(3A) of the Principal Act as in force immediately before the transition day, the notice has effect as if it were a notice given under subsection 155AA(4) of the Principal Act.

(3) If the Principal Member has given a notice to an applicant in purported reliance on subsection 148(3E) of the Principal Act as in force immediately before the transition day, the notice has effect as if it were a notice given under subsection 155AB(4) of the Principal Act.

5 (4) If:

(a) the Principal Member has given a notice to an applicant in purported reliance on section 148 of the Principal Act as in force immediately before the transition day; and

10 (b) the applicant has provided a written statement in purported reliance on that section as in force immediately before that day; the written statement has effect as if it were given under section 155AA or 155AB, as the case requires, of the Principal Act.

Delegation

15 30. Section 166 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The Principal Member may, by writing signed by him or her, also delegate all or any of his or her powers under section 155AA or 155AB to a registrar or a deputy registrar.”.

Division 4—Cambodia service

20 ***War and operational area related definitions***

31. Section 5B of the Principal Act is amended by omitting from paragraph (2)(b) “or 11” and substituting “, 11 or 12”.

Qualifying service

25 32. Section 7A of the Principal Act is amended by omitting from subparagraph 7A(1)(a)(iii) “or 11” and substituting “, 11 or 12”.

Schedule 2

33. Schedule 2 to the Principal Act is amended by adding at the end the following item:

“12. The area comprising Cambodia The period from and including
20 October 1991”.

Division 5—Automatic payment of pension and funeral benefits

30 34. After section 13 of the Principal Act the following section is inserted in Division 3 of Part II:

Certain dependants to be automatically paid pension

“13A.(1) If:

(a) a veteran dies; and

35 (b) the veteran is survived by a dependant of the deceased veteran; and

(c) the veteran:

(i) was, immediately before the veteran's death, a veteran to whom subsection 22(4) or section 24 applied; or

(ii) was, immediately before the veteran's death, a veteran to whom section 22, 23 or 25 applied who was in receipt of a pension the rate of which had been increased under subsection 27(2) by an amount specified in any of items 1 to 8 of the Table in subsection 27(1); or

(iii) is a veteran to whom subsection 13(3) applies;

the pension payable to the dependant in respect of the death of the veteran is payable:

(d) without the dependant having to make a claim for the pension under section 14; and

(e) without the Commission having to make a determination under section 19.

Note: for the dependant's eligibility for pension see subsection 13(2).

“(2) The pension is payable from and including the day after the veteran died.

Note: for the rate at which the pension is payable to the dependant see section 30.”

Claim for a pension

35. Section 14 of the Principal Act is amended by adding at the end of subsection (1) the following Notes:

“Note 1: some dependants do not have to make a claim (see section 13A).

Note 2: if it is uncertain whether a person is a dependant and as a result a pension is not payable to the person under section 13A, the person may make a claim for the pension under section 14. The Commission will determine whether the person is entitled to be granted a pension (see subsection 19(3)).”

Funeral benefits—veterans

36. Section 99 of the Principal Act is amended by omitting paragraphs (1)(b) and (c).

37. After section 99 of the Principal Act the following section is inserted:

Funeral benefits paid to estate of certain deceased veterans

“99A.(1) The Commission is to grant a benefit, called a funeral benefit, to the estate of a deceased veteran if:

(a) the veteran, immediately before his or her death, was being paid a pension under Part II as a veteran to whom section 24 applied; or

(b) the veteran, immediately before his or her death, was being paid a pension under Part II at a rate that had been increased under section 27 by reason that the veteran was incapacitated

from a war-caused injury or a war-caused disease of a kind described in items 1 to 8 of the Table in subsection 27(1).

“(2) The amount of the funeral benefit is \$550.”.

Division 6—Assets test (primary production assets)

5 *Assets test definitions*

38. Section 5L of the Principal Act is amended:

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

“**‘family member’**, in relation to a person, means:

- (a) the partner, father or mother of the person; or
- 10 (b) a sister, brother or child of the person; or
- (c) another person who, in the Commission’s opinion, should be treated for the purposes of this definition as one of the person’s relations described in paragraph (a) or (b);

‘fishing operations’ means:

- 15 (a) operations relating directly to the taking or catching of fish, turtles, crustacea, oysters or other shellfish; or
- (b) oyster farming; or
- (c) pearling operations;

but does not include:

- 20 (d) whaling; or
- (e) operations conducted otherwise than for the purposes of a business;

‘forest operations’ means:

- 25 (a) the planting or tending in a plantation or forest of trees intended for felling; or
- (b) the felling of trees in a plantation or forest;

but does not include operations conducted otherwise than for the purposes of a business;

‘primary producer’ means a person whose principal occupation is primary production;

‘primary production’ means production resulting directly from:

- 35 (a) the cultivation of land; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or
- (c) fishing operations; or
- (d) forest operations;

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture;”;

40 (b) by inserting after subsection (3) the following subsection:

“(3A) A reference in this Act to the value of a **liability** of a

person is, if the liability is shared by the person with another person, a reference to the value of the person's share of the liability.”.

Effect of charge or encumbrance on value of assets

39. Section 52C of the Principal Act is amended: 5

(a) by adding at the end of subsection (1) the following Note:

“Note: this section does not apply to an asset to which section 52CA (primary production assets) applies.”.

(b) by omitting subsection (2) and substituting the following subsection:

“(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that: 10

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of a person other than the person or the person's partner.”;

(c) by omitting subsection (5).

40. After section 52C of the Principal Act the following section is inserted: 15

Effect of certain liabilities on value of assets used in primary production

“52CA.(1) For the purposes of working out the value of a person's assets under this Act, if:

(a) the person is: 20

(i) a primary producer; or

(ii) a family member of a primary producer; and

(b) the person has assets (including real property) that are, in the Commission's opinion, used for the purposes of carrying on that primary production; and 25

(c) the person also has liabilities that are, in the Commission's opinion, related to the carrying on of the primary production;

then:

(d) section 52C does not apply in relation to the assets referred to in paragraph (b); and 30

(e) those assets are taken to be a single asset (the ‘primary production asset’); and

(f) the value of that single asset is worked out under subsection (2).

Note: for ‘family member’ see subsection 5L(1).

“(2) The value of a person's primary production asset is worked out in the following way: 35

Method statement

- Step 1.* Add together the value of the assets referred to in paragraph (1)(b); the result is called the **unencumbered value**.
- Step 2.* Add together the value of the liabilities referred to in paragraph (1)(c); the result is called the **total liability**.
- Step 3.* Take the total liability away from the unencumbered value; the result is the value of the person's primary production asset.

“(3) If the result under Step 3 of the Method statement is less than nil, the value of the primary production asset is taken to be nil.”.

Division 7—Certain unlisted property trusts

Market-linked investments made or acquired before 9 September 1988

5 **41.** Section 46J of the Principal Act is amended:

- (a) by omitting from subsection (1) “If” and substituting “Subject to subsection (4), if”;
- (b) by adding at the end the following subsections:

10 “(4) This section does not apply to the realisation of a person's market-linked investment if:

- (a) the investment is in a public unit trust; and
- (b) the trust is a property trust; and
- (c) the trust is not listed on a stock exchange; and
- 15 (d) the person made or acquired the investment before 9 September 1988; and
- (e) the investment is realised on or after 24 July 1991 and before 23 July 1992; and
- (f) the investment is realised due to a restructuring of the trust.

20 “(5) For the purposes of paragraph (4)(f), a person's investment is realised due to a restructuring if:

- (a) in realising the investment the person exchanges the investment for an investment in another public unit trust that is a property trust; and
- 25 (b) the same manager manages both the investments referred to in paragraph (a).”.

Division 8—Special residences and special residents

Income test definitions

42. Section 5H of the Principal Act is amended by adding at the end of subsection (8) the following paragraph:

“; (zk) an amount paid by a buyer under a sale leaseback agreement.”. 5

Assets test definitions

43. Section 5L of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “granny flat interest”;

(b) by omitting from the Note to subsection (1) “52K-52X (retirement villages)” and substituting “52KA-52X (special residences)”;

(c) by omitting subparagraph (4)(a)(ii) and substituting the following subparagraph:

“(ii) the person’s right or interest in the home gives the person reasonable security of tenure in the home; and”;

(d) by omitting subparagraph (4)(b)(ii) and substituting the following subparagraph:

“(ii) the person’s right or interest, or the partner’s right or interest, in the home gives the person, or the person’s partner, reasonable security of tenure in the home; and”;

(e) by omitting the Note to subsection (4) and substituting the following Note:

“Note: see also sections 52KA-52X (special residences).”;

(f) by omitting subsection (8A).

Retirement villages definitions

44. Section 5M of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “actual value”;

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

“‘retirement village resident’ has the meaning given by subsection (5).”;

(c) by omitting subsections (5) and (6) and substituting the following subsection:

“(5) A person is a retirement village resident if the person’s principal home is in a retirement village.”.

45. After section 5M of the Principal Act the following sections are inserted: 35

Granny flat definitions

“5MA.(1) In this Act, unless the contrary intention appears:
‘granny flat interest’ has the meaning given by subsection (2);
‘granny flat resident’ has the meaning given by subsection (3).

5 “(2) A person has a granny flat interest in the person’s principal home if:

(a) the residence that is the person’s principal home is a private residence; and

10 (b) the person has acquired for valuable consideration or has retained:

- (i) a right to accommodation for life in the residence; or
- (ii) a life interest in the residence.

“(3) A person is a granny flat resident if the person has a granny flat interest in the person’s principal home.

15 **Sale leaseback definitions**

“5MB.(1) In this Act, unless the contrary intention appears:
‘deferred payment amount’ has the meaning given by subsections (6), (7) and (8);

20 **‘initial payment amount’** has the meaning given by subsections (4) and (5);

‘sale leaseback agreement’ has the meaning given by subsections (2) and (3);

‘sale leaseback home’ has the meaning given by subsection (9);

25 **‘sale leaseback resident’** has the meaning given by subsections (10) and (11).

“(2) An agreement is a sale leaseback agreement, in relation to a person, if:

(a) under the agreement the person agrees to sell his or her principal home; and

30 (b) the residence that is the person’s principal home is a private residence; and

(c) under the agreement the person retains a right to accommodation in the residence; and

35 (d) under the agreement the buyer is to pay an amount when the person vacates the residence or when the person dies.

“(3) An agreement is a sale leaseback agreement for the purposes of this Act if the agreement is an agreement in respect of which a determination under subsection 5R(14) is in force.

40 “(4) The initial payment amount, in relation to a sale leaseback agreement, is the amount that the Commission determines to be the

Veterans' Affairs Legislation Amendment No. 70, 1992

initial amount that the buyer is to pay under the sale leaseback agreement.

“(5) In making the determination the Commission is to have regard to the following:

- (a) the consideration to be provided by the parties to the sale leaseback agreement; 5
- (b) when that consideration is to be provided;
- (c) the payments that are to be made under the sale leaseback agreement;
- (d) when those payments are to be made; 10
- (e) any other relevant matters.

“(6) The deferred payment amount, in relation to a sale leaseback agreement, is the total amount to be paid by the buyer under the sale leaseback agreement less the initial payment amount.

“(7) If the Commission considers that, for any special reason in a particular case, the deferred payment amount should be another amount, the deferred payment amount is that other amount. 15

Note: sections 52E to 52J (disposal of assets) may be relevant to working out the deferred payment amount.

“(8) Without limiting subsection (7), the Commission may consider that the deferred payment amount should be another amount if:

- (a) the parties to the sale leaseback agreement are not at arm's length; or 20
- (b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.

“(9) A residence is a sale leaseback home if the residence is subject to a sale leaseback agreement. 25

“(10) A person is a sale leaseback resident if:

- (a) the person's principal home is subject to a sale leaseback agreement; and
- (b) the person is a party to the sale leaseback agreement. 30

“(11) If a person is a member of a couple, the person is a sale leaseback resident if:

- (a) the person lives in the sale leaseback home; and
- (b) the person's partner is a sale leaseback resident.

Note: subsection (11) will only be used if a person is not a sale leaseback resident under subsection (10).

Special residence and resident definitions

“5MC.(1) In this Act, unless the contrary intention appears:

‘actual value’ has the meaning given by subsection (4);

‘special residence’ has the meaning given by subsection (2);

5 ‘special resident’ has the meaning given by subsection (3).

“(2) A residence is a special residence if the residence is:

(a) in a retirement village; or

(b) a granny flat; or

(c) a sale leaseback home.

10 “(3) A person is a special resident if the person is:

(a) a retirement village resident; or

(b) a granny flat resident; or

(c) a sale leaseback resident.

15 “(4) In Subdivision C of Division 14 (sections 52KA to 52X), a reference to the actual value of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person’s partner, that is, the value that would be the value of the person’s assets apart from the couple’s assets deeming provisions.

20 “(5) In subsection (4):

‘couple’s assets deeming provisions’ means:

(a) Service Pension Rate Calculator Where There Are No Dependent Children (point 41-F2); and

25 (b) Service Pension Rate Calculator Where There Are Dependent Children (point 42-G2); and

(c) Service Pension Rate Calculator for Widows, Widowers and Non-illness Separated Spouses (point 44-F2).”.

Determinations having interpretative effect

30 46. Section 5R of the Principal Act is amended by adding at the end the following subsections:

“Sale leaseback agreement determination

35 (14) The Commission may determine that an agreement is a sale leaseback agreement if the Commission is satisfied that the agreement is substantially similar in its effect to an agreement referred to in subsection 5MB(2).

“(15) The determination must be in writing.”.

Certain assets to be disregarded in calculating the value of a person’s assets

47. Section 52 is amended:

40 (a) by omitting from subparagraph (1)(a)(i) “and”;

- (b) by omitting subparagraph (1)(a)(ii);
- (c) by omitting from subparagraph (1)(b)(i) “and”;
- (d) by omitting subparagraph (1)(b)(ii);
- (e) by inserting after paragraph (1)(fa) the following paragraphs:

“(fb) if: 5

(i) the person has a granny flat interest in the person’s principal home; and

(ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies; 10

the value of the granny flat interest;

Note: a person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 52KA).

(fc) if:

(i) the person is a sale leaseback resident; and

(ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies; 15

the value of any right or interest of the person in the sale leaseback home;”;

(f) by omitting from subsection (4) “52K to 52X (retirement villages)” and substituting “52KA to 52X (special residences)”. 20

Effect of charge or encumbrance on value of assets

48. Section 52C of the Principal Act is amended by omitting from subsection (6) “sections 52K to 52X (retirement villages)” and substituting “sections 52KA to 52X (special residences)”.

Disposal of assets 25

49. Section 52E of the Principal Act is amended by omitting from the Note to subsection (2) “5L(8A)” and substituting “5MA(2)”.

50. The heading to Subdivision C of Division 14 of Part III is repealed and the following heading is substituted:

“Subdivision C—Provisions relating to special residences and special residents”. 30

51. Section 52K of the Principal Act is repealed.

Basis for different treatment

52. Section 52L of the Principal Act is amended by omitting “retirement village or granny flat” and substituting “special”. 35

Entry contribution

53. Section 52M of the Principal Act is amended:

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

- 5 “(1) A special resident’s entry contribution is:
- (a) if the resident is not a member of a couple—the resident’s individual residence contribution; or
- (b) if the resident is a member of a couple, shares the resident’s principal home with the resident’s partner and is not a member of an illness separated couple—an amount equal to 50% of the resident’s individual residence contribution and of the partner’s individual residence contribution; or
- 10 (c) if the resident is a member of an illness separated couple—the resident’s individual residence contribution; or
- 15 (d) if:
- (i) the resident is a member of an ordinary couple with different principal homes; and
- 20 (ii) the principal home of the resident’s partner is not a special residence;
- the resident’s individual residence contribution; or
- (e) if:
- (i) the resident is a member of an ordinary couple with different principal homes; and
- 25 (ii) the principal home of the resident’s partner is also a special residence;
- an amount equal to 50% of the resident’s individual residence contribution and of the partner’s individual residence contribution.
- 30

 “(1A) A special resident’s entry contribution is the resident’s individual residence contribution plus the amount paid, or agreed to be paid, for the resident’s current right (if any) to share the resident’s principal home with a partner if:

- 35 (a) the resident was a member of a couple at the time when the resident took up residence in the retirement village or granny flat; and
- (b) the resident has ceased to be a member of a couple.

40 “(1B) A special resident’s entry contribution is the resident’s individual residence contribution if:

- (a) the resident was a member of a couple at the time when the sale leaseback agreement was entered into; and
- (b) the resident has ceased to be a member of a couple.

“(1C) For the purposes of this Division, the **individual residence contribution** is:

- (a) for a retirement village resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; and 5
- (b) for a granny flat resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the granny flat; and
- (c) for a sale leaseback resident—the deferred payment amount. 10

Note: for ‘deferred payment amount’ see section 5MB.

“(1D) For the purposes of paragraph (1C)(b):

- (a) the total amount paid to obtain a person’s current right to live in a granny flat is the amount equal to the value of the person’s granny flat interest; and
- (b) the value of a person’s granny flat interest is: 15
 - (i) unless subparagraph (ii) applies—the amount paid, or agreed to be paid, for the interest; or
 - (ii) if the Commission considers that, for any special reason in any particular case, that value should be another amount—that other amount.”; 20
- (b) by omitting from subsection (2) “subsection (1)” and substituting “subsections (1), (1A) and (1B)”. 20

Extra allowable amount

54. Section 52N of the Principal Act is amended by inserting after subsection (2A) the following subsection: 25

“Sale leaseback home

- (2B) A sale leaseback resident’s **extra allowable amount** is:
- (a) if the resident is not a member of a couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property owner AVL and the pension (single) non-property owner AVL; or 30
 - (b) if the resident is a member of an illness separated couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property owner AVL and the pension (single) non-property owner AVL; or 35
 - (c) in any other case—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (partnered) property owner AVL and the pension (partnered) non-property owner AVL.”. 40

Residents who are not members of a couple

55. Section 52Q of the Principal Act is amended:

- (a) by omitting from subsection (1) "retirement village or granny flat" and substituting "special";
- 5 (b) by omitting from paragraph (2)(a) "retirement village or granny flat resident" and substituting "special";
- (c) by omitting from paragraph (3)(a) "retirement village or granny flat" and substituting "special".

Members of couples

10 56. Section 52R of the Principal Act is amended:

- (a) by omitting from subsection (1) "retirement village or granny flat" and substituting "special";
- (b) by omitting from paragraph (2)(a) "retirement village or granny flat" and substituting "special";
- 15 (c) by omitting from paragraph (3)(a) "retirement village or granny flat" and substituting "special".

Members of illness separated couple (both in special residences)

57. Section 52S of the Principal Act is amended:

- 20 (a) by omitting from subsection (1) "retirement village or granny flat" (first occurring) and substituting "special";
- (b) by omitting from paragraph (1)(b) "retirement village or granny flat" and substituting "special residence";
- (c) by omitting from paragraph (2)(a) "retirement village or granny flat" and substituting "special";
- 25 (d) by omitting from paragraph (3)(a) "retirement village or granny flat" and substituting "special";
- (e) by omitting from paragraph (5)(a) "retirement village or granny flat" and substituting "special".

Members of illness separated couple (partner not in special residence and partner property owner)

30

58. Section 52T of the Principal Act is amended:

- (a) by omitting from subsection (1) "retirement village or granny flat" (first occurring) and substituting "special";
- 35 (b) by omitting from paragraph (1)(b) "in a retirement village or granny flat" and substituting "a special residence";
- (c) by omitting from paragraph (2)(a) "retirement village or granny flat" and substituting "special";
- (d) by omitting from paragraph (3)(a) "retirement village or granny flat" and substituting "special".

Members of illness separated couple (partner not in special residence and partner not property owner)

59. Section 52U of the Principal Act is amended:
- (a) by omitting from subsection (1) "retirement village or granny flat" (first occurring) and substituting "special"; 5
 - (b) by omitting from paragraph (1)(b) "in a retirement village or granny flat" and substituting "a special residence";
 - (c) by omitting from paragraph (2)(a) "retirement village or granny flat" and substituting "special";
 - (d) by omitting from paragraph (4)(a) "retirement village or granny flat" and substituting "special". 10

Members of ordinary couple with different principal homes (both in special residences)

60. Section 52V of the Principal Act is amended:
- (a) by omitting from subsection (1) "retirement village or granny flat" (first occurring) and substituting "special"; 15
 - (b) by omitting from paragraph (1)(b) "in a retirement village or granny flat" and substituting "a special residence";
 - (c) by omitting from paragraph (2)(a) "retirement village or granny flat" and substituting "special"; 20
 - (d) by omitting paragraph (2)(d) and substituting the following paragraph:
 - "(d) the value of the resident's principal home is taken to be the resident's individual residence contribution; and";
 - (e) by omitting paragraph (2)(e) and substituting the following paragraph: 25
 - "(e) the value of the partner's principal home is taken to be the partner's individual residence contribution; and";
 - (f) by omitting from paragraph (3)(a) "retirement village or granny flat" and substituting "special"; 30
 - (g) by omitting paragraph (3)(d) and substituting the following paragraph:
 - "(d) the resident's assets are taken to include an amount equal to the resident's individual residence contribution; and";
 - (h) by omitting paragraph (3)(e) and substituting the following paragraph: 35
 - "(e) the partner's assets are taken to include an amount equal to the partner's individual residence contribution."

Members of ordinary couple with different principal homes (partner not in special residence and partner property owner) 40

61. Section 52W of the Principal Act is amended:
- (a) by omitting from subsection (1) "retirement village or granny flat" (first occurring) and substituting "special";

- (b) by omitting from paragraph (1)(b) “in a retirement village or granny flat” and substituting “a special residence”;
- (c) by omitting from subsection (2) “retirement village or granny flat” (first occurring) and substituting “special”;
- 5 (d) by omitting from subparagraph (2)(c)(ii) “in a retirement village or granny flat” and substituting “a special residence”.

Members of ordinary couple with different principal homes (partner not in special residence and partner not property owner)

62. Section 52X of the Principal Act is amended:

- 10 (a) by omitting from subsection (1) “retirement village or granny flat” (first occurring) and substituting “special”;
- (b) by omitting from paragraph (1)(b) “in a retirement village or granny flat” and substituting “a special residence”;
- 15 (c) by omitting from paragraph (2)(a) “retirement village or granny flat” and substituting “special”;
- (d) by omitting from paragraph (3)(a) “retirement village or granny flat” and substituting “special”.

Indexed and adjusted amounts

63. Section 59A of the Principal Act is amended:

- 20 (a) by omitting from column 2 of item 13 of the Index and Adjusted Amounts Table “retirement village and granny flat” and substituting “special”;
- (b) by inserting in column 3 of item 13 of that Table “special” after “separated”.

25 **Adjustment of special illness separated special resident AVL**

64. Section 59J of the Principal Act is amended by omitting “retirement village” and substituting “special”.

Division 9—Remote area allowance

General definitions

- 30 65. Section 5Q of the Principal Act is amended by adding at the end of subsection (2) the following Note:

“Note: the rule set out in subsection (2) may be modified by a determination under subsection 5R(11) or 5R(12).”.

Determinations having interpretative effect

66. Section 5R of the Principal Act is amended by adding at the end the following subsections:

“Remote area determination—current or future absence from remote area

(11) If the Commission is satisfied that:

- (a) a person's age or invalidity service pension includes an amount of remote area allowance; and 5
- (b) the person's remote area allowance includes an amount for a veteran pensioner add-on child; and
- (c) the person is absent from the remote area (but still in Australia); and
- (d) the absence is, or is likely to be, longer than 8 weeks; and 10
- (e) the absence is due to special circumstances (for example, the person's medical treatment or the person's attendance at a rehabilitation or training course);

the Commission may make a written determination that, despite that absence, the person's rate of pension continues to include remote area allowance for the period specified in the determination while the person has a veteran pensioner add-on child. 15

Note 1: for a veteran pensioner add-on child see points 42-H4 and 43-E4.

Note 2: a person whose absence from a remote area is longer than 8 weeks would not normally continue to be entitled to remote area allowance (see subsection 5Q(2)).

“Remote area determination—past absence from remote area

(12) If the Commission is satisfied that, in relation to a period:

- (a) a person is receiving an age or invalidity service pension; and 20
- (b) the person's usual place of residence is in a remote area; and
- (c) because the person is absent from the remote area (but still in Australia) for longer than 8 weeks, the person's rate of service pension ceases to include an amount by way of remote area allowance; and 25
- (d) immediately before the person's rate ceases to include remote area allowance, the person's remote area allowance includes an amount for a veteran pensioner add-on child; and
- (e) the person's absence is due to special circumstances (for example, the person's medical treatment or the person's attendance at a rehabilitation or training course); 30

the Commission may make a written determination that, despite that absence, the person's rate of pension continues to include remote area allowance for the period specified in the determination while the person has a veteran pensioner add-on child. 35

Note 1: for a veteran pensioner add-on child see points 42-H4 and 43-E4.

Note 2: a person whose absence from a remote area is longer than 8 weeks would not normally continue to be entitled to remote area allowance (see subsection 5Q(2)).

“(13) The period specified by the Commission in a determination under subsection (12) must not commence earlier than 3 months before

the Commission is notified that the person is absent from the remote area.”.

Rate of age, invalidity, partner and carer service pension (no dependent children)

- 5 **67.** Section 41 of the Principal Act is amended by omitting point 41-G3 and substituting the following point:

“Illness separated and respite care couples

10 41-G3. For the purposes of Table G in point 41-G2, a member of an illness separated couple or a respite care couple is to be treated as not being a member of a couple.”.

Rate of age, invalidity, partner and carer service pension (dependent child or children)

68. Section 42 of the Principal Act is amended:

- 15 (a) by inserting in point 42-H2 “or partner or carer service pensioner add-on child” after “veteran pensioner add-on child”;
- (b) by adding at the end of point 42-H2 the following Note:
 “Note 3: for ‘partner or carer service pensioner add-on child’ see point 42-H4A.”;
- (c) by omitting point 42-H3 and substituting the following point:

“Illness separated and respite care couples

20 42-H3. For the purposes of Table H in point 42⁵-H2, a member of an illness separated couple or a respite care couple is to be treated as not being a member of a couple.”;

- (d) by inserting after point 42-H4 the following point:

“Partner or carer service pensioner add-on child

25 42-H4A. A person has a partner or carer service pensioner add-on child if:

- (a) the person is a member of an illness separated or respite care couple; and
- (b) the person is receiving a partner or carer service pension; and
- 30 (c) the person’s partner is receiving an age or invalidity service pension; and
- (d) the person has a child; and
- (e) the person’s pension rate includes a dependent child add-on for the child.”.

35 **Rate of age and invalidity service pension (blinded veterans)**

69. Section 43 of the Principal Act is amended by omitting point 43-E3 and substituting the following point:

“Illness separated and respite care couples

43-E3. For the purposes of Table E in point 43-E2, a member of an illness separated couple or a respite care couple is to be treated as not being a member of a couple.”.

Division 10—Investment income

5

Investment income definitions

70. Section 5J of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “superannuation pension” and substituting the following definition:

10

“‘superannuation pension’ means a pension payable from a superannuation fund.”;

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

“‘foreign superannuation fund’ means a foreign superannuation fund as defined in subsection 6(1) of the Income Tax Assessment Act;

15

‘foreign superannuation pension’ means a pension payable from a foreign superannuation fund;”.

Certain assets to be disregarded in calculating the value of a person’s assets

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71. Section 52 of the Principal Act is amended by inserting after paragraph (1)(d) the following paragraph:

“(da) the value of any foreign superannuation pension of the person;”.

Division 11—Cancellation or suspension determinations

25

Cancellation or suspension determination—general

72. Section 56E of the Principal Act is amended by adding at the end the following subsection:

“(3) This section does not apply to a person if section 56EA applies to the person.”.

30

73. The Principal Act is amended by inserting after section 56E the following section:

Cancellation or suspension determination for failure to comply with section 54A notice

“56EA.(1) If:

35

(a) a person who is receiving a service pension is given a notice under section 54A; and

- (b) the person does not comply with the requirements set out in the notice;

the Commission may determine that the pension is to be cancelled or suspended.

- 5 “(2) A determination under subsection (1) must be in writing.

Note 1: for the date of effect of a determination under this section see section 56H.

Note 2: when a person's pension is suspended under section 56EA, the provision of fringe benefits (see Division 15) to the person is generally suspended too. However, the Commission may decide that the person can continue to receive medical treatment under section 53D or Part V (see subsection 85(8)).

Note 3: when a person's pension is cancelled under section 56EA, the person's fringe benefits (including treatment at Departmental expense) are also cancelled.”.

Resumption of payment after suspension

74. Section 56F of the Principal Act is amended by inserting in paragraph (a) “or 56EA” after “section 56E”.

Date of effect of adverse determination

- 10 75. Section 56H of the Principal Act is amended:

(a) by omitting from subsection (1) “or 56E” and substituting “, 56E or 56EA”;

(b) by inserting in subsection (4) “, 54A(6)” after “subsection 54(6)”.

- 15 *Division 12—Rounding base for income free area*

CPI Indexation Table

76. Section 59B of the Principal Act is amended by omitting from column 6 of item 4 of the CPI Indexation Table in subsection (1) “\$26.00” and substituting “\$52.00”.

- 20 *Division 13—Nomination of bank account etc.*

Manner of payment

77. Section 58C is amended by adding at the end the following Note:

“Note: for the procedure to be followed if the Commission determines that a person's service pension is to be paid into an account with a bank, credit union or building society see section 58F.”.

Payment into bank account etc.

- 24 78. Section 58F of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) If the person has not nominated an account for the purposes of subsection (2) the amount is not to be paid.

“(3B) If:

- (a) an amount has not been paid because of subsection (3A); and
- (b) the person nominates an account for the purposes of subsection (2);

the amount is to be paid under subsection (1).”.

Payment of pension

5

79. Section 122 of the Principal Act is amended by adding at the end of subsection (4) the following Note:

“Note: for the procedure to be followed if the Commission determines that a person’s pension is to be paid into an account with a bank, credit union or building society see section 122A.”.

Pension or allowance may be paid to bank etc.

80. Section 122A of the Principal Act is amended by inserting after subsection (1) the following subsections:

10

“(1A) If the person has not nominated an account for the purposes of subsection (1), the amount is not to be paid.

“(1B) If:

- (a) an amount has not been paid because of subsection (1A); and
- (b) the person nominates an account for the purposes of subsection (1);

15

the amount is to be paid under subsection (1).”.

Division 14—Attendant allowance

Attendant allowance

81. Section 98 of the Principal Act is amended by inserting after subsection (4A) the following subsection:

20

“(4B) Attendant allowance is not payable to a veteran if carer pension under Part 2.5 of the Social Security Act:

- (a) is payable to a person because the person is caring for the veteran; or
- (b) would be payable to a person because the person is caring for the veteran, apart from action taken in relation to that pension:
 - (i) under section 231 or 231A (cancellation or suspension) of that Act because the person has contravened a provision of that Act (other than section 233, 1304 or 1305); or
 - (ii) under section 1231 or 1234A (deductions to recover debts and overpayments) of that Act.”.

25

30

Division 15—Veterans' Review Board—term of appointment of full-time members

Terms of appointment

5 82. Section 159 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) A person who has turned 65 is not to be appointed as a full-time member.

10 “(2A) A person is not to be appointed as a full-time member for a period that extends beyond the date on which the person will turn 65.”.

Division 16—Saving and transitional

Certain veterans who are taken to be receiving fringe benefits are eligible for treatment under Part V

83. If:

15 (a) a veteran is eligible for fringe benefits because of subsection 17 (1) or (2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991*; and

20 (b) the veteran would be receiving an age or invalidity service pension but for Division 8A of Part III of the Principal Act; and

(c) were the veteran receiving an age or invalidity service pension, the veteran would be eligible under section 53D of the Principal Act to be provided with treatment under Part V of that Act;

25 then, for the purposes of the Principal Act and other laws of the Commonwealth, the veteran is taken to be eligible under that section to be provided with treatment under Part V.

Eligibility for treatment at Departmental expense

84. Section 53D of the Principal Act is amended by adding at the end of subsection (1) the following Notes:

“Note 3: some veterans who are not receiving an age or invalidity service pension because of Division 8A of Part III are treated as continuing to be eligible under section 53D to be provided with treatment under Part V (see section 83 of the *Veterans' Affairs Legislation Amendment Act 1992*).

Note 4: a veteran who is taken to be eligible for fringe benefits because of subsection 17(1) or (2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991* and who is receiving an age or invalidity service pension is eligible under section 53D to be provided with treatment under Part V if paragraph 53D(1)(b) applies to the veteran.”.

30 **Certain concessional beneficiaries are eligible for treatment under Part V**

85. If:

(a) a veteran is a person referred to in paragraph (ba) or (bb) of

the definition of "concessional beneficiary" in subsection 84 (1) of the *National Health Act 1953*; and

- (b) the veteran would be receiving a service pension under Part III of the Principal Act but for Division 8A of that Part; and
- (c) were the veteran receiving a service pension (other than a carer service pension) under Part III of the Principal Act, the veteran would be eligible under subsection 85(7) of that Act to be provided with treatment under Part V of that Act; 5

then, for the purposes of the Principal Act and other laws of the Commonwealth, the veteran is taken to be eligible under that subsection to be provided with treatment under Part V. 10

PART 5—AMENDMENT OF THE VETERANS' ENTITLEMENTS (REWRITE) TRANSITION ACT 1991

Fringe benefits test—interest attributed to money not invested or invested at a low rate of interest (changes introduced on 1 March 1991) 15

86. Section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*⁴ is amended:

- (a) by omitting from paragraph (b) "1991" and substituting "1990";
- (b) by inserting "of Part III" after "Division 15" (wherever occurring); 20
- (c) by adding at the end the following subsection:

"(2) If:

- (a) a person was not a prescribed person within the meaning of section 82 of the Principal Act at any time after 21 August 1990 and before 21 March 1991; and 25
- (b) the person invested the person's available money (within the meaning of section 50C of the Principal Act), or reinvested the person's deposit money (within the meaning of that section), in:
 - (i) an account with a financial institution; or 30
 - (ii) a loan, including a loan by way of debentures, bonds or other securities; or
 - (iii) an accruing return investment; or
 - (iv) a market-linked investment; or
 - (v) an immediate annuity; or 35
 - (vi) shares;

(within the meaning of the Principal Act) in anticipation of, or because of, the amendments made by subsection 54(1) of the *Veterans' Affairs Legislation Amendment Act 1990* (interest attributed to money not invested or invested at a low rate of interest); and 40

- (c) had the person not made the investments, the person

would otherwise have been a prescribed person on 21 March 1991;

then, for the purposes of the Principal Act and other laws of the Commonwealth, the person is taken to be eligible for fringe benefits under Division 15 of Part III of the Principal Act if:

(d) the person would not, at any time between 28 February and 1 July 1991, have become a prescribed person within the meaning of section 82 of the Principal Act if the amendments referred to in paragraph (b) had not been made; and

(e) the person would not, at any time after 30 June 1991, cease to be eligible for fringe benefits under Division 15 of Part III of the Principal Act if that Act did not contain Division 8A of that Part.”.

PART 6—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

Interpretation

87. Section 84 of the *National Health Act 1953*⁵ is amended by inserting after paragraph (b) of the definition of “concessional beneficiary” in subsection (1) the following paragraphs:

“(ba) a person:

(i) to whom paragraph (b) applied on 28 February 1991; and

(ii) to whom the paragraph would continue to apply but for section 50C of the *Veterans' Entitlements Act 1986* or Division 8A of Part III of that Act; or

(bb) a person:

(i) to whom paragraph (b) applied at any time after 21 August 1990 and before 21 March 1991; and

(ii) to whom the paragraph would continue to apply but for the person having invested the person's available money (within the meaning of section 50C of the *Veterans' Entitlements Act 1986*), or reinvested the person's deposit money (within the meaning of that section), in:

(A) an account with a financial institution; or

(B) a loan, including a loan by way of debentures, bonds or other securities; or

(C) an accruing return investment; or

(D) a market-linked investment; or

(E) an immediate annuity; or

(F) shares;

(within the meaning of that Act) in anticipation of, or because of, that section or Division 8A of Part III of that Act; or”.

PART 7—FURTHER AMENDMENTS

Consequential, minor and technical amendments

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

SCHEDULE

Section 88

CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS

PART 1—AMENDMENTS COMMENCING ON ROYAL ASSENT

Defence Force (Home Loans Assistance) Act 1990

Section 3 (definition of “non-DSH member”):

Add at the end “that has not been revoked”.

Seamen's War Pensions and Allowances Act 1940

Subsection 32AA(1):

Omit “qualified”, substitute “eligible”.

After subsection 32AA(1):

Insert:

“(1A) The requirement in subsection (1) does not apply if the person is outside Australia.”.

Subsection 32AA(3):

Omit “qualified”, substitute “eligible”.

Veterans' Entitlements Act 1986

Section 5 (Index):

(a) Omit the following entries:

“actual value	5M
granny flat interest	5L(8A)
rent	5N(4)”;

(b) Insert the following entries in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“actual value	5MC(4)
child of veteran or other person	10
deferred payment amount	5MB(6), (7), (8)
dependant	11
education leavers waiting period	5F(5A)
family member	5L(1)
fishing operations	5L(1)
foreign superannuation fund	5J(1)
foreign superannuation pension	5J(1)
forest operations	5L(1)
granny flat interest	5MA(2)
granny flat resident	5MA(3)
individual residence contribution	52M(1C)

SCHEDULE—continued

initial payment amount	5MB(4), (5)
marriage-like relationships	11A
primary producer	5L(1)
primary production	5L(1)
rent	5N(2), (3), (4)
retirement village resident	5M(5)
sale leaseback agreement	5MB(2), (3)
sale leaseback home	5MB(9)
sale leaseback resident	5MB(10), (11)
special residence	5MC(2)
special resident	5MC(3)
war-caused death	8
war-caused disease	5D(2), 9
war-caused injury	5D(2), 9”.

Subsection 5C(1) (definition of “defence force established by an allied country”):

Add at the end:

“Note 2: for an extended meaning of this term in relation to an allied veteran see subsection 5R(2).”.

Subsection 5C(3):

Add at the end:

“Note: for an extended meaning of the ‘defence force’ of a government-in-exile in relation to an allied veteran see subsection 5R(2).”.

Subsection 5E(2):

Add at the end:

“Note 3: subsection 5R(5) (determination in relation to ‘an illness separated couple’) is a qualification to the definition of ‘a member of a couple’.

Note 4: subsection 5R(6) (determination in relation to ‘a respite care couple’) is a qualification to the definition of ‘a member of a couple’.”.

Paragraph 5F(5)(c):

Omit “an unemployment benefit”, substitute “a newstart allowance”.

After paragraph 5H(8)(p):

Insert:

“(pa) if:

- (i) the person owes money under a mortgage or other arrangement; and
- (ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and
- (iii) payments are made to the creditor under the insurance;

SCHEDULE—continued

a payment so made;”.

Paragraph 5H(8)(q):

Add at the end:

“Note: these payments are to be disregarded in calculating the value of a person’s assets (see paragraph 52(1)(o)).”.

Subparagraph 5H(8)(v)(i):

Omit “unemployment benefit”, substitute “newstart allowance”.

Subsection 5J(1) (definition of “superannuation fund”):

Omit “(ia)”, substitute “(a)(ia)”.

Subsection 5N(1) (definition of “rent”):

Omit “subsection (2)”, substitute “subsections (2), (3) and (4)”.

Subsection 5Q(1) (paragraph (h) of the definition of “social security pension”):

Omit the paragraph, substitute:

“(h) special needs pension under Part 2.16;”.

Subsection 36A(1):

Add at the end:

“; or (d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or

(e) the person has not provided a tax file number for the person or the person’s partner (see section 128A).”.

Section 36C (Note):

Add at the end “and newstart allowance”.

Subsection 37A(1):

Add at the end:

“; or (d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or

(e) the person has not provided a tax file number for the person or the person’s partner (see section 128A).”.

Section 37C (Note):

Add at the end “and newstart allowance”.

Subsection 38A(1):

Add at the end:

“; or (d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or

SCHEDULE—continued

- (e) the person has not provided a tax file number for the person or the person's partner (see section 128A).".

Section 38C(1) (Note):

Add at the end "and newstart allowance".

Subsection 38P(1):

- (a) Before Note 1 insert:

"Note 1: this subsection refers to a person who is receiving a partner service pension from Veterans' Affairs and the person's partner who dies."

- (b) Renumber Note 1 as Note 2.
- (c) Renumber Note 2 as Note 3.
- (d) Renumber Note 3 as Note 4.
- (e) Renumber Note 4 as Note 5.

Subsection 38Q(2):

Omit the subsection.

Subsection 38R(2):

Omit the subsection.

Paragraph 39(1)(b):

Omit the paragraph, substitute:

"(b) lives in a home that is either:

- (i) the home of both the person and the severely handicapped veteran; or
- (ii) adjacent to the home of the severely handicapped veteran."

Subsection 39A(1):

Add at the end:

- "; or (e) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or
- (f) the person has not provided a tax file number for the person or the person's partner (see section 128A).".

Section 39C (Note):

Add at the end "and newstart allowance".

SCHEDULE—continued

Section 41 (Service Pension Rate Calculator Where There Are No Dependent Children—point 41-A1):

Add at the end:

“Note 4: the amount of a fortnightly instalment of pension will be rounded off to the nearest multiple of 10 cents (see subsections 58A(2) and (3)).

Note 5: for the minimum amount of a fortnightly instalment of pension see subsection 58A(4).”.

Section 41 (Service Pension Rate Calculator Where There Are No Dependent Children—point 41-F3):

Omit Note 4, substitute:

“Note 4: the assets value limit in column 3B of item 1 is adjusted annually in line with CPI increases (see section 59H). The other assets value limits are indexed annually in line with CPI increases (see sections 59B to 59E).”.

Section 42 (Service Pension Rate Calculator Where There Are Dependent Children—point 42-A1):

Add at the end:

“Note 5: the amount of a fortnightly instalment of pension will be rounded off to the nearest multiple of 10 cents (see subsections 58A(2) and (3)).

Note 6: for the minimum amount of a fortnightly instalment of pension see subsection 58A(4).”.

Section 42 (Service Pension Rate Calculator Where There Are Dependent Children—point 42-G3):

Omit Note 4, substitute:

“Note 4: the assets value limit in column 3B of item 1 is adjusted annually in line with CPI increases (see section 59H). The other assets value limits are indexed annually in line with CPI increases (see sections 59B to 59E).”.

Section 43 (Service Pension Rate Calculator For Blinded Veterans—point 43-A1):

Add at the end:

“Note 1: the amount of a fortnightly instalment of pension will be rounded off to the nearest multiple of 10 cents (see subsections 58A(2) and (3)).

Note 2: for the minimum amount of a fortnightly instalment of pension see subsection 58A(4).”.

Section 44 (Service Pension Rate Calculator For Widows, Widowers and Non-illness Separated Spouses—point 44-A1):

Add at the end:

“Note 3: the amount of a fortnightly instalment of pension will be rounded off to the nearest multiple of 10 cents (see subsections 58A(2) and (3)).

Note 4: for the minimum amount of a fortnightly instalment of pension see subsection 58A(4).”.

SCHEDULE—continued

Section 44 (Service Pension Rate Calculator For Widows, Widowers and Non-illness Separated Spouses—point 44-F3):

Omit Note 3, substitute:

“Note 3: the assets value limit in column 3B of item 1 is adjusted annually in line with CPI increases (see section 59H). The other assets value limits are indexed annually in line with CPI increases (see sections 59B to 59E).”.

After paragraph 46BA(a):

Insert:

“(aa) where the investment is an eligible investment in a body corporate or trust fund—the person transfers all or part of the investment to another body corporate or trust fund; or”.

After paragraph 46J(2)(a):

Insert:

“(aa) where the investment is an eligible investment in a body corporate or trust fund—the person transfers all or part of the investment to another body corporate or trust fund; or”.

After paragraph 52(1)(n):

Insert:

“; (o) the amount of any insurance or compensation payments received by the person because of the loss of, or damage to, buildings, plant or personal effects within the immediately preceding 12 months, or such longer period as the Commission determines for any special reason for a particular payment.”.

Subsection 52(1):

Add at the end:

“Note 2: the payments in paragraph (o) are not income for the persons of this Act (see paragraph 5H(8)(q)).”.

Subsection 53(1):

Add at the end:

“Note 2: some veterans who would otherwise have lost their entitlement to fringe benefits because of Division 8A of Part III are treated as continuing to be eligible for fringe benefits (see subsection 17(1) of the *Veterans' Entitlements (Rewrite) Transition Act 1991*).

Note 3: some veterans who would otherwise have lost their entitlement to fringe benefits because of investing money or re-investing money in anticipation of, or because of, Division 8A of Part III are treated as continuing to be eligible for fringe benefits (see subsection 17(2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991*).”.

After subsection 128A(2):

Insert:

“(2A) The requirement in subsection (2) does not apply if the person is outside Australia.”.

SCHEDULE—continued

After subsection 128A(3):

Insert:

“(3A) The requirement in subsection (3) does not apply if the person is outside Australia.”.

Subparagraph 128A(4)(a)(i):

Omit “qualified”, substitute “eligible”.

Subsection 128A(5):

Omit “qualified”, substitute “eligible”.

**PART 2—AMENDMENTS OF THE VETERANS’
ENTITLEMENTS ACT 1986 COMMENCING 1 JULY 1991,
IMMEDIATELY AFTER THE COMMENCEMENT OF THE
VETERANS’ ENTITLEMENTS AMENDMENT ACT 1991**

Subsection 5E(1) (paragraph (b) of the definition of “widow”):

Omit “her”, substitute “him”.

Subsection 5F(5):

Add at the end:

“Note: for ‘education leavers waiting period’ see subsection 5Q(1).”.

Paragraph 5H(8)(e) (Note):

Omit the Note, substitute:

“Note: however, a payment referred to in paragraph (b), (c), (d) or (e):

- is counted in working out the amount of rent assistance a person is entitled to, and may reduce that amount (see Rent Assistance Module of relevant Rate Calculator); and
- is counted in working out a person’s total income for the purposes of the hardship rules (see section 52Z).”.

Paragraph 5H(8)(g):

Add at the end:

“Note: however, a payment referred to in paragraph (f) or (g) is counted in working out a person’s total income for the purposes of the hardship rules (see section 52Z).”.

Subparagraph 5H(8)(zb)(ii):

After “recreation” insert “transport”.

Subsection 5Q(1):

Insert:

“ ‘education leavers waiting period’ means:

- (a) a newstart allowance education leavers waiting period under section 622 of the Social Security Act; or

SCHEDULE—continued

- (b) a job search allowance education leavers waiting period under sections 540 and 541 of that Act; or
- (c) a sickness allowance education leavers waiting period under sections 695 and 696 of that Act;”.

Paragraph 5R(10)(a):

Omit “(8)(a)”, substitute “(9)(a)”.

Paragraph 5R(10)(b):

Omit “(8)(b)”, substitute “paragraph (9)(b)”.

Paragraph 5R(10)(c):

Omit “(8)(c)”, substitute “paragraph (9)(c)”.

Subsection 11(1) (paragraph (c) of the definition of “dependant”):

After “widower”, insert “(other than a widow or a widower who marries or re-marries)”.

Paragraph 37P(3)(b):

Omit “able”, substitute “made”.

Section 41 (Service Pension Rate Calculator Where There Are No Dependent Children—point 41-C12):

Omit Note 3, substitute:

“Note 3: the free area is adjusted annually (see section 59GA).”.

Section 42 (Service Pension Rate Calculator Where There Are Dependent Children—point 42-D12):

Omit Note 3, substitute:

“Note 3: the basic free area is adjusted annually (see section 59GA).”.

Section 44 (Service Pension Rate Calculator for Widows, Widowers and Non-illness Separated Spouses—point 44-C12):

Omit Note 3, substitute:

“Note 3: the basic free area is adjusted annually (see section 59GA).”.

After subsection 52Z(3):

Insert:

“(3A) In working out the ordinary income of a person for the purposes of subsection (3), the following payments are to be counted:

- (a) a payment of an instalment of pension under Part II or IV;
- (b) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable because of subsection 4(6)

SCHEDULE—continued

or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

- (c) a payment of an instalment of a pension under the *Seamen's War Pensions and Allowances Act 1940*;
- (d) a payment (other than a payment referred to in paragraph (a), (b) or (c)) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged;
- (e) a payment by way of allowance (other than loss of earnings allowance) under Part VI of this Act;
- (f) a payment, by way of allowance, under regulation 37 of the *Seamen's War Pensions and Allowances Regulations*.

Note: the payments referred to in paragraphs (a) to (f) would not be considered ordinary income elsewhere in this Act (see subsections 5H(1) and (8)).”.

After paragraph 53D(1)(a):

Insert:

“(ab) the veteran is a veteran within the meaning of paragraph (a) of the definition of ‘veteran’ in subsection 5C(1); and”.

Paragraph 53D(1)(b):

Omit “(as defined by subsection 5C(1))”.

**PART 3—AMENDMENTS OF THE VETERANS’
ENTITLEMENTS ACT 1986 COMMENCING 1 JULY 1991,
IMMEDIATELY AFTER THE COMMENCEMENT OF
SECTION 19 OF THE VETERANS’ ENTITLEMENTS (REWRITE)
TRANSITION ACT 1991**

Paragraph 7A(1)(b):

- (a) Omit “Reserve)”, substitute “Reserve”.
- (b) Omit “description”, substitute “description”.

Paragraph 45B(2)(b):

Omit “greater”, substitute “less”.

**PART 4—AMENDMENTS COMMENCING 1 JULY 1991,
IMMEDIATELY AFTER THE COMMENCEMENT OF
SECTION 22 OF THE VETERANS’ ENTITLEMENTS (REWRITE)
TRANSITION ACT 1991**

Defence Service Homes Act 1918

**Subsection 4(1) (subparagraphs (g)(i) and (ii) of the definition of
“Australian Soldier”):**

Omit “5(12)”, substitute “5B(2)”.

SCHEDULE—continued

Paragraph 4(2)(a):

Omit “5(12)”, substitute “5B(2)”.

Veterans' Entitlements Act 1986

Subsection 46W(1):

Add at the end:

“Note: for ‘available money’ and ‘deposit money’ (see subsection 5H(1)).

(1A) For the purposes of this section:

- (a) ‘available money’ does not include money specified in a determination under section 46Z; and
- (b) ‘deposit money’ does not include money specified in a determination under section 46Z.”.

Subsection 46X(2):

Omit the subsection.

Subsection 46Y(2):

Omit the subsection.

Section 46Z:

Repeal the section, substitute:

Certain money to be disregarded

“46Z.(1) The Minister may determine that:

- (a) specified money of a person; or
- (b) specified money of a class of persons;

is to be disregarded in calculating a person’s available money or a person’s deposit money for the purposes of section 46W.

“(2) The determination is to be in writing.

“(3) The determination takes effect on the day on which the determination was made or on such later day or earlier day as is specified in the determination.”.

Subsection 46ZD(2):

Omit the subsection.

Subsection 46ZE(2):

Omit the subsection.

Section 46ZF:

Repeal the section, substitute:

SCHEDULE—continued

Certain loans to be disregarded

“46ZF.(1) The Minister may determine that:

- (a) specified loans; or
- (b) a specified class of loans;

are to be disregarded for the purposes of sections 46ZD and 46ZE.

“(2) The determination is to be in writing.

“(3) The determination takes effect on the day on which the determination was made or on such later day or earlier day as is specified in the determination.”.

PART 5—AMENDMENT OF THE VETERANS' ENTITLEMENTS ACT 1986 COMMENCING 22 MAY 1986, IMMEDIATELY AFTER THE COMMENCEMENT OF THAT ACT

Paragraph 6(1)(e):

After “person” (last occurring) insert “or the unit”.

PART 6—AMENDMENT OF THE VETERANS' ENTITLEMENTS ACT 1986 COMMENCING 23 FEBRUARY 1991

Subparagraph 7A(1)(a)(iii):

Omit “or 10”, substitute “, 10 or 11”.

PART 7—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986 COMMENCING 25 JUNE 1991

Paragraph 74(3)(a):

After “(3A)(a)”, insert “or (3B)(a)”.

After subsection 74(3A):

Insert:

“(3B) In this section, if:

- (a) a lump sum payment is made under section 30 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* to a person who is:
 - (i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or
 - (ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and

SCHEDULE—continued

- (b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of that incapacity or death;
the person is taken to have been, or to be, in receipt of payments of compensation:
- (c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and
- (d) at the rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary for the period until the person reaches 65; and
- (e) beginning:
- (i) on the day that the lump sum payment is made to that person; or
- (ii) on the day the pension becomes payable to the person; whichever is the later day.”.

**PART 8—AMENDMENTS COMMENCING
20 OCTOBER 1991**

Income Tax Assessment Act 1936

Paragraph 23AB(5)(c):

Omit “or 11”, substitute “, 11 or 12”.

Public Service Act 1922

Subsection 7(1) (definition of “Returned Soldier”):

Omit “or 11”, substitute “, 11 or 12”.

**PART 9—AMENDMENTS OF THE INCOME TAX
ASSESSMENT ACT 1936 COMMENCING 1 JULY 1992**

Section 24AC (Index—after the entry for special assistance):

Insert:

“Telephone allowance 24ACWA”.

After section 24ACW:

Insert:

Telephone allowance

“24ACWA. Payments under Part VIIB of the *Veterans' Entitlements Act 1986* are exempt.”.

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; Nos. 86 and 93, 1989; and Nos. 2, 14, 73, 74 and 208, 1991.
2. No. 60, 1940, as amended. For previous amendments, see No. 77, 1946; No. 80, 1950; Nos. 17 and 75, 1952; No. 70, 1953; No. 32, 1954; No. 40, 1955; No. 45, 1957; No. 48, 1958; No. 59, 1959; No. 46, 1960; No. 47, 1961; Nos. 64 and 113, 1964; No. 65, 1965; No. 43, 1966; No. 102, 1967; No. 67, 1968; No. 96, 1969; No. 61, 1970; Nos. 18 and 69, 1971; Nos. 16 and 83, 1972; Nos. 6 and 106, 1973; Nos. 4, 25 and 90, 1974; Nos. 35 and 111, 1975; Nos. 27, 91 and 112, 1976; No. 56, 1977; No. 129, 1978; Nos. 18 and 124, 1979; No. 129, 1980; No. 160, 1981; Nos. 80 and 100, 1982; No. 70, 1983; Nos. 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; Nos. 163 and 164, 1989; No. 119, 1990; and Nos. 2, 70 and 73, 1991.
3. 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; Nos. 56, 84 and 119, 1990; Nos. 2, 72, 73, 74 and 208, 1991; and Nos. 12 and 51, 1992.
4. No. 73, 1991, as amended. For previous amendments, see No. 74, 1991.
5. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100, and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991.

*[Minister's second reading speech made in—
House of Representatives on 7 May 1992
Senate on 28 May 1992]*