



Repatriation Legislation Amendment Act 1984

No. 97 of 1984

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CONSEQUENTIAL AMENDMENTS OF REPATRIATION ACT 1920

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CONSEQUENTIAL AMENDMENTS OF REPATRIATION (FAR EAST STRATEGIC
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SCHEDULE 3

CONSEQUENTIAL AMENDMENTS OF THE REPATRIATION (SPECIAL OVERSEAS
SERVICE) ACT 1962



Repatriation Legislation Amendment Act 1984

No. 97 of 1984

An Act relating to repatriation and related matters

[Assented to 9 October 1984]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Repatriation Legislation Amendment Act 1984*.

Commencement

2. This Act shall come into operation on 1 January 1985.

PART II—AMENDMENTS OF THE REPATRIATION ACT 1920

Principal Act

3. The *Repatriation Act 1920*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 6 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of "Board" and substituting the following definition:

"'Board' means the Veterans' Review Board established by this Act;";

- (b) by omitting from sub-section (1) the definition of "Tribunal";

- (c) by omitting from paragraph (3) (a) "or a Board"; and

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

"(b) a reference to a period of 3 months after the service on a person, in accordance with section 107VJ, of a copy of a decision of the Board;".

5. (1) Section 12 of the Principal Act is repealed and the following section is substituted:

Delegation by Commission

"12. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a Commissioner, or to an officer or employee of the Department, all or any of its powers and functions under this Act, or the regulations, other than this power of delegation.

"(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised or performed by the Commission.

"(3) A delegation of a power or function under this section does not prevent the exercise of the power, or the performance of the function, by the Commission.

"(4) Where—

- (a) the Commission delegates any of its powers or functions under a provision of this Act; and

- (b) that provision extends to and in relation to—

(i) members of the Forces within the meaning of the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Repatriation (Special Overseas Service) Act 1962*;

(ii) dependants of members referred to in sub-paragraph (i);

(iii) male or female members of the Interim Forces; or

(iv) dependants of members referred to in sub-paragraph (iii),

the delegation extends, unless the instrument of delegation otherwise provides, to the powers and functions of the Commission under that provision of this Act in its application to those members or dependants of members by virtue of section 7 of the *Repatriation (Far East Strategic Reserve) Act 1956*, section 7 of the *Repatriation (Special Overseas Service) Act 1962* or section 6, 7, 7AA or

7A of the *Interim Forces Benefits Act 1947*, whichever is applicable, and a power or function under such a provision, when exercised or performed by the delegate in relation to such a member or dependant, shall be deemed, for the purposes of the *Repatriation Act 1920* and of the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962* or the *Interim Forces Benefits Act 1947*, whichever is applicable, to have been exercised or performed by the Commission.”.

(2) An instrument of delegation in force immediately before the commencement of this Act under section 12 of the Principal Act continues in force after the commencement of this Act as if it had been made under section 12 of the Principal Act as amended by this Act.

Repatriation Boards

6. Sections 14, 15, 15A, 15B, 15C and 15D of the Principal Act are repealed.

Disclosure of interests of Commissioners in relation to claims for pensions, &c.

7. Section 17 of the Principal Act is amended—

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

“(i) is considering, or is to consider, a claim or application for pension;”;

(b) by omitting from paragraph (1) (d) “appeal,”;

(c) by omitting sub-paragraph (2) (a) (i) and substituting the following sub-paragraph:

“(i) is considering, or is to consider, a claim or application for pension;” and

(d) by omitting from paragraph (2) (c) “appeal,”.

Repeal of sections 17AAB and 17AAC

8. Sections 17AAB and 17AAC of the Principal Act are repealed.

Repeal of section 20

9. Section 20 of the Principal Act is repealed.

Pensions upon death or incapacity

10. Section 24 of the Principal Act is amended—

(a) by omitting from sub-section (2) “a Board” and substituting “the Commission”; and

(b) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Where a claim in accordance with section 25 for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for a pension, in accordance with an approved form, was received at an address of the Department.

“(4) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) a pension is granted to the person under this Division upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

Death or mental affliction of claimant

11. Section 24A of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) In this section, ‘claim’ means a claim or application for a pension, and includes—

- (a) an application under section 107VC for a review of a decision of the Commission;
- (b) a request under section 90C to review a decision, determination or assessment concerning a service pension; or
- (c) an application under section 107VZW for a review by the Administrative Appeals Tribunal,

and ‘claimant’ has a corresponding meaning.”.

12. Sections 24AA, 24AB, 25, 26, 27, 28 and 29 of the Principal Act are repealed and the following sections are substituted:

Claim for pension

“25. (1) A claim for pension—

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such evidence available to the claimant as he considers may support his claim; and
- (c) shall be made by forwarding the claim to the Secretary at an address of the Department together with any evidence in support of his claim referred to in paragraph (b).

“(2) Sub-section (1) shall not be taken to impose any onus of proof on a claimant or to prevent a claimant from submitting evidence in support of his claim subsequently to the making, but before the determination, of his claim.

“(3) Sub-section (1) does not apply to a claim for pension in respect of the incapacity of a member of the Forces in a case where there is in force a determination of the Commission, the Board or the Administrative Appeals Tribunal determining that the incapacity from which the member is suffering,—

- (a) in fact resulted from an occurrence that happened during his war service;
- (b) in fact resulted from his employment in connection with naval or military preparation or operations;
- (c) arose out of, or is attributable to, his war service; or
- (d) has been contributed to in any material degree, or has been aggravated, by the conditions of his war service,

but a pension has not been granted on the ground that the extent of the incapacity is insufficient to justify the grant of a pension.

“(4) In this section, ‘pension’ does not include a service pension.

Application for increase in pension

“26. (1) A member of the Forces who is in receipt of a pension under section 24 in respect of the incapacity of the member may apply for an increase in the rate of the pension on the ground that the incapacity of the member has increased since the rate of the pension was assessed or last assessed.

“(2) Where there is in force in respect of the incapacity of a member of the Forces a determination of a kind referred to in sub-section 25 (3) but a pension has not been granted to the member on the ground that the extent of the incapacity is insufficient to justify the grant of a pension under section 24, the member may make application for a pension on the ground that the incapacity of the member has increased since the grant of a pension in respect of the incapacity was refused or last refused.

“(3) An application under sub-section (1) or (2)—

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such evidence available to the applicant as he considers may support his application; and
- (c) shall be made by forwarding the application to the Secretary at an address of the Department, together with any evidence in support of his application referred to in paragraph (b).

“(4) Sub-section (3) shall not be taken to impose any onus of proof on an applicant or to prevent an applicant from submitting evidence in support of his application subsequently to the making, but before the determination, of his application.

“(5) Where the Commission grants an application under sub-section (1) or (2), the Commission may, subject to this Act, approve payment of pension at the increased rate, or payment of pension, from and including the date on which the application, in accordance with a form approved for the purposes of sub-section (3), was received at an address of the Department.

“(6) Where—

- (a) a person makes an application in writing of a kind referred to in sub-section (1) or (2), but otherwise than in accordance with a form approved for the purposes of sub-section (3);
- (b) the person subsequently makes an application of a kind so referred to in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his application in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) an increased pension, or a pension, is granted to the person under this Division upon consideration of that application in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the increased pension, or of the pension, from and including the date on which the application referred to in paragraph (a) was received at an address of the Department.

“(7) In this section, ‘pension’ does not include a service pension.

Who may make claim or application

“27. A claim under section 25 for a pension for a member of the Forces or for a dependant of a member of the Forces or deceased member of the Forces, an application under sub-section 26 (1) for an increase in the rate of pension payable to a member of the Forces or an application under sub-section 26 (2) for a pension for a member of the Forces may be made

- (a) by the member or dependant, as the case may be;
- (b) with the approval of the member or dependant, as the case may be, by another person on behalf of the member or dependant;
- (c) in the case of a member or dependant, as the case may be, who is unable, by reason of physical or mental incapacity, to approve a person to make the claim or application on his behalf—by another person, being a person approved by the Commission, on behalf of the member or dependant; or
- (d) in the case of a dependant who is under the age of 18 years, by—
 - (i) a parent or guardian of the dependant; or
 - (ii) another person approved by a parent or guardian of the dependant,on behalf of the dependant.

Investigation of claim by the Secretary

“28. (1) Where a claim is made for a pension in accordance with sub-section 25 (1), or an application is made for an increased pension in accordance with sub-section 26 (1) or for a pension under sub-section 26 (2), the Secretary shall cause an investigation to be made into the matters to which the claim or application relates.

“(2) The Secretary shall, upon completion of his investigation in respect of a claim or application, cause the claim or application to be submitted to the Commission for its consideration and determination.

“(3) A claim or application submitted to the Commission under sub-section (2) shall be accompanied by—

- (a) any evidence furnished by the claimant or applicant in support of the claim or application; and
- (b) all the records and other documents relevant to the claim or application that are under the control of the Department, including any evidence or documents relevant to the claim or application obtained in the course of the investigation of the claim or application under sub-section (1).

Duties of Commission in relation to pensions

“29. (1) It is the duty of the Commission—

- (a) in considering a claim or application submitted to it, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the determination of the claim or application;
- (b) to assess, from time to time, the rates of pensions of members of the Forces and their dependants, and determine the dates of the commencement and cessation of those pensions;
- (c) to determine, in such cases as the Commission deems proper, that payment of pension shall be suspended and fixing the date of any such suspension; and
- (d) to determine the date of re-commencement of a pension that has been suspended.

“(2) In this section, ‘pension’ does not include service pension.

Determination of claims and applications

“29A. (1) In this section, ‘claim’ means a claim made in accordance with section 25 or an application made in accordance with section 26.

“(2) Where a claim is submitted to the Commission in accordance with sub-section 28 (2), the Commission shall consider the claim and, after consideration of all matters that, in the opinion of the Commission are relevant, including, but without limiting the generality of the foregoing, the evidence, records and documents that were submitted with the claim in accordance with sub-section 28 (3), any evidence subsequently submitted to the Commission in relation to the claim, and any evidence, documents or other material furnished to the Commission under section 29B, shall, subject to sub-sections (3) and (4), determine the claim.

“(3) Where—

- (a) a claimant, being a member of the Forces, has refused or failed to undergo a medical examination for the purpose of the investigation of the claim or the consideration of the claim by the Commission; or

(b) a claimant has refused or failed—

- (i) to consent to the release to the Secretary or Commission of information concerning a member of the Forces for the purpose of the investigation or consideration of the claim; or
- (ii) to comply with a request under paragraph 29B (1) (c) to furnish material to the Commission,

the Commission may, if it is of the opinion that that medical examination, information or material is likely to affect the decision it will make in respect of the claim, defer further consideration of the claim until the member has undergone the medical examination, or the claimant has consented to the release of the information or furnished the material, as the case may be, and, if it does so, the Commission shall notify the claimant, either personally or by post, that the claim has been so deferred.

“(4) If, at the expiration of 6 months after a claimant has been notified under sub-section (3) that a claim has been deferred by reason of the refusal or failure of a member of the Forces to undergo a medical examination, the member has not undergone the medical examination, the claim shall, by force of this sub-section, be deemed to have been refused.

“(5) If, at the expiration of 6 months after a claimant has been notified under sub-section (3) that a claim has been deferred by reason that he has refused or failed to consent to the release of information or to furnish material—

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

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

Commission may take evidence

“29B. (1) Subject to sub-section (2), the Commission may, for the purposes of its consideration of a claim submitted to it in accordance with sub-section 28 (2) or of its review under section 31 of a decision in relation to pension—

- (a) summon a person to appear before the Commission to give evidence and produce such documents (if any) as are referred to in the summons;
- (b) take evidence on oath or affirmation;
- (c) request—
 - (i) in the case of consideration of a claim—the claimant or the Secretary; or
 - (ii) in the case of a review under section 31—a person likely to be affected by the review or the Secretary,

to furnish to the Commission material believed to be under his control and relevant to the determination of the claim, or the review of the decision; and

(d) request—

- (i) in the case of consideration of a claim—the claimant; or
- (ii) in the case of a review under section 31—the person likely to be affected by the review,

to attend before the Commission for a discussion of the claim, or of the review, as the case may be, or to discuss the claim, or the review, as the case may be, with the Commission by telephone.

“(2) Sub-section (1) does not authorize the Commission to summon—

- (a) for the purpose of its consideration of a claim—the claimant; or
- (b) for the purpose of a review under section 31—a person likely to be affected by the review,

to appear before the Commission to give evidence or to produce documents.

“(3) Where a claimant requests the Commission for an opportunity—

- (a) to attend before the Commission and discuss his claim with the Commission; or
- (b) to discuss his claim with the Commission by telephone,

the Commission shall, if it is of the opinion that the request is in all the circumstances reasonable, comply with the request.

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

“(5) The powers and duties of the Commission under this section may be exercised or performed on behalf of the Commission—

- (a) in relation to a claim—by a person to whom the Commission has delegated its powers under section 29A; or
- (b) in relation to a review under section 31—by a person to whom the Commission has delegated its powers under that section,

and, for the purpose of the exercise of those powers or the performance of those duties, sub-sections (1), (2) and (3) and (6) to (10), inclusive, of this section have effect as if a reference to the Commission included a reference to that person.

“(6) A person who has been summoned to appear as a witness before the Commission shall not, without reasonable excuse, and after tender of reasonable expenses, fail to appear in answer to the summons.

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

“(7) A person who appears before the Commission as a witness in answer to a summons shall not, without reasonable excuse, refuse to be sworn or make an affirmation.

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

“(8) Subject to sub-section (9), a person who appears before the Commission as a witness, otherwise than in answer to a summons, may be requested by the Commission to give evidence on oath, and, if he declines to be sworn or make an affirmation, his evidence shall not be received.

“(9) Sub-section (8) does not apply to a person who attends before the Commission for a discussion of a claim or review at the request of the Commission under sub-section (1) or at his own request under sub-section (3) or has a discussion with the Commission by telephone at his own request under sub-section (3).

“(10) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not, without reasonable excuse,—

(a) refuse to produce documents or to answer a question that he is required to answer by the Commission; or

(b) give evidence that is false or misleading in a material particular.

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

“(11) In this section—

‘claim’ includes application;

‘claimant’ includes applicant;

‘decision’ includes determination and assessment.

Withdrawal of claim or application

“29C. (1) A claimant or applicant may, at any time before his claim or application is determined by the Commission, by notice in writing forwarded to the Secretary at an address of the Department, withdraw his claim or application.

“(2) The withdrawal of a claim or application does not prevent the claimant from subsequently making another claim under section 25, or the applicant from subsequently making another application under section 26.

Payment of travelling expenses in respect of certain attendances

“29D. (1) Subject to such conditions as the Commission determines, where—

(a) a claimant or applicant; or

(b) a person likely to be affected by a review under section 31,

travels within Australia for the purpose of attending, at the request of the Commission or a delegate of the Commission, before the Commission or such a delegate, for a discussion in relation to the claim, application or review, he is entitled to receive such travelling expenses in connection with that travel as are prescribed.

“(2) Subject to such conditions as the Commission determines, an attendant who travels in Australia for the purpose of accompanying a claimant, applicant or person likely to be affected by a review under section 31 to a discussion referred to in sub-section (1) of this section is entitled to be paid such

travelling expenses in connection with that travel as the Commission considers reasonable.”.

13. Section 31 of the Principal Act is repealed and the following section is substituted:

Review by Commission

“31. (1) Where—

- (a) the time for making application to the Board under section 107VC for a review of a decision of the Commission under section 29A has not expired; or
- (b) an application has been duly made to the Board under section 107VC for a review of such a decision of the Commission but has not been determined by the Board,

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

“(2) Where application has been duly made, otherwise than by the Commission, to the Administrative Appeals Tribunal under section 107VZW for a review of—

- (a) a decision of the Commission that has been affirmed by the Board; or
- (b) a decision made by the Board in substitution for a decision of the Commission,

but the review has not been determined, the Commission may, in its discretion, review that decision and, if it varies that decision, it may approve as the date as from which the variation shall operate a date not earlier than the earliest date as from which the decision as so varied could have operated if the variation had been made by the Administrative Appeals Tribunal upon a review of the decision.

“(3) The Commission may, for the purpose only of correcting a manifest error, vary the date approved by the Board as the date from which a decision of the Board made in substitution for a decision of the Commission is to operate.

“(4) Where the Commission is satisfied that evidence before the Commission when it made a decision was false in a material particular, the Commission may, in its discretion, review the decision and, if it varies the decision, it may approve as the date as from which the variation shall operate a date, which may be a date before or after the commencement of the review, considered by the Commission to be appropriate in all the circumstances.

“(5) For the purposes only of approving a date under sub-section (1) or (2) as the date as from which a variation of a decision to which paragraph (1) (a) or (2) (a) applies shall operate, the Commission shall assume that an application had been made to the Board or Administrative Appeals Tribunal,

as the case may be, to review the decision on the date on which the Commission commenced its review of the decision.

“(6) If the Commission refuses or fails to review a decision in relation to pension, the refusal or failure is not subject to review by the Board or by the Administrative Appeals Tribunal.

“(7) A decision by the Commission upon its review under this section of a decision in relation to pension is not subject to review by the Board or the Administrative Appeals Tribunal unless the Commission revokes or varies the decision reviewed by the Commission.

“(8) This section applies to and in relation to a decision made before or after the commencement of this section but does not apply to or in relation to a decision of the Board referred to in sub-section 107VY (1) that is binding on the Commission by reason that the period specified in that sub-section has not expired.

“(9) In this section—

‘decision’ includes determination and assessment;

‘pension’ does not include service pension.”.

14. Section 47A of the Principal Act is repealed and the following section is substituted:

Reasons for decisions to be given

“47A. (1) Where the Commission makes a decision—

- (a) with respect to a claim for a pension in accordance with section 25, or an application for a pension or increased pension in accordance with section 26; or
- (b) to revoke or vary a decision upon a review carried out under section 31,

the Commission shall make a written record of its decision together with a statement in writing setting out its findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving its reasons for the decision.

“(2) As soon as practicable after the Commission makes a decision referred to in sub-section (1), the Commission shall, subject to sub-section (3), cause to be served—

- (a) in the case of a decision in respect of a claim or application—on the claimant or applicant; or
- (b) in the case of a decision upon a review carried out under section 31—on the person affected by the review,

a copy of its decision and of the statement relating to the decision made by it in accordance with sub-section (1), together with particulars of the right of the person on whom it is served to have the decision reviewed by the Board.

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

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

the document served on him in pursuance of sub-section (2) shall not contain or refer to that information, opinion or matter.”.

15. After section 87 of the Principal Act the following sections are inserted:

Claim for service pension, &c.

“88. A claim for service pension—

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such evidence available to the claimant as he considers may support his claim; and
- (c) shall be made by forwarding the claim to the Secretary at any address of the Department, together with any evidence in support of his claim referred to in paragraph (b).

Duties of Commission in relation to service pensions

“89. It is the duty of the Commission, in relation to service pensions—

- (a) in considering a claim for a service pension submitted to it, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the determination of the claim; and
- (b) to assess, from time to time, the rates of service pensions of service pensioners and their dependants, and determine the dates of commencement and cessation of those service pensions.

Investigation of claim by the Secretary

“90. (1) Where a claim for service pension is made in accordance with section 88, the Secretary shall cause an investigation to be made into the matters to which the claim relates.

“(2) The Secretary shall, upon completion of his investigation in respect of a claim, cause the claim to be submitted to the Commission for its consideration and determination.

“(3) A claim submitted to the Commission under sub-section (2) shall be accompanied by—

- (a) any evidence furnished by the claimant in support of the claim; and
- (b) any documents relevant to the claim under the control of the Department, including any evidence or documents relevant to the claim obtained in the course of the investigation of the claim under sub-section (1).

Determination of claim for service pension

"90A. (1) Where a claim for service pension is submitted to the Commission in accordance with sub-section 90 (2), the Commission shall consider the claim and, after consideration of all matters that, in the opinion of the Commission, are relevant, including, but without limiting the generality of the foregoing, the evidence and documents submitted with the claim in accordance with sub-section 90 (3) and any further evidence subsequently submitted to the Commission in support of the claim, shall determine the claim.

"(2) Where a service pension is granted to a person under this section, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than the date on which his claim for service pension, in accordance with the form approved for the purposes of section 88, was received at an address of the Department.

"(3) Where—

(a) a person makes a claim for a service pension in writing, but otherwise than in accordance with the form approved for the purposes of section 88;

(b) the person subsequently makes a claim for the service pension in accordance with the form so approved—

(i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with the form so approved; or

(ii) within 3 months after he had been so notified; and

(c) a service pension is granted to the person under this section upon consideration of that claim in accordance with the form so approved,

the Commission may, subject to this Act, approve payment of the service pension from and including a date not earlier than the date on which the claim referred to in paragraph (a) was received at an address of the Department.

Withdrawal of claim for service pension, &c.

"90B. (1) A claimant for service pension may, at any time before his claim is determined by the Commission, by notice in writing forwarded to the Secretary at an address of the Department, withdraw his claim.

"(2) The withdrawal of a claim for service pension does not prevent the claimant from subsequently making another claim for a service pension.

Review of decision, &c.

"90C. (1) Subject to sub-section (3), a claimant who is dissatisfied with—

(a) a decision of the Commission in respect of his claim for a service pension; or

(b) a decision of the Commission under section 98 cancelling or suspending a service pension or reducing the rate of a service pension,

may, subject to sub-section (3), request the Commission, in writing, to review the decision, and, where a claimant duly makes such a request, the Commission

shall review the decision or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

“(2) The Commission, or a person to whom the Commission has delegated its powers under this section, has, for the purposes of reviewing a decision under sub-section (1), all the powers of the Board under section 107VV and, for the purpose of the application of that section accordingly—

- (a) a reference in that section to the Board shall be read as a reference to the Commission, or the person to whom the Commission has so delegated its powers, as the case requires;
- (b) a reference in that section to the presiding member of the Board shall be read as a reference to the presiding member of the Commission or the person to whom the Commission has so delegated its powers, as the case requires; and
- (c) a reference in that section to a review shall be read as a reference to a review under this section.

“(3) A request under sub-section (1) to review a decision of the Commission may be made within 3 months after service on the person to whom the decision relates of notice of the decision, but not otherwise.

“(4) Where the Commission reviews a decision under sub-section (1), the Commission may affirm or set aside the decision and, if it sets aside the decision, it shall make such other decision as it considers to be in accordance with this Act.

“(5) Where the Commission makes a decision, in substitution for the decision set aside, granting the claim for service pension or increasing the rate at which service pension is to be payable, it may approve payment of service pension, or payment of service pension at the increased rate, as from a date not earlier than the date from which the Commission could have approved payment of service pension, or service pension at the increased rate, if it had made the substituted decision in place of the original decision.

“(6) In this section, ‘decision’ includes a determination and an assessment.

Reasons for decision to be given

“90D. (1) Where the Commission makes a decision upon a review of a decision under section 90C, the Commission shall make a written record of its decision together with a statement, in writing, setting out its findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving its reasons for the decision.

“(2) As soon as practicable after the Commission makes a decision referred to in sub-section (1), the Commission shall, subject to sub-section (3), cause to be served on the claimant or other person to whom the decision relates, a copy of its decision and of the statement relating to its decision made by it in accordance with sub-section (1), together with particulars of any right of the

person on whom it is served to have the decision reviewed by the Administrative Appeals Tribunal.

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

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

the document served on him in pursuance of sub-section (2) shall not contain or refer to that information, opinion or other matter.

“(4) In this section, ‘decision’ includes a determination and an assessment.”.

Liability of the Commonwealth to pay pensions to certain male members of the Forces

16. Section 101 of the Principal Act is amended by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Where a claim in accordance with section 25 for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

“(4) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

Liability of Commonwealth to pay pensions to certain male members of the Forces

17. Section 107C of the Principal Act is amended by omitting sub-sections (5) and (5A) and substituting the following sub-sections:

“(5) Where a claim in accordance with section 25 for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

“(5A) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—

- (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or

- (ii) within 3 months after he had been so notified; and

- (c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

Liability of Commonwealth to pay pensions to certain members of the Forces, &c.

18. Section 107M of the Principal Act is amended by omitting sub-sections (5), (6) and (7) and substituting the following sub-sections:

“(5) Where a claim in accordance with section 25 for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

“(6) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—

- (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or

- (ii) within 3 months after he had been so notified; and

- (c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

19. Parts IIIA, IIIB and IIIC of the Principal Act are repealed and the following Parts are substituted:

“PART IIIA—VETERANS’ REVIEW BOARD

“Division 1—Preliminary

Interpretation

“107VA. In this Part, unless the contrary intention appears—

‘applicant’ means a person who makes an application;

‘application’ means an application under this Part to the Board for a review of a decision of the Commission;

‘decision’, in relation to the Commission, includes a determination of the Commission and an assessment made by the Commission;

‘member’ means the Principal Member, a Senior Member or another member of the Board;

‘member of the Forces’ means—

(a) a person who is a member of the Forces within the meaning of section 23, 100, 105, 107B or 107F;

(b) a person who is a member to whom Division 10 of Part III applies by virtue of the definition of ‘member to whom this Division applies’ in section 107I; or

(c) a person to whom certain provisions of this Act extend by virtue of section 102, 107, 107D or 107G,

whichever is appropriate;

‘pension’ does not include service pension;

‘Principal Member’ means the Principal Member of the Board;

‘review’ means a review of a decision;

‘Senior Member’ means a Senior Member of the Board;

‘Services member’ means a member who, on the occasion of his appointment, or on any occasion of his re-appointment, as a member, was a person selected from lists submitted in accordance with a request made under sub-section 107VZC (3).

"Division 2—Establishment of the Veterans' Review Board

Establishment of Veterans' Review Board

"107VB. There is hereby established a Veterans' Review Board, which shall consist of a Principal Member and such number of Senior Members, and such number of other members, as are appointed in accordance with this Act.

"Division 3—Review by the Board of decisions

Review of decisions in respect of pensions

"107VC. (1) Where a person—

- (a) who has made a claim for a pension in accordance with section 25; or
- (b) who has made application for a pension, or for an increased pension, in accordance with section 26,

is dissatisfied with any decision of the Commission in respect of the claim or application (not being a decision under sub-section 29A (3)), the person may, subject to this Act, make application to the Board for a review of the decision of the Commission.

"(2) Where the Commission, upon a review under section 31 of a decision in relation to pension, has made a further decision revoking or varying that decision, the member of the Forces, or the dependant of a member of the Forces or deceased member of the Forces, as the case may be, affected by that further decision may make application to the Board for a review—

- (a) of the further decision of the Commission revoking that previous decision; or
- (b) of that previous decision as varied by the further decision of the Commission,

as the case may be.

"(3) Subject to sub-section (4), an application under sub-section (1) or (2) to the Board to review a decision of the Commission may be made within 12 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 47A (2), but not otherwise.

"(4) An application under sub-section (1) or (2) to the Board to review a decision of the Commission—

- (a) assessing a rate of pension or increased rate of pension;
- (b) refusing to grant a pension on the ground that the extent of the incapacity of the member of the Forces is insufficient to justify the grant of a pension;
- (c) refusing to increase the rate of a pension; or
- (d) reducing the rate of a pension,

may be made within 3 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 47A (2), but not otherwise.

Application for review

"107VD. (1) An application to the Board for a review—

- (a) shall be in writing;
- (b) shall be forwarded to the Secretary at an address of the Department; and
- (c) shall, for the purposes of this Act, be deemed to have been made on the date on which the application is received at an address of the Department.

and may set out a statement of the reasons for the application.

"(2) An application under sub-section (1) relating to a pension granted to, or claimed for, a member of the Forces, or a dependant of a member of the Forces or deceased member of the Forces, may be made—

- (a) by the member or dependant, as the case may be;
- (b) with the approval of the member or dependant, as the case may be, by another person on behalf of the member or dependant;
- (c) in the case of a member or dependant, as the case may be, who is unable, by reason of physical or mental incapacity, to approve a person to make an application on his behalf—on behalf of the member or dependant, by a person approved by the Commission; or
- (d) in the case of a dependant who is under the age of 18 years, on behalf of the dependant
 - (i) by a parent or guardian of the dependant; or
 - (ii) by another person approved by a parent or guardian of the dependant.

"(3) Sub-section (2) does not limit the application of section 24A in relation to applications under sub-section (1) of this section.

Secretary to prepare report

"107VE. (1) Within 6 weeks after receipt by the Secretary of an application for review made under sub-section 107VC (1) or (2), the Secretary shall—

- (a) cause to be prepared a report referring to the evidence under the control of the Department that is relevant to the review; and
- (b) subject to sub-section (2), cause a copy of that report to be served personally or by post on the applicant.

"(2) Where the report prepared by the Secretary in pursuance of sub-section (1) contains or refers to any information, opinion or other matter—

- (a) that, in the opinion of the Secretary, is of a confidential nature; or
- (b) that, in the opinion of the Secretary, it might be prejudicial to the physical or mental health or well-being of the applicant to communicate to the applicant,

the document served on the applicant in pursuance of paragraph (1) (b) shall not contain or refer to that information, opinion or other matter.

“(3) Where a copy of a report is served on an applicant in accordance with sub-section (1), the applicant may, within 28 days after service of the report on him or within such further period as he may request in writing before the expiration of that period, furnish to the Secretary in writing any comments he wishes to make concerning the report.

“(4) Upon the expiration of the period or extended period referred to in sub-section (3), the Secretary shall forward to the Principal Member of the Board all the relevant documents, including any comments furnished to the Secretary by the applicant concerning the report served on the applicant and, if a further investigation has been made in consequence of those comments of the applicant, a supplementary report referring to any evidence obtained in that further investigation.

Board not bound by technicalities, &c.

“107VF. (1) The Board, in conducting a review, in hearing a review or in making a decision on a review—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) shall act according to substantial justice and the merits and all the circumstances of the case and, without limiting the generality of the foregoing, shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to—
 - (i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; or
 - (ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the service of a member of the Forces was not reported to the appropriate authorities.

“(2) The Commission may make available to the Board—

- (a) statements of principles applied by the Commission in deciding claims for pension and applications for pension and increased pension and in conducting reviews under section 31; and
- (b) such other material as the Commission considers may be of assistance to the Board in the exercise of its powers or the performance of its functions under this Act.

“(4) Nothing in this section authorizes the Commission to direct the Board with respect to its consideration of a particular review by the Board.

Decision of Board

“107VG. (1) On a review, the Board shall have regard to the evidence that was before the Commission when the decision the subject of the review was made and to any further evidence before the Board on the review that was not before the Commission but would have been relevant to the making of the decision by the Commission.

“(2) It is the duty of the Board, in reviewing a decision of the Commission, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to that review.

“(3) On the completion of its consideration of a review of a decision—

- (a) if the decision was a decision to refuse to grant a claim for a pension—the Board shall set aside the decision unless it is satisfied, beyond reasonable doubt, that there were insufficient grounds for granting the claim or application; or
- (b) in any other case—the Board shall set aside the decision unless it is satisfied, beyond reasonable doubt, that the decision is the decision that the Board would have made if it had had the responsibility for making the decision the subject of the review.

“(4) Where the Board sets aside a decision of the Commission on a review of that decision, the Board shall substitute for that decision such other decision as the Board considers to be in accordance with this Act and, for that purpose, the Board may exercise all the powers and discretions that are conferred on the Commission.

“(5) Without limiting the generality of sub-section (4), where the Board sets aside a decision of the Commission refusing to grant a pension to a person and substitutes for it a decision granting a pension to the person, the Board shall assess the rate at which the pension is to be paid to the person or remit the matter to the Commission to assess the rate at which the pension is to be paid to the person.

“(6) Where the Board does not set aside a decision of the Commission on a review of the decision, it shall affirm the decision.

Further evidence relating to incapacity

“107VH. Where—

- (a) on a review of a decision made by the Commission upon an application under sub-section 26 (1) or (2), there is before the Board further evidence that was not before the Commission; and
- (b) by reason of that further evidence, the Board has reason to believe that there has been a change in the incapacity of the applicant since the date of that decision,

the Board shall, for the purpose of the review, disregard that further evidence to the extent that it relates to the incapacity of the applicant at any time after the date of that decision, but may, after making its decision on the review, refer the assessment back to the Commission for re-consideration in the light of that further evidence.

Statements of decisions of the Board, &c.

“107VJ. (1) Where the Board reviews a decision of the Commission, the Board shall—

- (a) record its decision on the review in writing;

- (b) prepare a written statement setting out its reasons for that decision, including its findings on any material questions of fact, and referring to the evidence or other material on which those findings were based;
- (c) file the decision and the written statement with the records of the case; and
- (d) cause to be served, either personally or by post, on each of the relevant persons—
 - (i) a copy of the decision; and
 - (ii) subject to sub-section (2), a copy of the written statement referred to in paragraph (b) of this sub-section,and, on the applicant for the review or a person authorized by the applicant, particulars of the person's right to make application to the Administrative Appeals Tribunal for a review of the decision of the Commission affirmed by that decision of the Board or the decision of the Board in substitution for the decision of the Commission set aside by the Board, as the case may be.

“(2) Where a statement prepared by the Board in pursuance of paragraph (1) (b) upon a review of a decision of the Commission contains or refers to any information, opinion or other matter—

- (a) that, in the opinion of the Board, is of a confidential nature; or
- (b) that, in the opinion of the Board, it might be prejudicial to the physical or mental health or well-being of the relevant person to communicate to the applicant,

the document served on the applicant in pursuance of sub-paragraph (1) (d) (ii) shall not contain or refer to that information, opinion or other matter.

“(3) In this section, ‘relevant person’, in relation to a review, means—

- (a) the applicant for the review, or a person authorized by the applicant; or
- (b) the Commission.

“Division 4—Organization of the Board

Constitution of Board for exercise of powers

“107VK. (1) Subject to this section, the Board shall, for the purposes of a review, be constituted by—

- (a) the Principal Member or a Senior Member;
- (b) a Services member; and
- (c) one other member.

“(2) With the approval of the Minister, the Board may, for the purposes of a particular review, or of a review included in a particular class of reviews, be constituted by—

- (a) the Principal Member or a Senior Member; or
- (b) one other member,

only.

Principal Member responsible for arrangement of business

"107VL. (1) The Principal Member is responsible for the efficient operation of the Board.

"(2) The Principal Member may give directions—

- (a) for the purpose of increasing the efficiency of the operations of the Board; and
- (b) as to the arrangement of the business of the Board.

Members to constitute Board

"107VM. (1) The Principal Member may give directions, from time to time, as to the persons who are to constitute the Board for the purpose of a particular review or particular reviews.

"(2) A direction under this section—

- (a) may specify the particular review or particular reviews to which it relates; or
- (b) may be expressed to relate to such reviews as the Principal Member may allocate from time to time to the Board as constituted by the direction.

Member ceasing to be member, &c.

"107VN. (1) Where one of the members constituting the Board by virtue of a direction under section 107VM ceases to be a member or ceases to be available for the purposes of a review, the 2 remaining members shall be deemed to constitute the Board by virtue of the direction given under section 107VM until the Principal Member otherwise directs.

"(2) Where the member referred to in sub-section (1) is the Principal Member or a Senior Member, the Principal Member shall direct which of the 2 remaining members shall preside at any hearing of the review.

"(3) Where a review re-allocated under sub-section (1) had been commenced, but had not been completed, before the re-allocation took place, the Board as constituted for the purpose of that review by virtue of that re-allocation may, in the review before it, have regard to any record of the review before the Board as previously constituted.

Places of sitting

"107VP. Sitzings of the Board shall be held from time to time as required, and at such places in Australia as may be convenient.

"Division 5—Proceedings before the Board

Principal Member or Senior Member to preside at hearing

"107VQ. (1) Where the Principal Member is included in the members constituting the Board for the purpose of a review, he shall preside at any hearing of the review.

“(2) Where the Principal Member is not included in the members constituting the Board for the purpose of a review, the Senior Member who is included in those members shall preside at any hearing of the review.

Parties to review before Board

“107VR. (1) The parties to a review by the Board of a decision of the Commission are—

- (a) the applicant for the review; and
- (b) the Commission.

“(2) A party to a review may—

- (a) appear in person, or be represented at his own expense by a person other than a legal practitioner, at any hearing of the review; or
- (b) if, for any reason, he wishes the review to proceed in his absence, make such submissions, in writing, to the Board as he considers are relevant to the review.

“(3) In this section, a reference to a legal practitioner shall be read as including a reference to any person who—

- (a) holds a degree of Bachelor of Laws, Master of Laws or Doctor of Laws or Bachelor of Legal Studies; or
- (b) is otherwise qualified for admission as a barrister, solicitor, or barrister and solicitor, of the High Court or of the Supreme Court of a State or Territory.

Procedure of Board

“107VS. (1) The Principal Member shall, upon receipt of the relevant documents relating to a review of a decision of the Commission, cause to be served, personally or by post, on each party to the review a notice informing the party that the Board is to review the decision of the Commission and requesting the party to inform the Principal Member, in writing, within a reasonable time specified in the notice, whether he wishes to appear on the hearing of the review and, if he wishes so to appear, whether he intends to appear on the hearing personally or by another person under section 107VR.

“(2) Where either party to a review of a decision of the Commission informs the Principal Member that the party wishes to appear on the hearing of the review of the decision by the Board, the Principal Member shall—

- (a) cause a date, time and place to be fixed for the hearing of the review; and
- (b) cause notice of the date, time and place so fixed to be served on each party to the review either personally or by post.

“(3) The Principal Member may defer fixing a date, time and place for the hearing of a review under sub-section (2) until the parties to the review have informed him that they are ready to proceed at a hearing.

“(4) Where a party to a review of a decision of the Commission does not inform the Principal Member, within the time specified in the notice served on

the party under sub-section (1), that the party wishes to appear on the hearing of the review, the review may be heard and determined in the absence of that party.

“(5) The Principal Member may give directions, not inconsistent with sub-sections (1), (2), (3) and (4), as to the procedure of the Board with respect to reviews before it.

“(6) The presiding member in respect of a particular review may, in respect of a matter not dealt with by directions under sub-section (5), give directions, not inconsistent with sub-sections (1), (2), (3) and (4), as to the procedure to be followed on a hearing of the review.

“(7) In giving a direction under this section, the Principal Member or a presiding member shall have regard to the need for the review to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Board permit.

Questions to be decided by majority of Board

“107VT. (1) A question before the Board on a review shall be decided according to the opinion of a majority of the members constituting the Board.

“(2) Where the Board is constituted for the purposes of a review by 2 members only and the 2 members cannot agree on a question arising in the review, the Board shall adjourn the review and refer the matter to the Principal Member for the giving of any necessary directions, or the taking of any other action, under section 107VM.

Hearing to be in private except in special circumstances

“107VU. (1) Subject to this section, the hearing of a review shall be in private.

“(2) The presiding member may give directions (whether in writing or otherwise) as to the persons who may be present at any hearing of a review.

“(3) If requested to do so by the applicant, the presiding member may permit a hearing, or a part of a hearing, of a review to take place in public.

Powers of Board

“107VV. (1) The Board may

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

“(2) The presiding member in relation to a review may—

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

(c) administer an oath or affirmation to a person so appearing.

"(3) The applicant for a review by the Board of a decision of the Commission is a competent and compellable witness upon the hearing of the review of that decision by the Board.

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

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

"(6) Where a person other than the presiding member in relation to a review is authorized, in accordance with sub-section (5), to take evidence for the purposes of the review—

- (a) the first-mentioned person has, for the purposes of taking that evidence, all the powers of the Board under sub-section (1) and all the powers of the presiding member under sub-section (2); and
- (b) for the purpose of the exercise of those powers by the first-mentioned person, this Part has effect (except where the context otherwise requires) as if a reference to the Board, or to the presiding member, in relation to the review included a reference to the first-mentioned person.

Request to Secretary for documents, &c.

"107vw. (1) The Board may, at any time, request the Secretary—

- (a) to forward to the Board further documents in his custody relating to a review;
- (b) to obtain, and forward to the Board, further documents relating to a review; or
- (c) to arrange for the making of any investigation, or any medical examination, that the Board thinks necessary with respect to a review, and to forward to the Board a report of that investigation or examination.

"(2) Where a request is made under sub-section (1), the Board shall adjourn any hearing of the review to which the request relates and may, in the case of a review of a decision with respect to a pension assessment, vary that assessment pending the completion of that review, having regard to the records and evidence on which the Commission reached that decision.

Information may be made available to parties

"107VX. (1) Subject to sub-section (2), where, after the relevant documents relating to a review have been submitted to the Board in accordance with sub-section 107VE (4) and before the commencement of the hearing of the review, a party to the review furnishes any information to the Board for the purposes of the review, the Board shall make that information available to the other party to the review.

"(2) Where the Board is of the opinion—

- (a) that any information under the control of the Board is of a confidential nature; or
- (b) that it might be prejudicial to the physical or mental health or well-being of the applicant to communicate any such information to the applicant,

the Board may refrain from making it available to the applicant, but may make it available to a person representing the applicant.

Period of operation of certain decisions of Board

"107VY. (1) A decision of the Board on a review of a decision of the Commission to which sub-section 107VC (4) applies shall, unless reviewed by the Administrative Appeals Tribunal and subject to sub-section (2) of this section, be binding upon the applicant and the Commission for a period of 6 months commencing on the day on which the Board makes that decision.

"(2) If, during the period referred to in sub-section (1), the applicant is of the opinion that his incapacity has increased, sub-section (1) does not prevent—

- (a) the applicant from making application under sub-section 26 (1) or (2) for an increased pension or for a pension; or
- (b) the grant of an increased pension, or a pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board upon review of the decision of the Commission on such an application.

Withdrawal of application

"107VZ. (1) An applicant for review by the Board of a decision of the Commission may withdraw his application at any time before the Board has commenced the review and, with the consent of the Board, at any time after the Board has commenced the review.

"(2) The withdrawal of an application to review a decision of the Commission does not prevent the applicant from subsequently making another application under section 107VC to review that decision within the time allowed by that section.

"Division 6—Date of operation of decisions of Board

Board to specify date of operation

"107VZA. The Board shall specify in a decision on a review under this Part the date from which the decision is to operate, being a date fixed in accordance with section 107VZB.

Dates that may be specified

"107VZB. (1) Where the Board, upon its review of a decision of the Commission refusing to grant a pension to a person, sets aside that decision and substitutes for it a decision to grant a pension to the person, the Board may fix, as the date from which its decision is to operate—

- (a) if the person made application for the review within 3 months after service on him of a copy of the decision of the Commission—a date not earlier than the earliest date from which the Commission could, if it had not made that decision, have approved payment of a pension to the person; or
- (b) in any other case—a date not more than 6 months before the date on which the person's application for review of that decision was received at an address of the Department.

"(2) Where the Board, upon its review of a decision of the Commission assessing a rate or increased rate of pension or refusing to increase the rate of a pension, sets aside that decision and substitutes for it a decision that increases the rate of that pension, the Board may fix, as the date from which its decision is to operate, a date not earlier than the earliest date which the Commission could, if it had not made that decision, have fixed as the date from which pension at that increased rate was to be payable.

"(3) Where the Board, on a review of a decision of the Commission under section 31 to revoke or vary a decision in relation to pension, sets aside the decision the subject of the review and substitutes another decision for it, the Board may fix, as the date from which its decision is to operate, a date not earlier than the earliest date from which that substituted decision could have operated if it had been made in place of the decision under review.

"Division 7—Membership of the Board

Appointment of members of Board

"107VZC. (1) The members of the Board shall be appointed by the Governor-General.

"(2) The members of the Board shall include—

- (a) persons who were selected from lists submitted in accordance with a request made under sub-section (3); and
- (b) persons who are medical practitioners.

"(3) The Minister may, from time to time, request organizations representing returned soldiers throughout Australia to submit to him lists of names of persons from which the organization concerned recommends that a selection be made of persons to serve as Services members of the Board.

"(4) The Principal Member shall be appointed as a full-time member.

"(5) A member other than the Principal Member may be appointed either as a full-time member or as a part-time member.

Terms of appointment

"107VZD. (1) Subject to this Division, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

"(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member, and a person shall not be appointed or re-appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.

"(3) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Part, as are determined by the Governor-General by instrument in writing.

Remuneration and allowances of members

"107VZE. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed.

"(2) A member shall be paid such allowances as are prescribed.

"(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Acting members

"107VZF. (1) The Minister may appoint a person to act as a member—

- (a) during any period, or during all periods, when a member, being a full-time member, is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office; or
- (b) during any period, or during all periods, when a member, being a part-time member, is, for any reason, unavailable to perform the duties of his office.

"(2) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a member in pursuance of an appointment under sub-section (1); and
- (b) at any time terminate such an appointment.

"(3) Where a person is acting as a member in accordance with paragraph (1) (a) or (b) and the office of that member becomes vacant while the person is

so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(4) Where a person has been appointed under sub-section (1) to act in the place of a member (in this sub-section referred to as the ‘absent member’) who is absent or unavailable, the Minister may, by reason of a pending review or other special circumstances, direct, before the absent member ceases to be absent or unavailable, that the person so appointed shall continue to act in the appointment after the absent member ceases to be absent or unavailable, until the person so appointed resigns the appointment or the Minister terminates the appointment, but a person shall not continue to act by virtue of this sub-section for more than 12 months after the absent member ceases to be absent or unavailable.

“(5) A person acting in the place of the Principal Member, a Senior Member or another member has all the powers, and shall perform all the functions and duties, conferred or imposed by this Part on the Principal Member, Senior Member or other member, as the case may be.

“(6) Where the Board as constituted for the purpose of a review includes a person acting, or purporting to be appointed to act, as a member under this section, or a person so acting, or purporting to be appointed so to act, has done any act, the validity of any decision of, or any direction given or other act done by, the Board as so constituted or of the act done by the person so acting, or purporting to be appointed so to act, shall not be called in question in any proceeding on the ground that the occasion for the person to act, or for the appointment of the person to act, had not arisen or that the occasion for his appointment to act had passed or his appointment had ceased to have effect.

“(7) The appointment of a person to act as a member ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

“(8) Section 107VZG applies to and in relation to a person appointed under sub-section (1) to act in place of a member on a full-time basis as if the person were a member, and section 107VZK applies to any person appointed under sub-section (1) to act in place of a member as if the person were a member.

Leave of absence

“107VZO. The Minister may grant leave of absence to a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

“107VZH. A member may resign his office by writing signed by him and delivered to the Governor-General.

Removal from office

"107vZL. (1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.

"(2) The Minister may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.

"(3) Where the Minister suspends a member from office, the Governor-General may, on the recommendation of the Minister—

- (a) remove the member from office;
- (b) direct that the suspension of the member continue for such further period as the Governor-General specifies; or
- (c) direct that the suspension of the member terminate.

"(4) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

"(5) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) a member, being a member who has been appointed as a full-time member—
 - (i) engages, except with the approval of the Minister, in paid employment outside the duties of his office; or
 - (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months; or
- (c) a member fails, without reasonable excuse, to comply with his obligations under section 107vZK,

the Governor-General shall remove the member from office.

"(6) The Governor-General may, with the consent of a member who is an eligible employee for the purposes of the *Superannuation Act 1976*, by instrument signed by him, retire the member from office on the ground of physical or mental incapacity on a date specified in the instrument, being a date not earlier than the date on which the instrument is signed by the Governor-General.

"(7) A member shall not be suspended, removed or retired from office except as provided by this section.

Disclosure of interests

"107vZK. (1) Where a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 107vM for the purposes of a review has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to that review—

- (a) he shall disclose his interest to the applicant and the Commission; and

- (b) except with the consent of the applicant and the Commission, he shall not take part in the review, or exercise any powers in relation to the review by the Board of the relevant decision of the Commission.

“(2) Where the Principal Member becomes aware that a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 107VM for the purposes of a review has in relation to that review such an interest as is mentioned in sub-section (1) of this section -

- (a) if the Principal Member considers that the member should not take part, or should not continue to take part, in the review—he shall give a direction to the member accordingly; or
- (b) in any other case—he shall cause the interest of the member to be disclosed to the applicant and to the Commission.

“Division 8—Miscellaneous

Delegation

“107VZL. (1) The Principal Member may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a Senior Member or to an acting Senior Member all or any of his powers under this Part, other than this power of delegation.

“(2) A power delegated under this section, when exercised by the delegate, shall, for the purposes of this Part, be deemed to have been exercised by the Principal Member.

“(3) A delegation under this section does not prevent the exercise of a power by the Principal Member.

Protection of members and witnesses

“107VZM. (1) A member has, in the performance of his duties as a member, the same protection and immunity as a Justice of the High Court.

“(2) A person representing a party at a hearing of a review before the Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

“(3) Subject to this Part, a person summoned to attend, or appearing, before the Board as a witness has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the High Court.

Failure of witness to attend

“107VZN. A person served, as prescribed, with a summons to appear as a witness before the Board shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

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

Refusal to be sworn or to answer questions

"107VZP. A person appearing as a witness before the Board shall not, without reasonable excuse—

- (a) when required in pursuance of section 107VV either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the presiding member; or
- (c) refuse or fail to produce a document that he is required to produce by a summons under this Part served on him as prescribed.

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

Contempt of Board

"107VZQ. (1) A person shall not—

- (a) obstruct or hinder the Board or a member in the performance of the functions of the Board; or
- (b) disrupt a hearing before the Board.

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

"(2) In sub-section (1), 'member' includes an acting member.

Payment of travelling expenses in respect of attendances

"107VZR. (1) Subject to such conditions as the Commission determines, an applicant is entitled, if he travels in Australia for the purpose of attending at a hearing of a review by the Board, to receive such travelling expenses in connection with that travel as are prescribed.

"(2) Subject to such conditions as the Commission determines, an attendant who travels in Australia for the purpose of accompanying an applicant referred to in sub-section (1) to a hearing of a review is entitled to be paid such travelling expenses in connection with that travel as the Commission considers reasonable.

Fees for witnesses

"107VZS. (1) A person, other than the applicant, summoned to appear as a witness at a hearing before the Board is entitled to be paid fees, and allowances for expenses, fixed by or in accordance with the regulations in respect of his attendance.

"(2) Subject to sub-section (3), the fees and allowances shall be paid—

- (a) in a case where the witness was summoned at the request of the applicant—by that applicant; and
- (b) in any other case—by the Commonwealth.

"(3) The Board may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2) (a) shall be paid, in whole or in part, by the Commonwealth.

Staff to assist Board

"107VZT. Any staff required to assist the Board shall be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary.

Oath or affirmation of office

"107VZU. (1) A person who is appointed or re-appointed as a member, or to act as a member, shall not discharge the duties of his office unless he has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 6.

"(2) The oath or affirmation shall be made before a justice of the peace or a commissioner for taking affidavits.

**"PART IIIB—REVIEW OF DECISIONS BY ADMINISTRATIVE
APPEALS TRIBUNAL**

Interpretation

"107VZV. In this Part, unless the contrary intention appears—
'decision'—

- (a) in relation to the Commission, includes a determination or assessment made by the Commission; and
- (b) in relation to the Board, includes a determination or assessment made by the Board;

'reviewable decision' means a decision in respect of which application may be made to the Administrative Appeals Tribunal under section 107VZW.

Applications for review

"107VZW. (1) Where a decision made by the Commission under section 29A or 31 has been reviewed by the Board and affirmed or set aside, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review

- (a) of the decision of the Commission that was so affirmed; or
- (b) of the decision made by the Board in substitution for the decision so set aside,

as the case may be.

"(2) Where the Commission, under section 90C, affirms a decision of the Commission made under section 90A or 98 or sets aside a decision made under section 90A or 98 and substitutes another decision for it, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review—

- (a) of the decision so affirmed; or

- (b) of the decision made by the Commission under section 90C in substitution for the decision previously made by the Commission under section 90A or 98.

Application of Administrative Appeals Tribunal Act

"107VZX. (1) The *Administrative Appeals Tribunal Act 1975* applies in relation to reviewable decisions as if paragraph 25 (3) (a) of that Act had been omitted.

"(2) For the purposes of the application of section 27 of the *Administrative Appeals Tribunal Act 1975* to and in relation to a reviewable decision, the Commission shall be taken to be a person whose interests are affected by a decision of the Board to set aside a decision of the Commission under section 29A or 31 of this Act and by the decision of the Board made in substitution for the decision so set aside.

"(3) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to or in relation to a person whose interests are affected by a reviewable decision if the person has been served with a copy of that decision and with the statement related to that decision in accordance with sub-section 47A (2), section 90D or section 107VJ, whichever was applicable.

"(4) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to and in relation to an application to the Administrative Appeals Tribunal for a review of a reviewable decision—

- (a) as if 'ending 3 months' were substituted for 'ending on the twenty-eighth day' in sub-section (2) of that section; and
- (b) as if at the end of sub-section (7) there were added 'until such date, being a date not more than 12 months after the date on which the document setting out the terms of the decision was furnished to the applicant, as the Tribunal deems fit'.

"(5) Section 30 of the *Administrative Appeals Tribunal Act 1975* applies to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision as if paragraphs (1) (a) and (b) of that section were omitted.

"(6) Subject to section 30 of the *Administrative Appeals Tribunal Act 1975* in its application in accordance with sub-section (5) of this section, the parties to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision are—

- (a) if the person who has duly applied for a review of the decision is a person other than the Commission—
 - (i) the person who has so applied; and
 - (ii) the Commission; or
- (b) in any other case—
 - (i) the Commission; and

- (ii) the member of the Forces, or a dependant of a member of the Forces or deceased member of the Forces, affected by that decision.

Effective dates of payment of pension or increased pension

"107VZY. (1) This section is in addition to, and not in substitution for, any of the provisions of section 43 of the *Administrative Appeals Tribunal Act 1975* in their application to proceedings for a review by the Administrative Appeals Tribunal of a reviewable decision.

"(2) Where the Administrative Appeals Tribunal, upon application made under sub-section 107VZW (1) for a review of a decision, grants a pension (not being a service pension), or increases the rate at which a pension (not being a service pension) is paid, the Tribunal may approve payment of the pension, or payment of the pension at the increased rate, as the case may be—

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—from a date not earlier than the earliest date as from which the Board could, if it had not made that decision, have approved payment of the pension, or payment of the pension at the increased rate, as the case may be; or
- (b) in any other case—
 - (i) if the review relates to a claim under section 25, from a date not more than 6 months before the date on which the application under sub-section 107VZW (1) was made; or
 - (ii) if the review relates to an application under section 26, from the date on which the application under sub-section 107VZW (1) was made.

"(3) Where the Administrative Appeals Tribunal, upon application under sub-section 107VZW (2) for a review of a decision, grants a service pension or increases the rate at which a service pension is to be paid, the Tribunal may approve payment of the service pension, or service pension at the increased rate, as the case may be—

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—from a date not earlier than the earliest date as from which the Commission could, if it had not made that decision, have approved payment of the pension, or payment of the pension at the increased rate, as the case may be, under section 90C; or
- (b) in any other case—from the date on which the application under sub-section 107VZW (1) was made.

Period of operation of certain decisions of Administrative Appeals Tribunal

"107VZZ. (1) Where, on a review of a reviewable decision, the decision of the Administrative Appeals Tribunal expressly, or in effect—

- (a) assesses a rate of pension or increased rate of pension;

- (b) refuses to grant a pension, on the ground that the extent of the incapacity of the member of the Forces was insufficient to justify the grant of such a pension;
- (c) refuses to increase the rate of a pension; or
- (d) reduces the rate of a pension,

that decision of the Administrative Appeals Tribunal shall, subject to sub-section (2), be binding on the parties to the proceedings before that Tribunal for a period of 6 months commencing on the day on which that Tribunal makes the decision.

“(2) If, during the period referred to in sub-section (1), the person to whom the pension is payable, or who was refused a pension, is of the opinion that his incapacity has increased, sub-section (1) does not prevent—

- (a) the person from making application for an increased pension; or
- (b) the grant of increased pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board on a review of the decision of the Commission on such an application.

“(3) In this section, ‘pension’ does not include service pension.

Payment of travelling expenses in respect of attendances

“107VZZA. (1) Subject to such conditions as the Commission determines, where—

- (a) the party (not being the Commission) to proceedings for a review of a reviewable decision who made application for the review; or
- (b) if the Commission made application for the review—the other party to the proceedings for the review whose interests are affected by the reviewable decision,

travels within Australia for the purpose of attending before the Administrative Appeals Tribunal in connection with the review, the party is entitled to receive such travelling expenses in connection with that travel as are prescribed.

“(2) Subject to such conditions as the Commission determines, an attendant who travels within Australia for the purpose of accompanying a party referred to in sub-section (1) on an attendance before the Administrative Appeals Tribunal referred to in that sub-section is entitled to be paid such travelling expenses in connection with that travel as the Commission considers reasonable.”

Appeals to Commission

20. Section 112 of the Principal Act is repealed.

Consequential Amendments

21. The Principal Act is further amended as set out in Schedule 1.

**PART III—AMENDMENTS OF THE INTERIM FORCES
BENEFITS ACT 1947**

Principal Act

22. The *Interim Forces Benefits Act 1947*¹ is in this Part referred to as the Principal Act.

War pensions for male members of the Interim Forces

23. Section 6 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (da) “and” (second occurring); and
- (b) by adding at the end of sub-section (2) the following paragraphs:
 - “(f) a pension under section 101 of the Repatriation Act in its application by virtue of sub-section (1) of this section shall be deemed to be a pension under Division 1 of Part III of the Repatriation Act;
 - (g) a reference to a pension, or to a pension under section 24 of the Repatriation Act, shall be read as a reference to a pension under section 101 of the Repatriation Act in its application by virtue of sub-section (1) of this section; and
 - (h) a provision of the Repatriation Act specified in sub-section (1) of this section that is expressed to apply subject to that Act applies subject to the provisions of that Act specified in sub-section 6 (1), section 7AA and section 7A of this Act and to the provisions of this Act.”.

War pensions for female members of the Interim Forces

24. Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (da) “and” (second occurring); and
- (b) by adding at the end of sub-section (2) the following paragraphs:
 - “(f) a pension under section 101 of the Repatriation Act in its application by virtue of sub-section (1) of this section shall be deemed to be a pension under Division 1 of Part III of the Repatriation Act;
 - (g) a reference to a pension, or to a pension under section 24 of the Repatriation Act, shall be read as a reference to a pension under section 101 of the Repatriation Act in its application by virtue of sub-section (1) of this section; and
 - (h) a provision of the Repatriation Act specified in sub-section (1) of this section that is expressed to apply subject to that Act applies subject to the provisions of that Act specified in sub-section 7 (1), section 7AA and section 7A of this Act and to the provisions of this Act.”.

Application of Parts IIIA and IIIB of Repatriation Act

25. Section 7AA of the Principal Act is amended by omitting “Part IIIA, IIIB and IIIC” and substituting “Parts IIIA and IIIB”.

PART IV—AMENDMENTS OF THE REPATRIATION (FAR EAST STRATEGIC RESERVE) ACT 1956

Principal Act

26. The *Repatriation (Far East Strategic Reserve) Act 1956*³ is in this Part referred to as the Principal Act.

Interpretation

27. Section 3 of the Principal Act is amended by omitting from sub-section (1) the definition of "Board".

Liability of Commonwealth to pay pensions to members of the Forces

28. Section 6 of the Principal Act is amended by omitting sub-sections (6) and (6A) and substituting the following sub-sections:

"(6) Where a claim in accordance with section 25 of the Repatriation Act for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

"(6A) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25 of the Repatriation Act;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department."

Extension of certain provisions of Repatriation Act

29. Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (g) "and"; and
- (b) by adding at the end of sub-section (2) the following paragraphs:
 - "(j) a reference to a pension, or to a pension under section 24 of the Repatriation Act, shall be read as a reference to pension under section 6 of this Act; and
 - (k) a provision of the Repatriation Act specified in sub-section (1) of this section that is expressed to apply subject to that Act

applies subject to the provisions of that Act specified in sub-sections (1), (2A) and (3) of this section and to the provisions of this Act.”.

30. (1) Section 12 of the Principal Act is repealed and the following section is substituted:

Delegation

“12. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a member of the Commission, or to an officer or employee of the Department, all or any of its powers and functions under this Act or the regulations, or under the provisions of the Repatriation Act as applied by section 7 of this Act, other than this power of delegation.

“(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations and the provisions of the Repatriation Act applied by section 7 of this Act, be deemed to have been exercised or performed by the Commission.

“(3) A delegation of a power or function under this section does not prevent the exercise of the power, or the performance of the function, by the Commission.”.

(2) An instrument of delegation in force immediately before the commencement of this Act under section 12 of the Principal Act continues in force after the commencement of this Act as if it had been made under section 12 of the Principal Act as amended by this Act.

Consequential Amendments

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

PART V—AMENDMENTS OF THE REPATRIATION (SPECIAL OVERSEAS SERVICE) ACT 1962

Principal Act

32. The *Repatriation (Special Overseas Service) Act 1962** is in this Part referred to as the Principal Act.

Interpretation

33. Section 3 of the Principal Act is amended by omitting from sub-section (1) the definition of “Board”.

Liability of Commonwealth to pay pensions to members of the Forces

34. Section 6 of the Principal Act is amended by omitting sub-sections (7) and (7A) and substituting the following sub-sections:

“(7) Where a claim in accordance with section 25 of the Repatriation Act for a pension is granted, the Commission may, subject to this Act, approve

payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

“(7A) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 25 of the Repatriation Act;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved,

the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

Extension of certain provisions of Repatriation Act

35. Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “and”; and
- (b) by adding at the end of sub-section (3) the following paragraphs:
 - “(k) a reference to a pension (not being a service pension), or to a pension under section 24 of the Repatriation Act, shall be read as a reference to a pension under section 6 of this Act; and
 - (m) a provision of the Repatriation Act specified in sub-sections (1) or (2) of this section that is expressed to apply subject to that Act applies subject to the provisions of that Act specified in sub-sections (1), (2), (3A) and (4) of this section and to the provisions of this Act.”.

36. (1) Section 13 of the Principal Act is repealed and the following section is substituted:

Delegation

“13. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a member of the Commission, or to an officer or employee of the Department, all or any of its powers and functions under this Act or the regulations, or under the provisions of the Repatriation Act as applied by section 7 of this Act, other than this power of delegation.

“(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations and the provisions

of the Repatriation Act as applied by section 7 of this Act, be deemed to have been exercised or performed by the Commission.

“(3) A delegation of a power or function under this section does not prevent the exercise of the power, or the performance of the function, by the Commission.”.

(2) An instrument of delegation in force immediately before the commencement of this Act under section 13 of the Principal Act continues in force after the commencement of this Act as if it had been made under section 13 of the Principal Act as amended by this Act.

Consequential amendments

37. The Principal Act is further amended as set out in Schedule 3.

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

Principal Act

38. The *Seamen's War Pensions and Allowances Act 1940*^a is in this Part referred to as the Principal Act.

Interpretation

39. Section 3 of the Principal Act is amended —

- (a) by inserting after the definition of “Australian mariner” the following definition:

“‘Board’ means the Veterans’ Review Board established by the *Repatriation Act 1920*;” and

- (b) by omitting the definition of “Tribunal”.

Pensions Committees to consult and co-operate with Commission

40. Section 4A of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “appeals under section 7 and in conducting reviews under section 8” and substituting “reviews under section 55”; and

- (b) by omitting paragraph (b) and substituting the following paragraph:

“(b) statements of principles derived from the decisions of the Administrative Appeals Tribunal, being principles deduced by the Commission from statements of reasons given by that Tribunal for its decisions on reviews of reviewable decisions within the meaning of section 38; and”.

Repeal of sections 7 and 8

41. Sections 7 and 8 of the Principal Act are repealed.

Grant of pensions

42. Section 12 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Where a claim in accordance with section 26 for a pension is granted, the Commission or the Pensions Committee may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for pension, in accordance with an approved form, was received at an address of the Department.

“(3) Where—

- (a) a person makes a claim for a pension in writing, but otherwise than in accordance with a form approved for the purposes of section 26;
- (b) the person subsequently makes a claim for the pension in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and

(c) a pension is granted to the person under this section upon consideration of that claim in accordance with a form so approved, the Commission or Pensions Committee may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an address of the Department.”.

Medical Reports

43. Section 14 of the Principal Act is amended by omitting from sub-section (3) “or the Tribunal” and substituting “or the Board”.

44. Section 26 of the Principal Act is repealed and the following sections are substituted:

Claim for pension

“26. (1) A claim for a pension—

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such evidence available to the claimant as he considers may support his claim; and
- (c) shall be made by forwarding the claim to the Secretary at an address of the Department together with any evidence in support of his claim referred to in paragraph (b).

“(2) Sub-section (1) does not apply to a claim for a pension in respect of the incapacity of an Australian mariner in a case where there is in force a determination of the Commission, a Pensions Committee, the Board or the Administrative Appeals Tribunal determining that the incapacity from which the member is suffering is directly attributable to a war injury sustained by the Australian mariner.

Claim for increase in pension

"26AA. (1) An Australian mariner who is in receipt of a pension in respect of the incapacity of the mariner may claim an increase in the rate of the pension on the ground that the incapacity of the mariner has increased since the rate of the pension was assessed or last assessed.

"(2) Where there is in force in respect of the incapacity of an Australian mariner a determination of a kind referred to in sub-section 26 (2) but a pension has not been granted to the mariner on the ground that the extent of the incapacity is insufficient to justify the grant of a pension, the mariner may make a claim for a pension on the ground that that incapacity of the mariner has increased since the grant of a pension in respect of the incapacity was refused or last refused.

"(3) A claim under sub-section (1) or (2)—

- (a) shall be in accordance with a form approved by the Commission;
- (b) shall be accompanied by such evidence available to the claimant as he considers may support his claim; and
- (c) shall be made by forwarding the claim to the Secretary at an address of the Department, together with any evidence in support of his claim referred to in paragraph (b).

"(4) Where the Commissioner or a Pensions Committee grants a claim under sub-section (1) or (2), it may, subject to this Act, approve payment of pension at the increased rate, or payment of pension, from and including the date on which the claim, in accordance with the form approved for the purpose of sub-section (3), was received at an address of the Department.

"(5) Where—

- (a) a person makes a claim of a kind referred to in sub-section (1) or (2), but otherwise than in accordance with a form approved for the purposes of sub-section (3);
- (b) the person subsequently makes a claim of a kind so referred to in accordance with a form so approved—
 - (i) at a time when he had not been notified by the Department that it would be necessary for him to make his claim in accordance with a form so approved; or
 - (ii) within 3 months after he had been so notified; and
- (c) an increased pension, or a pension, is granted to the person under this Act upon consideration of that claim in accordance with a form so approved,

the Commission or Pensions Committee may, subject to this Act, approve payment of the increased pension, or of the pension, from and including the date on which the claim referred to in paragraph (a) was received at an address of the Department.

Withdrawal of claim

"26AB. (1) A claimant may, at any time before his claim for a pension is determined by the Commission or Pensions Committee, by notice in writing forwarded to the Secretary at an address of the Department, withdraw his claim.

"(2) The withdrawal of a claim does not prevent the claimant from subsequently making another claim for a pension under this Act."

45. Part IV of the Principal Act is repealed and the following Parts are substituted:

"PART IV—REVIEW OF CERTAIN DECISIONS BY VETERANS" REVIEW BOARD

Interpretation

"34. In this Part, unless the contrary intention appears—

'decision', in relation to the Commission or a Pensions Committee, means a decision of, or a determination or assessment made by, the Commission or Pensions Committee, as the case may be;

'reviewable decision'—

- (a) in relation to the Commission, means a decision of the Commission under section 6, 19, 20, 21 or 22A, sub-section 23 (3), sub-section 27 (2) or section 30, 31, 53, 53A or 55; and
- (b) in relation to a Pensions Committee—any decision of a Pensions Committee.

Application for review

"35. (1) Where a person who is affected by a reviewable decision of the Commission or a Pensions Committee is dissatisfied with the decision, the person may make application to the Board for a review of the decision of the Commission or Pensions Committee, as the case may be.

"(2) Subject to sub-section (3), an application under sub-section (1) to the Board to review a reviewable decision of the Commission or a Pensions Committee, being a decision relating in whole or in part to a prescribed matter within the meaning of section 8A, may be made within 12 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 8A (2), but not otherwise.

"(3) An application under sub-section (1) to the Board to review a reviewable decision of the Commission or a Pensions Committee assessing a rate of pension or increased rate of pension may be made within 3 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 8A (2), but not otherwise.

Decision of the Board

"36. (1) On a review, the Board shall have regard to the evidence that was before the Commission or Pensions Committee when it made the decision the subject of the review and to any further evidence before the Board on the review that was not before the Commission or Pensions Committee but would have been relevant to the making of the decision by the Commission or Pensions Committee, as the case may be.

"(2) It is the duty of the Board, in reviewing a decision of the Commission or a Pensions Committee, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to that review.

"(3) On the completion of its consideration of a review of a decision, the Board shall—

- (a) if it is satisfied that the decision the subject of the review is not the decision that the Board would have made if it had dealt with the matter in the first instance—set aside that decision and substitute for that decision such decision as the Board considers to be in accordance with this Act; or
- (b) if it is not so satisfied—affirm the decision the subject of the review.

"(4) Where the Board sets aside a decision of the Commission or a Pensions Committee, the Board has, for the purposes of making a decision in substitution for the decision so set aside, all the powers and discretions that are conferred on the Commission or Pensions Committee, as the case may be.

Application of certain provisions of Part IIIA of Repatriation Act

"37. (1) Part IIIA (other than section 107VC, sub-section 107VF (1), section 107VG and sub-section 107VJ (2)) of the *Repatriation Act 1920* applies to, and in relation to, an application under section 35 of this Act as if the application were an application under Part IIIA of the *Repatriation Act 1920*.

"(2) For the purpose of the application, by virtue of sub-section (1), of provisions of Part IIIA of the *Repatriation Act 1920*—

- (a) a reference in those provisions to the Commission shall be read as including a reference to a Pensions Committee;
- (b) a reference in those provisions to a pension shall be read as a reference to a pension under this Act;
- (c) a reference in those provisions to the powers and functions of the Board under the *Repatriation Act 1920* shall be read as a reference to the powers and functions of the Board under the provisions of that Act that apply to an application under section 35 of this Act by virtue of sub-section (1) of this section;
- (d) a reference in those provisions to a decision in accordance with the *Repatriation Act 1920* shall be read as a reference to a decision in accordance with this Act;
- (e) a reference in those provisions to a decision of a Pensions Committee (by virtue of the application of paragraph (a)) shall be read as

including a reference to a determination of a Pensions Committee and an assessment made by a Pensions Committee;

- (f) a reference in those provisions to sub-section 107VC (1) or (2) of the *Repatriation Act 1920* shall be read as a reference to sub-section 35 (1) of this Act;
- (g) a reference in those provisions to a review under section 31 of the *Repatriation Act 1920* shall be read as a reference to a review under section 55 of this Act;
- (h) a reference in those provisions to an application under sub-section 26 (1) of the *Repatriation Act 1920* shall be read as a reference to a claim under sub-section 26AA (1) of this Act;
- (j) a reference in those provisions to a decision to which sub-section 107VC (4) of the *Repatriation Act 1920* applies shall be read as a reference to a decision
 - (i) assessing a rate of pension or increased rate of pension;
 - (ii) refusing to grant a pension on the ground that the extent of the incapacity of the Australian mariner is insufficient to justify the grant of a pension;
 - (iii) refusing to increase the rate of a pension; or
 - (iv) reducing the rate of a pension;
- (k) a reference in those provisions to Part IIIA of the *Repatriation Act 1920* shall be read as a reference to the provisions of Part IIIA of that Act that apply to an application under section 35 of this Act by virtue of sub-section (1) of this section; and
- (m) a reference in those provisions to an application under Part IIIA of the *Repatriation Act 1920* shall be read as a reference to an application under section 35 of this Act.

“PART V—REVIEW OF DECISIONS BY ADMINISTRATIVE APPEALS TRIBUNAL

Interpretation

“38. In this Part, unless the contrary intention appears—

‘decision’—

- (a) in relation to the Board, includes a determination or assessment made by the Board; and
- (b) in relation to the Commission or a Pensions Committee, includes a determination or assessment made by the Commission or Pensions Committee, as the case may be;

‘reviewable decision’ means a decision in respect of which application may be made to the Administrative Appeals Tribunal under section 39.

Application for review

“39. Where a decision of the Commission or a Pensions Committee has been reviewed by the Board and affirmed or set aside, then, subject to section 29

of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review—

- (a) of the decision that was so affirmed; or
- (b) of the decision made by the Board in substitution for the decision so set aside,

as the case may be.

Application of certain provisions of Part IIIB of Repatriation Act

“40. (1) Part IIIB (other than sections 107VZV, 107VZW and 107VZX) of the *Repatriation Act 1920* applies to, and in relation to, an application under section 39 of this Act as if the application were an application under Part IIIB of the *Repatriation Act 1920*.

“(2) For the purpose of the application, by virtue of sub-section (1), of the provisions of Part IIIB of the *Repatriation Act 1920*—

- (a) a reference in those provisions to a reviewable decision shall be read as a reference to a reviewable decision as defined by section 38 of this Act;
- (b) a reference in those provisions to a pension shall be read as a reference to a pension under this Act;
- (c) a reference in those provisions to the Commission shall be read as including a reference to a Pensions Committee; and
- (d) the provisions of sub-section 107VZY (2) of the *Repatriation Act 1920* relating to service pensions shall be disregarded.

Application of Administrative Appeals Tribunal Act

“41. (1) The *Administrative Appeals Tribunal Act 1975* applies in relation to reviewable decisions as if paragraph 25 (3) (a) of that Act were omitted.

“(2) For the purposes of the application of section 27 of the *Administrative Appeals Tribunal Act 1975* to and in relation to reviewable decisions, the Commission shall be taken to be a person whose interests are affected by a decision of the Board to set aside a decision of the Commission or a Pensions Committee made under this Act and by the decision of the Board in substitution for the decision so set aside.

“(3) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to or in relation to a person whose interests are affected by a reviewable decision if the person has been served with a copy of that decision and with the statement related to that decision in accordance with sub-section 8A (2) of this Act.

“(4) Section 29 of the *Administrative Appeals Tribunal Act 1975* applies to and in relation to an application to the Administrative Appeals Tribunal for a review of a reviewable decision—

- (a) as if ‘ending 3 months’ were substituted for ‘ending on the twenty-eighth day’ in sub-section (2) of that section; and

- (b) as if at the end of sub-section (7) there were added 'until such date, being a date not more than 12 months after the date on which the document setting out the terms of the decision was furnished to the applicant, as the Tribunal deems fit'.

"(5) Section 30 of the *Administrative Appeals Tribunal Act 1975* applies to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision as if paragraphs (1) (a) and (b) were omitted.

"(6) Subject to section 30 of the *Administrative Appeals Tribunal Act 1975* in its application in accordance with sub-section (5) of this section, the parties to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision are—

- (a) if the person who has duly applied for a review of the decision is a person other than the Commission—
 - (i) the person who has so applied; and
 - (ii) the Commission; or
- (b) in any other case—
 - (i) the Commission; and
 - (ii) the Australian mariner, or dependant of an Australian mariner or deceased Australian mariner, affected by that decision."

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

Review by Commission

"55. (1) Where—

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

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

"(2) Where application has been duly made, otherwise than by the Commission, to the Administrative Appeals Tribunal under section 39 for a review of—

- (a) a decision of the Commission or a Pensions Committee that has been affirmed by the Board; or

- (b) a decision made by the Board in substitution for a decision of the Commission or a Pensions Committee,

but the review has not been determined, the Commission may, in its discretion, review that decision and, if it varies that decision, it may approve as the date as from which the variation shall operate a date not earlier than the earliest date as from which the decision as so varied could have operated if the variation had been made by the Administrative Appeals Tribunal upon a review of that decision.

“(3) The Commission may, for the purpose only of correcting a manifest error, vary the date approved by the Board as the date as from which a decision of the Board made in substitution for a decision of the Commission or a Pensions Committee is to operate.

“(4) Where the Commission is satisfied that evidence before the Commission when it made a decision was false in a material particular, the Commission may, in its discretion, review the decision and, if it varies the decision, it may approve as the date as from which the variation shall operate a date, which may be a date before or after the commencement of the review, considered by the Commission to be appropriate in all the circumstances.

“(5) For the purpose only of approving a date under sub-section (1) or (2) as the date as from which a variation of a decision to which paragraph (1) (a) or (2) (a) applies shall operate, the Commission shall assume that an application had been made to the Board or Administrative Appeals Tribunal, as the case may be, to review the decision on the date on which the Commission commenced its review of the decision.

“(6) If the Commission refuses or fails to review a decision in relation to pension, the refusal or failure is not subject to review by the Board or the Administrative Appeals Tribunal.

“(7) Where the Commission on a review of a decision under sub-section (1) affirms that decision, the decision of the Commission affirming that other decision is not subject to review by the Board or by the Administrative Appeals Tribunal.

“(8) Where a person in receipt of, or entitled to receive, a pension under this Act refuses or fails to attend at the time and place fixed by the Commission for any review, or impedes or hinders the review, the Commission may cancel the pension.

“(9) On the cancellation, under sub-section (8), of a pension payable to an Australian mariner, a pension payable to his dependant shall not be continued for more than 12 months from the date fixed for the review unless the Commission is satisfied that the incapacity of the Australian mariner in respect of which a pension was granted to him is of a permanent nature.

“(10) This section applies to and in relation to a decision made before or after the commencement of this section.

“(11) In this section—

‘decision’ includes determination and assessment;

‘pension’ includes allowance, gratuity and compensation under this Act.”.

47. (1) Section 57 of the Principal Act is repealed and the following sections are substituted:

Delegation by Minister

“57. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act, except this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

“(3) A delegation of a power under this section does not prevent the exercise of the power by the Minister.

Delegation by Commission

“57A. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a member of the Commission, or to an officer or employee of the Department, all or any of its powers and functions under this Act or the regulations, or under the provisions of the *Repatriation Act 1920* as applied by sections 37 and 40 of this Act, other than this power of delegation.

“(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations and the provisions of the *Repatriation Act 1920* as applied by sections 37 and 40 of this Act, be deemed to have been exercised or performed by the Commission.

“(3) A delegation of a power or function under this section does not prevent the exercise of the power, or the performance of the function, by the Commission.”.

(2) An instrument of delegation signed by the Minister that was in force immediately before the commencement of this Act under section 57 of the Principal Act continues in force after the commencement of this Act as if it had been made under section 57 of the Principal Act as amended by this Act.

(3) An instrument of delegation under the seal of the Commission that was in force immediately before the commencement of this Act under section 57 of the Principal Act continues in force after the commencement of this Act as if it had been made under section 57A of the Principal Act as amended by this Act.

PART VII—TRANSITIONAL PROVISIONS

Interpretation

48. (1) In this Part, unless the contrary intention appears—

“commencing day” means the day on which this Act comes into operation;

“Commission” means the Repatriation Commission established by the *Repatriation Act 1920*;

“decision” includes determination and assessment;

“pension” means—

- (a) pension under, or in accordance with, Division 1 of Part III of the *Repatriation Act 1920*;
- (b) pension under section 6 of the *Repatriation (Far East Strategic Reserve) Act 1956*;
- (c) pension under section 6 of the *Repatriation (Special Overseas Service) Act 1962*; or
- (d) pension under the *Seamen's War Pensions and Allowances Act 1940*;

“Pensions Committee” means a Seamen's Pensions and Allowances Committee established under the *Seamen's War Pensions and Allowances Act 1940*;

“Principal Act” means—

- (a) the *Repatriation Act*;
- (b) the *Interim Forces Benefits Act 1947*, as in force immediately before the commencing day;
- (c) the *Repatriation (Far East Strategic Reserve) Act 1956*, as in force immediately before the commencing day;
- (d) the *Repatriation (Special Overseas Service) Act 1962*, as in force immediately before the commencing day; or
- (e) the *Seamen's War Pensions and Allowances Act*;

“Repatriation Act” means the *Repatriation Act 1920*, as in force immediately before the commencing day;

“Repatriation Board” means a Repatriation Board appointed under the *Repatriation Act*;

“Seamen's War Pensions and Allowances Act” means the *Seamen's War Pensions and Allowances Act 1940*, as in force immediately before the commencing day;

“service pension” means service pension under Division 5 of Part III of the *Repatriation Act*;

“Tribunal” means the Repatriation Review Tribunal established under the *Repatriation Act*;

“Veterans' Review Board” means the Veterans' Review Board established by the *Repatriation Act* as amended by this Act.

(2) In this Part, a reference to an Act specified in paragraph (b), (c), (d) or (e) of the definition of “Principal Act” in sub-section (1) shall, unless the contrary intention appears, be read as including a reference to any provisions of the *Repatriation Act* that extend to and in relation to—

- (a) in the case of the *Interim Forces Benefits Act 1947*—members of the Interim Forces within the meaning of that Act and dependants of those members; or

- (b) in the case of any other Act so specified—members of the Forces within the meaning of that Act and dependants of those members.

(3) A reference in this Part to a provision of the Repatriation Act shall, unless the contrary intention appears, be read, in a case where that provision extends as mentioned in sub-section (2), as including a reference to the provision as so extending.

Effect of amendments made by this Act

49. The amendments of a Principal Act made by this Act do not prevent—
- (a) payment, after the commencing day, of a pension or service pension granted before that day by the Commission, a Repatriation Board, a Pensions Committee, the Tribunal or the Administrative Appeals Tribunal in respect of a period ended before, or ending on or after, the commencing day; or
 - (b) effect being given, after the commencing day, under the Principal Act as amended by this Act, to a decision of, or any other matter or thing done by, the Commission, a Repatriation Board, a Pensions Committee, the Tribunal or the Administrative Appeals Tribunal under a Principal Act before the commencing day.

Decisions, &c., of a Repatriation Board

50. For the purpose of the application of a Principal Act as amended by this Act on and after the commencing day—

- (a) any decision of a Repatriation Board shall be deemed to be a decision of the Commission;
- (b) any other matter or thing done by a Repatriation Board under, or for the purposes of, a Principal Act, shall be deemed to have been so done by the Commission; and
- (c) any matter or thing done by a Repatriation Board by reason that the Board was of a certain opinion shall be deemed to have been done by the Commission by reason that the Commission was of that opinion.

Claims and applications, &c., for pension

51. (1) A claim for a pension, or an application for an increased pension, received at an address of the Department before the commencing day that had not been submitted to the Commission or a Repatriation Board for consideration and determination before that day shall be dealt with under the Principal Act as amended by this Act as if it had been made under that Act as so amended.

(2) Where a claim for pension, or an application for increased pension, had been submitted to a Repatriation Board for consideration and determination before the commencing day but had not been determined by the Repatriation Board before that day, the claim or application shall be deemed, by force of this sub-section, to have been submitted to the Commission, under sub-section 28 (2) of the Repatriation Act as amended by this Act, for consideration and determination.

(3) For the purposes of the application of the Principal Act as amended by this Act in accordance with sub-sections (1) and (2) of this section—

- (a) a claim for pension received before the commencing day that was in accordance with the appropriate form approved by the Commission shall be treated as being in accordance with the form approved by the Commission for the purposes of paragraph 25 (1) (a) of the Repatriation Act as amended by this Act;
- (b) an application in writing for increased pension received before the commencing day shall be treated as being in accordance with the form approved by the Commission for the purposes of paragraph 26 (3) (a) of the Repatriation Act as amended by this Act; and
- (c) a claim or application in writing for a pension received before the commencing day, being a claim or application on the ground that the incapacity of the claimant or applicant had increased since a previous claim or application for a pension was refused or last refused by reason that the extent of his incapacity was insufficient to justify the grant of a pension—
 - (i) shall be deemed to be an application for pension to which sub-section 26 (2) of the Repatriation Act as amended by this Act applies; and
 - (ii) shall be deemed to be in accordance with the form approved by the Commission for the purposes of paragraph 26 (3) (a) of the Repatriation Act as amended by this Act;
- (d) an investigation made under section 24AB of the Repatriation Act before the commencing day shall be treated as having been made under section 28 of that Act as amended by this Act;
- (e) anything done before the commencing day for the purposes of an investigation of a claim or application under section 24AB of the Repatriation Act, being an investigation that had been commenced but not completed before the commencing day, shall be treated as having been done for the purposes of an investigation of that claim or application under section 28 of the Repatriation Act as amended by this Act; and
- (f) any evidence, records and documents relating to a claim or application made before the commencing day that were in the possession or under the control of a Repatriation Board immediately before the commencing day and are, on or after that day, submitted to the Commission for consideration by the Commission shall be treated as having been so submitted in accordance with sub-section 28 (3) of the Repatriation Act as amended by this Act.

(4) A notification referred to a Repatriation Board under section 40AB of the Repatriation Act before the commencing day and not considered and dealt with by the Board before that day shall be deemed to have been referred to the Commission under section 40AB of the Repatriation Act as amended by this Act.

(5) A request made to a Repatriation Board under section 43 of the Repatriation Act before the commencing day that had not been dealt with by the Repatriation Board before that day shall be dealt with by the Commission as if it had been made to the Commission.

Appeals under section 28 of Repatriation Act

52. Where an appeal had been instituted before the commencing day under section 28 of the Repatriation Act in respect of a decision of a Repatriation Board, but had not been determined before that day, the appeal shall be treated as an application duly made to the Veterans' Review Board under section 107VC of the Repatriation Act as amended by this Act.

Reviews by Commission

53. Sub-sections 31 (6) and (7) of the Repatriation Act as amended by this Act apply to and in relation to—

- (a) a refusal or failure of the Commission to review a decision in relation to pension that occurs on or after the commencing day; and
- (b) a decision made by the Commission on or after the commencing day upon its review of a decision in relation to pension.

Claims for service pension or increased service pension

54. (1) A claim made under Division 5 of Part III of the Repatriation Act that had been submitted to a Repatriation Board but not determined by the Board before the commencing day shall be considered and determined by the Commission under and in accordance with Division 5 of Part III of that Act as amended by this Act.

(2) For the purpose of the application, in accordance with sub-section (1), of the provisions of Division 5 of Part III of the Repatriation Act as amended by this Act—

- (a) a claim duly made before the commencing day for a service pension or for an increase in the rate of a service pension shall be treated as having been made in accordance with section 88 of the Repatriation Act as amended by this Act;
- (b) a claim that is required by sub-section (1) to be considered and determined by the Commission shall be treated as if it had been submitted to the Commission in accordance with sub-section 90 (2) of the Repatriation Act as amended by this Act; and
- (c) any documents and evidence submitted with a claim made before the commencing day shall be treated as having been submitted with the claim in accordance with sub-section 90 (3) of the Repatriation Act as amended by this Act.

Applications to the Tribunal

55. (1) An application under section 107VC or section 107VD of the Repatriation Act that had not been decided by the Tribunal before the commencing day shall, on and after the commencing day, be treated as if it were

an application duly made under section 107VC of the Repatriation Act as amended by this Act, and that Act, as so amended, applies, subject to this section, to and in relation to it accordingly.

(2) Where a person would, but for the repeal of Part IIIA of the Repatriation Act, have had, on or after the commencing day, a right to make application under section 107VC or section 107VD of that Act to the Tribunal for a review of a decision of the Commission made before that day, application may, subject to sub-sections (3) and (4) of this section, be made under section 107VC of the Repatriation Act as amended by this Act to the Veterans' Review Board for a review of that decision.

(3) An application may be made under sub-section (2) for a review of a decision refusing an application for a service pension within 3 months after the service on the applicant of a copy of that decision, but not otherwise.

(4) Sub-section (2) does not apply to a decision of the Commission if an application for a review of that decision by the Tribunal had been made before the commencing day.

(5) Sub-sections 107VC (3) and (4) of the Repatriation Act, as amended by this Act, do not apply to or in relation to an application to which sub-section (1) or (2) of this section applies.

(6) An application under section 107VE of the Repatriation Act that had not been decided by the Tribunal before the commencing day shall, on and after the commencing day, be treated as if it were an application duly made under section 90C of the Repatriation Act, as amended by this Act, and that Act, as so amended, applies to and in relation to it accordingly.

(7) Where a copy of a decision of the Commission of a kind referred to in section 107VE of the Repatriation Act was served on a person in accordance with section 47A of that Act within 3 months before the commencing day but the person had not, before the commencing day, made application under section 107VE of that Act for a review of that decision, the person may, on or after the commencing day, but within 3 months after the copy of the decision was so served on him, make application under section 90C of the Repatriation Act, as amended by this Act, for a review of that decision.

Decisions of the Tribunal

56. For the purposes of the application of a Principal Act as amended by this Act on and after the commencing day, any decision of the Tribunal to which section 107VZC of the Repatriation Act applied immediately before the commencing day shall continue to be binding on the Commission for the remainder of the period for which it was binding under that section as if it were so binding under section 107VY of the Repatriation Act as amended by this Act.

Matters under section 107VM of Repatriation Act

57. (1) Where, immediately before the commencing day, the Commission is required by section 107VM of the Repatriation Act to reconsider a claim but the Commission has not given its decision on its reconsideration of the claim,

the claim shall be dealt with as if an application had been duly made under Part IIIA of the Repatriation Act as amended by this Act to the Veterans' Review Board for a review of the claim and shall be considered and decided by that Board accordingly.

(2) Where the President of the Tribunal has, before the commencing day, notified an applicant, under section 107VM of the Repatriation Act that, in his opinion the further evidence would have been relevant to the making of a decision of the Commission, but application had not been made to the Tribunal under sub-section 107VC (2) for a review of that decision, application may be made under section 107VC of the Repatriation Act as amended by this Act for a review of that decision and sub-sections (3) and (4) of that section shall not apply in relation to the application.

References to Administrative Appeals Tribunal

58. (1) Where the President of the Administrative Appeals Tribunal has directed a review of a decision under sub-section 107VZZB (8) of the Repatriation Act before the commencing day but the review has not been determined before that day, the review may, subject to this section, be continued and determined, or heard and determined, as the case requires, after that day as if Part IIIB of the Repatriation Act had not been repealed.

(2) Where the President of the Administrative Appeals Tribunal has, before the commencing day, indicated his intention under sub-section 107VZZB of the Repatriation Act to nominate the President of the Repatriation Review Tribunal as one of the persons to constitute the Administrative Appeals Tribunal for the purpose of a review to which sub-section (1) of this section applies, the person who was President of the Repatriation Review Tribunal immediately before the commencing day may, notwithstanding that that Tribunal has ceased to exist, continue to act, or act, as the case may be, as a non-presidential member of the Administrative Appeals Tribunal for the purposes of that review.

(3) Except as provided in sub-section (2) of this section, sub-section 107VZZB (9) of the Repatriation Act does not apply to or in relation to a review to which sub-section (1) of this section applies.

Appeals to Federal Court of Australia

59. (1) Where—

- (a) a question of law had been referred to the Federal Court of Australia under section 107VZZG of the Repatriation Act before the commencing day; or
- (b) an appeal to the Federal Court of Australia had been instituted under section 107VZZH of the Repatriation Act before the commencing day,

but had not been determined before that day, the Federal Court of Australia may hear and determine the question of law, or the appeal, as the case may be, as if Part IIIC of the Repatriation Act had not been repealed by this Act and, for the purpose of the application of sub-section 107VZZH (5) of the Repatriation Act accordingly, the second occurring reference in that

sub-section to the Tribunal shall be read as a reference to the Administrative Appeals Tribunal.

(2) Where a question of law to which sub-section (1) applies has been referred to the Federal Court of Australia, the Veterans' Review Board shall not, in the review to which the question is relevant -

- (a) give a decision to which the question is relevant while the reference is pending before the Federal Court of Australia; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia.

(3) In the application of sub-section 107VZZH (5) of the Repatriation Act to and in relation to an appeal to which sub-section (1) of this section applies, the reference in sub-section 107VZZH (5) to the Tribunal shall be read as a reference to the Administrative Appeals Tribunal.

Seamen's War Pensions and Allowances Act

60. (1) An appeal under section 7 of the Seamen's War Pensions and Allowances Act, in respect of a decision of a Pensions Committee that had been instituted before, but had not been determined before, the commencing day, shall be treated as an application duly made to the Veterans' Review Board under section 35 of that Act as amended by this Act to review that decision.

(2) Section 35 of the Seamen's War Pensions and Allowances Act, as amended by this Act, extends to and in relation to a reviewable decision made by the Commission or a Pensions Committee before the commencing day.

(3) An application under Part IV of the Seamen's War Pensions and Allowances Act that had not been decided by the Tribunal before the commencing day shall, on and after the commencing day, be treated as if it were an application duly made under section 35 of that Act as amended by this Act, and that Act, as so amended, applies, subject to sub-section (6) of this section, to and in relation to it accordingly.

(4) Where a person would, but for the repeal of Part IV of the Seamen's War Pensions and Allowances Act, have had, on or after the commencing day, a right to make application under section 34 or 35 of that Act to the Tribunal for a review of a decision of the Commission or of a Pensions Committee made before that day, application may, subject to sub-sections (5) and (6) of this section, be made under section 35 of the Seamen's War Pensions and Allowances Act as amended by this Act to the Veterans' Review Board for a review of that decision.

(5) An application referred to in sub-section (4) for a review of a decision of the Commission or a Pensions Committee

- (a) assessing the rate of pension of an Australian mariner;
- (b) refusing to alter the existing assessment of the rate of pension of an Australian mariner; or

(c) determining that the incapacity from which an Australian mariner is suffering is directly attributable to a war injury sustained by the mariner but is so slight that it does not warrant a pension assessment, may, subject to sub-section (8), be made within 3 months after the service on the applicant of a copy of that decision, but not otherwise.

(6) Sub-section (4) does not apply to a decision of the Commission or a Pensions Committee in respect of which an application had been made to the Tribunal before the commencing day.

(7) Sub-sections 35 (2) and (3) of the Seamen's War Pensions and Allowances Act, as amended by this Act, do not apply to or in relation to an application to which sub-section (1) or (2) of this section applies.

(8) If, in the case where sub-section (5) applies in relation to an Australian mariner, the mariner was, at any time during the period of 3 months referred to in that sub-section, a resident of the Torres Strait Islands, the application may be made within a further period of 3 months after the expiration of that period of 3 months so referred to.

Service of copy of decision

61. (1) Where a copy of a decision made by the Commission or a Repatriation Board before the commencing day under a Principal Act (other than the Seamen's War Pensions and Allowances Act) has been served on a claimant in accordance with section 47A of the Repatriation Act before, on or after the commencing day, that service shall, for the purposes of the Repatriation Act as amended by this Act, be deemed to be service in accordance with section 47A of the Repatriation Act as so amended.

(2) Where a copy of a decision (being a decision made before the commencing day) of the Commission or a Repatriation Board relating to service pension, together with a statement setting out its findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving reasons for the decision has been served on the claimant or other person affected by the decision before, on or after the commencing day, that service shall, for the purposes of the application of the Repatriation Act as amended by this Act, be deemed to be service in accordance with section 90D of the Repatriation Act as so amended.

(3) Where a copy of a decision made before the commencing day by the Tribunal has been served on the appropriate person in accordance with section 107VK of the Repatriation Act before, on or after the commencing day, that service shall, for the purposes of the Repatriation Act as amended by this Act, be deemed to be service of a decision of the Veterans' Review Board in accordance with section 107VJ of the Repatriation Act as so amended.

(4) Where a copy of a decision made by the Commission or a Pensions Committee under the Seamen's War Pensions and Allowances Act has been served on the claimant, or person authorized by the claimant, to whom the decision relates in accordance with section 8A of that Act before, on or after the

commencing day, that service shall, for the purposes of the Seamen's War Pensions and Allowances Act, as amended by this Act, be deemed to be service in accordance with section 8A of that Act as so amended.

Documents, &c., in possession of the Tribunal or a Repatriation Board

62. (1) The Secretary shall take possession of, and be entitled to the custody of, all documents, evidence, records and other matter in the possession or under the control of the Tribunal or a Repatriation Board immediately before the commencing day for the purposes of its consideration of a matter under a Principal Act.

(2) Where any documents, evidence or other matter referred to in sub-section (1) relates to a matter that, under this Part, is required to be determined by the Commission or the Veterans' Review Board, the Secretary shall, as soon as practicable after the commencing day, cause the documents, evidence or other matter to be submitted to the Commission, or forwarded to the Principal Member of the Veterans' Review Board, as the case may be.

SCHEDULE 1

Section 21

Consequential Amendments of *Repatriation Act 1920*

Section 17AA—

Omit "or to a member, or an acting member, of a Board".

Sub-section 17AB (1)—

Omit "or a member of a Board".

Sub-section 17AB (2)—

Omit "or an acting member of a Board".

Section 21—

Omit "a Board" (twice occurring), substitute "the Board".

Omit ", whether the Board to which he is appointed or another Board,".

Section 32—

Omit "or a Board".

Sub-section 39 (2)—

Omit "or a Board, as the case may be,".

Section 40AB—

Omit "or to a Board".

Sub-section 42 (1)—

Omit "or a Board".

Sub-section 43 (1)—

Omit "or a Board".

SCHEDULE 1—continued

Omit "or Board".

Sub-section 43 (2)—

Omit "or a Board".

Sub-section 47 (1)—

Omit ", or a Board".

Omit ", and the Commission, in hearing, considering or deciding an appeal".

Sub-section 47 (2)—

Omit "or a Board".

Omit ", and the Commission shall allow an appeal,".

Omit "or allowing the appeal".

Section 47B—

Omit ", application or appeal referred to in section 47", substitute "or application".

Sub-section 48 (3)—

Omit ", a Board or the Tribunal".

Paragraph 53 (1) (d)—

Omit "or a Board".

Paragraph 83 (3) (aa)—

Omit "a Board", substitute "the Commission or a person to whom the Commission has delegated its powers under section 84".

Sub-section 84 (1)—

Omit "or a Board".

Sub-section 84 (2)—

Omit "or a Board".

Omit "or the Board, as the case may be,".

Sub-section 84 (3)—

Omit "or a Board".

Omit "or the Board, as the case may be,".

Sub-section 85 (1)—

Omit "or a Board".

Sub-section 85 (1AA)—

Omit "or a Board".

Omit "or the Board, as the case may be,".

Sub-section 85 (1AB)—

Omit "or a Board".

Omit "or the Board, as the case may be,".

Sub-section 85 (2)—

Omit "or a Board".

SCHEDULE 1—continued

Sub-section 85 (3)—

Omit "or a Board".

Sub-section 85AA (1)—

Omit "or a Board".

Sub-section 94 (1)—

Omit "or a Board".

Sub-section 94 (2)—

Omit "or a Board".

Omit "or the Board".

Sub-section 97 (1)—

Omit "or a Board".

Sub-section 97 (2)—

Omit "or a Board".

Omit "or Board".

Section 98—

Omit "or a Board".

Omit "or Board".

Section 100—

Omit "or a Board" from sub-paragraph (d) (iv) of the definition of "Active Service".

Omit "or a Board" from the definition of "special mission".

Paragraph (a) of proviso to section 101

Omit "or a Board".

Sub-section 101 (1A)—

Omit "or a Board".

Sub-section 101 (2)—

Omit "or a Board".

Sub-section 107C (2A)—

Omit "or a Board".

Sub-section 107C (3)—

Omit "or a Board".

Paragraph 107M (3) (b)—

Omit "or a Board".

Paragraph 107M (3A) (b)—

Omit "or a Board".

Section 116—

Omit ", a Board".

SCHEDULE 1—continued

Schedule 1, paragraph 3—

Omit "or a Board".
Omit "or the Board".

Schedule 2—

Omit "or a Board" (twice occurring).

Schedule 5—

After Schedule 5, add the following Schedule:

"SCHEDULE 6

Section 107V2U

OATH

I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of Principal Member (or Senior Member or member) of the Veterans' Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will. So help me, God.

AFFIRMATION

I, _____, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of Principal Member (or Senior Member or member) of the Veterans' Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will."

SCHEDULE 2

Section 31

Consequential Amendments of Repatriation (Far East Strategic Reserve) Act 1956

Sub-section 6 (3)—

Omit "or a Board".

Sub-section 6 (4)—

Omit "or a Board".

Sub-section 7 (2A)—

Omit "Parts IIIA, IIIB and IIIC", substitute "Parts IIIA and IIIB".

SCHEDULE 3

Section 37

Consequential Amendments of the Repatriation (Special Overseas Service) Act 1962

Sub-section 6 (4)—

Omit "or a Board".

Sub-section 6 (5)—

Omit "or a Board".

Sub-section 7 (1)—

Omit "and 121", substitute ", 121, 121A, 121B, 121C, 121D and 121E".

Sub-section 7 (3A)—

Omit "Parts IIIA, IIIB and IIIC", substitute "Parts IIIA and IIIB".

NOTES

1. No. 6, 1920, as amended. For previous amendments, see No. 34, 1921; No. 23, 1922; No. 14, 1929; No. 74, 1930; Nos. 10 and 47, 1931; No. 32, 1934; No. 58, 1935; Nos. 29 and 67, 1936; Nos. 12, 24 and 42, 1937; No. 55, 1938; Nos. 37 and 96, 1940; No. 49, 1941; No. 22, 1943; No. 11, 1945; No. 49, 1946; Nos. 1, 29 and 74, 1947; No. 39, 1948; No. 38, 1949; Nos. 34 and 80, 1950; No. 31, 1951; No. 58, 1952; No. 69, 1953; No. 31, 1954; No. 39, 1955; Nos. 68 and 97, 1956; No. 44, 1957; No. 47, 1958; No. 58, 1959; No. 44, 1960; No. 46, 1961; Nos. 75 and 91, 1962; No. 47, 1963; Nos. 62 and 105, 1964; No. 64, 1965; No. 42, 1966; No. 64, 1967; Nos. 66 and 120, 1968; No. 95, 1969; Nos. 4 and 60, 1970; Nos. 17 and 68, 1971; Nos. 15, 82 and 139, 1972; Nos. 2, 27 and 104, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 3, 24 and 90, 1974; Nos. 35, 56 and 111, 1975; Nos. 27, 91 and 112, 1976; No. 56, 1977; Nos. 129 and 170, 1978; Nos. 18 and 124, 1979; No. 129, 1980; Nos. 41, 61 and 160, 1981; Nos. 20 and 80, 1982; No. 100, 1982 (as amended by No. 39, 1983); Nos. 36 and 70, 1983; and Nos. 78 and 97, 1984.
2. No. 46, 1947, as amended. For previous amendments, see No. 79, 1950; No. 106, 1964; No. 93, 1966; No. 5, 1973; No. 90, 1974; No. 18, 1979; No. 160, 1981; and No. 100, 1983.
3. No. 91, 1956, as amended. For previous amendments, see No. 90, 1962; No. 107, 1964; No. 93, 1966; No. 81, 1972; No. 4, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 90, 1974; No. 129, 1978; No. 18, 1979; No. 160, 1981; and No. 100, 1983.
4. No. 89, 1962, as amended. For previous amendments, see No. 108, 1964; No. 110, 1965; No. 93, 1966; No. 78, 1968; No. 80, 1972; No. 3, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 90, 1974; No. 129, 1978; No. 18, 1979; No. 160, 1981; No. 100, 1982; and No. 70, 1983.
5. No. 60, 1940, as amended. For previous amendments, see No. 77, 1946; No. 80, 1950; Nos. 17 and 75, 1952; No. 70, 1953; No. 32, 1954; No. 40, 1955; No. 45, 1957; No. 48, 1958; No. 59, 1959; No. 46, 1960; No. 47, 1961; Nos. 64 and 113, 1964; No. 65, 1965; No. 43, 1966; No. 102, 1967; No. 67, 1968; No. 96, 1969; No. 61, 1970; Nos. 18 and 69, 1971; Nos. 16 and 83, 1972; Nos. 6 and 106, 1973; Nos. 4, 25 and 90, 1974; Nos. 35 and 111, 1975; Nos. 27, 91 and 112, 1976; No. 56, 1977; No. 129, 1978; Nos. 18 and 124, 1979; No. 129, 1980; No. 160, 1981; Nos. 80 and 100, 1982; and No. 70, 1983.