Veterans' Entitlements Act 1986

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Volume 1: **sections 1–45UY**
Volume 2: sections 46–93ZG
Volume 3: sections 94–216
Volume 4: Schedules
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Veterans' Entitlements Act 1986* that shows the text of the law as amended and in force on 19 March 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the payment of pensions and other benefits to, and to provide medical and other treatment for, veterans and certain other persons, and for other purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Veterans' Entitlements Act 1986*.

2 Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

3 Repeal

(1) The Acts specified in Parts I, II, III, IV and V of Schedule 1 are repealed.

(2) The Acts specified in column 1 of Part VI of Schedule 1 are amended as set out in columns 2 and 3 of that Schedule.

4 Extension of Act to external Territories

This Act extends to the external Territories.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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4B Secretary may arrange for use of computer programs to make decisions

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Commission may, or must, under this Act or a legislative instrument made for the purposes of this Act:

(a) make a decision; or

(b) exercise any power or comply with any obligation; or

(c) do anything else related to making a decision or exercising a power or complying with an obligation.

(1A) Subsection (1) does not apply to the following:

(a) a decision that the death of a veteran was not war-caused;

(b) a decision that an injury suffered by a veteran is not a war-caused injury;

(c) a decision that a disease contracted by a veteran is not a war-caused disease;

(d) a decision that the death of a member of the Forces (within the meaning of Part IV), or a member of a Peacekeeping Force (within the meaning of that Part), was not defence-caused;

(e) a decision that an injury suffered by a member of the Forces (within the meaning of Part IV), or a member of a Peacekeeping Force (within the meaning of that Part), is not a defence-caused injury;

(f) a decision that a disease contracted by a member of the Forces (within the meaning of Part IV), or a member of a Peacekeeping Force (within the meaning of that Part), is not a defence-caused disease.

(2) For the purposes of this Act or the legislative instrument, the Commission is taken to have:

(a) made a decision; or

(b) exercised a power or complied with an obligation; or

(c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation;

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that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

Substituted decisions

(3) The Commission may, under a provision of this Act or of the legislative instrument, make a decision in substitution for a decision the Commission is taken to have made under paragraph (2)(a) if the Commission is satisfied that the decision made by the operation of the computer program is incorrect.

Note: For review of a decision made in substitution, see Parts IX and X.

(4) Subsection (3) does not limit any other provision of this Act that provide for the review or reconsideration of a decision.

5 Definitions—simplified outline

Sections 5A to 11B contain definitions of terms that are used in this Act.

Subsection 5Q(1) contains an entry for each expression that is defined for the purposes of this Act. That subsection is like a Dictionary.

The entry is either an actual definition of the expression or a signpost definition that identifies the provision that defines the expression.

Many other sections in this Part contain the actual definitions relating to a particular topic. For example, sections 6 to 6F deal with operational service and section 5H contains income test definitions.

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5A *Repatriation Commission* definitions

In this Act, unless the contrary intention appears:

acting commissioner means a person who is acting as a commissioner because of an appointment under section 191.

Acting Deputy President means a commissioner or acting commissioner who is acting as Deputy President because of an appointment under section 192.

Acting President means a commissioner or acting commissioner who is acting as President because of an appointment under section 192 or 193.

Commission means the Repatriation Commission continued in existence by section 179.

commissioner means a person holding an office of commissioner because of an appointment under section 182.

Deputy President means the Deputy President of the Commission.

President means the President of the Commission.

5AB *Repatriation Medical Authority and Specialist Medical Review Council* definitions

(1) In this Act, unless the contrary intention appears:

Chairperson means the Chairperson of the Repatriation Medical Authority.

Convener means the Convener of the Review Council.

councillor means the Convener or any other person holding office as a member of the Review Council.

member means the Chairperson or any other person holding office as a member of the Repatriation Medical Authority.

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registered medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory but does not include a person so registered or licensed:

(a) whose registration, or licence to practice, as a medical practitioner in any State or Territory has been suspended, or cancelled, following an inquiry relating to his or her conduct; and

(b) who has not, after that suspension or cancellation, again been authorised to register or practise as a medical practitioner in that State or Territory.

Review Council means the Specialist Medical Review Council established by section 196V.

sound medical-scientific evidence, in relation to a particular kind of injury, disease or death, has the meaning given by subsection (2).

(2) Information about a particular kind of injury, disease or death is taken to be ***sound medical-scientific evidence*** if:

(a) the information:

(i) is consistent with material relating to medical science that has been published in a medical or scientific publication and has been, in the opinion of the Repatriation Medical Authority, subjected to a peer review process; or

(ii) in accordance with generally accepted medical practice, would serve as the basis for the diagnosis and management of a medical condition; and

(b) in the case of information about how that kind of injury, disease or death may be caused—meets the applicable criteria for assessing causation currently applied in the field of epidemiology.

5B *War* and *operational area* related definitions

(1) In this Act, unless the contrary intention appears:

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allotted for duty in an operational area has the meaning given by subsection (2).

operational area means an area described in column 1 of Schedule 2 during the period specified in column 2 of Schedule 2 opposite to the description of the area in column 1.

period of hostilities means:

(a) World War 1 from its commencement on 4 August 1914 to 11 November 1918 (both included); or

(b) World War 2 from its commencement on 3 September 1939 to 29 October 1945 (both included); or

(c) the period of hostilities in respect of Korea from 27 June 1950 to 19 April 1956 (both included); or

(d) the period of hostilities in respect of Malaya from 29 June 1950 to 31 August 1957 (both included); or

(e) the period of hostilities in respect of war-like operations in operational areas from 31 July 1962 to 11 January 1973 (both included).

war to which this Act applies means World War 1 or World War 2.

World War 1 means:

(a) the war that commenced on 4 August 1914; and

(b) any other war in which the Crown became engaged after 4 August 1914 and before 11 November 1918.

World War 2 means:

(a) the war that commenced on 3 September 1939; and

(b) any other war in which the Crown became engaged after 3 September 1939 and before 3 September 1945.

Allotted for duty

(2) A reference in this Act to a person, or a unit of the Defence Force, that was ***allotted for duty*** in an operational area is a reference:

(a) in the case of duty that was carried out in an operational area described in item 1, 2, 3, 4, 5, 6, 7 or 8 of Schedule 2 (in

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column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act; or

(b) in the case of duty that was carried out in an operational area described in item 3A, 3B, 9, 10, 11, 12, 13, 14 or 15 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act; or

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

End of World War 1 and 2

(3) For the purposes of this Act:

(a) World War 1 is taken to have ended on 1 September 1921; and

(b) World War 2 is taken to have ended on 28 April 1952.

Note 1: 1 September 1921 is the date fixed by Proclamation under the *Termination of the Present War (Definition) Act 1919*.

Note 2: 28 April 1952 is the date on which the Treaty of Peace with Japan came into force.

5C *Eligibility* related definitions

(1) In this Act, unless the contrary intention appears:

allied country means any country (not being Australia or a Commonwealth country):

(a) that was, at the relevant time, at war with the enemy; or

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(b) the forces of which were, at the relevant time, engaged in an operational area against forces against which the forces of the Commonwealth were engaged in that area;

and includes:

(c) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

(d) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of such a country.

allied mariner means a person who:

(a) was during the period of World War 2 from its commencement to and including 29 October 1945:

(i) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship that was engaged in trading; or

(ii) a master, officer, seaman or apprentice employed in a lighthouse tender or pilot ship; or

(iii) employed as a pilot; or

(iv) a master, officer, seaman or apprentice employed in sea-going service on a ship (being a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel) that was operated by, or on behalf of, a foreign country; and

(b) was at any time during the course of that employment during the period referred to in paragraph (a) on a ship that was:

(i) operating from a port in Australia or from a port in a Commonwealth country or an allied country; or

(ii) engaged in trading with Australia or with a Commonwealth country or an allied country; or

(iii) engaged in providing assistance or support to the Defence Force, or to the forces, or any part of the forces, of a Commonwealth country or an allied country; or

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(iv) engaged in providing assistance or support to Australia or to a Commonwealth country or an allied country;

but does not include:

(c) an Australian mariner; or

(d) a person who has, at any time, been employed by a foreign country that was, at that time, at war with Australia; or

(e) a person who has, at any time, been employed:

(i) on a ship that operated to, or was operating from, a port in a country that was, at that time, at war with Australia; or

(ii) on a ship that was engaged in trading with a country that was, at that time, at war with Australia; or

(iii) on a ship that was engaged in providing assistance or support to the enemy or to a country that was, at that time, at war with Australia.

allied veteran means a person:

(a) who has been appointed or enlisted as a member of the defence force established by an allied country; and

(b) who has rendered continuous full-time service as such a member during a period of hostilities;

but does not include a person who has served at any time:

(c) in the forces of a country that was, at that time, at war with Australia, or in forces engaged in supporting or assisting the forces of such a country; or

(d) in forces that were, at that time, engaged in war-like operations against the Naval, Military or Air Forces of Australia.

Note: See also subsection 5R(2).

Australian mariner means a person who was, during the period of World War 2 from its commencement to and including 29 October 1945:

(a) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on

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a ship registered in Australia that was engaged in trading between a port in a State or Territory and any other port; or

(b) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered outside Australia who was, or whose dependants were, resident in Australia for at least 12 months immediately before he or she entered into the agreement or indenture; or

(c) a master, officer, seaman or apprentice employed on a lighthouse tender, or pilot ship of the Commonwealth or of a State; or

(d) a pilot employed or licensed by Australia or a State or by an authority constituted by or under a law of the Commonwealth or of a State; or

(e) a master, officer, seaman or apprentice employed in sea-going service on a ship owned in Australia and operating from an Australian port, being a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel; or

(f) a member or employee of the Commonwealth Salvage Board engaged in sea-going service under the direction of that Board; or

(g) a master, officer, seaman or apprentice employed in sea-going service on a ship registered in New Zealand who the Commission is satisfied was engaged in Australia and is not entitled to compensation under a law of a Commonwealth country providing for the payment of pensions and other payments to seamen who suffered death or disablement as a result of World War 2.

Commonwealth country means a country (other than Australia) that is, or was at the relevant time, a part of the Dominions of the Crown, and includes:

(a) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

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(b) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of a part of such a country.

Commonwealth veteran means a person who rendered continuous full-time service as a member of:

(a) the naval, military or air forces; or

(b) the nursing or auxiliary services of the naval, military or air forces; or

(c) the women's branch of the naval, military or air forces;

of a Commonwealth country during a period of hostilities.

continuous full-time service means:

(a) in relation to a member of the Defence Force:

(i) service in the Naval Forces of the Commonwealth of the kind known as continuous full-time naval service; or

(ii) service in the Military Forces of the Commonwealth of the kind known as continuous full-time military service; or

(iii) service in the Air Force of the Commonwealth of the kind known as continuous full-time air force service; or

(b) in relation to a member of the naval, military or air forces of a Commonwealth country or an allied country—service in those forces of a kind similar to a kind of service referred to in subparagraph (a)(i), (ii) or (iii).

Note: See also subsection 5R(1).

Defence Force has the same meaning as in the *Defence Act 1903*.

defence force established by a Commonwealth country means:

(a) the naval, military or air forces of the country; or

(b) the nursing and auxiliary services of the naval, military or air forces of the country; or

(c) the women's branch of the naval, military or air forces of the country.

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defence force established by an allied country means:

(a) the regular naval, military or air forces; and

(b) the nursing or auxiliary services of the regular naval, military or air forces; and

(c) the women's branch of the regular naval, military or air forces;

raised by an allied country and operated by the country with regular military-like lines of command, that is to say, raised and operated in such a manner that the members of those forces and services:

(d) were formally appointed to, or enlisted in, those forces or services; and

(e) were required to wear uniforms or insignia distinguishing them as members of those forces or services; and

(f) were required to carry arms openly; and

(g) were subject to the rules and conventions of warfare.

Note 1: For extended meaning of this term in relation to a government-in-exile, see subsection (3).

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

eligible civilian means a person:

(a) who was killed, or detained by the enemy, during World War 2; and

(b) who was, at the time the person was killed or first detained:

(i) a British subject; and

(ii) a resident, but not an indigenous inhabitant, of the Territory of Papua or the Territory of New Guinea; and

(c) who was not, at that time:

(i) rendering service as a member of the Defence Force; or

(ii) employed by the Commonwealth on a special mission outside Australia.

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enemy means:

(a) in relation to World War 1 or World War 2—the naval, military or air forces, or any part of the naval, military or air forces, of a State at war with the Crown during that war; and

(b) in relation to service in, or a period of hostilities in respect of, an operational area—the naval, military or air forces against which the Naval, Military or Air Forces of the Commonwealth were engaged in that operational area; and

(c) persons assisting any of those forces.

fishing vessel means a ship employed in connection with the occupation of sea fishing for profit.

former refugee means a person who was a refugee but does not include a person who ceased to be a refugee because his or her entry permit or visa (as the case may be) was cancelled.

government-in-exile, in relation to an allied country, includes a person, or group of persons, claiming to represent, or administer, the country or a part of the country or the people of the country.

member of a unit of the Defence Force means:

(a) a member of the Defence Force; or

(b) another person who is:

(i) a member of the unit; or

(ii) attached to the unit; or

(iii) appointed for continuous full-time service with the unit.

Note: See also subsection 5R(1).

member of the Defence Force includes a person appointed for continuous full-time service with a unit of the Defence Force.

Note: See also subsection (2).

member of the Interim Forces means a person who:

(a) enlisted or re-engaged in, or was appointed or re-appointed to, the Defence Force for continuous full-time service for a term of not more than 2 years; or

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(b) was appointed for continuous full-time service with a unit of the Defence Force for a term of not more than 2 years;

on or after 1 July 1947 and before 1 July 1949.

non-warlike service means service in the Defence Force of a kind determined in writing by the Defence Minister to be non-warlike service.

operational service has the meaning given by sections 6 to 6F.

qualifying service has the meaning given in section 7A.

refugee has the meaning given by subsection (4).

special mission means a mission that, in the opinion of the Commission, was of special assistance to the Commonwealth in the prosecution of a war to which this Act applies.

unit of the Defence Force means a body, contingent or detachment of the Defence Force.

veteran means:

(a) a person (including a deceased person):
  (i) who is, because of section 7, taken to have rendered eligible war service; or
  (ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and

(b) in Parts III and VIIC also includes a person who is:
  (i) a Commonwealth veteran; or
  (ii) an allied veteran; or
  (iv) an allied mariner.

Note: ***Commonwealth veteran***, ***allied veteran*** and ***allied mariner*** are defined in this subsection.

warlike service means service in the Defence Force of a kind determined in writing by the Defence Minister to be warlike service.

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Army Medical Corps Nursing Service

(2) For the purposes of this Act, a member of the Army Medical Corps Nursing Service who:

(a) rendered service during World War 1, either within or outside Australia; and

(b) rendered the service as such a member in accordance with an acceptance or appointment by the Director-General of Medical Services for service outside Australia;

is taken to have been serving as a member of the Defence Force while rendering that service.

Defence force *of government-in-exile*

(3) In relation to any period during which there was a government-in-exile in relation to an allied country, ***defence force established by an allied country*** includes:

(a) the regular naval, military or air forces; and

(b) the nursing or auxiliary services of the regular naval, military or air forces; and

(c) the women's branch of the regular naval, military or air forces;

raised by that government-in-exile and operated by it with regular military-like lines of command, that is to say, raised and operated in such a manner that the members of those forces and services:

(d) were formally appointed to, or enlisted in, those forces or services; and

(e) were required to wear uniforms or insignia distinguishing them as members of those forces or services; and

(f) were required to carry arms openly; and

(g) were subject to the rules and conventions of warfare.

Note: For an extended meaning of the ***defence force*** of a government-in-exile in relation to an allied veteran see subsection 5R(2).

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Refugee

(4) For the purposes of Part III, a person is a ***refugee*** if the person:

(a) is taken, under the Migration Reform (Transitional Provisions) Regulations, to be the holder of a transitional (permanent) visa because the person was, immediately before 1 September 1994, the holder of:

(i) a visa or entry permit that fell within Division 1.3—Group 1.3 (Permanent resident (refugee and humanitarian) (offshore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

(ii) a visa or entry permit that fell within Division 1.5—Group 1.5 (Permanent resident (refugee and humanitarian) (on-shore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

(b) was, immediately before 1 February 1993, the holder of a visa or entry permit of a class prescribed under the Migration Regulations as then in force that corresponds to a visa or entry permit referred to in subparagraph (a)(i) or (ii); or

(c) is the holder of:

(i) a permanent protection visa; or

(ii) a permanent visa of a class referred to in Schedule 2A; or

(iii) a permanent visa of a class referred to in a declaration of the Minister under subsection (5) that is in force.

Declaration of class of visas

(5) If:

(a) after the commencement of this subsection, a class of permanent visas (other than a class referred to in Schedule 2A) is prescribed by regulations made for the purposes of section 31 of the *Migration Act 1958*; and

(b) the Minister is of the view that a person holding a visa of that class should be regarded as a refugee for the purposes of Part III;

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the Minister may, by legislative instrument, declare that class of visas to be a class of visas for the purposes of subparagraph (4)(c)(iii).

5D *Injury/disease* definitions

(1) In this Act, unless the contrary intention appears:

blinded in an eye has the meaning given by subsection (3).

disease means:

(a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or

(b) the recurrence of such an ailment, disorder, defect or morbid condition;

but does not include:

(c) the aggravation of such an ailment, disorder, defect or morbid condition; or

(d) a temporary departure from:

(i) the normal physiological state; or

(ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

incapacity from a defence-caused injury or ***incapacity from a defence-caused disease*** has the meaning given by subsection (2).

incapacity from a war-caused injury or ***incapacity from a war-caused disease*** has the meaning given by subsection (2).

injury means any physical or mental injury (including the recurrence of a physical or mental injury) but does not include:

(a) a disease; or

(b) the aggravation of a physical or mental injury.

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War-caused injury; war-caused disease; defence-caused injury; defence-caused disease

(2) In this Act, unless the contrary intention appears:

(a) a reference to the ***incapacity*** of a veteran ***from a war-caused injury*** or ***a war-caused disease***; or

(b) a reference to the ***incapacity*** of a person who is a member of the Forces, or a member of a Peacekeeping Force (as defined by subsection 68(1)), ***from a defence-caused injury*** or ***a defence-caused disease***;

is a reference to the effects of that injury or disease and not a reference to the injury or disease itself.

Note: For ***war-caused injury*** and ***war-caused disease*** see section 9.

Blinded in an eye

(3) For the purposes of this Act, a person is taken to have been ***blinded in an eye*** if:

(a) the person has lost the eye; or

(b) in the opinion of the Commission, the eyesight of the person in that eye is so defective that the person has no useful sight in that eye.

5E *Family relationships* definitions—couples

(1) In this Act, unless the contrary intention appears:

couple has the meaning given by subsections (2), (3) and (4).

member of a couple has the meaning given by subsections (2), (3), (4) and (4A).

non-illness separated spouse means a person:

(a) who is legally married to another person but living separately and apart from that other person on a permanent basis; and

(b) whose separation has not resulted in a determination under subsection 5R(5).

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partner, in relation to a person who is a ***member of a couple***, means the other member of the couple.

partnered has the meaning given by subsection (5).

partnered (partner getting benefit) has the meaning given by subsection (5).

partnered (partner getting neither pension nor benefit) has the meaning given by subsection (5).

partnered (partner getting pension) has the meaning given by subsection (5).

partnered (partner getting pension or benefit) has the meaning given by subsection (5).

prohibited relationship has the meaning given by subsections (6) and (7).

war widow means a woman:

(a) who was the partner of, was legally married to, or was the wholly dependent partner of:
  (i) a veteran; or
  (ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or
  (iii) a person who was a member (within the meaning of the MRCA);

  immediately before the death of the veteran or person; and

(b) who:
  (i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or
  (ii) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; or

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(iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

war widower means a man:

(a) who was the partner of, was legally married to, or was the wholly dependent partner of:

(i) a veteran; or

(ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or

(iii) a person who was a member (within the meaning of the MRCA);

immediately before the death of the veteran or person; and

(b) who:

(i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or

(ii) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; or

(iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

wholly dependent partner has the meaning given by the MRCA.

widow means:

(a) a woman who was the partner of a person immediately before the person died; or

(b) a woman who was legally married to a person, but living separately and apart from the person on a permanent basis, immediately before the person died.

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widower means:

(a) a man who was a partner of a person immediately before the person died; or

(b) a man who was legally married to a person, but living separately and apart from the person on a permanent basis, immediately before the person died.

Member of a couple—general

(2) A person is a ***member of a couple*** for the purposes of this Act if:

(a) the person is legally married to another person and is not living separately and apart from the other person on a permanent basis; or

(aa) both of the following conditions are met:

(i) a relationship between the person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

(ii) the person is not living separately and apart from the other person on a permanent basis; or

(b) all of the following conditions are met:

(i) the person is living with another person, whether of the same sex or a different sex (in this paragraph called the ***partner***);

(ii) the person is not legally married to the partner;

(iii) the person and the partner are, in the Commission's opinion (formed as mentioned in section 11A), in a de facto relationship;

(iv) the person and the partner are not within a prohibited relationship.

Note 1: For ***living with a person*** see subsection (3).

Note 3: Subsection 5R(5) (determination in relation to ***an illness separated couple***) is a qualification to the definition of ***a member of a couple***.

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Note 4: Subsection 5R(6) (determination in relation to ***a respite care couple***) is a qualification to the definition of ***a member of a couple***.

(3) For the purposes of subparagraph (2)(b)(i), a person is to be treated as ***living with*** another person during:

(a) any temporary absence of one of those persons;

(b) an absence of one of those persons resulting from illness or infirmity;

if the Commission is of the opinion that they would, but for the absence, have been living together during that period.

Member of a couple—special excluding determination

(4) A person is not a ***member of a couple*** if a determination under subsection 5R(3) is in force in relation to the person.

Note: Subsection 5R(3) allows the Commission to treat a person who is a member of a couple as not being a member of a couple in special circumstances.

(4A) The partner of a person who:

(a) is receiving a youth allowance under the Social Security Act; and

(b) is not independent within the meaning of Part 3.5 of that Act;

is not a ***member of a couple*** for the purposes of:

(c) the provisions of this Act referred to in the table at the end of this subsection; and

(d) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (c).

Note: Paragraph (d) has the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test or compensation recovery provisions, including section 5H (Income test definitions), sections 5L and 5LA (Assets test definitions), section 5NB (Compensation recovery definitions) and Divisions 1 to 11 of Part IIIB (General provisions relating to the income and assets tests).

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Affected provisions		
Item	**Provisions of this Act**	**Subject matter**
1	Part IIIC	Compensation recovery
2	Module E of the Rate Calculator in Part 2 of Schedule 6	Ordinary/adjusted income test
3	Module F of the Rate Calculator in Part 2 of Schedule 6	Assets test

Standard family situation categories

(5) For the purposes of this Act:

(a) a person is ***partnered*** if the person is a member of a couple; and

(b) a person is ***partnered (partner getting neither pension nor benefit)*** if the person is a member of a couple and the person's partner:

(i) is not receiving a service pension; and

(ia) is not receiving income support supplement; and

(ib) is not receiving a veteran payment; and

(ii) is not receiving a social security pension; and

(iii) is not receiving a social security benefit; and

(c) a person is ***partnered (partner getting pension or benefit)*** if the person is a member of a couple and the person's partner is receiving:

(i) a service pension; or

(ia) income support supplement; or

(ib) a veteran payment; or

(ii) a social security pension; or

(iii) a social security benefit; and

(d) a person is ***partnered (partner getting pension)*** if the person is a member of a couple and the person's partner is receiving:

(i) a service pension; or

(ia) income support supplement; or

(ib) a veteran payment; or

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(ii) a social security pension; and

(e) a person is ***partnered (partner getting benefit)*** if the person is a member of a couple and the person's partner is receiving a social security benefit.

Prohibited relationship

(6) For the purposes of this Act, a person and his or her partner are within a ***prohibited relationship*** if the person is:

(a) an ancestor or a descendant of the partner; or

(b) a brother, sister, half-brother or half-sister of the partner.

(7) For the purposes of subsection (6), a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child.

5F *Family relationships* definitions—children

(1) In this Act, unless the contrary intention appears:

Aboriginal study assistance scheme means:

(a) the ABSTUDY Scheme; or

(b) the Aboriginal Overseas Study Assistance Scheme; or

(c) a scheme prescribed for the purposes of this definition.

adopted child means a child adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

child means:

(a) a person who has not turned 16; or

(b) a person who:

(i) has turned 16 but has not turned 25; and

(ii) is receiving full-time education at a school, college or university;

but does not include such a person if the person is receiving:

(c) a disability support pension; or

(e) a carer payment; or

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(f) a pension PP (single); or
(h) a widowed person allowance; or
(j) a social security benefit (except youth allowance paid because the person is at least 16 but less than 25 and is receiving full-time education at a school, college or university);

under the Social Security Act.

dependent child has the same meaning as in the Social Security Act.

family tax benefit has the meaning given by subsection 3(1) of the Family Assistance Act.

FTB child has the meaning given by Subdivision A of Division 1 of Part 3 of the Family Assistance Act.

maximum Part A rate of family tax benefit is the maximum rate worked out in step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act.

parent has a meaning affected by section 10A.

regular care child has the meaning given by subsection 3(1) of the Family Assistance Act.

step-child: without limiting who is a step-child of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***step-child*** of the person, if he or she would be the person's step-child except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a partner of a parent of the person is the ***step-parent*** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

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When a person becomes a dependent child

(2) A person becomes a dependent child at the time when the person would become a dependent child for the purposes of the Social Security Act if that Act applied in respect of the person.

5G *Australian residence* definitions

(1) In this Act, unless the contrary intention appears:

Australian resident has the meaning given by subsection (1AA).

holder, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

permanent visa, ***special category visa*** and ***special purpose visa*** have the same meanings as in the *Migration Act 1958*.

(1AA) An ***Australian resident*** is a person who:

(a) resides in Australia; and

(b) is one of the following:

(i) an Australian citizen;

(ii) the holder of a permanent visa;

(iii) the holder of a special category visa who is likely to remain permanently in Australia;

(iv) the holder of a special purpose visa who is likely to remain permanently in Australia.

Note 1: For ***holder***, ***permanent visa*** and ***special purpose visa*** see subsection (1).

Note 2: ***Australian citizen*** is defined in the *Australian Citizenship Act 2007*.

(1A) In deciding for the purposes of this Act whether or not a person resides in Australia, regard must be had to:

(a) the nature of the accommodation used by the person in Australia; and

(b) the nature and extent of the family relationships the person has in Australia; and

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(c) the nature and extent of the person's employment, business or financial ties with Australia; and

(ca) the nature and extent of the person's assets located in Australia; and

(cb) the frequency and duration of the person's travel outside Australia; and

(d) any other matter relevant to determining whether the person intends to remain permanently in Australia.

(1AB) For the purposes of paragraph (1A)(b), family relationships are taken to include (without limitation):

(a) relationships between partners; and

(b) relationships of child and parent that arise if someone is the parent of a person under section 10A; and

(c) any other relationship that would be a family relationship if a relationship mentioned in paragraph (a) or (b) is taken to be a family relationship.

Papua New Guinea residents

(2) For the purposes of this Act (other than Part VIIC), a person (other than an indigenous inhabitant of the Territory of Papua or the Territory of New Guinea) resident in Papua New Guinea immediately before it became an independent sovereign State, is taken to be an Australian resident so long as the person continues to reside in Papua New Guinea.

(3) If:

(a) a person who is receiving a service pension, income support supplement or a veteran payment is taken to be an Australian resident under subsection (2); and

(b) the person's partner was resident in Papua New Guinea after it became an independent sovereign State;

the partner is, for the purposes of Parts III, IIIA, IIIAA and IIIB, also taken to be an Australian resident.

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(4) If:

(a) a person who is receiving a service pension, income support supplement or a veteran payment is taken to be an Australian resident under subsection (2); and

(b) the person's non-illness separated spouse was resident in Papua New Guinea after it became an independent sovereign State;

the non-illness separated spouse is, for the purposes of Parts III, IIIA, IIIAA and IIIB, also taken to be an Australian resident.

5GA Pension supplement rate definitions

(1) In this Act, the ***combined couple rate of pension supplement*** is $2,199.60.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

Note 2: This rate is an annual rate.

(2) In this Act, the ***combined couple rate of minimum pension supplement*** is $1,185.60.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

Note 2: This rate is an annual rate.

(3) In this Act, a person's ***minimum pension supplement amount*** is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of minimum pension supplement; and

(b) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (a) is not a multiple of $2.60;

rounding the amount up or down to the nearest multiple of $2.60 (rounding up if the amount is not a multiple of $2.60 but is a multiple of $1.30).

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Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%

Note: A person's minimum pension supplement amount is an annual rate.

(4) In this Act, a person's ***pension supplement basic amount*** depends on which family situation in the following table applies to the person. The person's ***pension supplement basic amount*** is the corresponding amount set out in the table.

Item	Person's family situation	Amount
1	Not member of couple	$509.60
2	Partnered	$426.40
3	Member of illness separated couple	$509.60
4	Member of respite care couple	$509.60

Note 1: Each amount in the table will be indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

Note 2: A person's pension supplement basic amount is an annual rate.

(5) In this Act, the daily rate of ***tax-exempt pension supplement***, for a person who is receiving a service pension, income support supplement or a veteran payment is the amount a day worked out using the table.

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Tax-exempt pension supplement		
Item	**Payment received**	**Amount a day of tax-exempt pension supplement**
1	Service pension or veteran payment	The amount worked out by: (a) subtracting the person's pension supplement basic amount from the person's pension supplement amount; and (b) dividing the result of paragraph (a) by 364
2	Income support supplement	The person's minimum pension supplement amount divided by 364

Note: The portion of the person's service pension, income support supplement or veteran payment equal to the tax-exempt pension supplement is exempt from income tax (see sections 52-65 and 52-70 of the *Income Tax Assessment Act 1997*).

(6) If a person is receiving a service pension at a rate that:

(a) is worked out under subpoint SCH6-A1(4) of Schedule 6 and is the revised rate; or

(b) is worked out under subpoint SCH6-A1(5) of Schedule 6;

subsection (5) applies in relation to the person and the pension as if the person had a pension supplement amount equal to what would be the person's pension supplement amount if the person were receiving the service pension at the rate worked out under subpoint SCH6-A1(4) of Schedule 6 and equal to the provisional rate.

5H *Income test* definitions

(1) In this Act, unless the contrary intention appears:

adjusted income, in relation to a person for the purpose of assessment of the rate of income support supplement, means the sum of:

(a) the person's ordinary income; and

(b) a payment to the person that is a payment in respect of incapacity or death resulting from employment in connection

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with a war or war-like operations in which the Crown has been engaged, other than:

(i) a pension under Part II or IV (other than a pension that is payable under section 30 to a dependant of a deceased veteran); or

(ii) a pension payable because of subsection 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than a pension payable in respect of a child); and

(c) any instalment of pension payable to the person under subsection 30(1); and

(ca) if compensation under section 233 of the MRCA is payable to the person and the person has not made a choice under section 236 of the MRCA—any payment of the weekly amount mentioned in paragraph 234(1)(b) of the MRCA; and

(cb) if compensation under section 233 of the MRCA is payable to the person and the person has made a choice under section 236 of the MRCA—any weekly amount mentioned in paragraph 234(1)(b) of the MRCA that the person would have been paid if the person had not made that choice; and

(d) any instalment of pension that is payable to the person under the law of a foreign country and is, in the opinion of the Commission, similar in character to the pension referred to in paragraph (c).

approved exchange trading system has the meaning given by subsection (11).

available money, in relation to a person, means money that:

(a) is held by or on behalf of the person; and

(b) is not deposit money of the person; and

(c) is not the subject of a loan made by the person.

deposit money, in relation to a person, means the person's money that is deposited in an account with a financial institution.

disposes of ordinary income has the meaning given by section 48.

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domestic payment has the meaning given by subsection (3).

earned, derived or received has the meaning given by subsection (2).

exchange trading system has the meaning given by subsection (10).

exempt lump sum has the meaning given by subsections (12) and (12A).

home equity conversion agreement, in relation to a person, means an agreement under which the repayment of an amount paid to or on behalf of the person, or the person's partner, is secured by a mortgage of the principal home of the person or the person's partner.

Note 1: See also subsection (7).

Note 2: A home equity access scheme advance payment (within the meaning of Subdivision E of Division 11 of Part IIIB) is an example of a payment under a home equity conversion agreement.

income, in relation to a person, means:

(a) an income amount earned, derived or received by the person for the person's own use or benefit; or

(b) a periodical payment by way of gift or allowance; or

(c) a periodical benefit by way of gift or allowance;

but does not include an amount that is excluded under subsection (4), (5) or (8).

Note 1: See also sections 46B and 46C (business income), Division 3 of Part IIIB (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 4 of Part IIIB (income from income streams not covered by Division 3 of Part IIIB).

Note 2: Where a person or a person's partner has disposed of income, the person's income may be taken to include the amount which has been disposed of—see sections 48–48E.

Note 3: Amounts of maintenance income are **not** excluded amounts.

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income amount means:

(a) valuable consideration; or

(b) personal earnings; or

(c) moneys; or

(d) profits;

(whether of a capital nature or not).

instalment of parental leave pay means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

ordinary income means income that is not maintenance income or an exempt lump sum.

Note 1: For ***maintenance income*** see section 5K. For ***exempt lump sum***, see subsections (12) and (12A).

Note 2: The receipt of periodic compensation payments may result in reduction of the person's rate of service pension, income support supplement or veteran payment under Part IIIC. If this happens, the payments are not treated as ordinary income (see section 59X).

Note 3: For provisions affecting the amount of a person's ordinary income see sections 46 and 46A (ordinary income concept), sections 46B and 46C (business income), Division 3 of Part IIIB (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 4 of Part IIIB (income from income streams not covered by Division 3 of Part IIIB).

Earned, derived or received

(2) A reference in this Act to an income amount ***earned, derived or received*** is a reference to:

(a) an income amount earned, derived or received by any means; and

(b) an income amount earned, derived or received from any source (whether within or outside Australia).

Domestic payments

(3) A payment received by a person is a ***domestic payment*** for the purposes of this Act if:

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(a) the person receives the payment on the disposal of an asset of the person; and

(b) the asset was used, immediately before the disposal, by the person or the person's partner wholly or substantially for private or domestic purposes; and

(c) the asset was used by the person or the person's partner wholly or substantially for those purposes for:

(i) a period of 12 months before the disposal; or

(ii) if the Commission considers it appropriate—a period of less than 12 months before the disposal.

Excluded amounts—home equity conversion (not a member of a couple)

(4) If a person is not a member of a couple, an amount paid to or on behalf of the person under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person from time to time under home equity conversion agreements does not exceed $40,000.

Excluded amounts—home equity conversion (member of a couple)

(5) If a person is a member of a couple, an amount paid to or on behalf of the person or the person's partner under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person and the person's partner under home equity conversion agreements from time to time does not exceed $40,000.

Home equity conversion (amount owed)

(6) For the purposes of this Act, the amount owed by a person under a home equity conversion agreement is the principal amount secured by the mortgage concerned and does not include:

(a) any amount representing mortgage fees; or

(b) any amount representing interest; or

(c) any similar liability whose repayment is also secured by the mortgage.

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Home equity conversion (principal home)

(7) For the purposes of the definition of ***home equity conversion agreement*** in subsection (1), an asset cannot be a person's ***principal home*** unless the person or the person's partner has a beneficial interest (but not necessarily the sole beneficial interest) in the asset.

Excluded amounts—general

(8) The following amounts are not income in relation to a person for the purposes of this Act:

(a) a payment under Part III or Part IIIA;

(aa) a veteran payment;

(ab) a home equity access scheme advance payment (within the meaning of section 52ZBA);

(b) a payment of an instalment of pension under Part II or IV;

(ba) a payment of an instalment of a supplement under Part VIIA (veterans supplement);

(c) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable because of subsection 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

(e) a payment (other than a payment referred to in paragraph (b) or (c)) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged;

Note: However, a payment referred to in paragraph (b), (c) or (e) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

(ea) any payment of compensation (other than a payment referred to in paragraph (e)) to the extent that the payment is taken into account:

(i) under Division 5A of Part II; or

(ii) under section 74;

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to reduce a pension payable to the person under Part II or IV, as the case requires;

Note: However, a payment referred to in paragraph (ea) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

(f) a payment by way of allowance (other than a loss of earnings allowance) under Part VI of this Act;

Note: However, a payment referred to in paragraph (f) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

(faa) a payment, by a foreign country, of an allowance or annuity that is of a similar kind to decoration allowance payable under section 102 or to Victoria Cross allowance payable under section 103;

Note: However, a payment referred to in paragraph (faa) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

(faaa) a payment under Part VIB (prisoner of war recognition supplement);

Note: However, a payment referred to in paragraph (faaa) is counted in working out a person's total income for the purposes of the hardship rules (see section 52Z).

(fa) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the Veterans' Children Education Scheme;

(gb) a payment under Part VIIAD (energy supplement);

(h) a payment under the Social Security Act;

(ha) a payment under the ABSTUDY Scheme;

(haa) the amount or value of a scholarship known as a Commonwealth Trade Learning Scholarship;

(hab) a payment of an approved scholarship (within the meaning of subsection 8(1) of the *Social Security Act 1991*) awarded on or after 1 September 1990;

(hac) the amount or value of a scholarship:

(i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and

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(ii) specified under subsection 8(8AAA) of the *Social Security Act 1991*;

(hb) the amount or value of:

(i) a scholarship known as a Commonwealth Education Costs Scholarship; or

(ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*;

(hc) an amount covered by subsection (8A) (about reductions of amounts payable for enrolment or tuition in certain courses);

(hd) a payment covered by subsection (8B) (about payments that are made to an educational institution or the Commonwealth to reduce a person's liability to the educational institution or Commonwealth and that are made by someone other than the person);

(he) a payment of a scholarship, to the extent that the payment is not income for the purposes of the *Social Security Act 1991* because of paragraph 8(8)(zjd) of that Act;

(i) any return on a person's investment in:

(i) a superannuation fund; or

(ii) an approved deposit fund; or

(iiia) an ATO small superannuation account;

until the person:

(iv) reaches pension age; or

(v) commences to receive a pension or annuity out of the fund;

Note 1: For ***pension age*** see subsection (9) and sections 5QA and 5QB.

Note 2: For ***superannuation fund***, ***approved deposit fund*** and ***ATO small superannuation account*** see subsection 5J(1).

(j) the value of emergency relief or like assistance;

(m) a payment under Part III of the former *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;

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(maa) the value of supports or services that are specified in an instrument under subsection 8(8AAAB) of the Social Security Act and are provided under an arrangement or grant under the *Disability Services and Inclusion Act 2023*;

(ma) a payment under the *Business Services Wage Assessment Tool Payment Scheme Act 2015*;

(mb) a payment under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*;

(mc) a payment under the scheme known as the Territories Stolen Generations Redress Scheme;

(n) a payment of domiciliary nursing care benefit under Part VB of the *National Health Act 1953* as in force immediately before 1 July 1999;

(na) a payment of subsidy made to a registered provider under Division 4 of Part 2 of Chapter 4 of the *Aged Care Act 2024* in respect of care delivered to the person;

(nb) an accommodation bond balance (within the meaning of the *Aged Care Act 2024*) refunded to the person under that Act;

(nba) a payment under section 186 of the *Aged Care Act 2024*;

(nc) while a person is accruing a liability to pay an accommodation charge—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: ***Accommodation charge*** has the same meaning as in the *Aged Care Act 2024*: see subsection 5L(1).

Note 2: For ***rent***, see subsection 5N(2).

Note 3: Under subsections 5LA(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 4: The operation of this paragraph is limited by subsection (11A).

(nd) while a person is liable to pay all or some of an accommodation bond by periodic payments—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: For ***rent***, see subsection 5N(2).

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Note 2: Under subsections 5LA(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: The operation of this paragraph is limited by subsection (11A).

(ne) a refundable deposit balance refunded to the person under the *Aged Care Act 2024*;

(nf) while a person is liable to pay a daily accommodation payment or a daily accommodation contribution—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: For ***rent***, see subsection 5N(2).

Note 2: Under subsections 5LA(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: The operation of this paragraph is limited by subsection (11A).

(o) a payment under a Commonwealth law, one of whose objects is that of assisting people to purchase or build their own homes;

(oa) a payment by a State or Territory for the purpose of assisting people to purchase or build their own homes;

(p) a payment made to the person for or in respect of a child of the person;

(paa) a payment of family assistance, or of one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, first 2020 economic support payment, second 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021, under the Family Assistance Act;

(pab) a payment under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;

(paba) an NDIS amount;

(pabb) any return on a person's NDIS amounts;

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(pabc) a payment of a bursary under the program established by the Commonwealth and known as the Young Carer Bursary Programme;

(pac) disability expenses maintenance;

(pa) if:

(i) the person owes money under a mortgage or other arrangement; and

(ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and

(iii) payments are made to the creditor under the insurance;

a payment so made;

(q) insurance or compensation payments made because of the loss of, or damage to, buildings, plant or personal effects;

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

(r) money from an investment that is:

(i) an investment of payments of the kind referred to in paragraph (q); and

(ii) an investment for:

(A) a period of not more than 12 months after the person receives the payments; or

(B) if the Commission thinks it appropriate—of 12 months or more after the person receives those payments;

(s) an amount paid, under a law of, or applying in, a country or part of a country, by way of compensation for a victim of National Socialist persecution;

(u) if the person pays, or is liable to pay, rent—a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;

(v) a payment received by a trainee in full-time training under a program included in the programs known as Labour Market

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Programs, to the extent that the payment includes one or more of the following amounts:

(i) an amount calculated by reference to a rate of jobseeker payment or youth allowance under the Social Security Act;

(ii) an amount known as the training component;

(iii) an amount by way of a living away from home allowance;

(w) in the case of a person who:

(i) is receiving a service pension, income support supplement, a veteran payment, a social security pension or a social security benefit; and

(ii) is in part-time training, or engaged in part-time work experience, under a program included in the programs known as Labour Market Programs;

a payment received by the person under that program in respect of the person's expenses associated with his or her participation in the training or work experience;

(x) a payment received by the person under a self-employment program;

(xaa) a payment made by the Commonwealth known as the Apprenticeship Wage Top-Up to the person;

(xab) a payment to the person made by the Commonwealth under the program known as Skills for Sustainability for Australian Apprentices;

(xac) a payment to the person made by the Commonwealth under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program);

(xad) a payment made by the Commonwealth, under the program established by the Commonwealth and known as "Youth Jobs PaTH", to an individual placed in an internship under that program;

(xa) a payment made by the Mark Fitzpatrick Trust or the New South Wales Medically-Acquired HIV Trust to a person by

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way of assistance with expenses incurred in relation to a person who has medically acquired HIV infection;

(xb) a payment by the Thalidomide Australia Fixed Trust:

(i) made to, or applied for the benefit of, a beneficiary of the Trust; or

(ii) made to a person in respect of a beneficiary of the Trust;

(xc) a payment under the program established by the Commonwealth and known as the Support for Australia's Thalidomide Survivors program;

(y) a benefit under a law of the Commonwealth that relates to the provision of:

(i) pharmaceutical, sickness or hospital benefits; or

(ii) medical or dental services;

(ya) a payment towards the cost of personal care support services for the person that is made under a scheme approved under section 35A of the Social Security Act;

(z) a payment that:

(i) is made by an organisation that is registered under a law referred to in paragraph (y); and

(ii) is made in respect of expenses incurred by a person for:

(A) hospital treatment; or

(B) medical treatment; or

(C) dental treatment;

(za) in the case of a member of:

(i) the Naval Reserve; or

(ii) the Army Reserve; or

(iii) the Air Force Reserve;

the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);

(zb) a payment that is a bereavement payment under section 98A;

(zd) a periodical payment by way of gift or allowance, or a periodical benefit by way of gift or allowance, from a parent, child, brother or sister of the person;

(ze) the value of board or lodging received by the person;

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(zea) an amount received under the scheme known as the Western Australian Cost of Living Rebate Scheme;

(zeb) the value of a benefit obtained by using a card known as the Western Australian Country Age Pension Fuel Card;

(zec) a payment, known as the Cost of Living Concession, made by the Government of South Australia;

(zf) a domestic payment;

(zh) a payment received by the person for serving, or being summoned to serve, on a jury;

(zi) a payment received by the person for expenses incurred by the person as a witness, other than an expert witness, before a court, tribunal or commission;

(zj) a return on an exempt funeral investment;

Note: For ***exempt funeral investment*** see section 5PC.

(zk) an amount paid by a buyer under a sale leaseback agreement;

(zl) if a person is a member of an approved exchange trading system—an amount credited to the person's account for the purposes of the scheme in respect of any goods or services provided by the person to another member;

Note: For ***approved exchange trading system*** see subsections (10) and (11).

(zm) an advance payment of pension under Part IVA;

(zn) an amount worked out under section 115G;

(zo) a payment under section 47, 56, 81, 205, 214, 217, 226, 239 or 266 of the MRCA to reimburse costs incurred in respect of the provision of goods or services (other than a payment to the person who provided the goods or service);

(zp) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the MRCA (permanent impairment);

(zq) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;

(zr) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight, worked out under section 5I of this Act, that would, apart from this paragraph, be income of the person;

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Note: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

(zs) a payment under the Motor Vehicle Compensation Scheme under section 212 of the MRCA;

(zt) a payment of MRCA supplement under section 221, 245 or 300 of the MRCA;

(zu) a payment of a lump sum mentioned in paragraph 234(1)(a) or subsection 236(5) of the MRCA or of the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) (wholly dependent partner payment);

(zv) a payment under section 242 or 255 of the MRCA (continuing permanent impairment and incapacity etc. payments);

(zw) a payment under section 251 or 253 of the MRCA (eligible young person payment);

(zx) a payment under the scheme set up under section 258 of the MRCA (education scheme for eligible young persons);

(zy) a payment under section 262 of the MRCA (compensation for other dependants);

(zz) a payment under Division 1A, 2 or 3 of Part 4 of Chapter 6, or subsection 328(4), of the MRCA (compensation for treatment etc.);

(zza) a payment under section 424 of the MRCA (special assistance);

(zzaaaa) a clean energy payment under the MRCA;

(zzah) a clean energy payment under Part IIIE;

(zzaj) a one-off energy assistance payment under Part IIIF;

(zzak) a one-off energy assistance payment under Part IIIG;

(zzal) a first 2020 economic support payment under Division 1 of Part IIIH;

(zzam) a second 2020 economic support payment under Division 2 of Part IIIH;

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(zzan) an additional economic support payment 2020 under Division 1 of Part IIIJ;

(zzao) an additional economic support payment 2021 under Division 2 of Part IIIJ;

(zzap) a 2022 cost of living payment under Division 1 of Part IIIK;

(zzb) the value of the benefit provided under the initiative known as the Tools for Your Trade initiative;

(zzc) a cash flow boost (within the meaning of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020*);

(zzd) a payment:

(i) paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(ii) stated, in those rules, not to be income in relation to the person for the purposes of this Act;

(zze) a payment under an instrument made under any of the following:

(i) section 115S of this Act;

(ii) section 268B of the MRCA;

(ii) section 41B of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(zzf) a payment made by the Commonwealth to an individual under a program that is established by the Commonwealth and is determined in an instrument under subsection 8(8AC) of the Social Security Act to be an employment program;

(zzg) a payment made by a State or Territory to an individual under a program that is established by the State or Territory and is determined in an instrument under subsection 8(8AC) of the Social Security Act to be an employment program.

Note: However, some of the amounts referred to in paragraphs (zp), (zq), (zr) and (zu) are counted for the purposes of the hardship rules (see subsection 52Z(3A)).

(8AA) Paragraph (8)(h) does not apply to a payment under an arrangement or grant referred to in section 1062A of the Social

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Security Act. This subsection does not prevent another paragraph of subsection (8) from applying to such a payment.

(8A) This subsection covers the amount of a reduction (by discount, remission or waiver) of an amount that would otherwise be payable by a person:

(a) to an educational institution for enrolment or tuition of the person by the institution in a course that:

(i) is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act; or

(ii) is a Masters or Doctoral degree course accredited as a higher education course by the authority responsible for accrediting higher education courses in the State or Territory in which the course is conducted or by the institution, if it is permitted by a law of the Commonwealth, a State or a Territory to accredit higher education courses that it conducts; or

(iii) is a course of vocational training; or

(b) to the Commonwealth as a result of the person's enrolment in, or undertaking of, such a course at an educational institution.

(8B) This subsection covers a payment:

(a) that is made to discharge, or to prevent from arising, to any extent:

(i) a person's actual or anticipated liability to an educational institution for enrolment or tuition of the person by the institution in a course described in paragraph (8A)(a); or

(ii) a person's actual or anticipated liability to the Commonwealth resulting from the person's enrolment in, or undertaking of, such a course at an educational institution; and

(b) that is made by someone other than the person; and

(c) that is made to the institution or the Commonwealth; and

(d) that is not made at the direction of the person.

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(9) For the purposes of the application of subsection (8) in relation to income support supplement, the reference in subparagraph (8)(i)(iv) to ***pension age*** is taken to be a reference to the qualifying age.

Note: For ***qualifying age*** see section 5Q.

(10) An ***exchange trading system*** is an arrangement between a number of people (***members***) under which each member may obtain goods or services from another member that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:

(a) to which is credited:

(i) the amount representing the value of any goods or services provided by the member to another member; or

(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and

(b) to which is debited:

(i) the amount representing the value of any goods or services supplied to the member by another member; or

(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.

(11) An exchange trading system is an ***approved exchange trading system*** if the Commission is satisfied that:

(a) it is a local community-based system; and

(b) its primary purpose is to help people maintain their labour skills and keep them in touch with the labour market; and

(c) it is not a system run by a person or organisation for profit.

(11A) Paragraphs (8)(nc), (nd) and (nf) do not apply in relation to a person if:

(a) those paragraphs did not apply in relation to the person immediately before the commencement of the *Aged Care Act 2024*; or

(b) a period of 28 consecutive days ends after that commencement in which the person:

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(i) was not provided with residential care or flexible care through a residential care service or a flexible care service; and

(ii) did not access ongoing funded aged care services in an approved residential care home;

other than because the person was on leave.

(11C) An expression used in subsection (11A) and in the *Aged Care Act 2024* or the *Aged Care Act 1997* (as in force immediately before the commencement of the *Aged Care Act 2024*) has the same meaning in that subsection as in those Acts.

(12) An amount received by a person is an ***exempt lump sum*** if:

(a) it is not a periodic amount (within the meaning of subsection (13)); and

(b) it is not income from remunerative work undertaken by the person; and

(c) it is an amount, or one of a class of amounts, that the Commission determines to be an ***exempt lump sum***.

(12A) An amount received by a person is also an ***exempt lump sum*** if the amount is an exempt lump sum within the meaning of subsection 8(11) of the *Social Security Act 1991*.

(13) An amount is a ***periodic amount*** if it is:

(a) the amount of one payment in a series of related payments, even if the payments are irregular in time and amount; or

(b) the amount of a payment making up for arrears in such a series.

5I Special Rate Disability Pension reduction amount

For the purposes of paragraphs 5H(8)(zr) and 52Z(3A)(i), the amount per fortnight is:

$$\text{Special Rate Disability Pension reduction amount} \times \frac{10}{6}$$

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where:

Special Rate Disability Pension reduction amount means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the MRCA (but not below zero).

5J *Financial assets* and *income streams* definitions

(1) In this Act, unless the contrary intention appears:

approved deposit fund has the same meaning as in the *Income Tax Assessment Act 1997*.

asset-tested income stream (lifetime) has the meaning given by section 5JE.

asset-tested income stream (long term) means an income stream that is an asset-tested income stream (long term) under section 5JD or an income stream that:

(a) is not an asset-test exempt income stream; and

(b) has, on its commencement day:

(i) a specified term of more than 5 years; or

(ii) if the person who has acquired the income stream has a life expectancy of 5 years or less—a specified term equal to or greater than the person's life expectancy.

Note: Since the income stream must be for a specified term, an asset-tested income stream (long term) cannot be an asset-tested income stream (lifetime).

asset-tested income stream (short term) means an income stream that is an asset-tested income stream (short term) under section 5JD or an income stream that is none of the following:

(a) an asset-test exempt income stream;

(b) an asset-tested income stream (long term);

(c) an asset-tested income stream (lifetime).

asset-test exempt income stream has the meanings given by sections 5JA, 5JB, 5JBA and 5JBB.

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ATO small superannuation account means an account kept in the name of an individual under the *Small Superannuation Accounts Act 1995*.

commencement day, in relation to an income stream, means the first day of the period to which the first payment under the income stream relates.

deductible amount, in relation to a defined benefit income stream for a year, means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997* or, if applicable, section 307-125 of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the defined benefit income stream during the year.

defined benefit income stream has the meaning given by subsection (1E).

deprived asset has the meaning given by subsection (2B).

designated NDIS amount means:

(a) an NDIS amount that is deposited in an account with a financial institution; and

(b) any return on the NDIS amount that a person earns, derives or receives.

family law affected income stream has the meaning given by section 5JC.

financial asset means:

(a) a financial investment; or

(b) a deprived asset.

Note: For ***deprived asset*** see subsection (2B).

financial investment means:

(a) available money; or

(b) deposit money; or

(c) a managed investment; or

(d) a listed security; or

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(e) a loan that has not been repaid in full; or
(f) an unlisted public security; or
(g) gold, silver or platinum bullion; or
(h) an asset-tested income stream (short term); or
(i) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or
(j) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection (1G);

but does not include a designated NDIS amount.

Note: For ***loan*** see subsections (2) and (2A).

friendly society means:

(a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
(b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
(c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or
(d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or
(e) a body that had, before 13 December 1987, been approved for the purpose of the definition of ***friendly society*** in subsection 115(1) of the *Social Security Act 1947*.

governing rules, in relation to an income stream, means any trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the income stream.

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income stream means:

(a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or

(b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or

(c) an income stream arising under a retirement savings account; or

(d) an income stream provided as life insurance business by a life company registered under section 21 of the *Life Insurance Act 1995*; or

(f) an income stream designated in writing by the Commission for the purposes of this definition, having regard to the guidelines determined under subsection (1F); or

(fa) a family law affected income stream;

but does not include any of the following:

(g) available money;

(h) deposit money;

(i) a managed investment;

(j) a listed security;

(k) a loan that has not been repaid in full;

(l) an unlisted public security;

(m) gold, silver or platinum bullion;

(n) a payment of compensation to a person, or a payment to a person under an insurance scheme, in relation to:

(i) the person's inability to earn, derive or receive income from remunerative work; or

(ii) the person's total and permanent disability or incapacity.

investment:

(a) in relation to a superannuation fund or approved deposit fund—has the meaning given by subsection (6); or

(b) in relation to an ATO small superannuation account—has the meaning given by subsection (6A).

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investor, in relation to an ATO small superannuation account, means the person in whose name the account is kept.

life expectancy has the same meaning as ***life expectation factor*** has in section 27H of the Income Tax Assessment Act.

listed security means:

(a) a share in a company; or

(b) another security;

listed on a stock exchange.

loan has a meaning affected by subsections (2) and (2A).

managed investment has the meaning given by subsections (1A), (1B) and (1C).

military invalidity pension income stream has the meaning given by subsection (1EA).

original family law affected income stream has the meaning given by section 5JC.

primary FLA income stream has the meaning given by section 5JC.

public unit trust means a unit trust that:

(a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Income Tax Assessment Act; or

(b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G(1) of the Income Tax Assessment Act.

purchase price, in relation to an income stream, means the sum of the payments made to purchase the income stream (including amounts paid by way of employer and employee contributions) less any commuted amounts.

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relevant number, in relation to an income stream, means:

(a) if the income stream is payable for a fixed number of years—that number; or

(b) if the income stream is payable during the lifetime of a person and no longer—the number of years of the person's life expectancy; or

(c) if the income stream:

(i) is jointly owned by a person and his or her partner and is payable for the lifetime of the person or the partner; or

(ii) is payable during the lifetime of a person and then for the lifetime of a reversionary beneficiary;

the number of years in the longer of the relevant life expectancies; or

(d) in any other case—the number that the Commission considers appropriate having regard to the number of years in the total period during which the income stream will be, or may reasonably be expected to be, payable.

residual capital value, in relation to an income stream, means the capital amount payable on the termination of the income stream.

Note: An account-based income stream does not have a residual capital value (see subsection (9) of this section).

retirement savings account has the meaning that it has in the *Retirement Savings Accounts Act 1997*.

return:

(a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or

(b) in relation to any other investment (including an investment in the nature of superannuation)—means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment.

secondary FLA income stream has the meaning given by section 5JC.

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superannuation benefit, in relation to a person, means:

(a) a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person; or

(b) a payment under Part 7 of the *Small Superannuation Accounts Act 1995*, where the payment is in respect of an ATO small superannuation account kept in the name of the person.

superannuation contributions surcharge has the meaning that it has in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

superannuation fund means:

(a) a fund that is or has been a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* in relation to any tax year; or

(b) an Australian superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) that is not a complying superannuation fund mentioned in paragraph (a) in relation to any tax year; or

(c) a scheme for the payment of benefits upon retirement or death that is constituted by or under a law of the Commonwealth or of a State or Territory; or

(d) an RSA within the meaning of the *Retirement Savings Accounts Act 1997*; or

(e) any of the following funds (unless the fund is a foreign superannuation fund):

(i) a fund to which paragraph 23(jaa), or section 23FC, 121CC or 121DAB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 2) 1989*) has applied in relation to any tax year;

(ii) a fund to which paragraph 23(ja), or section 23F or 23FB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement of paragraph (a) of the definition of ***superannuation fund***

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in former subsection 27A(1) of the *Income Tax Assessment Act 1936*) has applied in relation to the tax year that started on 1 July 1985 or an earlier tax year;

(iii) a fund to which section 79 of the *Income Tax Assessment Act 1936* (as in force at any time before 25 June 1984) has applied in relation to the tax year that started on 1 July 1983 or an earlier tax year.

Note: For ***foreign superannuation fund*** see subsection 5L(1).

unlisted public security means:

(a) a share in a public company; or

(b) another security;

that is not listed on a stock exchange.

(1A) Subject to subsections (1B) and (1C), an investment is a ***managed investment*** for the purposes of this Act if:

(a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and

(b) the assets that represent the money or property invested (the ***invested assets***) are not held in the names of investors; and

(c) the investor does not have effective control over the management of the invested assets; and

(d) the investor has a legally enforceable right to share in any distribution of income or profits derived from the invested assets.

(1B) Without limiting the generality of subsection (1A) but subject to subsection (1C), the following are ***managed investments*** for the purposes of this Act:

(a) an investment in a public unit trust;

(b) an investment in an insurance bond;

(c) an investment with a friendly society;

(d) an investment in a superannuation fund;

(e) an investment in an approved deposit fund;

(g) an investment in an ATO small superannuation account;

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(h) an asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*.

Note 1: For paragraph (d), see paragraph (1C)(a) for superannuation investments held before pension age is reached.

Note 2: For paragraph (e), see paragraph (1C)(b) for investments in approved deposit funds held before pension age is reached.

Note 4: For paragraph (g), see paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.

Note 5: For paragraph (h), see paragraph (1C)(j) for a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 52BAB) for the income stream has occurred.

(1C) The following are not ***managed investments*** for the purposes of this Act:

(a) an investment in a superannuation fund if the investor has not yet turned pension age;

(b) an investment in an approved deposit fund if the investor has not yet turned pension age;

(ca) an investment in an ATO small superannuation account if the investor has not yet turned pension age;

(d) deposit money;

(e) a loan;

(f) an asset-test exempt income stream;

(g) an asset-tested income stream (long term);

(h) an asset-tested income stream (short term);

(i) a person's asset-tested income stream (lifetime) that arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*;

(j) a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 52BAB) for the income stream has occurred.

Note 1: For ***pension age*** see subsection (1D) and sections 5QA and 5QB.

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Note 2: For ***deposit money*** see subsection 5H(1).

Note 3: For provisions relating to when a loan is taken to be made see subsection (2).

(1D) For the purposes of the application of subsection (1C) in relation to income support supplement, the references in paragraphs (1C)(a), (b) and (c) to ***pension age*** are taken to be references to the qualifying age.

Note: For ***qualifying age*** see section 5Q.

(1E) An income stream is a ***defined benefit income stream*** if:

(a) under the *Superannuation Industry (Supervision) Regulations 1994*, the income stream is taken to be a pension for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and

(b) except in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*; and

(ba) in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the standards determined, by legislative instrument, by the Minister; and

(c) in any case—the income stream is attributable to a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).

(1EA) An income stream is a ***military invalidity pension income stream*** if:

(a) the income stream is:

(i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or

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(ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

(iii) an income stream provided under a superannuation scheme and that is covered by an instrument under subsection (1FA); and

(b) the income stream is not a defined benefit income stream.

(1F) The Commission may determine, by legislative instrument, guidelines to be complied with when designating an income stream for the purposes of the definition of ***income stream*** in subsection (1).

(1FA) For the purposes of subparagraph (1EA)(a)(iii), the Commission may, by legislative instrument, do any one or more of the following:

(a) specify an income stream;

(b) describe an income stream;

(c) determine requirements relating to an income stream;

regardless of whether the income stream relates to military service or invalidity.

(1FB) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection (1FA) may make different provision in relation to:

(a) different kinds of income streams; and

(b) different kinds of circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(1G) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (j) of the definition of ***financial investment*** in subsection (1).

(2) The following rules apply for the purposes of this Act:

(a) the acquisition by a person of debentures, bonds or other securities is treated as the making of a ***loan*** by the person;

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(b) a person is not treated as having made a ***loan*** merely because:

(i) the person has an account with a financial institution; or

(ii) the person has paid an entry contribution.

Note: For ***entry contribution*** see section 52M.

(2A) Subsection (2) does not limit the meaning of the word ***loan*** in this Act.

(2B) For the purposes of this Act, an asset is a ***deprived asset*** if:

(a) a person has disposed of the asset; and

(b) the value of the asset is included in the value of the person's assets by Subdivision BA or BB of Division 11 of Part IIIB.

Note: For circumstances in which a person is taken to dispose of assets see section 52E.

(2C) To avoid doubt, none of the following is a financial investment for the purposes of this Act:

(a) an accommodation bond;

(b) an accommodation bond balance;

(c) a refundable deposit;

(d) a refundable deposit balance.

Note: These expressions are defined in section 5L.

(6) For the purposes of this Act, a person has an ***investment*** in a superannuation fund or approved deposit fund if the person has benefits in the fund (whether the benefits are attributable to amounts paid by the person or someone else).

(6A) For the purposes of this Act:

(a) a person has an ***investment*** in an ATO small superannuation account if:

(i) the account is kept in the name of the person; and

(ii) the balance of the account exceeds nil; and

(b) the amount or value of that investment equals the balance of the account.

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(9) To avoid doubt, for the purposes of this Act, an account-based income stream does not have a ***residual capital value***.

5JA Meaning of *asset-test exempt income stream*—lifetime income streams

General requirements

(1) An income stream provided to a person is an ***asset-test exempt income stream*** for the purposes of this Act if:

(aa) subject to subsection (1AA), the income stream's commencement day happens before 20 September 2007; and

(a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (4) in respect of the income stream; and

(b) subject to subsections (1B), (1C) and (1D), the Commission is satisfied that in relation to an income stream, provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and

(c) the Commission is satisfied that the requirements of subsection (2) are being given effect to from the commencement day of the income stream.

Note: For paragraph (b), ***financial year*** means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.

Determination under subsection (5)

(1A) An income stream provided to a person is an ***asset-test exempt income stream*** for the purposes of this Act if the Commission has made a determination under subsection (5) in respect of the income stream.

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Defined benefit income streams

(1AA) Paragraph (1)(aa) does not apply if the income stream is a defined benefit income stream.

Guidelines relating to actuarial certificates

(1B) The Commission may determine, by legislative instrument, guidelines to be complied with when determining whether an actuarial certificate is in force.

Exception to paragraph (1)(b)

(1C) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1)(b) is in force in relation to an income stream, then paragraph (1)(b) does not apply in relation to the next financial year (the ***later year***) for the period:

(a) beginning on 1 July of the later year; and

(b) ending at the earlier of the following:

(i) the start of the first day in the later year on which any actuarial certificate is given to the Commission in relation to that income stream;

(ii) the end of the period of 26 weeks beginning on 1 July of the later year.

One certificate a financial year

(1D) For the purposes of paragraph (1)(b), if an actuarial certificate is given to the Commission in a financial year in relation to an income stream, then any actuarial certificate given to the Commission later in that financial year in relation to that income stream has no effect.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meet the requirements of this subsection if the contract or governing rules specify:

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(a) that payments under the income stream are to be made at least annually throughout the life of the person and, if there is a reversionary beneficiary:

(i) throughout the reversionary beneficiary's life; or

(ii) if the reversionary beneficiary is a child of the person or of a former reversionary beneficiary under the income stream—at least until he or she turns 16; or

(iii) if the child referred to in subparagraph (ii) is a full-time student who has turned 16—at least until the end of his or her full-time studies or until he or she turns 25, whichever occurs sooner; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the ***previous total***), and may not exceed the previous total:

(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (***recent index number***) exceeds the index number for the same quarter in the immediately preceding year (***base index number***) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

$$100 \times \left(\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right) + 1$$

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream

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relates to the period commencing on the day of that purchase; and

(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the commutation is made to the benefit of a reversionary beneficiary or of the person's estate, on the death of the person within the life expectancy period for the income stream; or

(iii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB or VIIIC of the *Family Law Act 1975*; or

(ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or

(v) to the extent necessary to pay a hardship amount; and

(i) that the income stream cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary; or

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(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and

(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

Note: For paragraph (h), ***hardship amount***, ***life expectancy period*** and ***non-commutation funded income stream*** are defined in subsection (7) and ***asset-test exempt income stream*** is defined in section 5J.

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and

(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Matters not required of income stream

(3) For the purpose of determining whether an income stream meets the requirements of subsection (2), it is immaterial that:

(a) if the primary beneficiary dies within the life expectancy period for the income stream, a surviving reversionary beneficiary may be paid an amount equal to the total of the payments that the primary beneficiary would (if he or she had

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not died) have received from the day of the death until the end of that period; and

(b) if:

(i) the primary beneficiary dies within the life expectancy period for the income stream; and

(ii) there is no surviving reversionary beneficiary;

an amount, not exceeding the difference between:

(iii) the sum of the amounts that would have been so payable to the primary beneficiary in that period; and

(iv) the sum of the amounts paid to the primary beneficiary;

is payable to the primary beneficiary's estate, and

(c) if:

(i) the primary beneficiary dies within the life expectancy period for the income stream; and

(ii) there is a surviving reversionary beneficiary who also dies within that period;

there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

Determination that income stream not asset-test exempt

(4) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a service pension, income support supplement, a veteran payment or a social security payment.

Determination that income stream is asset-test exempt

(5) The Commission may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission is to have regard to the guidelines (if any) determined under subsection (6).

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(5A) To avoid doubt, a determination under subsection (5) may be made in respect of an income stream regardless of the income stream's commencement day.

(5B) A determination under subsection (5) is not a legislative instrument.

Guidelines to be complied with in making determination

(6) The Commission may determine, by legislative instrument, guidelines to be complied with when making a determination under subsection (5).

Definitions

(7) In this section:

hardship amount, in relation to a person, means an amount determined by the Commission for the purposes of this definition if:

(a) the person applies in writing to the Commission to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and

(b) the Commission is satisfied that:

(i) the person's circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and

(ii) the person has insufficient liquid assets or other assets (excluding the person's principal home) that could be realised to avoid the extreme financial hardship; and

(iii) that amount is required to meet unavoidable expenditure.

life expectancy period, for an income stream, means:

(a) in a case where:

(i) there was only one primary beneficiary on the commencement day; and

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(ii) the primary beneficiary has decided not to round up his or her life expectancy for the purposes of this definition;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the primary beneficiary's life expectancy on the commencement day; and

(iv) 20 years; or

(b) in a case where:

(i) there was only one primary beneficiary on the commencement day; and

(ii) paragraph (a) does not apply;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(iv) 20 years; or

(c) in a case where:

(i) there were 2 primary beneficiaries on the commencement day; and

(ii) those primary beneficiaries have decided not to round up their life expectancies for the purposes of this definition;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the greater of the life expectancies, on the commencement day, of the primary beneficiaries; and

(iv) 20 years; or

(d) in a case where:

(i) there were 2 primary beneficiaries on the commencement day; and

(ii) paragraph (c) does not apply;

the period starting on the income stream's commencement day, and equal to the shorter of:

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(iii) the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of the primary beneficiaries; and

(iv) 20 years.

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

(a) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and

(b) managed investments; and

(c) insurance policies that can be surrendered for money; and

(d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and

(e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person;

but does not include the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

unavoidable expenditure, in relation to a person, means one or more of the following:

(a) essential medical expenses of the person, or the person's partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;

(b) the cost of:

(i) replacing the person's principal home; or

(ii) essential repairs to the person's principal home;

to the extent that the cost of the replacement or repairs is not covered by an insurance policy;

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(c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

5JB Meaning of *asset-test exempt income stream*—life expectancy income streams

(1) An income stream provided to a person is also an ***asset-test exempt income stream*** for the purposes of this Act if:

(a) the following criteria are satisfied:

(i) the income stream's commencement day happens before 20 September 2007;

(ii) subsection (1A) applies; or

(b) subsection (1B) applies.

No determination under subsection (3)

(1A) This subsection applies if:

(aa) the person to whom the income stream is being provided is:

(i) the primary beneficiary; or

(ii) the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death; and

(a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (3) in respect of the income stream; and

(b) subject to subsections (1C), (1D) and (1E), the Commission is satisfied that, in relation to an income stream provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and

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(c) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the commencement day of the income stream; and

(d) in the case of an income stream acquired before 20 September 2004 that is provided to a primary beneficiary's reversionary beneficiary—the remaining term (in years) of the income stream is equal to the life expectancy (in years) of the primary beneficiary's reversionary beneficiary.

Note 1: For paragraph (aa), ***reversionary partner*** is defined in subsection (7).

Note 2: For paragraph (b), ***financial year*** means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.

Determination under subsection (4)

(1B) This subsection applies if the Commission has made a determination under subsection (4) in respect of the income stream.

Guidelines relating to actuarial certificates

(1C) The Commission may determine, by legislative instrument, guidelines to be complied with when determining whether an actuarial certificate is in force.

Exception to paragraph (1A)(b)

(1D) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1A)(b) is in force in relation to an income stream, then paragraph (1A)(b) does not apply in relation to the next financial year (the ***later year***) for the period:

(a) beginning on 1 July of the later year; and

(b) ending at the earlier of the following:

(i) the start of the first day in the later year on which any actuarial certificate is given to the Commission in relation to that income stream;

(ii) the end of the period of 26 weeks beginning on 1 July of the later year.

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One certificate a financial year

(1E) For the purposes of paragraph (1A)(b), if an actuarial certificate is given to the Commission in a financial year in relation to an income stream, then any actuarial certificate given to the Commission later in that financial year in relation to that income stream has no effect.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream's term, which must comply with subsection (2B), (2C) or (2E); and

(aa) that payments under the income stream are to be made at least annually during the income stream's term; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the ***previous total***), and may not exceed the previous total:

(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (***recent index number***) exceeds the index number for the same quarter in the immediately preceding year (***base index number***) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

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$$100 \times \left(\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right) + 1$$

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or

(iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or

(ivaa) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

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(ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or

(ivc) to the extent necessary in order to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; or

(vi) to the extent necessary to pay a hardship amount; and

(i) that the income stream cannot be transferred except on death; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and

(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

Note: For paragraph (h), ***hardship amount***, ***non-commutation funded income stream*** and ***reversionary partner*** are defined in subsection (7) and ***asset-test exempt income stream*** is defined in section 5J.

Compliance with subsection (2) if certain conditions are met

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and

(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

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Term of the income stream

(2B) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(c) is at most as long as the greater of:

(i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

(2C) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary; and

(ii) the primary beneficiary's reversionary partner on that day; and

(c) is at most as long as the period worked out under subsection (2D).

(2D) For the purposes of paragraph (2C)(c), the period is the greater of:

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(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary, if the primary beneficiary were 5 years younger; and

(ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and

(b) the greater of:

(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

(2E) If, on an income stream's commencement day, there are 2 primary beneficiaries (the ***first primary beneficiary*** and the ***second primary beneficiary***), the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the lesser of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the first primary beneficiary; and

(ii) the second primary beneficiary; and

(c) is at most as long as the period worked out under subsection (2F).

(2F) For the purposes of paragraph (2E)(c), the period is the greater of:

(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

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(i) the first primary beneficiary, if the first primary beneficiary were 5 years younger; and

(ii) the second primary beneficiary, if the second primary beneficiary were 5 years younger; and

(b) the greater of:

(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the first primary beneficiary reaches age 100 (assuming that the first primary beneficiary lives until then); and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the second primary beneficiary reaches age 100 (assuming that the second primary beneficiary lives until then).

Determination that income stream not asset-test exempt

(3) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a service pension, income support supplement, a veteran payment or a social security payment.

Determination that income stream is asset-test exempt

(4) The Commission may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission is to have regard to the guidelines (if any) determined under subsection (5).

(4A) To avoid doubt, a determination under subsection (4) may be made in respect of an income stream regardless of the income stream's commencement day.

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(4B) A determination under subsection (4) is not a legislative instrument.

Guidelines to be complied with in making determination

(5) The Commission may determine, by legislative instrument, guidelines to be complied with when making a determination under subsection (4).

Interpretation

(7) In this section:

hardship amount has the same meaning as in section 5JA (see subsection 5JA(7).

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

(b) is the person to whom the income stream will revert on the primary beneficiary's death.

Note: For paragraph (a), ***member of a couple*** is defined in section 5E.

5JBA Meaning of *asset-test exempt income stream*—market-linked income streams

General requirements

(1) An income stream provided to a person is also an ***asset-test exempt income stream*** for the purposes of this Act if:

(a) all of the following criteria are satisfied:

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(i) the income stream's commencement day happens during the period from 20 September 2004 to 19 September 2007 (both dates inclusive);

(ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death;

(iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);

(iv) the Commission has not made a determination under subsection (10) in respect of the income stream;

(v) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or

(b) the Commission has made a determination under subsection (11) in respect of the income stream.

Note: For paragraph (a), ***reversionary partner*** is defined in subsection (14).

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream's term, which must comply with subsection (3) or (4); and

(b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and

(c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(d) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the

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income stream relates to the period commencing on the day of that acquisition; and

(e) that the income stream has no residual capital value; and

(f) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or

(iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or

(v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(vi) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

(via) to the extent necessary in order to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; or

(vii) to the extent necessary to pay a hardship amount; and

(g) that the income stream cannot be transferred except on death; and

(h) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(i) that, if the income stream reverts, it must not have a reversionary component greater than the account balance immediately before the reversion; and

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(j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

Note: For paragraph (f), ***hardship amount***, ***non-commutation funded income stream*** and ***reversionary partner*** are defined in subsection (14) and ***asset-test exempt income stream*** is defined in section 5J.

Term of the income stream

(3) An income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(c) is at most as long as the greater of:

(i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

(4) An income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary; and

(ii) the primary beneficiary's reversionary partner on that day; and

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(c) is at most as long as the period worked out under subsection (4A).

(4A) For the purposes of paragraph (4)(c), the period is the greater of:

(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary, if the primary beneficiary were 5 years younger; and

(ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and

(b) the greater of:

(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

Total amount payable in each financial year—general rule

(5) For each financial year wholly or partly within the income stream's term, the total amount of the payments to be made under the income stream must not be less than 90%, nor greater than 110%, of the amount worked out under the formula:

$$\frac{\text{Account balance}}{\text{PF}}$$

where:

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account balance means:

(a) if the financial year includes the income stream's commencement day—the opening account balance for the income stream; or

(b) otherwise—the account balance for the income stream at the start of the financial year.

PF means the payment factor for the income stream for the financial year, worked out under principles determined by the Commission under subsection (5A).

(5A) The Commission must, by legislative instrument, determine principles for the purposes of the definition of ***PF*** in subsection (5).

Other rules about payments under the income stream

(6) If the income stream's commencement day is not a 1 July, a total amount worked out under subsection (5) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

(7) If:

(a) the income stream's commencement day happens in June; and

(b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (5) and (6) do not apply to the income stream for that financial year.

(8) If the amount (the ***test amount***) of a payment to be made under the income stream on a day in a financial year:

(a) is worked out by reference to a total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and

(b) exceeds the income stream's account balance on that day;

then:

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(c) the account balance (if any) must be paid instead of the test amount; and

(d) that total amount described in paragraph (a) must be reduced by the amount of the excess.

(9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

Determination that income stream not asset-test exempt

(10) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that:

(a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a service pension, income support supplement, a veteran payment or a social security payment; and

(b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.

Determination that income stream is asset-test exempt

(11) The Commission may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission must have regard to the guidelines (if any) determined under subsection (12).

(11A) To avoid doubt, a determination under subsection (11) may be made in respect of an income stream regardless of the income stream's commencement day.

(11B) A determination under subsection (11) is not a legislative instrument.

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Guidelines to be complied with in making determination

(12) The Commission may determine, by legislative instrument, guidelines to be complied with when making a determination under subsection (11).

Definitions

(14) In this section:

hardship amount has the same meaning as in section 5JA (see subsection 5JA(7)).

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

(b) is the person to whom the income stream will revert on the primary beneficiary's death.

Note: For paragraph (a), ***member of a couple*** is defined in section 5E.

5JBB Meaning of asset-test exempt income stream—military invalidity pension income stream

An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the income stream is a military invalidity pension income stream.

5JC Family law affected income streams

If:

(a) an income stream is acquired or purchased (the ***original family law affected income stream***) by a person (the ***member***); and

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(b) the member's partner or former partner (the ***non-member***) becomes entitled to be paid some or all of that income stream under:

(i) a payment split under Part VIIIB of the *Family Law Act 1975*; or

(ii) an order under Part VIIIAA of the *Family Law Act 1975*;

then so much (if any) of the income stream paid to the non-member as a series of ongoing payments (***secondary FLA income stream***) and the remainder (if any) of the income stream paid to the member as such a series of payments (***primary FLA income stream***) are each ***family law affected income streams***.

5JD Asset-tested status of secondary FLA income streams

If there is a primary FLA income stream

(1) If a primary FLA income stream is, or would be if the income stream were assessed for the purposes of this Act:

(a) an asset-tested income stream (long term); or

(b) an asset-tested income stream (short term); or

(c) an asset-tested income stream (lifetime);

then the secondary FLA income stream to which it is related is also to be treated as if it were assessed as an income stream of that kind.

If there is no primary FLA income stream

(2) If:

(a) there is no primary FLA income stream in relation to a secondary FLA income stream; and

(b) had there been a primary FLA income stream in relation to that secondary FLA income stream it would have been assessed for the purposes of this Act as an asset-tested income stream (long term), an asset-tested income stream (short term) or an asset-tested income stream (lifetime);

then the secondary FLA income stream is to be treated as if it were assessed as an income stream of that kind.

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5JE Asset-tested income stream (lifetime)

(1) Subject to subsection (2), an income stream is an ***asset-tested income stream (lifetime)*** if:

(a) the contract, or governing rules, for the provision of the income stream ensure that, once payments of the income stream start, the income stream is to continue for the remainder of the life of one or more individuals; and

(b) the contract, or governing rules, for the provision of the income stream ensure that the amounts of those payments are determined by having regard to the age, life expectancy or other factors relevant to the mortality of those individuals; and

(c) the income stream is not an asset-test exempt income stream; and

(d) the income stream is not a defined benefit income stream.

(2) If:

(a) paragraphs (1)(a) to (d) are satisfied in relation to an income stream; and

(b) the income stream is of a kind determined in an instrument under subsection (3);

the income stream is an ***asset-tested income stream (lifetime)*** only to the extent determined in the instrument.

(3) The Commission may make a legislative instrument for the purposes of subsection (2).

(4) An income stream is an ***asset-tested income stream (lifetime)*** if:

(a) the income stream satisfies the conditions determined in an instrument under subsection (5); and

(b) the income stream is not an asset-test exempt income stream; and

(c) the income stream is not a defined benefit income stream.

(5) The Commission may, by legislative instrument, determine conditions for the purposes of paragraph (4)(a).

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5K *Maintenance income* definitions

In this Act, the expressions ***disability expenses maintenance***, ***maintenance*** and ***maintenance income*** have the same respective meanings as in the Family Assistance Act.

5L *Assets test* definitions

(1) In this Act, unless the contrary intention appears:

accommodation bond has the same meaning as in the *Aged Care Act 2024*.

accommodation bond balance has the same meaning as in the *Aged Care Act 2024*.

accommodation charge has the same meaning as in the *Aged Care Act 2024*.

asset means property or money (including property or money outside Australia).

Note: However, certain property or money is to be disregarded when calculating the value of a person's assets for certain purposes (for example, see subsection 52(1)).

daily accommodation contribution has the same meaning as in the *Aged Care Act 2024*.

daily accommodation payment has the same meaning as in the *Aged Care Act 2024*.

dispose of assets has the meaning given by section 52E.

family member, in relation to a person, means:

(a) the partner or a parent of the person; or

(b) a sister, brother or child of the person; or

(c) another person who, in the Commission's opinion, should be treated for the purposes of this definition as one of the person's relations described in paragraph (a) or (b).

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fishing operations means:

(a) operations relating directly to the taking or catching of fish, turtles, crustacea, oysters or other shellfish; or

(b) oyster farming; or

(c) pearling operations;

but does not include:

(d) whaling; or

(e) operations conducted otherwise than for the purposes of a business.

foreign superannuation fund has the same meaning as in the *Income Tax Assessment Act 1997*.

foreign superannuation pension means a pension presently payable from a foreign superannuation fund.

forest operations means:

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

(b) the felling of trees in a plantation or forest;

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

pension year has the meaning given by subsections (9) and (9A).

primary producer means a person whose principal occupation is primary production.

primary production means production resulting directly from:

(a) the cultivation of land; or

(b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or

(c) fishing operations; or

(d) forest operations;

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

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principal home has the meaning given by section 5LA.

property owner has the meaning given by subsection (4).

reasonable security of tenure has the meaning given by subsection 5LA(10).

refundable deposit has the same meaning as in the *Aged Care Act 2024*.

refundable deposit balance has the same meaning as in the *Aged Care Act 2024*.

unrealisable asset has the meaning given by subsections (11) and (12).

value of a charge or encumbrance on an asset has the meaning given by subsection (3).

value of a liability has the meaning given by subsection (3A).

value of a particular asset has the meaning given by subsection (2).

(2) A reference in this Act to the ***value of a particular asset*** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of the person's interest in the asset.

(3) A reference in this Act to the ***value of a charge or encumbrance on an asset*** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of that charge or encumbrance in so far as it relates to the person's interest in the asset.

(3A) A reference in this Act to the ***value of a liability*** of a person is, if the liability is shared by the person with another person, a reference to the value of the person's share of the liability.

(3B) To avoid doubt, an accommodation bond balance (within the meaning of the *Aged Care Rules 2025*) in respect of an

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accommodation bond (within the meaning of the *Aged Care Act 2024*: see subsection (1) of this section) paid by a person is taken to be an asset of the person.

(3BA) To avoid doubt, a refundable deposit balance (within the meaning of the *Aged Care Act 2024*) in respect of a refundable deposit (within the meaning of that Act: see subsection (1) of this section) paid by a person is taken to be an asset of the person.

(3C) To avoid doubt, a person's entitlement to be paid a pension bonus or pension bonus bereavement payment is taken not to be an asset of the person for the purposes of this Act.

(3D) Subsection (3C) is to be disregarded in determining whether any other entitlement is an asset for the purposes of this Act.

Property owner

(4) For the purposes of this Act:

(a) a person who is not a member of a couple is a ***property owner*** if:

(i) the person has a right or interest in the person's principal home; and

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

(b) a person who is a member of a couple is a ***property owner*** if:

(i) the person, or the person's partner, has a right or interest in one residence that is:

(A) the person's principal home; or

(B) the partner's principal home; or

(C) the principal home of both of them; and

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

(c) a person (whether a member of a couple or not) is a ***property owner*** while:

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(i) the whole or a part of the proceeds of the sale of the person's principal home are disregarded under subsection 52(2); or

(ii) the value of a residence, land or a structure is disregarded under subsection 52(2).

Note: See also sections 52KA–52X (special residences).

Pension year—disposal of assets

(9) A reference in sections 52E to 52J (disposal of assets) to a ***pension year***, in relation to a person who is receiving a service pension, income support supplement, a veteran payment or a social security pension is a reference to:

(a) if the person is a member of a couple and the person and the person's partner were, immediately before they became members of that couple, receiving a service pension, income support supplement, a veteran payment or a social security pension—the period of 12 months commencing on the day on which they became members of that couple; or

(b) in a case (not being a case referred to in paragraph (a)) where the person is a member of a couple and the person's partner is receiving a service pension, income support supplement, a veteran payment or a social security pension—the period of 12 months commencing on the day on which a service pension, income support supplement, a veteran payment or a social security pension first became payable to the person or to the person's partner, whichever was the earlier; or

(c) in any other case—the period of 12 months commencing on the day on which a service pension, income support supplement, a veteran payment or a social security pension first became payable;

and to each succeeding and each preceding period of 12 months.

No pension year to extend beyond 30 June 2002

(9A) No period after 30 June 2002 is, or is a part of, a pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pension

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year of a person, the part of that period that ends immediately before that date is taken to be a pension year of the person.

(10) The lending of money after 22 May 1986 is not a ***disposition*** of an asset for the purposes of section 52E.

Pre-pension year—disposal of assets

(10A) A reference in sections 52FA and 52GA (disposal of assets) to a ***pre-pension year***, in relation to a person who is claiming:

(a) a service pension; or

(b) income support supplement; or

(c) a social security pension;

is a reference to the period of 12 months ending on the day that is the person's provisional commencement day and each preceding period of 12 months.

Note: A disposition of assets that is more than 5 years old is disregarded (see section 52J).

No pre-pension year to extend beyond 30 June 2002

(10B) No period after 30 June 2002 is, or is a part of, a pre-pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pre-pension year of a person, the part of that period that ends immediately before that date is taken to be a pre-pension year of the person.

Unrealisable asset

(11) An asset of a person is an ***unrealisable asset*** if:

(a) the person cannot sell or realise the asset; and

(b) the person cannot use the asset as a security for borrowing.

(12) For the purposes of the application of this Act to a service pension, income support supplement or a veteran payment, an asset of a person is also an ***unrealisable asset*** if:

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(a) the person could not reasonably be expected to sell or realise the asset; and

(b) the person could not reasonably be expected to use the asset as a security for borrowing.

5LA *Principal home* definition for the purpose of the assets test

Principal home

(1) A reference in this Act to the ***principal home*** of a person includes a reference to:

(a) if the principal home is a dwelling-house—the land adjacent to the dwelling-house to the extent that:

(i) the land is held on the same title document as the land on which the dwelling-house is located; and

(ii) the private land use test in subsection (3) is satisfied in relation to the land or, if the person is one to whom the extended land use test applies in relation to the land, the extended land use test in subsection (6) is satisfied in relation to the land; or

(b) if the principal home is a flat or home unit—a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.

(2) The Commission may determine that land is to be treated, for the purpose of subparagraph (1)(a)(i), as if it were held on the same title document as other land if any of the following apply:

(a) the dwelling-house is located on both blocks of land;

(b) the dwelling-house is located on one of the blocks of land but that block and the other block, taken together, are a place, or are part of a place, that is protected under a law of the Commonwealth, or of a State or Territory, because of its natural, historic or indigenous heritage;

(c) the alienation of one of the blocks of land without the other would seriously undermine the function of the house as a dwelling.

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Note: A mere loss of amenity, such as the loss of a swimming pool, garden, tennis court or view, would not seriously undermine the function of a house as a dwelling.

Private land use test

(3) The ***private land use test*** is satisfied in relation to land if:

(a) the area of land, together with the area of the ground floor of the dwelling-house, is not more than 2 hectares; and

(b) the land is used primarily for private or domestic purposes in association with the dwelling-house.

To whom does the extended land use test apply?

(4) The extended land use test applies to a person in relation to land adjacent to the dwelling-house if:

(a) the person has reached the qualifying age; and

(b) the person is eligible to receive a service pension, income support supplement or a veteran payment and that pension, supplement or payment is payable to the person; and

(c) the dwelling-house has been the person's principal home for 20 years or more continuously.

Note: For ***qualifying age*** see section 5Q.

(5) Where a person (the ***first person***) to whom the extended land use test applies in relation to land adjacent to the dwelling-house in which the person lives is a member of a couple:

(a) the extended land use test applies to the first person's partner (the ***second person***); and

(b) the extended land use test continues to apply to the second person if the first person and the second person cease to be members of a couple for any reason, provided the dwelling-house continues to be the second person's principal home.

Extended land use test

(6) The ***extended land use test*** is satisfied in relation to land if:

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(a) the area of the land, together with the area of the ground floor of the dwelling-house, is more than 2 hectares; and

(b) the Commission determines that, given the circumstances of the person to whom the test is applied in relation to the land, the person is making effective use of the land.

(7) In determining whether a person is making effective use of the land, the Commission is to take into account the following matters:

(a) where the land is located;

(b) the size of the block of land;

(c) the person's family situation;

(d) the person's health;

(e) whether the land contains a dwelling-house occupied by a family member of the person, or a child of a family member of the person, receiving an income support payment (within the meaning of the *Social Security Act 1991*);

(f) whether the land is being used to support:

(i) a family member of the person; or

(ii) a child of a family member of the person;

(g) any current commercial use of the land;

(h) any potential commercial use of the land;

(i) whether the person's capacity to make commercial use of the land is diminished because the person, or the person's partner, has responsibility for the care of another person;

(j) whether the block of land is an amalgamation of 2 or more blocks and, if so:

(i) when the amalgamation occurred; and

(ii) whether the amalgamation reduced the potential for the land to produce personal income or to support the person;

(k) environmental issues relating to the land;

(l) any other matter that the Commission considers relevant.

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Effect of absences from principal home

(8) A residence of a person is taken to be the person's ***principal home*** during:

(a) if the Commission is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident—any period during which:

(i) the person is accruing a liability to pay an accommodation charge (or would be accruing such a liability, assuming that no conditions under section 143 of the *Aged Care Act 2024* were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

(b) if the Commission is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident—any period during which:

(i) the person is liable to pay all or some of an accommodation bond by periodic payments (or would be liable to do so, assuming that no conditions under section 143 of the *Aged Care Act 2024* were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

(ba) if the Commission is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident—any period during which:

(i) the person is liable to pay all or some of a daily accommodation payment or a daily accommodation contribution (or would be liable to do so, assuming that no conditions under section 143 of the *Aged Care Act*

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2024 were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

(c) any period during which the residence is, because of paragraph (a), (b) or (ba), the principal home of the person's partner.

Note 1: ***Accommodation charge*** and ***accommodation bond*** have the same meaning as in the *Aged Care Act 2024*: see subsection 5L(1).

Note 2: For ***rent***, see subsection 5N(2). For ***in a care situation***, see subsection 5NC(2). For ***aged care resident***, see subsection 5NC(5).

Note 3: This subsection is not meant to imply that a person may have more than one principal home at the same time.

Note 4: A person can be liable to pay an accommodation charge only if certain conditions are met in accordance with rules made for the purposes of Chapter 4 of the *Aged Care Act 2024*.

(8A) Subsection (8) does not apply in relation to a person if:

(a) that subsection did not apply in relation to the person immediately before the commencement of the *Aged Care Act 2024*; or

(b) a period of 28 consecutive days ends after that commencement in which the person:

(i) was not provided with residential care or flexible care through a residential care service or a flexible care service; and

(ii) did not access ongoing funded aged care services in an approved residential care home;

other than because the person was on leave.

(8C) An expression used in subsection (8A) and in the *Aged Care Act 2024* or the *Aged Care Act 1997* (as in force immediately before the commencement of the *Aged Care Act 2024*) has the same meaning in that subsection as in those Acts.

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(9) A residence of a person is to be taken to continue to be the person's ***principal home*** during:

(a) any period (not exceeding 12 months or any longer period determined under subsection (9A) or (9B)) during which the person is temporarily absent from the residence; and

(b) if the person is in a care situation or is an aged care resident—the period of 2 years beginning when the person started to be in a care situation or an aged care resident; and

(c) any period during which:

(i) the person is in a care situation or is an aged care resident; and

(ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person's partner or non-illness separated spouse; and

(d) if:

(i) the person is in a care situation or is an aged care resident; and

(ii) while paragraph (c) applies, the person's partner or non-illness separated spouse dies while in a care situation or while an aged care resident; and

(iii) the person's partner or non-illness separated spouse had been in a care situation or an aged care resident for less than 2 years;

the period of 2 years beginning at the time the person's partner or non-illness separated spouse started to be in a care situation or an aged care resident; and

(e) where:

(i) the person is in a care situation or is an aged care resident; and

(ii) while paragraph (c) applies, the person's partner or non-illness separated spouse dies (but not while in a care situation or while an aged care resident);

the period of 2 years from that death; and

(f) any period of up to 2 years while the person is absent from the residence and is personally providing community-based care for another person.

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Note 1: For ***in a care situation***, see subsection 5NC(2).

Note 2: For ***aged care resident***, see subsection 5NC(5).

(9A) For the purposes of paragraph (9)(a), the Commission may determine, in writing, a period of up to 24 months if:

(a) a person's principal home is lost or damaged (including, for example, by a natural disaster); and

(b) the loss or damage was not wilfully caused by the person; and

(c) the person is making reasonable attempts, as a result of the loss or damage, to:

(i) rebuild or repair the principal home; or

(ii) sell the principal home in order to purchase or build another residence that is to be the person's principal home; or

(iii) purchase or build another residence that is to be the person's principal home; and

(d) the person has made those attempts within a reasonable period after the loss or damage; and

(e) the person has experienced delays beyond his or her control in:

(i) rebuilding, repairing or selling the principal home; or

(ii) purchasing or building the other residence.

(9B) For the purposes of paragraph (9)(a), the Commission may, in relation to a person and a residence of the person, determine, in writing, a longer period if:

(a) the Commission is satisfied that the person is temporarily absent from that residence because the person is absent from Australia; and

(b) the Commission is satisfied that the person's absence from Australia is temporary; and

(c) the Commission is satisfied that the person is unable to return to Australia before the end of the following period because of circumstances beyond the person's control:

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(i) the 12 months mentioned in paragraph (9)(a), unless subparagraph (ii) of this paragraph applies;

(ii) if the Commission has determined a period under subsection (9A) in relation to the person and that residence—that period.

Reasonable security of tenure

(10) If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person ***reasonable security of tenure*** in the home unless the Commission is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

Definition of title document

(11) In this section:

title document, in relation to land, means:

(a) in relation to land title which is registered under a Torrens system of registration—the certificate of title for the land; or

(b) in any other case—the last instrument by which title to the land was conveyed.

Application of the Legislation Act 2003

(12) A determination under subsection (2) or paragraph (6)(b) is not a legislative instrument.

5M *Retirement village* definitions

(1) In this Act:

member of an ordinary couple with different principal homes has the meaning given by subsection (2).

retirement village has the meaning given by subsections (3) and (4).

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retirement village resident has the meaning given by subsection (5).

(2) A person is a ***member of an ordinary couple with different principal homes*** if:

(a) the person is a member of a couple; and

(b) the person does not share the person's principal home with the person's partner; and

(c) the person is not a member of an illness separated couple.

(3) Premises constitute a ***retirement village*** for the purposes of this Act if:

(a) the premises are residential premises; and

(b) accommodation in the premises is primarily intended for persons who are at least 55 years old; and

(c) the premises consist of:

(i) one or more of the following kinds of accommodation:

(A) self-care units;

(B) serviced units;

(C) hostel units; and

(ii) communal facilities for use by occupants of the units referred to in subparagraph (i).

(3A) For the purposes of paragraph (3)(b), if accommodation in premises is primarily intended for persons who are a certain age that is more than 55 years, the accommodation in those premises is taken to be primarily intended for persons who are at least 55 years old.

(4) Residential premises are also to be taken to constitute a ***retirement village*** for the purposes of this Act if, in the Commission's opinion, the premises have similar functions to those referred to in subsection (3).

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(5) A person is a ***retirement village resident*** if the person's principal home is in a retirement village.

Note: Subsection (3A) was inserted as a response to the decision of the Federal Court in *Repatriation Commission v Clarke* (unreported, VG73 of 1991).

5MA *Granny flat* definitions

(1) In this Act, unless the contrary intention appears:

granny flat interest has the meaning given by subsection (2).

granny flat resident has the meaning given by subsection (3).

(2) A person has a ***granny flat interest*** in the person's principal home if:

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

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

(i) a right to accommodation for life in the residence; or

(ii) a life interest in the residence.

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

5MB *Sale leaseback* definitions

(1) In this Act, unless the contrary intention appears:

deferred payment amount has the meaning given by subsections (6), (7) and (8).

initial payment amount has the meaning given by subsections (4) and (5).

sale leaseback agreement has the meaning given by subsections (2) and (3).

sale leaseback home has the meaning given by subsection (9).

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sale leaseback resident has the meaning given by subsections (10) and (11).

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

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

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

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

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

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

(4) The ***initial payment amount***, in relation to a sale leaseback agreement, is the amount that the Commission determines to be the initial amount that the buyer is to pay under the sale leaseback agreement.

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

(a) the consideration to be provided by the parties to the sale leaseback agreement;

(b) when that consideration is to be provided;

(c) the payments that are to be made under the sale leaseback agreement;

(d) when those payments are to be made;

(e) any other relevant matters.

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

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

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

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

(a) the parties to the sale leaseback agreement are not at arm's length; or

(b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.

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

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

(a) the person's principal home is subject to a sale leaseback agreement; and

(b) the person is a party to the sale leaseback agreement.

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

(a) the person lives in the sale leaseback home; and

(b) the person's partner is a sale leaseback resident.

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

5MC *Special residence* and *resident* definitions

(1) In this Act, unless the contrary intention appears:

actual value has the meaning given by subsection (4).

special residence has the meaning given by subsection (2).

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

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(2) A residence is a ***special residence*** if the residence is:
  (a) in a retirement village; or
  (b) a granny flat; or
  (c) a sale leaseback home.

(3) A person is a ***special resident*** if the person is:
  (a) a retirement village resident; or
  (b) a granny flat resident; or
  (c) a sale leaseback resident.

(4) In Subdivision C of Division 11 (sections 52KA to 52X), a reference to the ***actual value*** of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person's partner, that is, the value that would be the value of the person's assets apart from the provisions in point SCH6-F2.

5N *Rent* definitions

(1) In this Act, unless the contrary intention appears:

amount of rent paid or payable has the meaning given by subsections (6) and (7).

board, when used in the expression ***board and lodging***, means the provision of meals on a regular basis in connection with the provision of lodging.

Government rent means rent payable to any of the following authorities:
  (a) New South Wales Land and Housing Corporation;
  (b) the Director, within the meaning of the *Housing Act 1983* of the State of Victoria;
  (c) The Queensland Housing Commission;
  (d) The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;
  (e) the South Australian Housing Trust;

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(f) The State Housing Commission established by a law of Western Australia;

(g) the Director-General of Housing and Construction holding office under a law of Tasmania;

(h) the Northern Territory Housing Commission;

(i) The Commissioner for Housing within the meaning of the *Housing Assistance Act 1987* of the Australian Capital Territory.

Note 1: Subsection (5) deals with the situation when the name of an authority is altered.

Note 2: Rent payable by a person for living in premises in respect of which someone else pays Government rent may also be regarded as Government rent (see subsection (4)).

ineligible property owner means a property owner other than:

(a) a person who is a property owner by virtue of paragraph 5L(4)(c); or

(c) a person who:

(i) is absent from the person's principal home, in relation to which the person is a property owner; and

(ii) is in a care situation but is not residing in a retirement village; or

(ca) a person who:

(i) is absent from the person's principal home, in relation to which the person is a property owner; and

(ii) is personally providing community-based care for another person; or

(d) a person who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person's principal home; or

(e) a person who pays amounts for the right to moor a vessel that is the person's principal home.

Note: For ***retirement village*** see subsections 5M(3) and (4), for ***property owner*** see subsection 5L(4), for ***principal home*** see section 5LA, for ***personally providing community-based care***, see subsection 5NC(4), for ***in a care situation*** see subsection 5NC(2).

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rent has the meaning given by this section.

residential care charge means an amount paid by, or on behalf of, a person to a registered provider (within the meaning of the *Aged Care Act 2024*) for the delivery of care to the person, but does not include an accommodation bond (within the meaning of that Act).

(2) Amounts are ***rent*** in relation to the person if:

(a) the amounts are payable by the person:

(i) as a condition of occupancy of premises, or of a part of premises, that are in Australia and are occupied by the person as the person's principal home; or

(ia) as a condition of occupancy of premises, or of a part of premises, that are in Australia and are occupied by the person to allow him or her personally to provide community-based care for another person; or

(ii) for services provided in a retirement village in Australia that is the person's principal home; or

(iii) if the person is in a care situation and the place where the person receives the care is a place in Australia that is the person's principal home or would be the person's principal home apart from subsection 5LA(8) or (9)—for accommodation in the place where the person receives care; or

(iv) for lodging in premises in Australia that are the person's principal home; or

(v) for the use of a site in Australia for:

(A) a caravan or other vehicle; or

(B) a structure;

occupied by the person as the person's principal home; or

(vi) for the right to moor in Australia a vessel that is occupied by the person as the person's principal home; and

(b) either:

(i) the amounts are payable every 3 months or more frequently; or

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(ii) the amounts are payable at regular intervals (greater than 3 months) and the Commission is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: For ***retirement village*** see subsections 5M(3) and (4) and for ***principal home*** see section 5LA.

(3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).

(3AA) To avoid doubt, an amount that is paid or becomes payable by a person is not rent in relation to the person (either at the time when it is paid or becomes payable or at any later time) if the amount is, or forms part of, a special resident's entry contribution in relation to the person in respect of a retirement village under section 52M, whether the amount is paid or payable (whether wholly or partly) in a lump sum, by instalments or otherwise.

(3AB) If the whole or any part of an amount that is not rent in relation to a person as mentioned in subsection (3AA) is, or will or may become, repayable to the person, any amount by which the amount so repayable is reduced is not rent in relation to the person (either at the time when the reduction occurs or at any later time).

(3A) If a person is in a care situation and the person's principal home is not the place where the person receives the care, the person's rent may be an amount described in any of the subparagraphs of paragraph (2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph (2)(a).

Note: Under subsection 5LA(8) or (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

(3B) If an amount described in subparagraph (2)(a)(ia) and an amount described in another subparagraph of paragraph (2)(a) are payable by a person, the person's rent may be an amount described in either of those subparagraphs but cannot include amounts described in different subparagraphs of paragraph (2)(a).

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Note: Under subsection 5LA(8) or (9), premises occupied by a person as described in subparagraph (2)(a)(ia) may not be the person's principal home.

(4) If a person pays, or is liable to pay, rent for living in premises in respect of which another person pays Government rent, the rent paid or payable by the person for living in those premises is taken to be ***Government rent***, unless:

(a) the rent paid by the other person is at or above a rate that the authority receiving the rent has told the Department is the market rate; or

(b) the person shares the premises with that other person and the person's income has been taken into account in calculating the amount of Government rent payable in respect of those premises.

(5) If a law of a State or of the Northern Territory alters ***the name of an authority*** referred to in the definition of ***Government rent*** in subsection (1), a reference to that authority in that definition is to be read as a reference to the authority under the new name.

Board and lodging

(6) Where:

(a) a person pays, or is liable to pay, amounts for board and lodging; and

(b) it is not possible to work out the part of each of those amounts that is paid or payable for lodging;

the ***amount of rent paid or payable*** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

People in care situations

(7) Where:

(a) a person in a care situation pays, or is liable to pay, amounts for accommodation and other services in the care situation; and

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(b) it is not possible to work out the part of each of those amounts that is paid or payable in respect of accommodation;

the ***amount of rent paid or payable*** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

5NA *Indexation* and *rate adjustment* definitions

(1) In this Act, unless the contrary intention appears:

current figure, as at a particular time and in relation to an amount that is to be indexed or adjusted under Division 18 of Part IIIB, means:

(a) if the amount has not yet been indexed or adjusted under Division 18 before that time—the amount; and

(b) if the amount has been indexed or adjusted under Division 18 before that time—the amount most recently substituted for the amount under Division 18 before that time.

index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

Publication of substituted index numbers

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

Change to CPI index reference period

(3) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the changed index place,

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only to index numbers published in terms of the new index reference period.

5NB *Compensation recovery* definitions

(1) In this Act, unless the contrary intention appears:

average weekly earnings, in relation to a lump sum preclusion period, means the amount:

(a) estimated as the average total weekly earnings, during a particular month, of all employees (all persons) in Australia; and

(b) last published by the Australian Statistician before the lump sum compensation payment became payable.

Note: For ***lump sum preclusion period*** see subsections 59Q(3) to (7).

compensation has the meaning given by subsection (2).

Note: See also section 59O.

compensation affected pension means:

(a) an invalidity service pension payable to a person who has not reached pension age; or

(b) a partner service pension payable to a person who has not reached pension age; or

(c) income support supplement payable to a person who has not reached qualifying age; or

(d) a veteran payment payable to a person who has not reached pension age (within the meaning of subsections 5QB(2), (3), (4) and (5)); or

(f) an education entry payment payable to a person who:

(i) is receiving invalidity service pension or partner service pension; or

(ii) is receiving income support supplement and has not reached qualifying age.

Note 1: For ***pension age*** see sections 5QA and 5QB.

Note 2: For ***qualifying age*** see section 5Q.

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compensation part, in relation to a lump sum compensation payment, has the meaning given by subsections (7) and (8).

compensation payer means:

(a) a person who is liable to make a compensation payment; or

(b) an authority of a State or Territory that has determined that it will make a payment by way of compensation to another person, whether or not the authority is liable to make the payment.

event that gives rise to a person's entitlement to compensation has the meaning given by subsection (11).

periodic payments period means:

(a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or

(b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of arrears payment.

potential compensation payer means a person who, in the Commission's opinion, may become a compensation payer.

receives compensation has the meaning given by subsection (10).

Compensation

(2) For the purposes of Part IIIC, ***compensation*** means:

(a) a payment of damages or compensation; or

(b) a payment under a scheme of insurance or compensation under a law of the Commonwealth or of a State or Territory, or under a contract entered into under such a scheme; or

(c) a payment (with or without admission of liability) in settlement of a claim for damages or of a claim under such an insurance scheme;

made wholly or partly in respect of lost earnings or lost capacity to earn. The payment may be in the form of a lump sum (or part of a lump sum) or in the form of periodic payments and may be made either within or outside Australia, but it does not include any

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payment that, under subsection (3), (4), (5), (6) or (6A), is excluded from the application of this subsection.

Note: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.

(3) Subsection (2) does not apply to a periodic payment or a lump sum payment referred to in paragraph 26(1)(b) or (2)(b) or subsection 30(3).

(4) Subsection (2) does not apply to a compensation payment if:

(a) the recipient has made contributions (for example, by way of insurance premiums) towards the payment; and

(b) either:

(i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives the compensation affected pension under this Act; or

(ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.

(5) Subsection (2) does not apply to any payment of compensation made to a person that was taken into account under Division 5A of Part II to reduce the amount, or stop the payment, of a pension that, apart from that Division, would have been payable to the person under that Part.

(6) Subsection (2) does not apply to any payment of compensation made to a person that was taken into account under Division 4 of Part IV to reduce the amount, or stop the payment, of a pension that, apart from that Division, would have been payable to the person under that Part.

(6A) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute ***compensation*** for the purposes of this Act.

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(6B) The reference in subsection (6A) to a ***criminal injury*** is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

Compensation part of a lump sum

(7) Subject to subsection (8), for the purposes of Part IIIC, the ***compensation part of a lump sum compensation payment*** is:

(a) 50% of the payment if the following circumstances apply:

(i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and

(ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(b) 50% of the payment if the following circumstances apply:

(i) the payment represents that part of a person's entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and

(ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and

(iii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(c) if paragraphs (a) and (b) do not apply—so much of the payment as is, in the Commission's opinion, in respect of lost earnings or lost capacity to earn, or both.

(8) If a person:

(a) has received periodic compensation payments in respect of lost earnings or lost capacity to earn; and

(b) after receiving those payments, receives a lump sum compensation payment in respect of the lost earnings or lost capacity to earn (the ***LSP***); and

(c) because of receiving the LSP, becomes liable to repay an amount (the ***Repaid Periodic Compensation Payment***—

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RPCP) equal to the periodic compensation payments received;

then, for the purposes of subsection (7), the amount of the lump sum compensation payment is:

LSP – RPCP.

(9) For the purposes of Part IIIC, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Note: For the treatment of a payment of arrears of periodic compensation payments where, at the time of the event that gave rise to the compensation payments, the person was receiving a payment under this Act that is covered by Part IIIC, see point SCH6-E4.

Receives compensation

(10) A person ***receives compensation*** whether he or she receives it directly or whether another person receives it, on behalf of, or at the direction of the first person.

Event giving rise to entitlement

(11) For the purposes of Part IIIC, the ***event that gives rise to a person's entitlement to compensation*** for a disease, injury or condition is:

(a) if the disease, injury or condition was caused by an accident—the accident; or

(b) in any other case—the disease, injury or condition first becoming apparent;

and is not, for example, the decision or settlement under which the compensation is payable.

Insurer

(12) A reference in Part IIIC to an ***insurer who is, under a contract of insurance, liable to indemnify*** a compensation payer or a potential compensation payer against a liability arising from a claim for compensation includes a reference to:

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(a) an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or

(b) an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.

5NC *In care* definitions

(1) In this Act:

aged care resident has the meaning given by subsection (5).

in a care situation has the meaning given by subsection (2).

in respite care has the meaning given by subsection (8).

personally providing community-based care has the meaning given by subsection (4).

receiving community-based care has the meaning given by subsection (3).

(2) A person is ***in a care situation*** if:

(a) the person is residing in premises at which accommodation is provided exclusively or principally for people who have a mental disability; or

(b) the person is a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or

(c) the person is in respite care; or

(d) the person is receiving community-based care.

(3) A person is ***receiving community-based care*** if, in the Commission's opinion, the person needs, and has been receiving or is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.

(4) A person is ***personally providing community-based care*** for another person if, in the Commission's opinion:

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(a) the first-mentioned person is personally providing for the other person, in a private residence, a substantial level of care needed by the other person; and

(b) has personally provided, or is likely to personally provide, that level of care for at least 14 consecutive days.

(5) Subject to subsections (6) and (7), a person is an ***aged care resident*** for the purposes of this Act if the person is accessing ongoing funded aged care services (other than under a specialist aged care program) in an approved residential care home operated by a registered provider.

(6) A person is taken not to be an aged care resident if the person is in respite care.

(7) The Commission may determine, for the purposes of subsection (5), that a person is taken not to be an aged care resident on a day that occurs:

(a) after the person in fact became an aged care resident; and

(b) before the day occurring 15 days after the person in fact became an aged care resident;

if the Commission is satisfied that, immediately before the day, the person was liable to pay rent.

(8) A person is ***in respite care*** on a particular day if the person accesses short-term funded aged care services through the service group residential care.

(9) An expression used in subsection (5) or (8) and in the *Aged Care Act 2024* has the same meaning in that subsection as in that Act.

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5PB *Seniors health card* definitions

(1) In this Act, unless the contrary intention appears:

holder of a seniors health card has the meaning given by subsection (2).

(2) A person is the ***holder of a seniors health card*** while there is in force a determination under section 118ZG or 118ZP that the person is entitled to a seniors health card.

5PC Exempt funeral investments

(1) Work out whether a funeral investment that relates to a particular funeral is an ***exempt funeral investment*** by applying these rules:

(a) the expenses for the funeral must not be prepaid; and

(b) in relation to that funeral:

(i) only one investment of not more than $10,000 can be an exempt funeral investment; or

(ii) only two investments that combined are not more than $10,000 can be exempt funeral investments.

Note: The amounts in paragraph (1)(b) are indexed each year on 1 July (see Division 18 of Part IIIB).

(2) Disregard any return on an investment in determining the amount of an investment for the purposes of this section.

(3) For the purposes of subsection (1), a ***funeral investment*** means an investment, being an investment that cannot be realised before maturity and the return on which is not payable before maturity, that:

(a) matures on the death of whichever member of a couple dies first or dies last and is to be applied on maturity to the expenses of the funeral of that member of the couple; or

(b) matures on the death of:

(i) the investor; or

(ii) if the investor is a member of a couple at the time the investment is made, the investor's partner at that time;

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and is to be applied on maturity to the expenses of the funeral of the person on whose death it matures.

5Q Dictionary

(1) In this Act, unless the contrary intention appears:

Aboriginal study assistance scheme: see subsection 5F(1).

accommodation bond: see subsection 5L(1).

accommodation bond balance: see subsection 5L(1).

accommodation charge: see subsection 5L(1).

account, in relation to a financial institution, means the account maintained by a person with the institution to which is credited money received on deposit by the institution from that person.

acting commissioner: see section 5A.

Acting Deputy President: see section 5A.

Acting President: see section 5A.

actual market exchange rate in relation to a foreign currency, means the on-demand airmail buying rate in relation to that foreign currency available at the Commonwealth Bank of Australia.

actual value: see subsection 5MC(4).

adjusted income: see subsection 5H(1).

adopted child: see subsection 5F(1).

advance payment eligible amount, for a person, means:

(a) if the person is receiving a service pension worked out under subpoint SCH6-A1(2) of Schedule 6—the sum of the following amounts:

(i) the person's maximum basic rate;

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(ii) the amount (if any) by which the person's pension supplement amount exceeds the person's minimum pension supplement amount; or

(b) otherwise—the result of paragraph (a) worked out as if the person were receiving a service pension worked out under subpoint SCH6-A1(2) of Schedule 6.

aged care resident: see subsection 5NC(5).

allied country: see subsection 5C(1).

allied mariner: see subsection 5C(1).

allied veteran: see subsections 5C(1) and 5R(2).

allotted for duty in an operational area: see subsection 5B(2).

amount of rent paid or payable: see subsections 5N(6) and (7).

approved deposit fund: see subsection 5J(1).

approved exchange trading system: see subsection 5H(11).

Approved Guide to the Assessment of Rates of Veterans' Pensions: see subsection 29(3).

asset: see subsections 5L(1), (3B), (3BA), (3C) and (3D).

asset-tested income stream (long term): see subsection 5J(1).

asset-tested income stream (short term): see subsection 5J(1).

asset-test exempt income stream: see sections 5JA, 5JB, 5JBA and 5JBB.

ATO small superannuation account: see subsection 5J(1).

Australia, when used in a geographical sense, includes the external Territories for the purposes of Parts III, IIIA, IIIAA and IIIAB, Subdivision E of Division 11 of Part IIIB, sections 52ZO and 58A, Parts IIID, IIIE, VIB, VIIA, VIIAD and VIIC, section 132 and Schedule 6.

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Australian mariner: see subsection 5C(1).

Australian resident: see section 5G.

austudy payment has the meaning given by the *Social Security Act 1991*.

available money: see subsection 5H(1).

average weekly earnings in relation to a lump sum preclusion period: see subsection 5NB(1).

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

blinded in an eye: see subsection 5D(3).

Board has the same meaning as in the MRCA.

board when used in the expression ***board and lodging***: see subsection 5N(1).

British nuclear test defence service: see subsection 68(1).

Chairperson: see subsection 5AB(1).

child: see subsection 5F(1).

child of a veteran or ***child of a deceased veteran***: see section 10.

clean energy bonus under an Act or scheme means any of the following that is provided for by the Act or scheme:

(b) a payment known as an energy supplement or a quarterly energy supplement;

(c) an increase that is described using the phrase "energy supplement" and affects the rate of another payment that is provided for by the Act or scheme.

clean energy payment means:

(b) any of the following:

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(i) energy supplement under section 62A (for pension under Part II or IV at a rate determined under or by reference to Division 4 of Part II);

(ii) energy supplement under section 62B (for pension under Part II or IV at a rate determined under or by reference to subsection 30(1));

(iii) quarterly energy supplement for service pension; or

(c) an essential medical equipment payment.

clean energy underlying payment means:

(a) a pension under Part II or IV at a rate determined under or by reference to Division 4 of Part II; or

(b) a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); or

(c) service pension; or

(d) seniors supplement.

combined couple rate of minimum pension supplement: see subsection 5GA(2).

combined couple rate of pension supplement: see subsection 5GA(1).

commencement day in relation to an income stream: see subsection 5J(1).

Commission: see section 5A.

commissioner: see section 5A.

Commonwealth country: see subsection 5C(1).

Commonwealth veteran: see subsection 5C(1).

comparable foreign pension means a payment that is:

(a) available from a foreign country; and

(b) similar to a service pension, income support supplement, a veteran payment or a social security pension.

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compensation: see subsection 5NB(2) and section 59O.

compensation affected pension: see subsection 5NB(1).

compensation part in relation to a lump sum compensation payment: see subsection 5NB(1).

compensation payer: see subsection 5NB(1).

continuous full-time service: see subsections 5C(1) and 5R(1).

Convener: see subsection 5AB(1).

councillor: see subsection 5AB(1).

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

CTPA means the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

current figure: see subsection 5NA(1).

daily accommodation contribution: see subsection 5L(1).

daily accommodation payment: see subsection 5L(1).

decision includes a determination and an assessment.

deductible amount in relation to a defined benefit income stream for a year: see subsection 5J(1).

de facto relationship: see section 11A.

defence-caused death: see sections 70 and 71.

defence-caused disease: see sections 70 and 71.

defence-caused injury: see sections 70 and 71.

Defence Force: see subsection 5C(1).

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defence force established by a Commonwealth country: see subsection 5C(1).

defence force established by an allied country: see subsections 5C(1) and (3) and 5R(2).

Defence Minister has the meaning given by the *Military Rehabilitation and Compensation Act 2004*.

defence service: see subsection 68(1).

deferred payment amount in relation to a sale leaseback agreement: see subsections 5MB(6), (7) and (8).

defined benefit income stream: see subsection 5J(1E).

dependant in relation to a veteran (including a veteran who has died): see section 11.

dependent child: see subsections 5F(1) and (2).

deposit money: see subsection 5H(1).

deprived asset: see subsection 5J(2B).

Deputy President: see section 5A.

disability expenses maintenance: see section 5K.

disease: see subsection 5D(1).

disposes of assets: see subsection 5L(10) and section 52E.

disposes of ordinary income: see section 48.

domestic payment: see subsection 5H(3).

domiciled has a meaning affected by section 11B.

earned, derived or received: see subsection 5H(2).

eligible civilian: see subsection 5C(1).

eligible war service: see section 7.

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EMEP residence has the meaning given by section 63A.

enemy: see subsection 5C(1).

energy supplement means:

(a) energy supplement payable under section 62A (for pension under Part II or IV at a rate determined under or by reference to Division 4 of Part II); or

(b) energy supplement payable under section 62B (for pension under Part II or IV at a rate determined under or by reference to subsection 30(1)); or

(c) energy supplement added to a person's maximum basic rate of service pension under the Rate Calculator.

entry contribution in relation to a special resident: see section 52M.

essential medical equipment payment has the meaning given by section 63A.

event that gives rise to a person's entitlement to compensation: see subsection 5NB(11).

exchange trading system: see subsection 5H(10).

exempt funeral investment has the meaning given by section 5PC.

exempt lump sum: see subsections 5H(12) and (12A).

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

family law affected income stream: see section 5JC.

family member: see subsection 5L(1).

family tax benefit: see subsection 5F(1).

financial asset: see subsection 5J(1).

financial institution means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

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financial investment: see subsections 5J(1) and (2C).

fishing operations: see subsection 5L(1).

fishing vessel: see subsection 5C(1).

foreign exchange period means:

(a) the period commencing 20 September and ending on the day before the pension payday that falls closest to the middle of the 6 month period commencing 20 September; and

(b) the period starting from the pension payday referred to in paragraph (a) and ending on 19 March; and

(c) the period commencing 20 March and ending on the day before the pension payday that falls closest to the middle of a 6 month period commencing 20 March; and

(d) the period starting from the pension payday referred to in paragraph (c) and ending on 19 September.

foreign superannuation fund: see subsection 5L(1).

foreign superannuation pension: see subsection 5L(1).

forest operations: see subsection 5L(1).

former refugee: see subsection 5C(1).

friendly society: see subsection 5J(1).

FTB child: see subsection 5F(1).

funeral investment: see subsection 5PC(3).

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

governing rules in relation to an income stream: see subsection 5J(1).

government-in-exile: see subsection 5C(1).

Government rent: see subsections 5N(1), (4) and (5).

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granny flat interest: see subsection 5MA(2).

granny flat resident: see subsection 5MA(3).

hazardous service: see subsection 68(1).

holder in relation to a visa: see subsection 5G(1).

holder of a seniors health card: see subsection 5PB(2).

home equity conversion agreement: see subsections 5H(1) and (7).

illness separated couple: see subsection 5R(5).

immediate family member, of a person, means an individual:

(a) who is a natural parent, adoptive parent or step-parent of the person; or

(ab) who is the person's parent because of subsection 10A(1); or

(b) who is, or was when the person was under 18 years of age, a legal guardian of the person; or

(c) who is a grandparent of the person; or

(d) who is a sibling of the person.

in a care situation: see subsection 5NC(2).

incapacity from a defence-caused disease: see subsection 5D(2).

incapacity from a defence-caused injury: see subsection 5D(2).

incapacity from a war-caused disease: see subsection 5D(2).

incapacity from a war-caused injury: see subsection 5D(2).

incentive allowance has the meaning that was given to that expression by the *Social Security Act 1991* as in force immediately before 12 November 1991.

income: see subsection 5H(1).

income amount: see subsection 5H(1).

income stream: see subsections 5J(1) and (1F).

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Income Tax Assessment Act means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

income year has the meaning given by the *Income Tax Assessment Act 1997*.

index number: see subsections 5NA(1), (2) and (3).

ineligible property owner: see subsection 5N(1).

in gaol: see subsection 55(4).

initial payment amount in relation to a sale leaseback agreement: see subsections 5MB(4) and (5).

injury: see subsection 5D(1).

in respite care: see subsection 5NC(8).

instalment of parental leave pay: see subsection 5H(1).

insurer who is, under a contract of insurance, liable to indemnify: see subsection 5NB(12).

investment:

(a) in relation to a superannuation fund or approved deposit fund—see subsection 5J(6); or

(b) in relation to an ATO small superannuation account—see subsection 5J(6A).

investor in relation to an ATO small superannuation account: see subsection 5J(1).

joint ownership includes ownership as joint tenants or tenants in common.

life expectancy: see subsection 5J(1).

listed security: see subsection 5J(1).

loan: see subsections 5J(2) and (2A).

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lump sum preclusion period: see subsections 59Q(3) to (8).

maintenance: see section 5K.

maintenance income: see section 5K.

managed investment: see subsections 5J(1A), (1B) and (1C).

maximum Part A rate of family tax benefit: see subsection 5F(1).

medical equipment has the meaning given by section 63A.

member: see subsection 5AB(1).

member of a couple: see subsections 5E(2), (3), (4) and (4A) and 5R(3).

member of an ordinary couple with different principal homes: see subsection 5M(2).

member of a Peacekeeping Force: see subsection 68(1).

member of a unit of the Defence Force: see subsections 5C(1) and 5R(1).

member of the Defence Force: see subsections 5C(1) and (2).

member of the Forces: see subsection 68(1).

member of the Interim Forces: see subsection 5C(1).

military invalidity pension income stream: see subsection 5J(1EA).

Military Rehabilitation and Compensation Act Education and Training Scheme means the scheme determined under section 258 of the *Military Rehabilitation and Compensation Act 2004*.

Military Rehabilitation and Compensation Commission means the Military Rehabilitation and Compensation Commission established under section 361 of the MRCA.

minimum pension supplement amount: see subsection 5GA(3).

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MRCA means the *Military Rehabilitation and Compensation Act 2004*.

MRCA commencement date means the date on which section 3 of the MRCA commences.

NDIS amount has the same meaning as in the *National Disability Insurance Scheme Act 2013*.

NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*.

NDIS plan means a plan, for an NDIS participant, within the meaning of the *National Disability Insurance Scheme Act 2013.*

non-illness separated spouse: see subsection 5E(1).

non-warlike service: see subsection 5C(1).

operational area: see subsection 5B(1).

operational service: see sections 6 to 6F.

ordinary income: see subsection 5H(1) and section 46.

organisation representing veterans means:

(a) an organisation:
  (i) whose members include veterans throughout the Commonwealth; and
  (ii) whose objects include that of representing veterans throughout the Commonwealth; or

(b) an organisation:
  (i) whose members include persons throughout the Commonwealth who are receiving or eligible to receive pensions under Part II as dependants of veterans; and
  (ii) whose objects include that of representing those persons throughout the Commonwealth.

original family law affected income stream: see section 5JC.

parent: see section 10A.

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partner: see subsection 5E(1).

partnered: see paragraph 5E(5)(a).

partnered (partner getting benefit): see paragraph 5E(5)(e).

partnered (partner getting neither pension nor benefit): see paragraph 5E(5)(b).

partnered (partner getting pension): see paragraph 5E(5)(d).

partnered (partner getting pension or benefit): see paragraph 5E(5)(c).

peacekeeping service: see subsection 68(1).

pension, in Parts IIIA, IIIAB, IIIB and IIIC, section 122B and Schedule 6, includes income support supplement.

pension age:

(a) in relation to a veteran—has the meaning given by section 5QA; or

(b) in relation to a person other than a veteran—has the meaning given by section 5QB.

Note: The qualifying age for income support supplement is separately provided for (see section 5Q).

pension bonus means pension bonus under Part IIIAB (and does not include pension bonus bereavement payment under Division 11A of that Part).

pension bonus bereavement payment means a pension bonus bereavement payment under Division 11A of Part IIIAB.

pension payday means:

(a) the Thursday falling on 11 July 1991; and

(b) each succeeding alternate Thursday.

Note: Part of an instalment of a pension may be paid on a different day if a determination is in force under subsection 58(3A) or 121(5A) (about weekly payments of pension instalments).

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pension period means a period of 2 weeks that:

(a) starts 2 days before the beginning of a pension payday; and

(b) ends 2 days before the beginning of the next pension payday.

pension supplement amount, for a person:

(a) whose rate of service pension is worked out under subpoint SCH6-A1(2) or (3) of Schedule 6 or whose rate of veteran payment is worked out under subpoint SCH6-A1(8) or (9) of Schedule 6; or

(b) whose rate of service pension is worked out under subpoint SCH6-A1(4) of Schedule 6 and is the provisional rate worked out under that subpoint;

means the amount worked out and added under the pension supplement Module of the Rate Calculator.

pension supplement basic amount: see subsection 5GA(4).

pension year: see subsections 5L(9) and (9A).

periodic amount: see subsection 5H(13).

periodic payments period: see subsection 5NB(1).

period of hostilities: see subsection 5B(1).

permanent visa: see subsection 5G(1).

personally providing community-based care: see subsection 5NC(4).

person with medical needs has the meaning given by section 63A.

physically present in a remote area has the meaning given by subsection (2).

port includes airport.

potential compensation payer: see subsection 5NB(1).

President: see section 5A.

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primary FLA income stream: see section 5JC.

primary producer: see subsection 5L(1).

primary production: see subsection 5L(1).

principal beneficiary, of a special disability trust, has the meaning given by subsection 52ZZZWA(1).

principal home: see section 5LA.

prohibited relationship: see subsections 5E(6) and (7).

property owner: see subsection 5L(4).

psychiatric confinement: see subsections 55(5) and (6).

public unit trust: see subsection 5J(1).

purchase price in relation to an income stream: see subsection 5J(1).

qualifying age for a person means:

(a) if the person is a veteran—the pension age for that person; or

(b) if the person is not a veteran—the age that would be the pension age for that person if he or she were a veteran.

qualifying service: see section 7A.

quarterly energy supplement for service pension means the separate payment described in section 62E.

quarterly pension supplement means the separate payment described in subsection 60A(1).

Rate Calculator means the Rate Calculator in Part 2 of Schedule 6.

reasonable security of tenure: see subsection 5LA(10).

receives compensation: see subsection 5NB(10).

receiving community-based care: see subsection 5NC(3).

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recoverable amount has the meaning given by subsection 205(8).

refugee: see subsection 5C(4).

refundable deposit: see subsection 5L(1).

refundable deposit balance: see subsection 5L(1).

registered medical practitioner: see subsection 5AB(1).

regular care child: see subsection 5F(1).

reinstated pensioner: see section 11AA.

relates to service: see subsections (1B) and (1C).

relevant number in relation to an income stream: see subsection 5J(1).

remote area means:

(a) those parts of Australia referred to in Part I of Schedule 2 to the Income Tax Assessment Act; and

(aa) those parts of Australia referred to in Part II of that Schedule to that Act that are further than 250 kilometres by the shortest practicable surface route from the nearest urban centre with a census population (within the meaning of that Act) of 2,500 or more; and

(ab) those places in Australia that, for the purposes of that Act, are treated as if they were in a part of Australia referred to in paragraph (a) or (aa).

remunerative work includes any remunerative activity.

rent: see section 5N.

Repatriation Pharmaceutical Benefits Scheme: see subsection 91(3).

Repatriation Private Patient Principles: see subsection 90A(4).

residential care charge: see subsection 5N(1).

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residual capital value in relation to an income stream: see subsections 5J(1) and (9).

respite care couple: see subsection 5R(6).

retirement age:

(a) in relation to a person who is a war widow or a war widower but is not a veteran—means the age that would be the pension age for that person if he or she were a veteran; or

(b) in relation to any other person—means the pension age for that person.

retirement savings account: see subsection 5J(1).

retirement village: see subsections 5M(3) and (4).

retirement village resident: see subsection 5M(5).

return:

(a) in relation to an ATO small superannuation account—see subsection 5J(1); or

(c) in relation to any other investment (including an investment in the nature of superannuation)—see subsection 5J(1).

Review Council: see subsection 5AB(1).

sale leaseback agreement: see subsections 5MB(2) and (3).

sale leaseback home: see subsection 5MB(9).

sale leaseback resident: see subsections 5MB(10) and (11).

secondary FLA income stream: see subsection 5J(1).

Secretary means the Secretary of the Department.

self-employment program means:

(a) the scheme known as the New Enterprise Incentive Scheme; or

(b) the program known as:

(i) the Self-Employment Assistance program; or

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(ii) if the Self-Employment Assistance program is known by another name—that other name.

Note: For the purposes of subparagraph (b)(ii), if the name of the Self-Employment Assistance program changes, notice must be given of that change (see subsection 23(25) of the Social Security Act).

service pension means:

(a) an age service pension; or

(b) an invalidity service pension; or

(c) a partner service pension.

service pensioner means a person who is receiving a service pension.

sibling, of a person, except for the purposes of sections 123 to 123E, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or foster-sister of the person.

Note: For the meaning of ***sibling*** in sections 123 to 123E, see subsection 123(1).

Social Security Act means the *Social Security Act 1991*.

social security benefit has the same meaning as it has in the Social Security Act.

social security law has the same meaning as in the Social Security Act.

social security payment has the same meaning as in the Social Security Act.

social security pension has the same meaning as it has in the Social Security Act.

sound medical-scientific evidence in relation to a particular kind of injury, disease or death: see subsection 5AB(2).

special category visa: see subsection 5G(1).

special disability trust has the meaning given by section 52ZZZW.

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special mission: see subsection 5C(1).

special purpose visa: see subsection 5G(1).

special residence: see subsection 5MC(2).

special resident: see subsection 5MC(3).

step-child: see subsection 5F(1).

step-parent: see subsection 5F(1).

superannuation benefit: see subsection 5J(1).

superannuation contributions surcharge: see subsection 5J(1).

superannuation fund: see subsection 5J(1).

tax-exempt pension supplement: see subsections 5GA(5) and (6).

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

tax year means:

(a) a year of income (within the meaning of the *Income Tax Assessment Act 1936*); or

(b) an income year.

temporarily, in relation to a departure or absence from Australia, has a meaning affected by subsection (3) or (4), as the case requires.

tobacco product means:

(a) tobacco (in any form); or

(b) any product that:

(i) contains tobacco as its main or a substantial ingredient; and

(ii) is not included in the Australian Register of Therapeutic Goods kept under the *Therapeutic Goods Act 1989*.

Treatment Principles: see subsection 90(4).

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unit of the Defence Force: see subsection 5C(1).

unlisted public security: see subsection 5J(1).

unrealisable asset: see subsections 5L(11) and (12).

use, in relation to a tobacco product, includes smoke, chew or inhale.

value of a charge or encumbrance on an asset: see subsection 5L(3).

value of a liability: see subsection 5L(3A).

value of a particular asset: see subsection 5L(2).

Vehicle Assistance Scheme: see subsection 105(9).

veteran: see subsection 5C(1).

veteran payment means a veteran payment made under an instrument made under section 45SB.

Veterans' Children Education Scheme: see subsection 117(7).

Veterans' Vocational Rehabilitation Scheme: see subsection 115B(7).

war-caused death: see sections 8 and 9A.

war-caused disease: see sections 9 and 9A.

war-caused injury: see sections 9 and 9A.

warlike service: see subsection 5C(1).

war to which this Act applies: see subsection 5B(1).

war widow: see subsection 5E(1).

war widower: see subsection 5E(1).

war widow/war widower—pensioner means:

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(a) a person who is receiving a pension under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or

(b) a person who is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or who has received a lump sum mentioned in subsection 236(5) of the MRCA.

wholly dependent partner: see subsection 5E(1).

widow: see subsection 5E(1).

widower: see subsection 5E(1).

World War 1: see subsections 5B(1) and (3).

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

youth allowance has the meaning given by the *Social Security Act 1991*.

(1A) In Parts VIII, XI and XIA, unless the contrary intention appears:

British nuclear test defence service has the same meaning as in Part IV.

defence service has the same meaning as in Part IV.

hazardous service, in relation to a member of the Forces, has the same meaning as in section 120.

member of a Peacekeeping Force has the same meaning as in Part IV.

member of the Forces has the same meaning as in Part IV.

peacekeeping service has the same meaning as in Part IV.

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*Definition of **relates to service** for injuries, diseases and deaths*

(1B) For the purposes of this Act, an injury, disease or death ***relates to service*** rendered by a person if:

(a) it resulted from an occurrence that happened while the person was rendering that service; or

(b) it arose out of, or was attributable to, that service; or

(c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:

(i) to a place for the purpose of performing duty; or

(ii) away from a place of duty upon having ceased to perform duty; or

(d) in the case of an injury—it resulted from an accident that would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon his or her having rendered that service; or

(e) in the case of a disease—it would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon his or her having rendered that service; or

(f) in the case of a death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon his or her having rendered that service.

*Definition of **relates to service** for aggravations and material contributions*

(1C) For the purposes of this Act, an aggravation of, or a material contribution to, an injury or disease ***relates to service*** rendered by a person if:

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(a) it resulted from an occurrence that happened while the person was rendering that service; or

(b) it arose out of, or was attributable to, that service; or

(c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:

(i) to a place for the purpose of performing duty; or

(ii) away from a place of duty upon having ceased to perform duty; or

(d) in the case of an aggravation of, or a material contribution to, an injury—it resulted from an accident that would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon his or her having rendered that service; or

(e) in the case of an aggravation of, or a material contribution to, a disease—it would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon his or her having rendered that service.

(2) If:

(a) a person's usual place of residence is in the remote area; and

(b) the person is absent from the remote area for a period;

the person is to be taken to be ***physically present in the remote area*** during:

(c) if the period does not exceed 8 weeks—the whole of that period; or

(d) if the period exceeds 8 weeks—the first 8 weeks of that period.

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

(3) In determining whether a person has left Australia temporarily or otherwise, regard is to be had to the following:

(a) the purpose for which the person left Australia;

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(b) the intended duration of the person's absence from Australia;
(c) the frequency of the occasions on which the person has left Australia.

(4) In determining whether a person is absent from Australia temporarily or otherwise, regard is to be had to the following:
(a) the purpose of the absence;
(b) the intended duration of the absence;
(c) the frequency of such absences.

(5) For the purposes of this Act, if under a provision of this Act one person is the child of another person because the person is a child of the other person within the meaning of the *Family Law Act 1975*, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

Note: Paragraph 10(1)(b) and paragraph (b) of the definition of ***child*** in section 52ZO are examples of provisions under which one person may be the child of another person because the person is a child of the other person within the meaning of the *Family Law Act 1975*.

(6) Subsection (5) does not apply for the purposes of determining when a person and his or her partner are within a prohibited relationship under subsection 5E(6). However, this does not prevent expressions used in subsection 5E(6) from having their ordinary meaning.

5QAA Equal amounts

(1) Where:
(a) a provision of this Act refers to:
(i) the greater or greatest, or the higher or highest; or
(ii) the lesser or least, or the lower or lowest;
of 2 or more amounts; and
(b) the amounts are equal;
the provision is taken to refer to one only of the amounts.

(2) Where:

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(a) a provision of this Act refers to the greatest or highest of 3 or more amounts; and

(b) 2 or more (but not all) of the amounts are equal and exceed the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

(3) Where:

(a) a provision of this Act refers to the least or lowest of 3 or more amounts; and

(b) 2 or more (but not all) of the amounts are equal and are less than the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

5QA Pension age for veterans

(1) This section deals with the pension age for veterans.

Men

(2) A man reaches ***pension age*** when he turns 60 years.

Women

(3) A woman born before 1 July 1940 reaches ***pension age*** when she turns 55.

(4) A woman born within the period specified in column 2 of an item in the following Table reaches ***pension age*** when she turns the age specified in column 3 of that item.

Table

Column 1 Item no.	Column 2 Period within which woman was born (both dates inclusive)	Column 3 Pension age
1.	From 1 July 1940 to 31 December 1941	55 years and 6 months
2.	From 1 January 1942 to 30 June 1943	56 years
3.	From 1 July 1943 to 31 December 1944	56 years and 6 months

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Table		
Column 1 **Item no.**	**Column 2** **Period within which woman was born (both dates inclusive)**	**Column 3** **Pension age**
4.	From 1 January 1945 to 30 June 1946	57 years
5.	From 1 July 1946 to 31 December 1947	57 years and 6 months
6.	From 1 January 1948 to 30 June 1949	58 years
7.	From 1 July 1949 to 31 December 1950	58 years and 6 months
8.	From 1 January 1951 to 30 June 1952	59 years
9.	From 1 July 1952 to 31 December 1953	59 years and 6 months

(5) A woman born on or after 1 January 1954 reaches ***pension age*** when she turns 60.

5QB Pension age for persons other than veterans

(1) This section deals with the pension age for persons other than veterans.

Men

(2) A man born during the period specified in column 2 of an item in the following table reaches ***pension age*** when he turns the age specified in column 3 of that item.

Table—Pension age for men		
Column 1 **Item**	**Column 2** **Period during which man was born**	**Column 3** **Pension age**
1	On or before 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months
5	On or after 1 January 1957	67 years

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Women

(3) A woman born before 1 July 1935 reaches ***pension age*** when she turns 60 years.

(4) A woman born within the period specified in column 2 of an item in the following Table reaches ***pension age*** when she turns the age specified in column 3 of that item.

Table

Column 1 Item no.	Column 2 Period within which woman was born (both dates inclusive)	Column 3 Pension age
1.	From 1 July 1935 to 31 December 1936	60 years and 6 months
2.	From 1 January 1937 to 30 June 1938	61 years
3.	From 1 July 1938 to 31 December 1939	61 years and 6 months
4.	From 1 January 1940 to 30 June 1941	62 years
5.	From 1 July 1941 to 31 December 1942	62 years and 6 months
6.	From 1 January 1943 to 30 June 1944	63 years
7.	From 1 July 1944 to 31 December 1945	63 years and 6 months
8.	From 1 January 1946 to 30 June 1947	64 years
9.	From 1 July 1947 to 31 December 1948	64 years and 6 months

(5) A woman born during the period specified in column 2 of an item in the following table reaches ***pension age*** when she turns the age specified in column 3 of that item.

Table—Pension age for women

Column 1 Item	Column 2 Period during which woman was born	Column 3 Pension age
1	1 January 1949 to 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months

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Table—Pension age for women		
Column 1	**Column 2**	**Column 3**
Item	**Period during which woman was born**	**Pension age**
5	On or after 1 January 1957	67 years

5R Determinations having interpretative effect

Continuous full-time service determination; member of unit of Defence Force determination

(1) The Minister may, by notice in writing published in the *Gazette*, make, in respect of a person, or of persons included in a class of persons, specified in the notice, all or any of the following determinations:

(a) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person, or a person included in that class of persons, as if he or she was, while he or she was rendering service of a kind specified in the notice (in this subsection referred to as ***relevant service***), a member of the Defence Force who was rendering continuous full-time service;

(b) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person (being a member of the Defence Force), or a person included in that class of persons (being members of the Defence Force), as if he or she was, while he or she was rendering relevant service, rendering continuous full-time service;

(c) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person, or a person included in that class of persons, as if he or she was, while he or she was rendering relevant service, a member of a specified unit of the Defence Force;

and, if the Minister does so, this Act applies, or the specified provisions of this Act apply, as the case may be, accordingly.

Note: For ***continuous full-time service*** and ***member of a unit of the Defence Force*** see subsection 5C(1).

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Allied veteran determination

(2) If a person who is a claimant for an age service pension or an invalidity service pension satisfies the Commission:

(a) that the person had been appointed or enlisted as a member of the forces or services of:

(i) an allied country, being forces or services of a kind referred to in the definition of ***defence force established by an allied country***; or

(ii) the government-in-exile of an allied country, being forces or services of a kind referred to in subsection 5C(3); and

(b) that those forces or services were raised and operated in such a manner that the members of those forces and services:

(i) were formally appointed to, or enlisted in, those forces or services; and

(ii) were subject to the rules and conventions of warfare; and

(c) that the person was not required, as such a member, to wear a uniform or insignia distinguishing the person as a member of those forces or services or to carry arms at all or to carry arms openly; and

(d) that it would have been unreasonable, having regard to the conditions existing, at the time the person served in those forces or services, in the parts of that country in which the person so could serve, for the person to have been required to wear a uniform or insignia or to carry arms or to carry arms openly;

the Commission must determine that the person is, for the purposes of the definition of ***allied veteran*** in subsection 5C(1) to be treated as a person who has been appointed or enlisted as a member of the defence force established by that allied country or that government-in-exile.

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Person may be treated as not being a member of a couple

(3) The Commission may determine, for any special reason, that a person who is a member of a couple is not to be treated as a member of a couple for the purposes of this Act.

Note: For ***member of a couple*** see subsection 5E(2).

(4) The determination must be in writing.

Illness separated couple determination

(5) If the Commission is satisfied that:

(a) 2 people are members of a couple; and

(b) they are unable to live together in their home as a result of the illness or infirmity of either or both of them; and

(c) because of that inability to live together, their living expenses are, or are likely to be greater than they would otherwise be; and

(d) that inability is likely to continue indefinitely;

the Commission may make a written determination that the 2 people are members of an ***illness separated couple*** for the purposes of this Act.

Respite care couple determination

(6) If the Commission is satisfied that:

(a) 2 people are members of a couple; and

(b) one of the members of the couple is in respite care; and

(c) the member who is in respite care has remained, or is likely to remain, in that care for at least 14 consecutive days;

the Commission may make a written determination that the 2 people are members of a ***respite care couple*** for the purposes of this Act.

Note: For ***in respite care***, see subsection 5NC(8).

(7) A determination under subsection (6) takes effect from the day specified by the Commission in the determination, being a day not

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earlier than 3 months before the Commission is notified that the person is in respite care.

Remote area determination—current or future absence from remote area

(11) If the Commission is satisfied that:

(a) a person's age or invalidity service pension, income support supplement or veteran payment includes an amount of remote area allowance; and

(b) the person's remote area allowance includes an amount for an FTB child or a regular care child; and

(d) the absence is, or is likely to be, longer than 8 weeks; and

(e) the absence is due to special circumstances (for example, the person's medical treatment or the person's attendance at a rehabilitation or training course);

the Commission may make a written determination that, despite that absence, the person's rate of pension, income support supplement or veteran payment continues to include remote area allowance for the period specified in the determination while the person has an FTB child, or a regular care child, (as the case requires).

Note 1: For an ***FTB child*** and a ***regular care child*** see subsection 5F(1).

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

Remote area determination—past absence from remote area

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

(a) a person is receiving an age or invalidity service pension, income support supplement or a veteran payment; and

(b) the person's usual place of residence is in a remote area; and

(c) because the person is absent from the remote area for longer than 8 weeks, the person's rate of service pension, income support supplement or veteran payment ceases to include an amount by way of remote area allowance; and

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(d) immediately before the person's rate ceases to include remote area allowance, the remote area allowance includes an amount for an FTB child or a regular care child;

the Commission may make a written determination that, despite that absence, the person's rate of pension, income support supplement or veteran payment continues to include remote area allowance for the period specified in the determination while the person has an FTB child, or a regular care child, (as the case requires).

Note 1: For an ***FTB child*** and a ***regular care child*** see subsection 5F(1).

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

(13) The period specified by the Commission in a determination under subsection (12) must not commence earlier than 3 months before the Commission is notified that the person is absent from the remote area.

Sale leaseback agreement determination

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

(15) The determination must be in writing.

5T Lodgment of claims, applications, requests and documents

(1) This section regulates the lodgment of all claims, applications, requests or other documents under this Act.

Note: So far as concerns the lodgment of documents with the Repatriation Medical Authority and the Specialist Medical Review Council, these matters are dealt with in Parts XIA and XIB respectively.

(2) For the purposes of this Act, a claim, application, request or other document, other than a claim, application, request or other

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document that is approved by the Commission for electronic lodgment and that is transmitted electronically:

(a) is taken to have been lodged at an office of the Department in Australia only if the claim, application, request or other document is:

(i) lodged at a place approved by the Commission for the purposes of this subsection; or

(ii) delivered to a person approved by the Commission for the purposes of this subsection; and

(b) is taken to have been so lodged on the day on which it is received at that place or delivered to that person.

(3) For the purposes of this Act, a claim, application, request or other document that is approved by the Commission for electronic lodgment and that is transmitted electronically:

(a) is taken to have been lodged at an office of the Department in Australia only if the claim, application, request or document is transmitted electronically:

(i) in a manner approved by the Commission for the purposes of this subsection; and

(ii) to an electronic address approved by the Commission for the purposes of this subsection;

in relation to claims, applications, requests or documents of that kind; and

(b) is taken to have been so lodged on the day on which it is so received at that electronic address.

(4) Claims, applications, requests and other documents transmitted electronically other than in a manner approved by the Commission or to an electronic address other than an electronic address approved by the Commission are not to be treated as having been validly lodged.

(5) The Commission may approve a place within or outside Australia for the purposes of subparagraph (2)(a)(i).

(6) For the purposes of this Act, a claim, application, request or other like document is taken to have been made on the day on which,

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under subsection (2) or (3), it is taken to have been lodged at an office of the Department in Australia.

(7) For the purposes of this Act, a notice or like document is taken to have been given on the day on which, under subsection (2) or (3), it is taken to have been lodged at an office of the Department in Australia.

(8) If any provision of this Act requires any material to be lodged in support of a claim, application, request or other document, that supporting material:

(a) unless paragraph (b) applies—may be lodged in accordance with this section in the same manner as the claim, application, request or other document to which it relates; and

(b) if the supporting material is not appropriate to be lodged in the same manner as the claim, application, request or other document to which it relates—may be lodged in such other manner contemplated by this section as the Commission approves.

5U Notes

For the purposes of this Act, a Note is taken to be part of:

(a) if the Note immediately follows a section that does not contain subsections—the section; or

(b) if the Note immediately follows a subsection—the subsection; or

(c) if the Note immediately follows a point in a Rate Calculator—the point; or

(d) if the Note immediately follows a Step in a Method statement and is aligned with the text of the Step—the Step; or

(e) if the Note immediately follows a Table—the Table; or

(f) if the Note immediately follows a paragraph and is aligned with the text of the paragraph—the paragraph.

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6 Operational service—general outline

Sections 6A to 6F deal with operational service as set out in the following table:

Operational service		
Item	**Section number**	**Type of operational service**
1	6A	Operational service—world wars
2	6B	Operational service—Australian mariners
3	6C	Operational service—post World War 2 service in operational areas
4	6D	Operational service—other post World War 2 service
4A	6DA	Operational service—minesweeping and bomb/mine clearance service
4B	6DB	Operational service—service on submarine special operations
5	6E	Operational service—Korean demilitarised zone and Vietnam
6	6F	Operational service—warlike and non-warlike service

6A Operational service—world wars

(1) Subject to subsection (3), a person referred to in column 2 of an item in the following table is taken to have been rendering operational service during any period during which the person was rendering continuous full-time service of a kind referred to in column 3 of that item.

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Operational service		
Item	**Person**	**Nature of service**
1	A member of the Defence Force	(a) continuous full-time service outside Australia during a war to which this Act applies (b) continuous full-time service for a period of at least 3 months in that part of the Northern Territory that is north of the parallel 14 degrees 30 minutes south latitude (including any of the islands adjoining the Northern Territory) between 19 February 1942 and 12 November 1943 (both dates inclusive) (c) continuous full-time service during a war to which this Act applies rendered within Australia immediately before, or immediately after, a period of continuous full-time service of the kind referred to in paragraph (a) or (b) (d) continuous full-time service rendered within Australia during World War 2 in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy
2	A member of the Defence Force who enlisted in the Defence Force while living on a Torres Strait Island	(a) continuous full-time service for a period of at least 3 months on that island between 14 March 1942 and 18 June 1943 (both dates inclusive) (b) continuous full-time service during a war to which this Act applies rendered within Australia immediately before, or immediately after, a period of continuous full-time service of the kind referred to in paragraph (a)

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Operational service		
Item	**Person**	**Nature of service**
3	A member of the naval, military or air forces of a Commonwealth country or of an allied country who was domiciled in Australia or an external Territory immediately before his or her appointment or enlistment in those forces	Continuous full-time service during a war to which this Act applies rendered: (a) outside that country; or (b) within that country but in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy

Note: Section 11B may affect a person's domicile immediately before appointment or enlistment.

(2) A person referred to in column 2 of an item in the following table is taken to have been rendering operational service during the period, or at the time, specified in column 3 of that item.

Operational service		
Item	**Person**	**Relevant period or time**
1	A person who was, during a war to which this Act applies, employed by the Commonwealth on a special mission outside Australia	The period during which the person was so employed by the Commonwealth
2	An eligible civilian who was killed, during the invasion of the Territory of Papua or the Territory of New Guinea during World War 2, as a result of action by the enemy	The time of the event as a result of which the person was killed
3	An eligible civilian who was detained by the enemy during World War 2	The period during which the person was so detained
4	A person who, while rendering continuous full-time service as a member of the Defence Force within Australia during World War 2, was injured, or contracted a disease, as a result of enemy action	The time of the event as a result of which the person was injured or contracted the disease

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(3) Any continuous full-time service that was rendered during World War 2 by a member of the Defence Force (other than a member of the Interim Forces) on or after the cut off date for the member is not taken to be operational service.

(4) For the purposes of subsection (3), the ***cut off date*** for a member of the Defence Force is the date applicable to the member in accordance with the following table:

Cut off date

Item	Member	Date
1	A member who was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service, or solely for service during that war or during that war and a definite period immediately following that war	1 July 1951
2	A member who was appointed or enlisted in the Citizen Forces and was called up for continuous full-time service for the duration of, or directly in connection with, World War 2	1 July 1951
3	A member who served in the British Commonwealth Occupation Force in Japan	1 July 1951, or the day on which the member arrived back in Australia on the completion of his or her service in that Force, whichever is the earlier
4	Any other member	3 January 1949

6B Operational service—Australian mariners

(1) A person is taken to have been rendering operational service during:

(a) any period of employment outside Australia as an Australian mariner on a ship; or

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(b) any period of employment within Australia as an Australian mariner on a ship if that period of employment ended immediately before, or started immediately after, the period of employment referred to in paragraph (a).

(2) A person who, while employed within Australia as an Australian mariner on a ship, was injured, or contracted a disease, as a result of enemy action is taken to have been rendering operational service at the time of the event as a result of which the person was injured or contracted the disease.

(3) A person who was employed within Australia as an Australian mariner on a ship in such circumstances that the employment should, in the opinion of the Commission, be treated as employment in actual combat against the enemy is taken to have been rendering operational service while the person was so employed.

(4) Without limiting subsection (1), a person is taken to have been employed outside Australia as an Australian mariner on a ship in each of the following circumstances:

(a) at any time when the person was at a place outside Australia on leave from the ship while the ship was at a port outside Australia;

(b) at any time when the person was outside Australia while on his or her way to take up employment as an Australian mariner on a ship;

(c) while the person was awaiting return to Australia from employment as an Australian mariner on a ship;

(d) while the person was returning to Australia from employment as an Australian mariner on a ship.

(5) For the purposes of this section, if a person was employed as an Australian mariner on a ship undertaking a voyage for the purpose of going from a place within Australia to another place within Australia, the person is taken to have been employed within Australia during the whole of the voyage.

(6) In this section:

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Australia does not include an external territory.

6C Operational service—post World War 2 service in operational areas

(1) Subject to this section, a member of the Defence Force who has rendered continuous full-time service in an operational area as:

(a) a member who was allotted for duty in that area; or

(b) a member of a unit of the Defence Force that was allotted for duty in that area;

is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.

(2) A member of the naval, military or air forces of a Commonwealth country or of an allied country who:

(a) was domiciled in Australia or an external Territory immediately before his or her appointment or enlistment in those forces; and

(b) has rendered continuous full-time service in an operational area;

is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.

Note: Section 11B may affect a person's domicile immediately before appointment or enlistment.

(3) For the purposes of subsection (1), a member of the Defence Force is, subject to subsection (4), taken to have rendered continuous full-time service in an operational area during the period commencing on:

(a) if the member was in Australia on the day (***relevant day***) from which the member, or the unit of the member, was allotted for duty in that area—on the day on which the member left the last port of call in Australia for that service; or

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(b) if the member was outside Australia on the relevant day—on that day;

and ending at the end of:

(c) if the member, or the unit of the member, ceased to be allotted for duty—the day from which the member, or the unit, ceased to be allotted for duty; or

(d) if the member, or the unit of the member, was assigned for duty from the operational area to another area outside Australia (not being an operational area)—the day from which the member, or the unit, was assigned to that other area, or the day on which the member, or the unit, arrived at that other area, whichever is the later; or

(e) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

(4) If, while rendering continuous full-time service in an operational area, a member of the Defence Force has:

(a) returned to Australia in accordance with the Rest and Recuperation arrangements of the naval, military or air forces; or

(b) returned to Australia on emergency or other leave granted on compassionate grounds; or

(c) returned to Australia on duty; or

(d) returned to Australia for the purpose of receiving medical or surgical treatment as directed by the medical authorities of the Defence Force;

only so much of the period of service of the member within Australia after his or her return and while the member:

(e) continued to be allotted for duty in an operational area; or

(f) continued to be a member of a unit of the Defence Force allotted for duty in an operational area;

as does not exceed 14 days is taken, for the purposes of subsection (1), to be a period when the member was rendering continuous full-time service in the operational area.

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6D Operational service—other post World War 2 service

(1) This section applies to a member of the Defence Force who, or a member of a unit of the Defence Force that:

(a) was assigned for service:

(i) in Singapore at any time during the period from and including 29 June 1950 to and including 31 August 1957; or

(ii) in Japan at any time during the period from and including 28 April 1952 to and including 19 April 1956; or

(iii) in North East Thailand (including Ubon) at any time during the period from and including 28 July 1962 to and including 24 June 1965; or

(iv) in North East Thailand (not including Ubon) at any time during the period from and including 31 May 1962 to and including 27 July 1962; or

(b) was, at any time during the period from and including 1 August 1960 and including 27 May 1963, in the area comprising the territory of Singapore and the country then known as the Federation of Malaya;

but so applies only if the member, or the unit of the member, is included in a written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act.

Note: Service in Ubon in Thailand between 31 May 1962 and 27 July 1962 is taken to be operational service because of section 6C and item 3A in Schedule 2.

(2) A person to whom this section applies is taken to have been rendering operational service during any period during which he or she was rendering continuous full-time service as:

(a) a member of the Defence Force; or

(b) a member of a unit of the Defence Force;

while the person was in the area described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be).

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(3) For the purposes of subsection (2), the operational service of a person to whom this section applies:

(a) is taken to have started:

(i) if the person was in Australia on the day (***relevant day***) from which his or her unit was assigned for service as described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be)—on the day on which the member left the last port of call in Australia for that service; or

(ii) if the person was outside Australia on the relevant day—on that day; and

(b) is taken to have ended:

(i) if the member was assigned for service in another country or area outside Australia (not being an operational area)—the day from which the member was assigned to that other country or area, or the day on which the member arrived at that other area, whichever is the later; or

(ii) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

6DA Operational service—minesweeping and bomb/mine clearance service

A member of the Defence Force is taken to have been rendering operational service during any period of service in respect of which the member has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the Bomb and Mine Clearance 1945-49 Clasp or the Bomb and Mine Clearance 1945-56 Clasp.

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6DB Operational service—service on submarine special operations

A member of the Defence Force for whom the following are satisfied:

(a) the member has rendered continuous full-time service on a submarine for a period that started on or after 1 January 1978 and ended on or before the end of 12 May 1997;

(b) the member has rendered continuous full-time service on submarine special operations (the ***special service***) at any time in the period beginning on 1 January 1978 and ending at the end of 12 May 1997;

(c) the member:

(i) has been awarded the Australian Service Medal with Clasp "SPECIAL OPS" for the special service; or

(ii) has become eligible for that award for the special service; or

(iii) would have been eligible for that award for the special service if the member had not already been awarded it for other service;

is taken to have been rendering operational service during each period covered by paragraph (a).

6E Operational service—Korean demilitarised zone and Vietnam

A member of the Defence Force who was assigned for service:

(a) in the demilitarised zone between North Korea and South Korea after 18 April 1956; or

(b) on HMA Ship Vampire or Quickmatch in Vietnam during the period from and including 25 January 1962 to and including 29 January 1962;

is taken to have been rendering operational service while he or she was so rendering continuous full-time service in that zone or in Vietnam (as the case may be) during the period in which he or she was so assigned for service.

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6F Operational service—warlike and non-warlike service

A member of the Defence Force is taken to have been rendering operational service during any period of warlike service or non-warlike service of the member.

7 Eligible war service

(1) Subject to subsection (2), for the purposes of this Act:

(a) a person who has rendered operational service shall be taken to have been rendering eligible war service while the person was rendering operational service; and

(b) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 1 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(c) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 2, being service that commenced before 1 July 1947, shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(d) a person who rendered continuous full-time service (not being operational service) as a member of the Interim Forces during World War 2 on or after 1 July 1947 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and

(e) a person who was employed on a ship as an Australian mariner is taken to have been rendering eligible war service:

(i) if part of that employment was operational service—for the part of that employment that was not operational service; or

(ii) in any other case—while the person was so employed.

Note 1: For ***World War 1*** and ***World War 2*** see subsection 5B(1).

Note 2: For ***operational service*** see sections 6 to 6F.

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Note 3: For ***Australian mariner***, ***continuous full-time service***, ***member of the Defence Force*** and ***member of the Interim Forces*** see subsection 5C(1).

Note 4: Subsections (3) and (4) contain information that is relevant to paragraph (e).

(2) A person who rendered continuous full-time service in the Defence Force during World War 2:

(a) if the person was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service or solely for service in time of that war or during that time and a definite time thereafter—on or after 1 July 1951;

(b) if the person was appointed or enlisted in the Citizen Forces and was called up for continuous full-time service for the duration of, or directly in connection with, World War 2—on or after 1 July 1951; or

(c) if the person was not appointed or enlisted as set out in paragraph (a) or (b)—on or after 3 January 1949;

shall not be taken, by virtue of paragraph (1)(c), to have been rendering eligible war service while the person was so rendering continuous full-time service.

(3) Without limiting paragraph (1)(e), a person is taken to be employed on a ship as an Australian mariner while the person was at a place (being a place that is in Australia but is not on land in Australia) in the course of proceeding to employment on a ship as an Australian mariner.

(4) For the purposes of subsection (3), ***Australia*** does not include an external territory.

7A Qualifying service

(1) For the purposes of Parts III and VA and sections 85 and 118V, a person has rendered qualifying service:

(a) if the person has, as a member of the Defence Force:

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(i) rendered service, during a period of hostilities specified in paragraph (a) or (b) of the definition of ***period of hostilities*** in subsection 5B(1), at sea, in the field or in the air in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when the person incurred danger from hostile forces of the enemy in that area or on that aircraft or ship; or

(ii) rendered service after 29 October 1945 in respect of which the person has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the Bomb and Mine Clearance 1945-49 Clasp or the Bomb and Mine Clearance 1945-56 Clasp; or

(iii) rendered service outside Australia in an area described in column 1 of Schedule 2 during the period specified in column 2 of that Schedule opposite to that description, as a member of a unit of the Defence Force that was allotted for duty, or as a person who was allotted for duty, in that area; or

(iv) rendered warlike service; or

(v) rendered continuous full-time service on submarine special operations, at some time in the period starting on 1 January 1978 and ending at the end of 12 May 1997, for which the person has been awarded, or has become eligible to be awarded, the Australian Service Medal with Clasp “SPECIAL OPS”; or

(vi) rendered continuous full-time service on submarine special operations, at some time in the period starting on 1 January 1978 and ending at the end of 12 May 1997, for which the person would have been eligible to be awarded the Australian Service Medal with Clasp “SPECIAL OPS” if the person had not already been awarded it for other service; or

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(b) if, during a period of hostilities, the person has, as a member of the defence force established by a Commonwealth country, rendered, in connection with war or war-like operations in which the Naval, Military or Air Forces of Australia were engaged:

(i) service, in an area outside that country, at a time when the person incurred danger from hostile forces of the enemy in that area; or

(ii) service within that country, being service in respect of which the person has been awarded, or has become eligible to be awarded, a campaign medal; or

(c) if the person is an allied veteran who, during a period of hostilities, has, as a member of the defence force established by an allied country, rendered, in connection with a war, or war-like operations, in which the Naval, Military or Air Forces of Australia were engaged, service in an area within or outside the country in which the person enlisted in those forces, being service in respect of which the person incurred danger from hostile forces of the enemy; or

(d) if the person was, during a period of hostilities specified in paragraph (a) or (b) of the definition of ***period of hostilities*** in subsection 5B(1), employed by the Commonwealth on a special mission outside Australia, and, in the course of carrying out that mission, incurred danger from hostile forces of the enemy; or

(e) if the person is an eligible civilian within the meaning of subsection 5C(1) who was, during a period of hostilities specified in paragraph (b) of the definition of ***period of hostilities*** in subsection 5B(1), detained by the enemy; or

(f) if the person is a person in respect of whom a pension is payable in pursuance of subsection 13(6); or

(g) if the person is an Australian mariner as defined by subsection 5C(1) who, in the course of:

(i) any service rendered by the person in employment of a kind specified in paragraph (a), (b), (c), (e) or (g) of that definition; or

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(ii) any service rendered by the person as a pilot referred to in paragraph (d) of that definition; or

(iii) any service rendered by the person as a member or employee of the Commonwealth Salvage Board;

was on a ship or in an area at a time when the person incurred danger from hostile forces of the enemy on the ship or in the area, as the case may be; or

(h) if the person is an allied mariner who, in the course of any service rendered by the person in employment of a kind to which paragraphs (a) and (b) of the definition of ***allied mariner*** in subsection 5C(1) applies:

(i) was detained by the enemy; or

(ii) was in an area service in which would, if the person had been a member of the Defence Force, have entitled the person to the award of a campaign medal and incurred, while he or she was in that area, danger from hostile forces of the enemy.

Note 1: For ***period of hostilities*** see subsection 5B(1) and for ***allotted for duty*** in an operational area see subsection 5B(2).

Note 2: For ***allied mariner***, ***allied veteran***, ***Australian mariner***, ***defence force established by a Commonwealth country***, ***defence force established by an allied country***, ***eligible civilian***, ***enemy***, ***member of a unit of the Defence Force***, ***member of the Defence Force*** and ***special mission*** see subsection 5C(1).

(2) In subparagraphs (1)(b)(ii) and (1)(h)(ii):

campaign medal, in relation to service during the period of World War 2 from its commencement to and including 29 October 1945, means:

(a) any of the following medals:

(i) 1939-45 Star;

(ii) Atlantic Star;

(iii) Air Crew Europe Star;

(iv) Africa Star;

(v) Pacific Star;

(vi) Burma Star;

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(vii) Italy Star;

(viii) France and Germany Star; or

(b) any other medal declared by the regulations to be a campaign medal in relation to service during that period.

8 War-caused death

(1) Subject to this section and section 9A, for the purposes of this Act, the death of a veteran shall be taken to have been war-caused if:

(a) the death of the veteran resulted from an occurrence that happened while the veteran was rendering operational service;

(b) the death of the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;

(c) the death of the veteran resulted from an accident that occurred while the veteran was travelling, while rendering eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;

(d) in the opinion of the Commission, the death of the veteran was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran's environment consequent upon his or her having rendered eligible war service; or

(e) the injury or disease from which the veteran died:

(i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;

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

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service rendered after the veteran suffered that injury or contracted that disease; or

(f) the injury or disease from which the veteran died is an injury or disease that has been determined in accordance with section 9 to have been a war-caused injury or a war-caused disease, as the case may be;

Note: The effect of paragraph (f) is that, if the veteran has died from an injury or disease that has already been determined by the Commission to be war-caused, the death is to be taken to have been war-caused. Accordingly the Commission is not required to relate the death to eligible war service rendered by the veteran and sections 120A and 120B do not apply.

but not otherwise.

(2) Paragraph (1)(a), (b), (c) or (d) does not apply to the death of a veteran if the death:

(a) resulted from the veteran's serious default or wilful act; or

(b) arose from:

(i) a serious breach of discipline committed by the veteran; or

(ii) an occurrence that happened while the veteran was committing a serious breach of discipline.

(3) Subsection (1) does not apply to the death of a veteran if the death of the veteran resulted from the serious default or wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.

(4) Paragraph (1)(c) does not apply:

(a) to an accident that occurred while the veteran was travelling on a journey from the veteran's place of duty in a case where the veteran had delayed commencing the journey for a substantial time after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the veteran's duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not

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substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used unless:

(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran's duties; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.

(5) Paragraph (1)(e) does not apply to the death of a veteran from an injury or disease, being injury or disease that has been contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran, unless the veteran has rendered operational service or the period of the eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.

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(6) Despite subsection (1), the death of a veteran is taken not to have been war-caused if the veteran's death is related to the veteran's eligible war service only because:

(a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or

(b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.

9 War-caused injuries or diseases

(1) Subject to this section and section 9A, for the purposes of this Act, an injury suffered by a veteran shall be taken to be a war-caused injury, or a disease contracted by a veteran shall be taken to be a war-caused disease, if:

(a) the injury suffered, or disease contracted, by the veteran resulted from an occurrence that happened while the veteran was rendering operational service;

(b) the injury suffered, or disease contracted, by the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;

(c) the injury suffered, or disease contracted, by the veteran resulted from an accident that occurred while the veteran was travelling, while rendering eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;

(d) the injury suffered, or disease contracted, by the veteran is to be deemed by subsection (2) to be a war-caused injury or a war-caused disease;

(e) the injury suffered, or disease contracted, by the veteran:

(i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service

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rendered by the veteran, but not while the veteran was rendering eligible war service;

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

but not otherwise.

(2) For the purposes of this Act, where any incapacity of a veteran was, in the opinion of the Commission, due to an accident that would not have occurred, or due to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran's environment consequent upon his or her having rendered eligible war service:

(a) if that incapacity was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the veteran as a result of the accident and the injury so suffered shall be deemed to be a war-caused injury suffered by the veteran; or

(b) if the incapacity was due to a disease—the incapacity shall be deemed to have arisen out of that disease and that disease shall be deemed to be a war-caused disease contracted by the veteran.

(3) Paragraph (1)(a), (b), (c) or (d) does not apply to an injury suffered, or disease contracted, by a veteran if the injury or disease:

(a) resulted from the veteran's serious default or wilful act; or

(b) arose from:

(i) a serious breach of discipline committed by the veteran; or

(ii) an occurrence that happened while the veteran was committing a serious breach of discipline.

(4) Subsections (1) and (2) do not apply to an injury suffered, or disease contracted, by a veteran if the incapacity of the veteran from that injury or disease resulted from the serious default or

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wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.

(5) Paragraph (1)(c) does not apply:

(a) to an accident that occurred while the veteran was travelling on a journey from the veteran's place of work in a case where the veteran had delayed commencing the journey for a substantial period after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the veteran's duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used, unless:

(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran's duty; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of the risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.

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(6) Paragraph (1)(e) does not apply to an injury suffered, or disease contracted, by a veteran (being an injury or disease that has been contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran):

(a) if the aggravation of the injury or disease:

(i) resulted from the veteran's serious default or wilful act;

(ii) arose from a serious breach of discipline committed by the veteran; or

(b) unless the veteran had rendered operational service or the period of eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.

(7) Despite subsection (1), the injury or disease of a veteran is taken not to have been war-caused if that injury or disease is related to the veteran's eligible war service only because:

(a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or

(b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.

9A Most war-caused injuries, diseases and deaths no longer covered by this Act

(1) A veteran's injury, disease or death is taken not to be war-caused if:

(a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and

(b) the injury, disease or death either:

(i) relates to service rendered by the person on or after that date; or

(ii) relates to service rendered by the person before, and on or after, that date.

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Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such injuries, diseases and deaths.

(3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

10 Child of a veteran or other person

(1) In this Act, a reference to a child of a veteran or of a deceased veteran is a reference to:

(a) a child of the veteran or an adopted child of the veteran; or

(b) a child who is a child of the veteran within the meaning of the *Family Law Act 1975*; or

(c) any other child who is, or was immediately before the death of the veteran, wholly or substantially dependent on the veteran.

(3) For the purposes of subsection (1), where a veteran is, under a law of the Commonwealth or of a State or Territory, liable to maintain a child, the child shall be deemed to be wholly or substantially dependent on that veteran.

(4) In this section, a reference to a veteran shall be read as including a reference to a person who is a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(5) In this Act, unless the contrary intention appears, a reference to a child of a person (not being a person who is a veteran or a member referred to in subsection (4)) shall be read as a reference to a person who would, in accordance with subsection (1), be a child of that person if that person were a veteran.

10A Parent of a person

(1) Without limiting who is a parent of anyone for the purposes of this Act, a person is the ***parent*** of another person (other than an

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adopted child) if the other person is a child of the person within the meaning of the *Family Law Act 1975*.

(2) For the purposes of this Act, ***parent*** of a person who is an adopted child means an adoptive parent of the person.

11 Dependants

(1) In this Act, unless the contrary intention appears:

dependant, in relation to a veteran (including a veteran who has died), means:

(a) the partner; or

(b) a non-illness separated spouse; or

(c) a widow or widower (other than a widow or a widower who marries, re-marries or enters into a de facto relationship); or

(ca) a reinstated pensioner; or

(d) a child;

of the veteran.

Note 1: A veteran may have more than one dependant of the kind referred to in paragraphs (a) to (d) at the same time.

Note 2: For the meaning of ***reinstated pensioner*** see section 11AA.

Note 3: Subsection (4) affects the meaning of ***widow*** in paragraph (c).

Note 4: Section 11A affects formation of an opinion as to whether 2 people are living together in a de facto relationship.

(2) Without limiting the generality of subsection (1) in its application to a veteran (including a veteran who has died) who is, or was:

(a) a descendant of an indigenous inhabitant of the Torres Strait Islands; or

(b) a male aboriginal native of Australia;

who served during World War 2 in the Defence Force at a rate of pay less than the minimum rate of pay that was prescribed as payable to a male member of the Australian Military Forces and whose services have been terminated by discharge or death, a person whom the Commission, by instrument in writing,

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determines to be, for the purposes of this section, a person who is dependent on the veteran is a dependant of the veteran.

(3) In subsection (1), a reference to a veteran shall be read as including a reference to a person who is a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(4) In paragraph (1)(c), ***widow*** does not include a reinstated pensioner.

Note: For the meaning of ***reinstated pensioner*** see section 11AA.

11AA Reinstated pensioner

In this Act, unless the contrary intention appears:

reinstated pensioner means a person who the Commission has determined under section 13AG to be a reinstated pensioner.

11A De facto relationships

In forming an opinion for the purposes of this Act whether 2 people are living together in a de facto relationship, regard is to be had to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:
  (i) any joint ownership of real estate or other major assets and any joint liabilities; and
  (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
  (iii) any legal obligations owed by one person in respect of the other person; and
  (iv) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:
  (i) any joint responsibility for providing care or support of children; and
  (ii) the living arrangements of the people; and

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(iii) the basis on which responsibility for housework is distributed;

(c) the social aspects of the relationship, including:

(i) whether the people hold themselves out as being in a de facto relationship with each other; and

(ii) the assessment of friends and regular associates of the people about the nature of their relationship; and

(iii) the basis on which the people make plans for, or engage in, joint social activities;

(d) any sexual relationship between the people;

(e) the nature of the people's commitment to each other, including:

(i) the length of the relationship; and

(ii) the nature of any companionship and emotional support that the people provide to each other; and

(iii) whether the people consider that the relationship is likely to continue indefinitely; and

(iv) whether the people see their relationship as a de facto relationship.

11B Domicile

(1) A person is taken for the purposes of this Act to have been capable of having an independent domicile at a time before 1 July 1982 if the person had turned 18 at or before that time.

Note: Subsection 8(1) of the *Domicile Act 1982* has a similar effect for a time occurring on or after 1 July 1982.

(2) Subsection (1) has effect despite any rule of law to the contrary.

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Part II—Pensions by way of compensation to veterans and their dependants

Division 1—Interpretation

12 Interpretation

In this Part, unless the contrary intention appears:

guidance and appeals panel has the same meaning as in the *Administrative Review Tribunal Act 2024*.

guidance and appeals panel application has the same meaning as in the *Administrative Review Tribunal Act 2024*.

pension means a pension under this Part.

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Division 2—Eligibility for pensions by way of compensation to veterans and their dependants

13 Eligibility for pensions by way of compensation to veterans and their dependants

(1) Where:

(a) the death of a veteran was war-caused; or

(b) a veteran is incapacitated from a war-caused injury or a war-caused disease;

the Commonwealth is, subject to this Act, liable to pay:

(c) in the case of the death of the veteran—pensions by way of compensation to the dependants of the veteran; or

(d) in the case of the incapacity of the veteran—pension by way of compensation to the veteran;

in accordance with this Act.

(2) Where:

(a) a veteran has died;

(b) the death of the veteran was not war-caused; and

(c) the veteran was, immediately before the veteran's death:

(i) a veteran to whom subsection 22(4) or section 23, 24 or 25 applied; or

(ii) a veteran to whom section 22 applied who was in receipt of a pension the rate of which had been increased by reason that the pension was in respect of an incapacity described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in section 27;

the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the veteran in accordance with this Act.

(2A) If:

(a) a veteran has died; and

(b) the veteran's death was not war-caused; and

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(c) the veteran was a prisoner of war at a time before 1 July 2004 when the veteran was on operational service;

the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the veteran in accordance with this Act.

(2B) The date of commencement of a pension payable under subsection (2A) is not to be earlier than 1 January 1993.

(3) Where a pension in respect of the incapacity of a veteran from war-caused injury or war-caused disease, or both, is granted, after the death of the veteran, as from a date before the death of the veteran, subsection (2) applies as if the veteran had been in receipt of that pension immediately before the veteran died.

(4) Where:

(a) a veteran who has rendered operational service has died;

(b) the death of the veteran was not war-caused;

(c) the veteran is survived by a child of the veteran; and

(d) the Commission is satisfied that the child is not being maintained by a parent, adoptive parent or step-parent of the child;

the Commonwealth is, subject to subsection (7) of this section and to the other provisions of this Act, liable to pay pension to that child.

(5) The Commonwealth is not liable to pay a pension under subsection (1) to a veteran who is a veteran by reason only that he or she has rendered operational service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2) unless the veteran is residing in, and is physically present in, Australia or an external Territory at the time when he or she makes a claim for the grant of the pension in accordance with section 14 or, if the veteran has made 2 or more such claims, at the time when he or she made the first of those claims.

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(6) Where the death of a person who is, or was, a member of the Defence Force, or the incapacity of such a person from injury or disease:

(a) resulted from an occurrence that happened, or a disease that was contracted, on or after 31 July 1962:

(i) as a result of action of hostile forces; or

(ii) while the person was engaged in warlike operations against hostile forces;

being an occurrence that happened, or a disease that was contracted, outside Australia while the person was rendering continuous full-time service as a member of the Defence Force, but otherwise than during any operational service of the person in an operational area; or

(b) has arisen out of or is attributable to:

(i) action by hostile forces; or

(ii) the engagement of the person in warlike operations against hostile forces;

on or after 31 July 1962 outside Australia while the person was rendering continuous full-time service as a member of the Defence Force, but otherwise than during any operational service of the person in an operational area;

the Commonwealth is, subject to subsection (7) of this section and to the other provisions of this Act, liable to pay:

(c) in the case of the death of the person—pensions to the dependants of the person; or

(d) in the case of the incapacity of the person—pension to the person;

in accordance with this Act, and this Act, other than subsections (1) to (5), inclusive, of this section, applies to and in relation to the person as if the person were a veteran and the death of the person were war-caused, the injury suffered by the person were a war-caused injury or the disease contracted by the person were a war-caused disease, as the case may be.

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Subsection (6) ceases to apply

(6A) The Commonwealth is not liable, under subsection (6), to pay a pension in respect of a person's death, or the incapacity of a person, if:

(a) either:

(i) the occurrence resulting in the death or incapacity happened on or after the MRCA commencement date; or

(ii) the disease was contracted on or after the MRCA commencement date; and

(b) either:

(i) the occurrence or disease relates to service rendered by the person on or after that date; or

(ii) the occurrence or disease relates to service rendered by the person before, and on or after, that date (whether the service spans the commencement date or is rendered during separate periods before and on or after that date).

(7) The Commonwealth is not liable to pay a pension:

(a) to a dependant of a veteran, being a child of the veteran, under subsection (1), (2) or (2A);

(b) to a child of a veteran under subsection (4); or

(c) to a dependant of a person, being a child of the person, under subsection (6);

if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:

(d) by way of youth allowance; or

(e) under the scheme known as the Assistance for Isolated Children Scheme; or

(f) under the scheme known as the ABSTUDY scheme; or

(g) under the scheme known as the Post-Graduate Awards Scheme; or

(h) under the Veterans' Children Education Scheme.

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(7A) The Commonwealth is liable to pay a pension to a reinstated pensioner.

(8) Where a dependant of a deceased veteran (not being a reinstated pensioner or a child of the veteran) re-marries, marries or enters into a de facto relationship after the death of the veteran and after the commencement of this Act:

(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board, the Administrative Review Tribunal or the former Administrative Appeals Tribunal, as the case may be, to grant the pension:

(i) was made before the commencement of this Act; or

(ii) was or is made after the commencement of this Act upon consideration or re-consideration of a claim for that pension that was duly made (whether before or after the commencement of this Act) before the re-marriage, marriage or entry into the de facto relationship occurred; and

(b) a decision granting a pension to the dependant under this section made after the commencement of this Act by the Commission, the Board, the Administrative Review Tribunal or the former Administrative Appeals Tribunal after that re-marriage, marriage or entry into the de facto relationship occurred (including a decision granting such a pension as from a date before that re-marriage, marriage or entry into the de facto relationship occurred) is void and of no effect unless the decision was made upon consideration or re-consideration of a claim for that pension made as described in subparagraph (a)(ii).

Note: For the meaning of ***reinstated pensioner*** see section 11AA.

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

(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the

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Commission, the Board or the former Administrative Appeals Tribunal, as the case may be, to grant the pension was made before the commencement of section 7 of the *Veterans' Affairs Legislation Amendment Act 1988*; and

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

Note: For the meaning of ***reinstated pensioner*** see section 11AA.

(8B) If:

(a) a male dependant of a deceased veteran (not being a child of the veteran) has re-married or married after the death of the veteran; and

(b) the re-marriage or marriage occurred before 22 January 1991;

the Commonwealth is not liable to pay a pension to that dependant under this section.

(9) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow or widower of a deceased veteran, the Commonwealth is not liable to pay another pension to the person under this Part as the widow or widower of another deceased veteran or under Part IV as the widow or widower of a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(10) Where a person who is in receipt of, or is eligible to receive, a pension under this Part as the child of a deceased person, being a veteran, would, but for this subsection, become eligible to receive a pension under this Part or Part IV as the child of another deceased person, being a veteran, or a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1), the Commonwealth is liable to pay a pension to the person under this Part or Part IV as the child of only one of those deceased persons, and, if the rate at which that pension would be payable as the child of one of those deceased persons (in this subsection referred to as

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the ***relevant deceased person***) is higher than the rate at which that pension would be payable as the child of the other of those deceased persons, then:

(a) if the relevant deceased person is a veteran—the Commonwealth is liable to pay a pension to the person under this Part as the child of the relevant deceased person; or

(b) in any other case—the Commonwealth is not liable to pay a pension to the person under this Part.

(11) In this section (other than in subsections (7A), (8), (8A), (8B), (9) and (10)), a reference to a veteran shall be read as a reference to a person (including a deceased person) who is, because of section 7, taken to have rendered eligible war service.

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Division 2A—Verification determinations for reinstated pensioners

13AA Application for verification determination

A person who wants to be determined by the Commission to be a reinstated pensioner (a ***verification determination***) must make a proper application.

13AB Who may apply

(1) An application for a verification determination may be made:
  (a) by the person (the ***applicant***) who wants to be determined to be a reinstated pensioner; or
  (b) with the approval of the applicant, by another person on behalf of the applicant.

(2) If the applicant is unable, by reason of physical or mental incapacity, to approve a person to make the application on his or her behalf, the Commission may approve another person to make the application.

13AC Application for verification determination

An application for a verification determination:
  (a) must be in writing and in accordance with a form approved by the Commission; and
  (b) must be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application; and
  (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

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13AE Investigation by the Secretary

(1) If an application is made for a verification determination, the Secretary must investigate the matters to which the application relates.

(2) When the investigation is completed, the Secretary must submit the application to the Commission for its consideration and determination.

(3) When an application is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the applicant in connection with the application; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the application; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the application.

13AF Duties of Commission in relation to application for verification determination

(1) If an application is submitted to the Commission in accordance with subsection 13AE(2), the Commission must:
  (a) consider all matters that, in the Commission's opinion, are relevant to the application; and
  (b) determine all matters relevant to the determination of the application.

(2) Without limiting paragraph (1)(a), the matters that the Commission must consider include:
  (a) the evidence and documents that were submitted with the application; and
  (b) any further evidence subsequently submitted to the Commission in relation to the application.

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13AG Verification determination

(1) The Commission must determine that a person is a reinstated pensioner if the Commission is satisfied that:

(a) the person was eligible for and receiving a pension, on or before 28 May 1984, under one of the repealed Acts as a widow of a deceased member of the Forces or a widow of an Australian Mariner; and

(b) the person remarried on or before that date; and

(c) the pension was cancelled under the repealed Act only because the person married or remarried.

(2) A determination under this section:

(a) must be in writing; and

(b) takes effect from the day, under section 13B, that pension becomes liable to be paid to the reinstated pensioner.

(3) In subsection (1):

Australian Mariner has the meaning it had in the *Seamen's War Pensions and Allowances Act 1940*.

pension means:

(a) in relation to a repealed Act set out in paragraph (a) of the definition of ***repealed Act***—pension (other than service pension) payable to a widow under that repealed Act in respect of the death of a member of the Forces; and

(b) in relation to the *Seamen's War Pensions and Allowances Act 1940*—pension payable to a widow under that Act in respect of the death of an Australian Mariner.

repealed Act means:

(a) an Act specified in Part I, II, III, IV or V of Schedule 1; or

(b) the *Seamen's War Pensions and Allowances Act 1940*.

(4) A reference in subsection (1) to a ***member of the Forces*** is a reference to:

(a) a member of the Forces within the meaning of:

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(i) Divisions 1, 6 and 8 of Part III of the *Repatriation Act 1920*; or

(ii) the *Repatriation (Far East Strategic Reserve) Act 1956*; or

(iii) the *Repatriation (Special Overseas Service) Act 1962*; and

(b) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1) of this Act; and

(c) a ***member of the Interim Forces*** within the meaning of the *Interim Forces Benefits Act 1947*; and

(d) a person the incapacity or death of whom was taken, by section 7A of the *Repatriation (Special Overseas Service) Act 1962*, to have resulted from an occurrence that happened during a period of special service of the person as a member of the Forces.

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Division 3—Claims for pensions and applications for increases in pensions

13A Certain dependants to be automatically paid pension

(1) If:

(a) a veteran dies; and

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

(c) the veteran:

(i) was, immediately before the veteran's death, a veteran to whom subsection 22(4) or section 23, 24 or 25 applied; or

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

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

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

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

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

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

(1A) If:

(a) a veteran dies; and

(b) the veteran is survived by a person who is a dependant of the veteran; and

(c) the veteran was a prisoner of war at a time when the veteran was on operational service; and

(d) at the time when the veteran dies, the Secretary:

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(i) is aware of the person's existence; and
(ii) is aware that the person is a dependant of the veteran; and
(iii) has enough information about the veteran's and the person's circumstances to know that a pension is payable to the dependant under subsection 13(2A);

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

(e) without the dependant having to make a claim for the pension under section 14; and
(f) without the Commission having to make a determination under section 19.

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

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

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

13B Reinstated pensioners to be automatically paid pension

(1) If the Commission makes a determination under section 13AG that a person is a reinstated pensioner, the pension payable to the reinstated pensioner under subsection 30(1) is payable:
(a) without the reinstated pensioner having to make a claim for the pension under section 14; and
(b) without the Commission having to make a determination under section 19.

(2) The Commonwealth is liable to pay the pension from the later of the following dates:
(a) 1 January 2002; or
(b) the date that an application for the determination in respect of the reinstated pensioner was lodged under section 13AC.

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14 Claim for pension

(1) Subject to subsection (2), a veteran, or a dependant of a deceased veteran other than a reinstated pensioner, may make a claim for a pension in accordance with subsection (3).

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

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

(2) Where a determination under this Act is in force determining that any incapacity from which a veteran is suffering resulted from war-caused injury or war-caused disease, or both, but a pension was not granted to the veteran on the ground that the extent of the incapacity was insufficient to justify the grant of a pension, subsection (1) does not apply to a claim for a pension in respect of that incapacity.

(3) A claim for a pension:

(a) shall be in writing and in accordance with a form approved by the Commission;

(b) shall be accompanied by such evidence available to the claimant as the claimant considers may be relevant to the claim; and

(c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(4) Subsection (3) shall not be taken to impose any onus of proof on a claimant or to prevent a claimant from submitting evidence in support of the claim subsequently to the making, but before the determination, of the claim.

(5) Where:

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

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(b) the claim has not been finally determined;

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

(6) Where:

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

(b) the claim has not been finally determined;

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

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

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

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

15 Application for increase in pension

(1) A veteran who is in receipt of a pension under this Part in respect of the incapacity of the veteran may apply, in accordance with subsection (3) of this section, for an increase in the rate of the pension on the ground that the incapacity of the veteran 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 veteran a determination of a kind referred to in subsection 14(2) but a pension has not been granted to the veteran on the ground that the extent of the incapacity is insufficient to justify the grant of a pension under this Part, the veteran may make application, in accordance with subsection (3) of this section, for a pension on the ground that the incapacity of the veteran has increased since the

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grant of a pension in respect of the incapacity was refused or last refused.

(3) An application under subsection (1) or (2):
  (a) shall be in writing and in accordance with a form approved by the Commission;
  (b) shall be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application; and
  (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(4) Subsection (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 the application subsequently to the making, but before the determination, of the application.

(5) Where:
  (a) a person has made an application under this section for a pension at an increased rate, or for a pension; and
  (b) the application has not been finally determined;

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

(6) For the purpose of subsection (5), an application is finally determined when either:
  (a) a decision that has been made in respect of the application is not subject to any form of appeal or review; or
  (b) a decision that has been made in respect of the application was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.

16 Who may make claim or application

A claim under subsection 14(1) for a pension for a veteran or for a dependant of a deceased veteran, an application under

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subsection 15(1) for an increase in the rate of pension payable to a veteran or an application under subsection 15(2) for a pension for a veteran may be made:

(a) by the veteran or dependant, as the case may be;

(b) with the approval of the veteran or dependant, as the case may be, by another person on behalf of the veteran or dependant;

(c) in the case of a veteran 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 or her behalf—by another person, being a person approved by the Commission, on behalf of the veteran or dependant; or

(d) in the case of a dependant who is under the age of 18 years:

(i) by a parent or guardian of the dependant;

(ii) by another person approved by a parent or guardian of the dependant; or

(iii) if there is not a parent or guardian of the dependant alive, or willing and able to make, or approve a person to make, such a claim or application on behalf of the dependant—by another person, being a person approved by the Commission;

on behalf of the dependant.

17 Investigation by the Secretary

(1) Where a claim is made for a pension under subsection 14(1), or an application is made for an increased pension under subsection 15(1) or for a pension under subsection 15(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 the investigation in respect of a claim or application, cause the claim or application to be submitted to the Commission for its consideration and determination.

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(3) A claim or application submitted to the Commission under subsection (2) shall be accompanied by:

(a) any evidence furnished by the claimant or applicant in connection with the claim or application; and

(b) the 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 subsection (1).

18 Duties of Commission in relation to pensions

(1) It is the duty of the Commission 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.

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

(a) the assessment of the rate, or increased rate, at which a pension is to be payable under this Part; or

(b) the fixing of the date as from which a decision of the Board, the Administrative Review Tribunal or the court is to operate;

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

19 Determination of claims and applications

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

(a) consider all matters that, in the Commission's opinion, are relevant to the claim or application; and

(b) subject to this section, determine the claim as provided by subsection (3); and

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(c) subject to this section, determine an application under subsection 15(1) under subsection (5D); and

(d) subject to this section, determine an application under subsection 15(2) as provided by subsection (5).

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

(a) the evidence and documents that were submitted with the claim or application in accordance with subsection 17(3);

(b) any evidence subsequently submitted to the Commission in relation to the claim or application; and

(c) any evidence, documents or other material furnished to the Commission under section 32.

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

(a) first, the Commission shall determine whether the claimant is entitled to be granted a pension in respect of:

(i) the incapacity of a veteran from war-caused injury or war-caused disease, or both; or

(ii) the death of a veteran that was war-caused;

(b) then, if the Commission determines that the claimant is so entitled, the Commission shall proceed as set out in subsections (5A), (5B), (5C) and (5D).

(4) The Commission must determine an application under subsection 15(2) as provided by subsection (5).

(4A) The Commission must deal with an application under subsection 15(1) in accordance with subsections (5A), (5B) and (5C) and determine the application under subsection (5D).

(5) The Commission must determine an application under subsection 15(2) as follows:

(a) first, the Commission must determine whether the claimant is entitled to be granted a pension in respect of the incapacity of the veteran;

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(b) then, if the Commission determines that the applicant is so entitled, the Commission must proceed as set out in subsections (5A), (5B), (5C) and (5D).

(5A) If:

(a) paragraph (3)(b) applies in respect of a claim; or

(b) subsection (4A) applies in respect of an application under subsection 15(1); or

(c) paragraph (5)(b) applies in respect of an application under subsection 15(2);

the Commission must assess the matters set out in subsection (5C).

(5B) The Commission must assess the matters set out in subsection (5C) in accordance with whichever of sections 22, 23, 24, 25, 27 and 30 are applicable in the particular case.

(5C) The matters that the Commission must assess are:

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

(b) subject to subsection (6), the rate at which the pension is payable.

(5D) After making an assessment under subsection (5C), the Commission must determine that pension is payable at the rate assessed.

(5E) Pension is payable from the date of effect of the determination made under:

(i) in the case of a claim—subsection (3); or

(ii) in the case of an application made under subsection 15(2)—paragraph (5)(a); or

(iii) in the case of an application made under subsection 15(1)—subsection (5D).

(5F) A determination under:

(a) subsection (3), in respect of a claim; or

(b) subsection (5), in respect of an application under subsection 15(2); or

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(c) subsection (5D), in respect of an application under subsection 15(1);

takes effect from the date on which the determination is made or on such later or earlier date as is specified in the determination.

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

(7) Where:

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

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

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

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

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

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

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incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such defence-caused injury as war-caused injury and any such defence-caused disease as war-caused disease:

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

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

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

(9) In this section:

application means an application made in accordance with section 15.

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

(a) the day on which the claim or application was received at an office of the Department in Australia; or

(b) if subsection 20(2), 20(2B) or 21(2) applies to the person—the day on which the claim or application referred to in paragraph 20(2)(a), 20(2B)(a) or 21(2)(a) was so received.

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

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claim means a claim made in accordance with section 14.

relevant documentary medical evidence, in relation to a claim or application referred to in subsection (8), means certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which the veteran or deceased veteran in respect of whom the claim is made had received medical treatment, in support of the claim or application, being certificates, reports or documents reasonably used:

(a) in support of the claim or application; or

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

19A Refusal to undergo medical examination etc. may delay consideration of claim or application

(1) Where:

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

(b) a claimant has refused or failed:

(i) to consent to the release to the Secretary, or to the Commission, of information concerning a veteran for the purpose of the investigation or consideration of the claim; or

(ii) to comply with a request under paragraph 32(1)(c) to furnish material to the Commission;

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

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

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

(a) the claimant has not consented to the release of the information; or

(b) the claimant has not furnished the material or satisfied the Commission that the material is not in the claimant's possession or under the claimant's control;

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

(4) In this section:

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

20 Dates of effect that may be specified in respect of grant of claim for pension

(1) Where a claim in accordance with section 14 for a pension is granted (other than a claim to which subsection (2A) applies), the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect of the claim, a date not earlier than 3 months before the date on which the claim for a pension, in accordance with a form approved for the purposes of paragraph 14(3)(a) was received at an office of the Department in Australia.

(2) Where:

(a) a person makes a claim for a pension in writing (other than a claim to which subsection (2B) applies), but otherwise than

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in accordance with a form approved for the purposes of paragraph 14(3)(a);

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

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

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

(c) a pension is granted to the person upon consideration of that claim in accordance with a form so approved;

the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect of the claim, a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an office of the Department in Australia.

(2A) If:

(a) a claim in accordance with section 14 for a pension for a dependant of a deceased veteran, being a dependant who is the widow or widower of the veteran, is granted; and

(b) the claim for a pension, in accordance with a form approved for the purposes of paragraph 14(3)(a), was received at an office of the Department in Australia less than 6 months after the death of the veteran;

the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect of the claim a date not earlier than 6 months before the date on which the claim for a pension was received.

(2B) If:

(a) a person makes a claim for a pension for a dependant of a deceased veteran, being a dependant who is the widow or widower of the veteran, that is in writing but not in accordance with a form approved for the purposes of paragraph 14(3)(a); and

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(b) that claim is made less than 6 months after the death of the veteran; and

(c) the person subsequently makes a claim for the pension in accordance with an approved form:

(i) at a time when the person had not been notified by the Department in writing that it would be necessary to make the claim in accordance with an approved form; or

(ii) within 6 months after the person had been so notified; and

(d) a pension for a dependant of a deceased veteran, being a dependant who is the widow or widower of the veteran, is granted to the person on consideration of the claim in accordance with an approved form;

the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect of the claim a date not earlier than 6 months before the date on which the claim referred to in paragraph (a) was received at an office of the Department in Australia.

(3) Nothing in this section empowers the Commission to specify as a date that a determination of a claim under subsection 19(3) takes effect in respect of a person who has made a claim for a pension under section 14, a date before the date that the person became eligible to be granted the pension.

21 Dates of effect that may be specified in respect of grant of applications under section 15

(1) The Commission may, subject to this Act, specify as a date that a determination of an application made under section 15 takes effect in respect of a person, the date on which the application, in accordance with a form approved for the purposes of paragraph 15(3)(a) was received at an office of the Department in Australia.

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

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(2) Where:

(a) a person makes an application in writing of a kind referred to in subsection 15(1) or (2), but otherwise than in accordance with a form approved for the purposes of paragraph 15(3)(a);

(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 the person had not been notified by the Department, in writing, that it would be necessary to make the application in accordance with a form so approved; or

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

(c) an increased pension, or a pension, is granted to the person upon consideration of that application in accordance with a form so approved;

the Commission may, subject to this Act, specify as a date that a determination of an application made under section 15 takes effect, the date on which the application referred to in paragraph (a) was received at an office of the Department in Australia.

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

(3) Nothing in this section empowers the Commission to specify as a date that a determination of an application made under section 15 takes effect in respect of a person, a date before the date that the person became eligible to be granted the increased pension, or pension, as the case may be.

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

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Division 4—Rates of pensions payable to veterans

21A Determination of degree of incapacity

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

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

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

22 General rate of pension and extreme disablement adjustment

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

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

(3) For the purposes of this section, the maximum rate per fortnight is $338.94 per fortnight.

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(4) Where:

(a) either:

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

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

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

(c) the veteran has an impairment rating of at least 70 points and a lifestyle rating of at least 6 points, each determined in accordance with the Approved Guide to the Assessment of Rates of Veterans' Pensions; and

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

the rate at which pension is payable to the veteran is $510.40 per fortnight.

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

(a) the rate has been reduced, or the pension is not payable, because of section 26, 30C, 30D or 74;

(b) amounts are being deducted from the pension under section 30P, 79 or 205; or

(c) the pension has been suspended under section 31.

23 Intermediate rate of pension

(1) This section applies to a veteran if:

(aa) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

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(aab) the veteran had not yet turned 65 when the claim or application was made; and

(a) either:

(i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be at least 70% or has been so determined by a determination that is in force; or

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

(b) the veteran's incapacity from war-caused injury or war-caused disease, or both, is, of itself alone, of such a nature as to render the veteran incapable of undertaking remunerative work otherwise than on a part-time basis or intermittently; and

(c) the veteran is, by reason of incapacity from war-caused injury or war-caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking and is, by reason thereof, suffering a loss of salary or wages, or of earnings on his or her own account, that the veteran would not be suffering if the veteran were free from that incapacity; and

(d) section 24 or 25 does not apply to the veteran.

(2) Paragraph (1)(b) shall not be taken to be fulfilled in respect of a veteran who is undertaking, or is capable of undertaking, work of a particular kind:

(a) if the veteran undertakes, or is capable of undertaking, that work for 50 per centum or more of the time (excluding overtime) ordinarily worked by persons engaged in work of that kind on a full-time basis; or

(b) in a case where paragraph (a) is inapplicable to the work which the veteran is undertaking or capable of undertaking—if the veteran is undertaking, or is capable of undertaking, that work for 20 or more hours per week.

(3) For the purpose of paragraph (1)(c):

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(a) a veteran who is incapacitated from war-caused injury or war-caused disease, or both, to the extent set out in paragraph (1)(b) shall not be taken to be suffering a loss of salary or wages, or of earnings on his or her own account, by reason of that incapacity:

(i) if the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both;

(ii) if the veteran is incapacitated, or prevented, from engaging in remunerative work for some other reason; or

(iii) if the veteran has been engaged in remunerative work on a part-time basis or intermittently for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; and

(b) where a veteran, not being a veteran who has attained the age of 65 years, who has not been engaged in remunerative work satisfies the Commission that he or she has been genuinely seeking to engage in remunerative work, that he or she would, but for that incapacity, be continuing so to seek to engage in remunerative work and that that incapacity is the substantial cause of his or her inability to obtain remunerative work in which to engage, the veteran shall be treated as having been prevented, by reason of that incapacity, from continuing to undertake remunerative work that the veteran was undertaking.

(3A) This section applies to a veteran if:

(a) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(b) the veteran had turned 65 before the claim or application was made; and

(c) paragraphs (1)(a) and (1)(b) (as affected by subsection (2)) apply to the veteran; and

(d) the veteran is, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from

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continuing to undertake the remunerative work (***last paid work***) that the veteran was last undertaking before he or she made the claim or application; and

(e) because the veteran is so prevented from undertaking his or her last paid work, the veteran is suffering a loss of salary or wages, or of earnings on his or her own account, that he or she would not be suffering if he or she were free from that incapacity; and

(f) the veteran was undertaking his or her last paid work after the veteran had turned 65; and

(g) when the veteran stopped undertaking his or her last paid work, the veteran had been undertaking remunerative work for a continuous period of at least 10 years that began before the veteran turned 65; and

(h) section 24 or 25 does not apply to the veteran.

(3B) For the purposes of paragraph (3A)(e), a veteran who is incapacitated from war-caused injury or war-caused disease or both, to the extent set out in paragraph (1)(b) is not taken to be suffering a loss of salary or wages, or of earnings on his or her own account, because of that incapacity if:

(a) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

(b) the veteran is incapacitated, or prevented from engaging in remunerative work for some other reason; or

(c) the veteran has been engaged in remunerative work on a part-time basis or intermittently for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both.

(4) Subject to subsections (5) and (6), the rate at which pension is payable to a veteran to whom this section applies is $619.80 per fortnight.

(5) Subject to subsection (6), the rate at which pension is payable to a veteran to whom section 115D applies (veterans working under

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rehabilitation scheme) is the reduced amount worked out using the following formula:

$$\text{General rate} + \left(14 \times \text{Reduced daily pension amount worked out under section 115D} \right)$$

(6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4) or (5) of this section, reduced in accordance with section 25A.

24 Special rate of pension

(1) This section applies to a veteran if:

(aa) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(aab) the veteran had not yet turned 65 when the claim or application was made; and

(a) either:

(i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be at least 70% or has been so determined by a determination that is in force; or

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

(b) the veteran is totally and permanently incapacitated, that is to say, the veteran's incapacity from war-caused injury or war-caused disease, or both, is of such a nature as, of itself alone, to render the veteran incapable of undertaking remunerative work for periods aggregating more than 8 hours per week; and

(c) the veteran is, by reason of incapacity from that war-caused injury or war-caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking and is, by reason thereof, suffering a loss of

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salary or wages, or of earnings on his or her own account, that the veteran would not be suffering if the veteran were free of that incapacity; and

(d) section 25 does not apply to the veteran.

(2) For the purpose of paragraph (1)(c):

(a) a veteran who is incapacitated from war-caused injury or war-caused disease, or both, shall not be taken to be suffering a loss of salary or wages, or of earnings on his or her own account, by reason of that incapacity if:

(i) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

(ii) the veteran is incapacitated, or prevented, from engaging in remunerative work for some other reason; and

(b) where a veteran, not being a veteran who has attained the age of 65 years, who has not been engaged in remunerative work satisfies the Commission that he or she has been genuinely seeking to engage in remunerative work, that he or she would, but for that incapacity, be continuing so to seek to engage in remunerative work and that that incapacity is the substantial cause of his or her inability to obtain remunerative work in which to engage, the veteran shall be treated as having been prevented by reason of that incapacity from continuing to undertake remunerative work that the veteran was undertaking.

(2A) This section applies to a veteran if:

(a) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(b) the veteran had turned 65 before the claim or application was made; and

(c) paragraphs (1)(a) and (1)(b) apply to the veteran; and

(d) the veteran is, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from

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continuing to undertake the remunerative work (***last paid work***) that the veteran was last undertaking before he or she made the claim or application; and

(e) because the veteran is so prevented from undertaking his or her last paid work, the veteran is suffering a loss of salary or wages, or of earnings on his or her own account, that he or she would not be suffering if he or she were free from that incapacity; and

(f) the veteran was undertaking his or her last paid work after the veteran had turned 65; and

(g) when the veteran stopped undertaking his or her last paid work, the veteran had been undertaking remunerative work for a continuous period of at least 10 years that began before the veteran turned 65; and

(h) section 25 does not apply to the veteran.

(2B) For the purposes of paragraph (2A)(e), a veteran who is incapacitated from war-caused injury or war-caused disease or both, is not taken to be suffering a loss of salary or wages, or of earnings on his or her own account, because of that incapacity if:

(a) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

(b) the veteran is incapacitated, or prevented from engaging in remunerative work for some other reason.

(3) This section also applies to a veteran who has been blinded in both eyes as a result of war-caused injury or war-caused disease, or both.

(4) Subject to subsections (5), (5A) and (6), the rate at which pension is payable to a veteran to whom this section applies is $1,595.66 per fortnight.

(5) Subject to subsections (5A) and (6), the rate at which pension is payable to a veteran to whom section 115D applies (veterans working under rehabilitation scheme) is the reduced amount worked out using the following formula:

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$$\text{General rate} + \left(14 \times \begin{array}{c}\text{Reduced daily pension amount} \\ \text{worked out under section 115D}\end{array} \right)$$

(5A) If:

(a) section 115D applies to a veteran because of subsection 115D(1A); and

(b) the veteran is engaged in remunerative work of more than 8 hours, but less than 20 hours, per week as a result of undertaking a vocational rehabilitation program under the Veterans' Vocational Rehabilitation Scheme;

then, subject to subsection (6) of this section, the rate at which pension is payable to the veteran is the higher of the following amounts:

(c) the amount worked out under subsection (5) of this section;

(d) the amount under subsection 23(4).

(6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4), (5) or (5A) of this section, reduced in accordance with section 25A.

24A Continuation of rates of certain pensions

(1) Subject to subsections (1A) and (2), if the Commonwealth is or becomes liable to pay a pension to a veteran at the rate applicable under section 23 or 24, that rate continues, while a pension continues to be payable to the veteran, to apply to the veteran unless:

(a) the decision to apply that rate of pension to the veteran would not have been made but for a false statement or misrepresentation made by a person;

(b) in the case of a veteran to whom section 23 applies:

(i) the veteran is undertaking or is capable of undertaking remunerative work of a particular kind for 50% or more of the time (excluding overtime) ordinarily worked by

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persons engaged in work of that kind on a full time basis; or

(ii) in a case where subparagraph (i) is inapplicable to the work which the veteran is undertaking or is capable of undertaking—the veteran is undertaking or is capable of undertaking that work for 20 or more hours per week; or

(c) in the case of a veteran to whom section 24 applies—the veteran is undertaking or is capable of undertaking remunerative work for periods aggregating more than 8 hours per week.

(1A) However, subsection (1) does not prevent a rate applicable under subsection 24(4), (5) or (5A) from being reduced to give effect to subsection 24(6).

(2) Paragraphs (1)(b) and (c) do not apply to a veteran if the veteran is undertaking a rehabilitation program under the Veterans' Vocational Rehabilitation Scheme or section 115D applies to the veteran.

25 Temporary payment at special rate

(1) Where the Commission is satisfied that:

(a) a veteran is temporarily incapacitated from war-caused injury or war-caused disease, or both; and

(b) if the veteran were so incapacitated permanently, the veteran would be a veteran to whom section 24 applies;

the Commission shall determine the period during which, in its opinion, that incapacity is likely to continue and this section applies to the veteran in respect of that period.

(2) Where this section applies to a veteran in respect of a period, the rate at which pension is payable to the veteran in respect of that period is the rate that would have been applicable under subsection 24(4), (5), (5A) or (6) if section 24 applied to the veteran.

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(3) The Commission may, under this section:
  (a) determine a period that commenced before the date on which the determination is made; and
  (b) determine a period in respect of a veteran that commenced or commences upon the expiration of a period previously determined by the Commission under subsection (1) in respect of the veteran.

25A Offsetting certain payments made under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*

(1) This section applies to a veteran:
  (a) to whom section 23, 24 or 25 applies; or
  (b) who is granted a loss of earnings allowance under section 108;

in respect of the incapacity of the veteran from a war-caused injury or a war-caused disease if the veteran has received an amount of compensation, whether before or after the commencement of this section, under section 24, 25 or 27 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* for that injury or disease, or any other injury or disease, in relation to some other incapacity of the veteran.

(2) That amount of compensation is to be converted to a fortnightly amount in accordance with advice from the Australian Government Actuary.

(3) The rate at which:
  (a) a pension is payable to the person under section 23, 24 or 25; or
  (b) a loss of earnings allowance under section 108 is payable to the person;

apart from this section, is reduced, but not below zero, by the fortnightly amount worked out under subsection (2) of this section.

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26 Reduction in rate of pension in certain cases

(1) Where:

(a) a veteran is entitled to receive, or is in receipt of, a pension in respect of incapacity from war-caused injury or war-caused disease, or both; and

(b) the veteran is also entitled to receive, or is also in receipt of, periodical payments, or a lump-sum payment:

(i) under the law of a foreign country; or

(ii) under the law of a State;

in respect of incapacity resulting from his or her employment in connection with war-like operations in which the Crown was engaged, being incapacity only from injury or disease or both referred to in paragraph (a);

the rate of the pension referred to in paragraph (a) shall be assessed at the rate per year at which it would, but for this subsection, be assessed, reduced by the rate per year of the periodical payments referred to in paragraph (b) or an amount per year determined by the Commission to be the periodical payment equivalent of that lump-sum payment, as the case may be.

(2) Where:

(a) a veteran is entitled to receive, or is in receipt of, a pension in respect of incapacity from war-caused injury or war-caused disease, or both; and

(b) the veteran is also entitled to receive, or is also in receipt of, periodical payments, or a lump-sum payment:

(i) under the law of a foreign country; or

(ii) under the law of a State;

in respect of incapacity resulting from his or her employment in connection with war-like operations in which the Crown was engaged, not being incapacity only from the injury or disease, or both, referred to in paragraph (a);

the rate of those periodical payments, or the amount of that lump-sum payment, as the case may be, shall be taken into account in assessing the rate of the pension referred to in paragraph (a) so that the total of the payments by way of that pension and of the

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payments or payment referred to in paragraph (b) do not exceed the total of the payments that the veteran would be entitled to receive by way of pension under this Part in respect of the incapacity referred to in paragraphs (a) and (b), assuming, for the purposes only of this subsection, that the incapacity referred to in paragraph (b) was wholly incapacity from war-caused injury for the purposes of this Part.

(3) Where:

(a) the rate per year by which the rate of a veteran's pension is required by subsection (1) to be reduced exceeds the rate that, but for that subsection, would be the rate per year of that pension; or

(b) the rate of the periodical payments or amount of the lump sum payment that is required by subsection (2) to be taken into account in assessing the rate of a veteran's pension is such as to require the assessment of the rate of that pension at a rate that does not exceed nought per centum;

the veteran is not entitled to be paid pension.

27 Increased rates of pension in certain cases

(1) This section applies to a veteran (other than a veteran to whom section 24 applies) who is being paid, or is eligible to be paid, a pension under this Part in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the following table:

Column 1		**Column 2**
Kind of incapacity		**Rate per fortnight $**
1.	Two arms amputated	354.80
2.	Two legs and one arm amputated	354.80
3.	Two legs amputated above the knee	354.80
4.	Two legs amputated and blinded in one eye	354.80

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Column 1		Column 2
Kind of incapacity		**Rate per fortnight $**
5.	One arm and one leg amputated and blinded in one eye	354.80
6.	One leg and one arm amputated	354.80
7.	One leg amputated above, and one leg amputated below, the knee	112.50
8.	Two legs amputated below the knee	75.90
9.	One arm amputated and blinded in one eye	65.20
10.	One leg amputated and blinded in one eye	65.20
11.	One leg amputated above the knee	32.60
12.	One leg amputated below the knee	17.10
13.	One arm amputated above the elbow	32.60
14.	One arm amputated below the elbow	17.10
15.	Blinded in one eye	25.20

(2) Subject to subsection (3), the rate at which pension is payable under section 22, 23 or 25 to a veteran to whom this section applies is a rate equal to the sum of:

(a) the rate applicable to that pension under section 22, 23 or 25, as the case requires; and

(b) the rate specified in column 2 of the table in subsection (1) of this section opposite to the description of the kind of incapacity described in column 1 from which the veteran is suffering.

(3) If the rate calculated in accordance with subsection (2) in respect of the pension payable to a veteran exceeds:

(a) if section 25A applies to the veteran—the rate specified in subsection 24(6); or

(b) otherwise—the rate specified in subsection 24(4);

the rate must be reduced by the amount of the excess.

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(4) For the purpose of the application of a table in subsection (1) to and in relation to a veteran:

(a) amputation of an arm of a veteran below the elbow shall, if the elbow action is lost as a result of the amputation, be treated as if an arm of the veteran had been amputated above the elbow;

(b) amputation of a leg of a veteran below the knee shall, if the knee action is lost as a result of the amputation, be treated as if a leg of the veteran had been amputated above the knee;

(c) amputation of a foot of a veteran shall be treated as amputation of a leg of the veteran below the knee;

(d) amputation of a hand of a veteran shall be treated as amputation of an arm of the veteran below the elbow; and

(e) a leg, foot, hand or arm that has been rendered permanently and wholly useless shall be treated as having been amputated.

27A Calculation of arrears of pension

(1) This section applies if:

(a) a pension becomes payable, or becomes payable at an increased rate, under this Part to a veteran from a date (the ***operative date***) before the date on which a decision to grant the pension, or to increase the rate of the pension, (the ***decision***) is made; and

(b) the veteran is a member of a couple or was a member of a couple at any time during the period (the ***arrears period***) between:

(i) the operative date; and

(ii) immediately before the first pension period during which an instalment of the pension, or an instalment of the pension at the increased rate, is paid to the person; and

(c) the veteran's partner was receiving:

(i) a social security pension or benefit; or

(ia) a service pension; or

(ii) income support supplement; or

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(iii) a veteran payment;

at any time during the arrears period; and

(d) the rate at which the social security pension or benefit, service pension, income support supplement or veteran payment is payable to the veteran's partner is reduced as a result of the pension becoming payable to the veteran, or becoming payable to the veteran at an increased rate, as the case requires; and

(e) an amount (the ***recovered amount***), or no amount, in respect of that reduction has been deducted under section 205 or section 205AA.

Note: The amount of arrears of pension payable to a veteran may also be affected by section 205 or 205AA.

(2) The amount of the pension payable to the veteran in respect of the arrears period is reduced by an amount calculated as follows:

Method statement

Step 1. Work out the total amount of the pension that would have been paid to the veteran during the arrears period if the decision had been made on the operative date.

Step 2. Work out the total amount (if any) of the pension that was paid to the veteran during the arrears period.

Step 3. Subtract the amount obtained in Step 2 from the amount obtained in Step 1. The result is called the ***provisional arrears***.

Step 4. Work out the total amount of social security pension or benefit, service pension, income support supplement or veteran payment that was paid to the veteran's partner during the arrears period.

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Step 5.	Work out the total amount (if any) of social security pension or benefit, service pension, income support supplement or veteran payment that would have been payable to the veteran's partner during the arrears period if the decision had been made on the operative date.
Step 6.	Subtract the amount obtained in step 5 from the amount obtained in step 4. The result is called the ***notional excess payment***.
Step 6A.	Subtract the recovered amount (if any) from the notional excess payment. The result is called the ***excess payment***.
Step 7.	If the excess payment is equal to or more than the provisional arrears, the pension payable to the veteran in respect of the arrears period is reduced by the amount of the provisional arrears.
Step 8.	If the excess payment is less than the provisional arrears, the amount of the pension payable to the veteran in respect of the arrears period is reduced by the amount of the excess payment.

27B Certain decisions under section 27A reviewable under the Social Security Act

(1) This section applies if:

(a) a decision is made under section 27A in relation to the amount of arrears of pension to be paid to a veteran; and

(b) subparagraph 27A(1)(c)(i) applies in relation to the veteran.

(2) The calculations made under steps 4 to 6A of the Method statement in section 27A in relation to the payment and payability of a social security pension or benefit are, for the purposes of the Social Security Act, taken to be decisions made under that Act by an officer (other than the Secretary) of the Department administered by the Minister administering that Act.

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28 Capacity to undertake remunerative work

In determining, for the purposes of paragraph 23(1)(b) or 24(1)(b), whether a veteran who is incapacitated from war-caused injury or war-caused disease, or both, is incapable of undertaking remunerative work, and in determining for the purposes of section 24A whether a veteran who is so incapacitated is capable of undertaking remunerative work, the Commission shall have regard to the following matters only:

(a) the vocational, trade and professional skills, qualifications and experience of the veteran;

(b) the kinds of remunerative work which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake; and

(c) the degree to which the physical or mental impairment of the veteran as a result of the injury or disease, or both, has reduced his or her capacity to undertake the kinds of remunerative work referred to in paragraph (b).

29 Approved Guide to the Assessment of Rates of Veterans' Pensions

(1) The Commission may, in writing, determine a guide setting out:

(a) criteria by reference to which the extent of the incapacity of a veteran resulting from war-caused injury or war-caused disease, or both, shall be assessed; and

(b) methods by which the extent of that incapacity, as assessed in accordance with those criteria, shall be expressed as a percentage of incapacity from that injury or disease, or both, being a percentage not exceeding 100 per centum.

Determination must be approved by the Minister

(2) A determination under subsection (1) has no effect unless the Minister has approved it in writing.

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(3) A determination under subsection (1) approved by the Minister and as in force from time to time is the ***Approved Guide to the Assessment of Rates of Veterans' Pensions***.

Variation or revocation of Approved Guide to the Assessment of Rates of Veterans' Pensions

(3A) The Commission may, by written determination, vary or revoke the Approved Guide to the Assessment of Rates of Veterans' Pensions.

(3B) A determination under subsection (3A) has no effect unless the Minister has approved it in writing.

Guide is binding

(4) Where the Commission, the Board or the Administrative Review Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the extent of the incapacity of a veteran resulting from war-caused injury or war-caused disease, or both, the provisions of the Approved Guide to the Assessment of Rates of Veterans' Pensions are binding on the Commission, the Board or the Administrative Review Tribunal, as the case may be, in, and in connection with, the carrying out by it of that assessment, re-assessment or review, and the assessment, re-assessment or review of the extent of that incapacity made by it shall be in accordance with the relevant provisions of the Approved Guide to the Assessment of Rates of Veterans' Pensions.

Extent of incapacity

(5) The percentage of incapacity of a veteran from war-caused injury or war-caused disease, or both, ascertained in accordance with the methods referred to in paragraph (1)(b) may be nought per centum.

(6) In preparing criteria by reference to which the extent of incapacity of a veteran from war-caused injury or war-caused disease, or both, shall be assessed, or in varying those criteria, the Commission shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury or disease and the extent (if

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any) to which incapacity resulting from the injury or disease may reasonably be capable of being reduced or removed.

Legislative instruments

(10) A determination under subsection (1) or (3A) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

(11) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to the legislative instrument.

Incorporation of other instruments

(12) Despite subsection 14(2) of the *Legislation Act 2003*:

(a) a determination under subsection (1); or

(b) a determination under subsection (3A) varying the Approved Guide to the Assessment of Rates of Veterans' Pensions;

may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Division 5—Rates of pensions payable to dependants of deceased veteran

30 Rates at which pensions are payable to dependants

(1) Subject to subsection (3), the rate at which pension is payable under this Part to a dependant of a deceased veteran, being a person who is the widow or widower of the veteran or a reinstated pensioner in relation to the veteran, is a rate per fortnight equal to the sum of the following amounts per fortnight:

(a) $^1/_{26}$ of the amount specified in column 3 of item 1 of the table in point SCH6-B1 of Schedule 6;

(b) $35;

(c) $25.60.

Note: Each of the amounts referred to in paragraphs (1)(a), (b) and (c) is subject to indexation (see Division 18 of Part IIIB for indexation of the amount referred to in paragraph (1)(a), and section 198 for indexation of the amounts in paragraphs (1)(b) and (c)).

(2) Subject to subsection (3), the rate at which pension is payable under this Part to a dependant of a deceased veteran, being a person who is a child of the veteran, is:

(a) if there is no widow or widower of the veteran—$88.80 per fortnight;

(b) if there is a widow or widower of the veteran, but the child is not being maintained by a parent, adoptive parent or step-parent—$88.80 per fortnight; or

(c) in any other case—$44.40 per fortnight.

(3) Where, under the law:

(a) of a foreign country; or

(b) of a State;

a dependant of a deceased veteran is entitled to receive, or is in receipt of, periodical payments, or a lump-sum payment, in respect of the death of the veteran resulting from employment in connection with warlike operations in which the Crown has been

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engaged, the rate of those payments, or the amount of that payment, shall be taken into account in assessing the rate of pension payable under this Part so that the total payments to the dependant shall not exceed the total payments that the dependant would be entitled to receive under this Part if the dependant were not entitled to receive, or were not in receipt of, those periodical payments or that lump-sum payment.

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Division 5A—Effect of certain compensation payments on rates of pension

30A This Division does not apply to certain payments

This Division does not apply to:

(a) a periodic payment or a lump sum payment referred to in paragraph 26(1)(b) or (2)(b) or subsection 30(3), whether the payment was made before or is made after the commencement of this section; or

(b) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the *Defence Act 1903*; or

(c) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force, where:

(i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and

(ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (b) if the death or injury had occurred on or after 10 June 1997.

30B Interpretation

(1) In this Division, unless the contrary intention appears:

compensation includes:

(a) any payment in the nature of compensation; and

(b) any damages recoverable at law from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person; and

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(c) any amount paid under a compromise or settlement of a claim for damages referred to in paragraph (b);

but does not include any amount that represents expenses incurred in medical or hospital treatment.

(2) For the purposes of this Part, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Note: For lump sum payments of compensation see section 30C. For periodic payments of compensation see section 30D.

(3) In sections 30G and 30H:

damages does not include an amount that has been paid under a notice under section 51 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

(4) In sections 30L and 30M:

international organisation means:

(a) an organisation:

(i) of which 2 or more countries, or the governments of 2 or more countries, are members; or

(ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or

(b) an organisation that is:

(i) an organ of, or office within, an organisation described in paragraph (a); or

(ii) a commission, council or other body established by an organisation so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a), or of such an organ, council or body.

30C Lump sum compensation payment

(1) If:

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(a) a lump sum payment of compensation is made to a person who is a veteran or a dependant of the veteran; and

(b) the compensation payment is paid in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period of the person's life determined by, or under the instructions of, the Commonwealth Actuary;

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum payment is made to the person; or

(ii) on the day the pension becomes payable to the person;

whichever is the earlier day.

Note 1: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Note 2: A payment of arrears of periodic compensation is not a lump sum compensation payment (see subsection 30B(2)).

Lump sum payment—Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (section 137)

(2) If:

(a) a lump sum payment is made under section 137 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to a person who is a veteran or a dependant of the veteran; and

(b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

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(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period of the person's life determined by, or under the instructions of, the Commonwealth Actuary;

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum compensation payment is made to that person; or

(ii) on the day the pension becomes payable to the person;

whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Lump sum payment—Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (section 30)

(3) If:

(a) a lump sum payment is made under section 30 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to a person who is a veteran or a dependant of the veteran; and

(b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death;

the following provisions have effect:

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(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period until the person reaches 65;

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum payment is made to the person; or

(ii) on the day the pension becomes payable to the person;

whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Pension payable to one person

(4) Subject to subsection (6), if:

(a) a person is taken to be in receipt of payments of compensation at a particular rate per fortnight under subsection (1), (2) or (3); and

(b) but for this subsection, pension referred to in paragraph (1)(c), (2)(c) or (3)(c) would be payable to the person at a particular rate per fortnight;

after the lump sum payment is made, the rate per fortnight of the pension is to be reduced by the rate per fortnight of compensation.

(5) If, under subsection (4), the rate per fortnight of compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

(6) If:

(a) a lump sum payment is made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and

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(b) the person or persons are taken to be in receipt of compensation under subsection (1), (2) or (3); and

(c) apart from this subsection, pensions under this Part in respect of the same incapacity of the veteran from that or any other injury or disease, or in respect of that death, would be payable to 2 or more persons at particular rates per fortnight;

after the lump sum payment is made, the sum of those rates per fortnight of pensions is to be reduced by the rate per fortnight of compensation that the person is, or the sum of the rates per fortnight of compensation that the persons are, taken to be in receipt of.

Note: Subsections (8), (9) and (10) set out how the reduction is to be made.

(7) If, under subsection (6), the rate or the sum of the rates per fortnight of compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.

How reduction is to be made

(8) In giving effect to subsection (6), if:

(a) pensions are payable to 2 or more persons; and

(b) one pension is to be preferred to another under subsection (12);

the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.

(9) If:

(a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (8); and

(b) there are 2 or more pensions that are not to be preferred to each other;

the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Excess compensation payable}$$

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where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of the pensions referred to in paragraph (b).

excess compensation payable is the rate per fortnight of compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.

(10) If:

(a) pensions are payable to 2 or more persons; and

(b) subsections (8) and (9) do not apply;

the reduction in the rate per fortnight for each pension is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Total pensions payable}} \times \text{Total compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

total pensions payable is the sum of the rates per fortnight of pensions payable to the persons.

total compensation payable is the sum of the rates per fortnight of compensation that the persons are taken to be in receipt of.

(11) If:

(a) an amount of damages payable to a veteran, or to a dependant of a veteran, is paid to the Commonwealth under section 30G or 30H; or

(b) the liability of the Commonwealth to pay damages to a veteran or to a dependant of a veteran, is, under section 30K,

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taken to have been discharged to the extent of a particular amount;

subsection (1) of this section applies to the veteran or the dependant as if pension commences to be payable, only after the veteran or dependant receives payments by way of instalments of pension equal to the amount referred to in paragraph (a) or (b).

Preferred pensions

(12) For the purposes of this section:

(a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and

(b) a pension payable under this Part to a partner or non-illness separated spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and

(c) a pension payable under this Part to the widow or widower of a deceased veteran is to be preferred to such a pension payable to a child of the veteran; and

(d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

(13) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

30D Periodic payment of compensation

(1) If:

(a) periodic payments of compensation are made to a person who is a veteran or a dependant of the veteran; and

(b) the compensation payments are made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person receives, or is subsequently granted, a pension under this Part in respect of the same incapacity of the

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veteran from that or any other injury or disease or in respect of that death;

the rate per fortnight of the person's pension that would, apart from this subsection, be payable to the person for the periodic payments period is to be reduced by the rate per fortnight of the periodic compensation.

Note 1: For ***periodic payments period*** see subsection (10).

Note 2: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

(2) If, under subsection (1), the rate per fortnight of the periodic compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

(3) If:

(a) periodic payments of compensation are made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and

(b) apart from this subsection, pensions under this Part in respect of the same incapacity of the veteran from that or any other injury or disease, or in respect of that death, would be payable to 2 or more persons for the periodic payments period at particular rates per fortnight;

the sum of those rates per fortnight of pensions for the periodic payments period is to be reduced by the rate per fortnight of the periodic compensation or the sum of the rates per fortnight of the periodic compensation.

Note: Subsections (5), (6) and (7) set out how the reduction is to be made.

(4) If, under subsection (3), the rate or the sum of the rates per fortnight of periodic compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.

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How reduction is to be made

(5) In giving effect to subsection (3), if:

(a) pensions are payable to 2 or more persons; and

(b) one pension is to be preferred to another under subsection (8);

the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.

(6) In giving effect to subsection (3), if:

(a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (5); and

(b) there are 2 or more pensions that are not to be preferred to each other;

the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Excess compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of the pensions referred to in paragraph (b).

excess compensation payable is the rate per fortnight of periodic compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.

(7) If:

(a) pensions are payable to 2 or more persons; and

(b) subsections (5) and (6) do not apply;

the reduction in the rate per fortnight for each pension is to be worked out using the following formula:

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$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of pensions payable to the persons.

compensation payable is the sum of the rates per fortnight of periodic compensation that is payable to the persons.

Preferred pensions

(8) For the purposes of this section:
   (a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and
   (b) a pension payable under this Part to a partner or non-illness separated spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and
   (c) a pension payable under this Part to the widow or widower of a veteran is to be preferred to such a pension payable to a child of the veteran; and
   (d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

(9) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

(10) In this section:

periodic payments period means:
   (a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or

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(b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of arrears payment.

30E Proceedings against third party

If:

(a) a pension is payable or has been paid under this Part in respect of:

(i) the incapacity of a veteran from a war-caused injury or disease; or

(ii) the death of a veteran; and

(b) a person other than the Commonwealth appears legally liable to pay damages in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death; and

(c) the veteran, a dependant of the veteran or a person on behalf of the dependant has:

(i) not instituted proceedings against the person for the recovery of damages in respect of the same incapacity of the veteran or in respect of that death; or

(ii) not properly prosecuted proceedings that have been instituted; or

(iii) discontinued proceedings that have been instituted;

the Commission may, by written notice, request the veteran or dependant:

(d) to institute proceedings or new proceedings against the person; or

(e) properly to prosecute proceedings against the person.

30F Failure to comply with Commission's request made under section 30E

(1) If, within a reasonable time after a notice under section 30E is given to a veteran or a dependant of a veteran, the veteran or dependant:

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(a) refuses or fails to institute proceedings; or

(b) discontinues proceedings that have been instituted;

the Commission may, on behalf of the veteran or dependant, institute proceedings or new proceedings against the person for recovery of damages in respect of the incapacity or death.

(2) If, within a reasonable time after a notice is given, a veteran or a dependant of a veteran fails to prosecute properly proceedings that have been instituted, the Commission may take over the conduct of the proceedings.

(3) If a veteran or a dependant of a veteran institutes proceedings under a notice but refuses or fails to prosecute the proceedings properly, the Commonwealth may take over the conduct of the proceedings.

Commonwealth liability to pay costs

(4) The Commonwealth is liable to pay all the plaintiff's costs of, or incidental to, the proceedings. The Commonwealth is not liable to pay costs that the plaintiff unreasonably incurs.

Commonwealth may settle etc. proceedings

(5) If the Commonwealth:

(a) institutes proceedings; or

(b) takes over the conduct of the proceedings;

the Commonwealth may:

(c) settle the proceedings, with or without obtaining judgment; and

(d) if a favourable judgment is given in favour of the plaintiff—take such steps as are necessary to enforce that judgment.

Veteran or dependant of veteran must sign all documents relating to proceedings

(6) The veteran, or a dependant of the veteran, must sign any document relevant to the proceedings, including settlement of the

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proceedings, that the Commonwealth requires the veteran or the dependant to sign.

(7) If the veteran or the dependant fails to sign any such document, the court or tribunal in which the proceedings are being held may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for that purpose.

30G Payment of damages by third party to Commonwealth

(1) Subject to subsection (2), if:

(a) a pension is payable or has been paid under this Part in respect of:

(i) the incapacity of a veteran from a war-caused injury or disease; or

(ii) the death of the veteran; and

(b) a person other than the Commonwealth appears to be legally liable to pay damages in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death;

the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

Note: Damages in this section do not include certain amounts paid under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (see subsection 30B(3)).

(2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.

(3) The person must comply with the notice if:

(a) the person agrees to pay damages to a veteran or dependant in respect of the incapacity or the death; or

(b) damages against the person are awarded to the veteran or dependant in proceedings instituted in respect of the incapacity or death.

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30H Payment of damages by third party where agreement, or an award against the person, to pay damages has been made

(1) Subject to subsection (4), if:

(a) pension is payable or has been paid under this Part in respect of:

(i) the incapacity of a veteran from a war-caused injury or disease; or

(ii) the death of a veteran; and

(b) an amount of damages is payable by a person other than the Commonwealth in respect of the same incapacity of the veteran from that or any other injury or disease or in respect of that death because:

(i) the person agreed to pay such damages; or

(ii) damages against the person were awarded to the veteran or dependant in proceedings instituted in respect of the same incapacity of the veteran or in respect of that death;

the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

Note: Damages in this section do not include certain amounts paid under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (see subsection 30B(3)).

(2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.

(3) The person must comply with the notice.

Effect of notice where damages already paid

(4) If, before a notice under subsection (1) was received by a person, the person had paid to, or in respect of, the veteran or dependant the whole or any part of the damages to which the notice relates, then:

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(a) if the whole of the damages had been paid—the notice has no force or effect; or
(b) if part of the damages had been paid—the specified amount of damages is the amount of damages that has not been paid.

30I Debt due to the Commonwealth

If a person fails to pay an amount to the Commonwealth under a notice under section 30G or 30H, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

30J Discharge of liability

The payment of an amount to the Commonwealth under a notice under section 30G or 30H is, to the extent of the amount paid, a discharge of the liability of that person to the veteran or the dependant.

30K Discharge of liability of Commonwealth to pay damages

If:

(a) pension is payable, or has been paid, under this Part in respect of:
  (i) the incapacity of a veteran from a war-caused injury or disease; or
  (ii) the death of a veteran; and
(b) damages have been awarded against the Commonwealth:
  (i) to a veteran in proceedings instituted to recover damages in respect of the same incapacity of the veteran from that or any other injury or disease; or
  (ii) to a dependant of a deceased veteran in proceedings instituted to recover damages in respect of the death of the veteran; and

the liability of the Commonwealth to pay those damages (excluding any part of them that represents expenses incurred in medical or hospital treatment) is taken to have been discharged to

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the extent of the total of the amounts of the pension that have been paid to the veteran or the dependant.

30L Other payments of compensation

If:

(a) any pension has been paid under this Part in respect of:
  (i) the incapacity of the veteran from war-caused injury or disease; or
  (ii) the death of the veteran; and

(b) any compensation is paid:
  (i) under the law of a country other than Australia; or
  (ii) by, or under a scheme arranged by, an international organisation;

to, or in respect of:

  (iii) a veteran in respect of the same incapacity of the veteran from that or any other injury or disease; or
  (iv) a dependant of a deceased veteran in respect of the death of the veteran;

the Commonwealth may recover from the veteran or dependant, by action in a court of competent jurisdiction, an amount equal to the amount of compensation paid that does not exceed the total of the pension paid under this Part to the veteran or dependant.

Note: For ***international organisation*** see subsection 30B(4).

30M Commission may require a statutory declaration

The Commission may, by notice in writing to a claimant or recipient of a pension under this Part, require the person to give the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation:

(a) has been paid to, or in respect of, the person; or

(b) has been claimed by, or in respect of, the person;

under a law of a country other than Australia, or under a scheme arranged by an international organisation in respect of the same

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incapacity or death for which the person claims or receives a pension under this Part.

Note: For ***international organisation*** see subsection 30B(4).

30N Failure to comply with statutory declaration requirement

(1) If a person refuses or fails to comply with a notice given under section 30M, the person's right:

(a) to pension under this Part in respect of the incapacity or death to which the notice relates; and

(b) to institute or take any proceedings under this Act in relation to that pension or a claim for that pension;

is suspended until the statutory declaration has been given to the Commission.

(2) If a person's right to pension under this Part is suspended under subsection (1), the person is not entitled to be paid pension under this Part for the period of the suspension.

30P Overpayments of pension

(1) If:

(a) an amount of pension is payable or has been paid under this Part in respect of:

(i) the incapacity of the veteran from a war-caused injury or disease; or

(ii) the death of the veteran; and

(b) because of section 25A, 30C or 30D, that amount of pension was not payable to the veteran or dependant;

an amount equal to the amount of pension paid is recoverable from the veteran or dependant.

(2) The amount may be recovered, either in whole or in part, by deduction from any amount of pension payable under this Part to the veteran or dependant.

(3) Subsection (2) does not prevent the recovery of the amount in a manner other than the one provided for in that subsection. An

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amount is not to be recovered as provided and also in a manner that is not provided for in subsection (2).

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Division 6—Reconsideration of decisions by Commission

31 Commission may initiate reconsideration of decisions

(1) This section applies in relation to any decision of the Commission in respect of the following claims or applications (including a decision under section 20 or 21 but not a decision under subsection 19A(1)):

(a) a claim for a pension under section 14;

(b) an application for a pension, or for an increased pension, under section 15;

(c) an application for attendant allowance under section 98.

(2) Section 347 of the MRCA applies in relation to the decision as if:

(a) the decision were an original determination made by the Commission; and

(b) a reference in that section to the Commission were a reference to the Repatriation Commission.

Note: This means that the Commission may, on its own initiative, reconsider the decision.

(3) If a determination (the ***reconsideration determination***) is made under subsection 347(3) of the MRCA because of the operation of subsection (2) of this section, section 346 of the MRCA applies in relation to the reconsideration determination as if:

(a) the reconsideration determination were an original determination made by the Commission; and

(b) a person in respect of whom the reconsideration determination was made were the claimant; and

(c) a reference in that section to the Commission were a reference to the Repatriation Commission.

Note: This means that the Commission must give notice of the reconsideration determination.

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Division 7—Procedural

32 Commission may take evidence

(1) Subject to subsection (2), the Commission may, for the purposes of its consideration of a claim submitted to it in accordance with subsection 17(2) or of its reconsideration under section 31 of a decision in relation to a pension or attendant allowance:

(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 reconsideration under section 31—a person likely to be affected by the reconsideration or the Secretary;

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

(d) request:

(i) in the case of consideration of a claim—the claimant; or

(ii) in the case of a reconsideration under section 31—the person likely to be affected by the reconsideration;

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

(2) Subsection (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 reconsideration under section 31—a person likely to be affected by the reconsideration;

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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 the claim with the Commission; or

(b) to discuss the 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 the person 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 19; or

(b) in relation to a reconsideration 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, subsections (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, after tender of reasonable expenses, fail to appear in answer to the summons.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(6A) An offence under subsection (6) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) A person who appears before the Commission as a witness in answer to a summons shall not refuse to be sworn or make an affirmation.

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Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(8) Subject to subsection (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 the person declines to be sworn or make an affirmation, the person's evidence shall not be received.

(9) Subsection (8) does not apply to a person who attends before the Commission for a discussion of a claim or reconsideration at the request of the Commission under subsection (1) or at his or her own request under subsection (3) or has a discussion with the Commission by telephone under subsection (3).

(10) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not refuse to produce documents or to answer a question that the person is required to answer by the Commission.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(11) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not give evidence that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months or 20 penalty units, or both.

(11A) A person does not commit an offence under this section if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11A). See subsection 13.3(3) of the *Criminal Code*.

(12) In this section:

claim includes application.

claimant includes applicant.

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33 Withdrawal of claim or application

(1) A claimant or applicant may, at any time before the claim or application is determined by the Commission, by notice in writing lodged in accordance with section 5T, withdraw the claim or application.

(2) The withdrawal of a claim or application does not prevent the claimant from subsequently making another claim under section 14, or the applicant from subsequently making another application under section 15.

34 Reasons for decisions to be given

(1) Where the Commission makes a decision:

(a) with respect to a claim for a pension in accordance with section 14, or an application for a pension or increased pension in accordance with section 15;

(b) by way of assessing the rate of a pension or attendant allowance, or determining the date of commencement or cessation of a pension or attendant allowance;

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

(2) As soon as practicable after the Commission makes a decision referred to in subsection (1), the Commission shall, subject to subsection (3), cause to be served:

(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 of a kind referred to in paragraph (1)(b)—on the person affected by the decision;

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

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

(a) that, in the opinion of the Commission, is of a confidential nature; or

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

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

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Part III—Service pensions

Division 1—General features

35 Order and structure of Divisions

(1) In this Part:
  (a) Division 2 deals with establishing qualifying service; and
  (b) Divisions 3, 4 and 5 deal with the 3 kinds of service pension (age, invalidity and partner service pension respectively).

(2) In Divisions 3, 4 and 5 (dealing with each kind of service pension) this is the order in which the provisions are presented:
  (a) eligibility provisions (who is entitled to the pension);
  (b) claim provisions (how a claim is made);
  (c) rates provisions (how much the payment will be).

(3) Other relevant provisions are referred to in notes at the bottom of key provisions in the Division.

35A Eligibility for and payability of service pension

Before a person can be paid a service pension under this Part:
  (a) the person must be eligible for the pension; and
  (b) there must be nothing in this Act that makes the pension not payable to the person (for example, a dual pension provision): the pension must be ***payable to the person***.

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Division 2—Establishing qualifying service

Subdivision A—Pathways to establishing qualifying service

35B Pathways to establishing qualifying service

(1) To establish that a veteran has rendered qualifying service:

(a) a proper claim must be made for a determination that the veteran has rendered such service; or

(b) there must be a determination in force under section 35BA in respect of the veteran.

Note 1: A veteran must have rendered qualifying service to be eligible for age service pension or invalidity service pension: see subsections 36(1) and 37(1).

Note 2: A claim is not required for a determination under section 35BA.

Note 3: For ***qualifying service*** see section 7A.

(2) To establish for the purposes of paragraph 38(1)(aa) or (e) that a person's partner or deceased partner has rendered qualifying service:

(a) a proper claim must be made for a determination that the person's partner or deceased partner has rendered such service; or

(b) there must be a determination in force under section 35BA in respect of the person's partner or deceased partner.

Note 1: For a person to be eligible for a partner service pension under paragraph 38(1)(aa) or (e), the person's partner or deceased partner needs to be a veteran who rendered qualifying service.

Note 2: A claim is not required for a determination under section 35BA.

Note 3: For ***qualifying service*** see section 7A.

35BA Commission determination without the need for a claim

(1) The Commission may make a written determination that a specified veteran has rendered qualifying service if the Commission is satisfied that the veteran has rendered such service.

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Note 1: A claim is not required for a determination under this section.

Note 2: For ***qualifying service*** see section 7A.

(2) The Commission must give a copy of the determination to:
  (a) the veteran; or
  (b) the person described in paragraph 38(1)(aa) or (e) in relation to the veteran.

(3) A determination by the Commission under this section that a veteran has rendered qualifying service is proof, for all purposes of this Act, that the veteran has rendered qualifying service.

(4) A determination under this section is not a legislative instrument.

35C Who can claim?

(1) Subject to subsection (2), a claim for a qualifying service determination must be made by:
  (a) the veteran who wants to establish that he or she has rendered qualifying service; or
  (b) with the approval of the veteran—another person on the veteran's behalf; or
  (c) a person who wants to establish for the purposes of paragraph 38(1)(aa) or (e) that his or her partner or deceased partner has rendered qualifying service; or
  (d) with the approval of the person referred to in paragraph (c) of this subsection—another person on the person's behalf.

(2) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

35D Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and

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(c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and

(d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

35F Claim may be withdrawn

(1) A claimant for qualifying service or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

35FB Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

35FC Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

35FD Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a

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claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 35FC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

Subdivision B—Investigation of claim

35G Secretary to investigate claim and submit it to Commission

(1) If a veteran makes a proper claim for a determination that he or she has rendered qualifying service, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision C—Consideration and determination of claim

35H Duties of Commission in relation to claim

Determination of claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission's opinion, relevant to the claim and must then determine the claim.

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(2) In considering the claim, the Commission must:
   (a) satisfy itself with respect to; or
   (b) determine;
   (as the case requires) all matters relevant to the determination of the claim.

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 35G; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

Record of determination and reasons

(4) When the Commission determines the claim it must make a written record of its determination.

(5) The Commission must also make a statement in writing about the determination that:
   (a) sets out the Commission's findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission's determination.

Notification of determination

(6) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:
   (a) a copy of the record of the Commission's determination; and
   (b) subject to subsection (7), a copy of the statement about the determination referred to in subsection (5); and
   (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

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(7) If the statement referred to in paragraph (6)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

(b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

35J Determination of qualifying service to be proof of qualifying service

A determination by the Commission under section 35H that a veteran has rendered qualifying service is proof, for all purposes of this Act, that the veteran has rendered qualifying service.

Note: This provision also applies to a decision of the Administrative Review Tribunal that a person has rendered qualifying service. This is because subsection 108(2) of the *Administrative Review Tribunal Act 2024* provides that the Tribunal's decision is taken to be the decision of the original decision-maker (in this case, the Commission).

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Division 3—Age service pension

Subdivision A—Eligibility for and payability of age service pension

36 Eligibility for age service pension

(1) Subject to subsection (4), a person is eligible for an age service pension if the person:

(a) is a veteran; and

(b) has rendered qualifying service; and

(c) has reached pension age.

Note 1A: For ***veteran*** see subsection 5C(1).

Note 1: For ***qualifying service*** see section 7A.

Note 2: For ***pension age*** see section 5QA.

Additional eligibility criterion for Commonwealth veterans, allied veterans and allied mariners

(2) Subject to subsection (2A), a person who is a veteran by reason only of being a Commonwealth veteran, an allied veteran or an allied mariner must, in addition to meeting the requirements of subsection (1), have been an Australian resident for a continuous period of at least 10 years.

(2A) Subsection (2) does not apply to:

(a) a refugee; or

(b) a former refugee.

(3) Where:

(a) a veteran has been an Australian resident during more than one period; and

(b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and

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(c) the aggregate of those periods is more than 10 years;

in the application of subsection (2) to the veteran, the period of 10 years specified in that subsection is to be reduced by a period equal to the period by which the aggregate is more than 10 years.

(4) If:

(a) a veteran lodges a proper claim for an age service pension before meeting the eligibility requirements referred to in subsection (1); and

(b) the veteran ceases to be an Australian resident after lodging the claim and before the claim is determined;

the veteran is not eligible for age service pension unless:

(c) the day on which the veteran met all the eligibility requirements; and

(d) the day from which age service pension would, if the claim were granted, be payable;

are earlier than the day on which the veteran ceased to be an Australian resident.

36A Age service pension may not be payable in some circumstances

(1) Even though a veteran is eligible for an age service pension, the pension may not be payable to the veteran because:

(a) the pension has not commenced to be payable (see section 36B); or

(b) the veteran is in gaol or in psychiatric confinement (see sections 55 and 55A); or

(c) the veteran is receiving another pension (see section 36C); or

(d) the pension is cancelled or suspended:

(i) under this Act (see sections 56E, 56EA, 56J and 56K); or

(ii) under Part 3C (schooling requirements) of the *Social Security (Administration) Act 1999*; or

Note: See section 124E of the *Social Security (Administration) Act 1999*.

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

(2) Subject to subsections (3) and (4), an age service pension is not payable to a veteran if the veteran's age service pension rate would be nil.

Note: A veteran whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a veteran if the veteran's rate would be nil merely because:

(a) an election by the veteran under subsection 60A(1) is in force; or

(b) the veteran has been paid an advance pharmaceutical allowance under Part 2.23 of the Social Security Act.

(4) Subsection (2) does not apply to a veteran if the veteran's rate is nil merely because of the operation of Part IVA.

36B Age service pension generally not payable before claim

Provisional commencement day

(1) An age service pension is not payable to a veteran before the veteran's provisional commencement day.

(1A) Subject to subsection (2), a veteran's provisional commencement day is the day on which the veteran claims the age service pension.

Initial incorrect claim followed by proper claim

(2) If:

(a) a veteran makes a claim (in this subsection called the ***initial claim***) for age service pension; and

(b) the claim is not a proper claim; and

(c) on the day on which the veteran makes the initial claim, the veteran is eligible for age service pension; and

(d) the veteran subsequently makes a proper claim:

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(i) within 3 months after being notified that the initial claim was not a proper claim; or

(ii) if the veteran was not so notified—at any time;

then the veteran's provisional commencement day is the day on which the initial claim was lodged.

36C Restrictions on dual pensions

An age service pension is not payable to a veteran if the veteran is receiving:

(a) another service pension; or

(aa) a veteran payment; or

(b) a social security pension; or

(c) a social security benefit.

Note: ***Social security benefit*** includes jobseeker payment.

36CA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

age service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for age service pension

36D Need for a claim

A veteran who wants to be granted an age service pension must make a proper claim for that pension.

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36E Who can claim?

(1) Subject to subsection (2), the claim must be made by:
  (a) the veteran who wants to be granted the age service pension; or
  (b) with the approval of the veteran—another person on the veteran's behalf.

(2) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

36F Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
  (d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:
  (a) the pension bonus scheme (see Part IIIAB); or
  (b) the corresponding scheme under Part 2.2A of the Social Security Act.

(3) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

36H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the veteran making the claim, or on whose behalf the claim is being made, is:
  (a) an Australian resident; and

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(b) in Australia;

on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

(2) Subsection (1) does not apply to a veteran's claim if:

(a) the veteran is outside Australia and is receiving:

(i) invalidity service pension; or

(ii) partner service pension; or

(iii) income support supplement; or

(iiia) veteran payment; or

(iv) a social security pension; and

(b) the veteran would, if that pension, supplement or payment were cancelled, be eligible for age service pension.

Note 1: If the veteran ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 36), the veteran's eligibility is not affected.

Note 2: For ***social security pension*** see subsection 5Q(1).

36J Claim may be withdrawn

(1) A claimant for age service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

36JB Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

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36JC Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

36JD Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 36JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

36JE Secretary may require claimant or claimant's partner to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed an age service pension; and

(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(1A) If:

(a) a person has claimed an age service pension; and

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(b) the Secretary is satisfied that the claimant's partner (if any) may be entitled to a comparable foreign pension if the partner applied for that pension;

the Secretary may give the claimant a notice that requires the partner to take reasonable action to obtain the comparable foreign pension.

(2) A notice under subsection (1) or (1A):

(a) must be in writing; and

(b) must be given personally or by post; and

(c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:

(a) the claimant is given a notice under subsection (1) or (1A); and

(b) the Commission is satisfied that the claimant, or the claimant's partner, has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

Subdivision C—Investigation of claim

36K Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for age service pension, the Secretary must cause an investigation to be made into the matters to which the claim relates.

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(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision D—Consideration and determination of claim

36L Duties of Commission in relation to claim

Determination of claim

(1) When the claim is submitted to the Commission, the Commission must:
  (a) consider the claim; and
  (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
  (c) determine all matters requiring determination before the claim can be determined; and
  (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
  (a) the evidence submitted with the claim under section 36K; and
  (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:

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(a) first, the Commission must determine whether the pension is to be granted to the person; and

(b) if the Commission determines that the pension is to be granted to the person, the Commission then must:

(i) work out the person's age service pension rate under section 36N; and

(ii) determine that the pension is payable to the person at that rate.

Record of determination and reasons

(5) When the Commission determines the claim it must make a written record of its determination.

(6) The Commission must also make a statement in writing about the determination that:

(a) sets out the Commission's findings on material questions of fact; and

(b) refers to the evidence or other material on which those findings are based; and

(c) provides reasons for the Commission's determination.

Notification of determination

(7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:

(a) a copy of the record of the Commission's determination; and

(b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and

(c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

(8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

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(b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

36M Date of effect of determination

If the Commission determines under section 36L that age service pension is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, age service pension is payable to the person at the rate specified in the determination.

Note: Age service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 36C).

Subdivision E—Rate of age service pension

36N How to work out the rate of a veteran's age service pension

A veteran's age service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under a self-employment program (see Division 9 of Part IIIB).

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Division 4—Invalidity service pension

Subdivision A—Eligibility for and payability of invalidity service pension

37 Eligibility for invalidity service pension

(1) Subject to subsection (6), a person is eligible for an invalidity service pension if the person:

(a) is a veteran; and

(b) has rendered qualifying service; and

(c) is permanently incapacitated for work in accordance with a determination under section 37AA.

Note 1: For ***veteran*** see subsection 5C(1).

Note 2: For ***qualifying service*** see section 7A.

Additional eligibility criterion for Commonwealth veterans, allied veterans and allied mariners

(3) Subject to subsection (3A), a person who is a veteran by reason only of being a Commonwealth veteran, an allied veteran or an allied mariner must, in addition to meeting the requirements of subsection (1), have been an Australian resident for a continuous period of at least 10 years.

(3A) Subsection (3) does not apply to:

(a) a refugee; or

(b) a former refugee.

(4) For the purpose of applying subsection (3), where:

(a) a veteran has been an Australian resident during more than one period; and

(b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and

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(c) the aggregate of those periods is more than 10 years;

in the application of subsection (3) to the veteran, the period of 10 years specified in that subsection is to be reduced by a period equal to the period by which the aggregate is more than 10 years.

(5) Subsection (3) does not apply to a veteran if:

(a) the veteran became permanently incapacitated for work while the veteran was an Australian resident; and

(b) the veteran's permanent incapacity for work was not brought about with a view to obtaining a service pension or a social security pension; and

(c) the veteran does not have an enforceable claim against any person, under any law or contract, for adequate compensation in respect of the permanent incapacity.

(6) If:

(a) a veteran lodges a proper claim for an invalidity service pension before meeting the eligibility requirements referred to in subsection (1); and

(b) the veteran ceases to be an Australian resident after lodging the claim and before the claim is determined;

the veteran is not eligible for invalidity service pension unless:

(c) the day on which the veteran met all the eligibility requirements; and

(d) the day from which invalidity service pension would, if the claim were granted, be payable;

are earlier than the day on which the veteran ceased to be an Australian resident.

37AA Commission must determine circumstances in which persons are permanently incapacitated for work

(1) The Commission must, by written determination, specify the circumstances in which persons are permanently incapacitated for work for the purposes of paragraph 37(1)(c).

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Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Legislative instrument

(3) A determination under this section is a legislative instrument.

37AAA Continued eligibility for invalidity service pension if person undertaking a rehabilitation program etc.

If:

(a) a person is receiving an invalidity service pension; and

(b) the person ceases to be permanently incapacitated for work while, or as a result of, undertaking a rehabilitation program under the Veterans' Vocational Rehabilitation Scheme;

the person does not cease to be eligible for the invalidity service pension from the time at which the person ceases to be permanently incapacitated for work until the end of the period of 5 years mentioned in subsection 115G(2) (as affected by subsection 115G(2A)).

37A Invalidity service pension may not be payable in some circumstances

(1) Even though a veteran is eligible for an invalidity service pension, the pension may not be payable to the veteran because:

(a) the pension has not commenced to be payable (see section 37B); or

(b) the veteran is in gaol or in psychiatric confinement (see sections 55 and 55A); or

(c) the veteran is receiving another pension (see section 37C); or

(d) the pension is cancelled or suspended:

(i) under this Act (see sections 56E, 56EA, 56J and 56K); or

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(ii) under Part 3C (schooling requirements) of the *Social Security (Administration) Act 1999*; or

Note: See section 124E of the *Social Security (Administration) Act 1999*.

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

(f) the person or the person's partner is entitled to receive compensation (see Division 3 of Part IIIC).

(2) Subject to subsections (3) and (4), an invalidity service pension is not payable to a veteran if the veteran's invalidity service pension rate would be nil.

Note: A veteran whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a veteran if the veteran's rate would be nil merely because:

(a) an election by the veteran under subsection 60A(1) is in force; or

(b) the veteran has been paid an advance pharmaceutical allowance under Part 2.23 of the Social Security Act.

(4) Subsection (2) does not apply to a veteran if the veteran's rate is nil merely because of the operation of Part IVA.

37B Invalidity service pension generally not payable before claim

Provisional commencement day

(1) An invalidity service pension is not payable to a veteran before the veteran's provisional commencement day.

(1A) Subject to subsection (2), a veteran's provisional commencement day is the day on which the veteran claims the invalidity service pension.

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Initial incorrect claim followed by proper claim

(2) If:

(a) a veteran makes a claim (in this subsection called the ***initial claim***) for invalidity service pension; and

(b) the claim is not a proper claim; and

(c) on the day on which the veteran makes the initial claim, the veteran is eligible for invalidity service pension; and

(d) the veteran subsequently makes a proper claim:

(i) within 3 months after being notified that the initial claim was not a proper claim; or

(ii) if the veteran was not so notified—at any time;

then the veteran's provisional commencement day is the day on which the initial claim was lodged.

37C Restrictions on dual pensions

An invalidity service pension is not payable to a veteran if the veteran is receiving:

(a) another service pension; or

(aa) a veteran payment; or

(b) a social security pension; or

(c) a social security benefit.

Note: ***Social security benefit*** includes jobseeker payment.

37CA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

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invalidity service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for invalidity service pension

37D Need for a claim

A veteran who wants to be granted an invalidity service pension must make a proper claim for that pension.

37E Who can claim?

(1) A veteran may not claim an invalidity service pension if he or she has reached pension age (within the meaning of subsections 5QB(2), (3), (4) and (5)).

(2) Subject to subsection (3), a claim for invalidity service pension must be made by:
  (a) the veteran who wants to be granted the invalidity service pension; or
  (b) with the approval of the veteran—another person on the veteran's behalf.

(3) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

37F Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
  (d) lodged at an office of the Department in Australia in accordance with section 5T.

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(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

37H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the veteran making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and

(b) in Australia;

on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

(2) Subsection (1) does not apply to a veteran's claim if:

(a) the veteran is outside Australia and is receiving:

(i) age service pension; or

(ii) partner service pension; or

(iii) income support supplement; or

(iiia) veteran payment; or

(iv) a social security pension; and

(b) the veteran would, if that pension, supplement or payment were cancelled, be eligible for invalidity service pension.

Note 1: If the veteran ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 37), the veteran's eligibility is not affected.

Note 2: For ***social security pension*** see subsection 5Q(1).

37J Claim may be withdrawn

(1) A claimant for invalidity service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

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37JB Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

37JC Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

37JD Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 37JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

37JE Secretary may require claimant or claimant's partner to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed an invalidity service pension; and

(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

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(1A) If:

(a) a person has claimed an invalidity service pension; and

(b) the Secretary is satisfied that the claimant's partner (if any) may be entitled to a comparable foreign pension if the partner applied for that pension;

the Secretary may give the claimant a notice that requires the partner to take reasonable action to obtain the comparable foreign pension.

(2) A notice under subsection (1) or (1A):

(a) must be in writing; and

(b) must be given personally or by post; and

(c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:

(a) the claimant is given a notice under subsection (1) or (1A); and

(b) the Commission is satisfied that the claimant, or the claimant's partner, has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

Subdivision C—Investigation of claim

37K Secretary to investigate claim and submit it to Commission

(1) If a veteran makes a proper claim for an invalidity service pension, the Secretary must cause an investigation to be made into the matters to which the claim relates.

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(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision D—Consideration and determination of claim

37L Duties of Commission in relation to claim

Determination of claim

(1) When the claim is submitted to the Commission, the Commission must:
  (a) consider the claim; and
  (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
  (c) determine all matters requiring determination before the claim can be determined; and
  (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
  (a) the evidence submitted with the claim under section 37K; and
  (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:

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(a) first, the Commission must determine whether the pension is to be granted to the person; and

(b) if the Commission determines that the pension is to be granted to the person, the Commission then must:

(i) work out the person's invalidity service pension rate under section 37N; and

(ii) determine that the pension is payable to the person at that rate.

Record of determination and reasons

(5) When the Commission determines the claim it must make a written record of its determination.

(6) The Commission must also make a statement in writing about the determination that:

(a) sets out the Commission's findings on material questions of fact; and

(b) refers to the evidence or other material on which those findings are based; and

(c) provides reasons for the Commission's determination.

Notification of determination

(7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:

(a) a copy of the record of the Commission's determination; and

(b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and

(c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

(8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

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(b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

37M Date of effect of determination

If the Commission determines under section 37L that invalidity service pension is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, invalidity service pension is payable to the person at the rate specified in the determination.

Note: Invalidity service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 37C).

Subdivision E—Rate of invalidity service pension

37N How to work out the rate of a veteran's invalidity service pension

A veteran's invalidity service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under a self-employment program (see Division 9 of Part IIIB).

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Division 5—Partner service pension

Subdivision A—Eligibility for and payability of partner service pension

38 Eligibility for partner service pension

(1) Subject to this section, a person is eligible for a partner service pension if the person:

(a) is a person:

(i) who is a member of a couple; and

(ii) whose partner is a veteran who is receiving an age service pension or invalidity service pension, or who would be receiving such a pension if not for the operation of one or more disqualifying provisions; or

(aa) is a person:

(i) who is a member of a couple; and

(ii) whose partner is a veteran who has rendered qualifying service; and

(iii) who is qualified for an age pension under the Social Security Act; or

(b) is a person in relation to whom the following apply:

(i) subsection (1AA) applies to the person;

(ii) the veteran is receiving an age service pension or an invalidity service pension, or would be receiving such a pension if not for the operation of one or more disqualifying provisions; or

(c) is a person in relation to whom the following apply:

(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

(ia) the veteran, immediately before his or her death, was receiving an age service pension or an invalidity service pension, or would have been receiving such a pension if not for the operation of one or more disqualifying provisions;

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(ii) the person was receiving a partner service pension or a social security pension immediately before the veteran's death; or

(d) is a person in relation to whom the following apply:

(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

(ii) the person had, before the veteran's death, made a claim for a partner service pension which had not been determined at the date of the death;

(iii) the veteran:

(A) was, immediately before his or her death, receiving an age service pension or invalidity service pension; or

(B) had, before his or her death, made a claim for an age service pension or invalidity service pension which had not been determined at the date of the death but which the Commission determines would have been granted if the veteran had not died; or

(e) is a person in relation to whom the following apply:

(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB)) and who has rendered qualifying service;

(ii) the person is qualified for an age pension under the Social Security Act; or

(f) is a person:

(i) who is a member of a couple; and

(ii) whose partner is a veteran who is registered as a member of the pension bonus scheme (see Part IIIAB); or

(g) is a person in relation to whom the following apply:

(i) subsection (1AA) applies to the person;

(ii) the veteran is registered as a member of the pension bonus scheme (see Part IIIAB); or

(h) is a person in relation to whom the following apply:

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(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

(ii) the veteran, immediately before his or her death, was registered as a member of the pension bonus scheme (see Part IIIAB), was receiving an age service pension or an invalidity service pension, or would have been receiving such a pension if not for the operation of one or more disqualifying provisions;

(iii) the person, immediately before the veteran's death, was registered as a member of the pension bonus scheme (see Part IIIAB) or of the corresponding scheme under Part 2.2A of the Social Security Act or was receiving a partner service pension or a social security pension; or

(i) is a person in relation to whom the following apply:

(i) the person is an eligible person in relation to a veteran who has died (see subsection (1AB));

(ii) the person had, before the veteran's death, made a claim for a partner service pension which had not been determined at the date of the death;

(iii) the veteran was, immediately before his or her death, registered as a member of the pension bonus scheme (see Part IIIAB).

(1AA) This subsection applies to a person if:

(a) the person is the non-illness separated spouse of a veteran; or

(b) the following apply:

(i) a relationship between the person and a veteran (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

(ii) the person and the veteran have separated and the person is living separately and apart from the veteran on a permanent basis;

(iii) the separation has not resulted in a determination under subsection 5R(5); or

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(c) the following apply:
(i) the person and a veteran were, in the Commission's opinion (formed as mentioned in section 11A), in a de facto relationship;
(ii) the person and the veteran have separated and the person is living separately and apart from the veteran on a permanent basis;
(iii) the separation has not resulted in a determination under subsection 5R(5);
(iv) the person and the veteran are not within a prohibited relationship; or

(d) the following apply:
(i) the person becomes divorced from a veteran;
(ii) immediately before the divorce, paragraph (a) applied in relation to the person and the veteran; or

(e) the following apply:
(i) a relationship, described in subparagraph (b)(i), between the person and a veteran ceases to be registered under a law of the State or Territory concerned;
(ii) immediately before the cessation, paragraph (b) applied in relation to the person and the veteran.

(1AB) For the purposes of this section, a person is an ***eligible person*** in relation to a veteran who has died if:
(a) the person is the widow or widower of the veteran; or
(b) the following apply:
(i) immediately before the veteran died, a relationship between the person and the veteran (whether of the same sex or a different sex) was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;
(ii) immediately before the veteran died, the person was living separately and apart from the veteran on a permanent basis;

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(iii) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran's death; or

(c) the following apply:

(i) at any time before the veteran's death, the person and the veteran were, in the Commission's opinion (formed as mentioned in section 11A), in a de facto relationship;

(ii) immediately before the veteran died, the person was living separately and apart from the veteran on a permanent basis;

(iii) immediately before the veteran died, the person and the veteran were not within a prohibited relationship;

(iv) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran's death; or

(d) the following apply:

(i) at any time before the veteran's death, the person became divorced from the veteran;

(ii) immediately before the divorce, paragraph (1AA)(a) applied in relation to the person and the veteran;

(iii) the person has not been a member of a couple at any time on or after the first day on which the person was living separately and apart from the veteran on a permanent basis and before the veteran's death; or

(e) the following apply:

(i) at any time before the veteran's death, a relationship, described in subparagraph (b)(i), between the person and the veteran ceased to be registered under a law of the State or Territory concerned;

(ii) immediately before the cessation, paragraph (1AA)(b) applied in relation to the person and the veteran;

(iii) the person has not been a member of a couple at any time on or after the first day on which the person was

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living separately and apart from the veteran on a permanent basis and before the veteran's death.

(1A) For the purposes of subsection (1), a ***disqualifying provision*** is a section of this Part or of Part IIIB or IIIC that has the effect that an age service pension or an invalidity service pension that would otherwise be payable to a person is not, or ceases to be, payable.

(1B) Subject to subsections (1C) and (1D), a person is not eligible for a partner service pension under subsection (1) unless the person:

(a) has a dependent child when he or she makes a claim for the pension; or

(b) if subsection (1BA) applies in relation to the person—has reached 50 years of age; or

(c) has reached qualifying age.

Note: For ***qualifying age*** see section 5Q.

(1BA) This subsection applies in relation to a person if:

(a) paragraph (1)(a) or (f) applies in relation to the person; and

(b) one of the following applies:

(i) the veteran concerned is a veteran to whom subsection 22(4) or section 23 or 25 applies;

(ii) the veteran concerned is a veteran to whom section 22 applies who is in receipt of a pension the rate of which has been increased because the pension is in respect of an incapacity described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1);

(iii) the veteran concerned suffers an impairment (within the meaning of the MRCA) and the Military Rehabilitation and Compensation Commission has determined under Part 2 of Chapter 4 of the MRCA that the impairment constitutes at least 80 impairment points (within the meaning of the MRCA).

(1C) Subsection (1B) does not apply to a person:

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(a) whose claim for a partner service pension had not been determined before 1 October 1995 but who was eligible, at the date of the claim, for the pension; or

(b) who was determined by the Commission, before 1 October 1995, to be eligible for a partner service pension;

unless the person's pension is or has been cancelled for any reason.

(1D) Subsection (1B) does not apply to a person whose partner:

(a) is a veteran to whom section 24 applies; or

(b) is receiving, or eligible to receive, a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA.

Note: A person is still eligible to receive a Special Rate Disability Pension even if the amount of the pension is totally offset under section 204 of the MRCA.

(2) If a veteran:

(a) makes a claim for age service pension or invalidity service pension at a time when the veteran is receiving age pension or disability support pension under the Social Security Act; and

(b) the veteran dies before the claim is determined;

the Commission is, for the purpose of the determination under sub-subparagraph (1)(d)(iii)(B), to disregard the fact that the veteran was receiving social security pension at the time of the claim.

(2A) A person's eligibility under paragraph (1)(b), (c), (d), (e), (g), (h) or (i) ceases if the person becomes a member of a couple.

Note: The person may become eligible for partner service pension under paragraph (1)(a), (aa) or (f).

(2AB) A person's eligibility under paragraph (1)(b) or (g) ceases at the end of the period of 12 months beginning on the first day on which the person was living separately and apart from the veteran concerned on a permanent basis.

(2AC) A person's eligibility under paragraph (1)(b) or (g) does not cease under subsection (2AB) if:

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(a) the person has reached pension age; or
(b) the circumstances specified under subsection (2AD) exist in relation to the person.

Note: For ***pension age*** see section 5Q.

(2AD) The Commission may, by legislative instrument, specify circumstances for the purposes of paragraph (2AC)(b).

(4) If:
(a) a person lodges a proper claim for a partner service pension before meeting the eligibility requirements referred to in subsection (1); and
(b) the person ceases to be an Australian resident after lodging the claim and before the claim is determined;

the person is not eligible for partner service pension unless:
(c) the day on which the person met all the eligibility requirements; and
(d) the day from which partner service pension would, if the claim were granted, be payable;

are earlier than the day on which the person ceased to be an Australian resident.

38AA Disclosure or use of personal information relevant to partner service pension eligibility

(1) An APP entity that holds a record that contains personal information relating to a veteran may:
(a) disclose to the veteran's partner personal information to the effect that, with effect from a specified date, the veteran has become a veteran to whom section 24 applies so as to facilitate the making of a claim, or of a further claim, by the veteran's partner for partner service pension; or
(b) otherwise use that information for the purpose of dealing with a claim, or a further claim, by the veteran's partner for such a pension.

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(2) To avoid doubt, if information is disclosed or used in accordance with subsection (1), the disclosure or use is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.

(3) Unless the contrary intention appears, an expression used in this section has the same meaning as in the *Privacy Act 1988*.

38A Partner service pension may not be payable in some circumstances

(1) Even though a person is eligible for a partner service pension, the pension may not be payable to the person because:

(a) the pension has not commenced to be payable (see section 38B); or

(b) the person is in gaol or in psychiatric confinement (see sections 55 and 55A); or

(c) the person is receiving another pension (see section 38C); or

(d) the pension is cancelled or suspended:

(i) under this Act (see sections 56E, 56EA, 56J and 56K); or

(ii) under Part 3C (schooling requirements) of the *Social Security (Administration) Act 1999*; or

Note: See section 124E of the *Social Security (Administration) Act 1999*.

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

(f) the person or the person's partner is entitled to receive compensation (see Division 3 of Part IIIC).

(2) Subject to subsections (3) and (4), a partner service pension is not payable to a person if his or her partner service pension rate would be nil.

Note: A person whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a person if the person's rate would be nil merely because:

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(a) an election by the person under subsection 60A(1) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under Part 2.23 of the Social Security Act.

(4) Subsection (2) does not apply to a person if the person's rate is nil merely because of the operation of Part IVA.

38B Partner service pension generally not payable before claim

Provisional commencement day

(1) A partner service pension is not payable to a person before the person's provisional commencement day.

(1A) Subject to subsections (2) and (3), a person's provisional commencement day is the day on which the person claims the partner service pension.

Initial incorrect claim followed by proper claim

(2) If:

(a) a person makes a claim (in this subsection called the ***initial claim***) for partner service pension; and

(b) the claim is not a proper claim; and

(c) on the day on which the person makes the initial claim, the person is eligible for partner service pension; and

(d) the person subsequently makes a proper claim:

(i) within 3 months after being notified that the initial claim was not a proper claim; or

(ii) if the person was not so notified—at any time;

then the person's provisional commencement day is the day on which the initial claim was lodged.

After a person makes a claim, the person's partner becomes a special rate disability pensioner

(3) If:

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(a) a person makes a claim for partner service pension; and
(b) that claim is refused; and
(c) that claim would not have been refused if, on the day on which the claim was made, the person's partner was a veteran to whom section 24 applied; and
(d) after that claim is refused, the Secretary notifies the person's partner that he or she is a veteran to whom section 24 applies; and
(e) within 3 months after that notification, the person makes another claim for partner service pension;

then the person's provisional commencement day is the later of:

(f) the day the person made the claim referred to in paragraph (a); and
(g) the day the person's partner became a veteran to whom section 24 applies.

38C Restrictions on dual pensions

(1) A partner service pension is not payable to a person if the person is receiving:
(a) another service pension; or
(aa) a veteran payment; or
(b) a social security pension; or
(c) a social security benefit.

Note: ***Social security benefit*** includes jobseeker payment.

(2) A partner service pension is not payable to a war widow or a war widower.

Note: For ***war widow*** and ***war widower*** see subsection 5E(1).

38CA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

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(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

partner service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for partner service pension

38D Need for a claim

A person who wants to be granted a partner service pension must make a proper claim for that pension.

38E Who can claim?

(1) Subject to subsection (2), the claim must be made by:

(a) the person who wants to be granted the partner service pension; or

(b) with the approval of the person—another person on his or her behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

38F Making a claim

(1) To be a proper claim, the claim must be:

(a) made in writing; and

(b) in accordance with a form approved by the Commission; and

(c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and

(d) lodged at an office of the Department in Australia in accordance with section 5T.

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(1A) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:

(a) the pension bonus scheme (see Part IIIAB); or

(b) the corresponding scheme under Part 2.2A of the Social Security Act.

38H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and

(b) in Australia;

on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

(2) Subsection (1) does not apply to a person's claim if:

(a) the person is outside Australia and is receiving:

(i) age service pension; or

(ii) invalidity service pension; or

(iia) veteran payment; or

(iii) a social security pension; and

(b) the person would, if that pension or payment were cancelled, be eligible for partner service pension.

Note 1: If the person ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 38), the person's eligibility for partner service pension is not affected.

Note 2: For ***social security pension*** see subsection 5Q(1).

38J Claim may be withdrawn

(1) A claimant for partner service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

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(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

38JB Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

38JC Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

38JD Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 38JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

38JE Secretary may require claimant or claimant's partner to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed a partner service pension; and

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(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(1A) If:

(a) a person has claimed a partner service pension; and

(b) the Secretary is satisfied that the claimant's partner (if any) may be entitled to a comparable foreign pension if the partner applied for that pension;

the Secretary may give the claimant a notice that requires the partner to take reasonable action to obtain the comparable foreign pension.

(2) A notice under subsection (1) or (1A):

(a) must be in writing; and

(b) must be given personally or by post; and

(c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:

(a) the claimant is given a notice under subsection (1) or (1A); and

(b) the Commission is satisfied that the claimant, or the claimant's partner, has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

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Subdivision C—Investigation of claim

38K Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a partner service pension, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision D—Consideration and determination of claim

38L Duties of Commission in relation to claim

Determination of claim

(1) When the claim is submitted to the Commission, the Commission must:
  (a) consider the claim; and
  (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
  (c) determine all matters requiring determination before the claim can be determined; and
  (d) determine the claim as provided by subsection (4).

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(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:

(a) the evidence submitted with the claim under section 38K; and

(b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:

(a) first, the Commission must determine whether the pension is to be granted to the person; and

(b) if the Commission determines that the pension is to be granted to the person, the Commission then must:

(i) work out the person's partner service pension rate under section 38N; and

(ii) determine that the pension is payable to the person at that rate.

Record of determination and reasons

(5) When the Commission determines the claim it must make a written record of its determination.

(6) The Commission must also make a statement in writing about the determination that:

(a) sets out the Commission's findings on material questions of fact; and

(b) refers to the evidence or other material on which those findings are based; and

(c) provides reasons for the Commission's determination.

Notification of determination

(7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:

(a) a copy of the record of the Commission's determination; and

(b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and

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(c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

(8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

(b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

38M Date of effect of determination

If the Commission determines under section 38L that partner service pension is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, partner service pension is payable to the person at the rate specified in the determination.

Note: Partner service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 38C).

Subdivision E—Rate of partner service pension

38N How to work out the rate of a person's partner service pension

A person's partner service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

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Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under a self-employment program (see Division 9 of Part IIIB).

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Part IIIA—Income support supplement

Division 1—Eligibility for and payability of income support supplement

45A Eligibility for income support supplement

A person is eligible for income support supplement if the person is a war widow or war widower.

45B Income support supplement may not be payable in some circumstances

(1) Even though a person is eligible for income support supplement, income support supplement may not be payable to the person because:

(a) the pension has not commenced to be payable (see section 45C); or

(b) the person is in gaol or in psychiatric confinement (see sections 55 and 55A); or

(c) a person is receiving an age service pension, an invalidity service pension, a veteran payment, a social security pension, a social security benefit or another income support supplement (see section 45D); or

(d) the pension is cancelled or suspended:

(i) under this Act (see sections 56E, 56EA, 56J and 56K); or

(ii) under Part 3C (schooling requirements) of the *Social Security (Administration) Act 1999*; or

Note: See section 124E of the *Social Security (Administration) Act 1999*.

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

(f) the person or the person's partner is entitled to receive compensation (see Division 3 of Part IIIC).

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(2) Subject to subsection (3), income support supplement is not payable to a person if the person's income support supplement rate would be nil.

Note: A person whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a person if the person's income support supplement rate is nil merely because of the operation of Part IVA.

45C Income support supplement generally not payable before claim

(1) Income support supplement is not payable to a person before the day on which the person claimed, or is taken to have claimed, income support supplement.

Initial incorrect claim followed by proper claim

(2) If:

(a) a person has made a claim (***initial claim***) for income support supplement; and

(b) the claim is not a proper claim; and

(c) on the day on which the person made the initial claim, the person was eligible for income support supplement; and

(d) the person subsequently makes a proper claim:

(i) within 3 months after being notified that the initial claim was not a proper claim; or

(ii) if the person was not so notified—at any time;

then:

(e) subsection (1) does not apply to the person; and

(f) income support supplement is not payable to the person before the day on which the initial claim was lodged.

(3) Subsections (1) and (2) have effect subject to subsection 45R(2).

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45D Restrictions on dual pensions

(1) Income support supplement is not payable to a person if the person is receiving:
  (a) an age service pension; or
  (b) an invalidity service pension; or
  (ba) a veteran payment; or
  (c) a social security benefit.

(1A) Income support supplement is not payable to a person if the person is already receiving an income support supplement.

(2) Income support supplement is not payable to a person if:
  (a) the person:
    (i) elected under subsection 45E(2); or
    (ii) is taken under subsection 45E(3) to have elected;
  to continue to receive a social security pension; and
  (b) that pension has not ceased to be payable to the person under the Social Security Act.

(3) Income support supplement is not payable to a person if:
  (a) the person:
    (i) elected under subsection 45F(2) or 45G(2); or
    (ii) is taken under subsection 45F(3) or 45G(3) to have elected;
  to receive a social security pension in the event that it was granted to him or her; and
  (b) that pension:
    (i) was granted to the person; and
    (ii) has not ceased to be payable to the person under the Social Security Act.

45DA Exclusion of certain participants in ABSTUDY Scheme

If:

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(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

income support supplement is not payable to the person in respect of any part of the period.

45E Election to continue to receive social security pension

(1) This section applies to a war widower or war widow who immediately before the day (***commencing day***) on which this Part commences was receiving a social security pension.

(2) A person to whom this section applies may, on the commencing day, by notice in writing given to the Secretary, elect to continue to receive, on and after that day, the social security pension that he or she was receiving immediately before that day.

Note: As a result of that election, the person is precluded from receiving income support supplement under this Part (see section 45D) for as long as the social security pension continues to be payable to the person.

(3) If:

(a) a person to whom this section applies has failed to make an election under subsection (2); and

(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of the person's incapacity or absence from Australia);

the Commission may determine that the person is to be taken for the purposes of this Act to have elected to continue to receive the social security pension.

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45F Claim for social security pension by war widower or war widow pending at commencement of Part

(1) This section applies to a war widower or war widow if:

(a) before the day (***commencing day***) on which this Part commences, he or she had made a claim for a social security pension under the Social Security Act; and

(b) on the commencement of this Part, the claim has not been determined.

(2) A person to whom this section applies may, on the commencing day, elect to receive the social security pension in the event that it is granted to him or her.

Note: If the social security pension is granted, the person is, as a result of that election, precluded from receiving income support supplement under this Part (see section 45D) for as long as the social security pension continues to be payable to the person.

(3) If:

(a) a person to whom this section applies has failed to make an election under subsection (2); and

(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of a person's incapacity or absence from Australia);

the Commission may determine that the person is to be taken for the purposes of this Act to have elected to receive the social security pension in the event that it is granted to him or her.

45G Review of decision rejecting a claim by war widower or war widow for social security pension pending at commencement of Part

(1) This section applies to a war widower or war widow if:

(a) before the day (***commencing day***) on which this Part commences, he or she had made a claim for a social security pension, and the claim had been rejected, under the Social Security Act; and

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(b) on the commencement of this Part:

(i) the decision to reject the claim (or a decision confirming the decision) is still subject to review following an application for review under Chapter 6 of the Social Security Act; or

(ii) an application for review of the decision to reject the claim (or of a decision confirming the decision) may still be made under Chapter 6 of that Act, as a result of which a favourable determination may be made under that Act that will take effect (if made) as provided under whichever backdating provision is applicable to the determination.

(2) A person to whom this section applies may, on the commencing day, elect to receive the social security pension in the event that it is granted to him or her at the end of the review process.

Note: If the social security pension is granted, the person is, as a result of that election, precluded from receiving income support supplement under this Part (see section 45D) for as long as the social security pension continues to be payable to the person.

(3) If:

(a) a person to whom this section applies has failed to make an election under subsection (2); and

(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of a person's incapacity or absence from Australia);

the Commission may determine that the person is to be taken for the purposes of this Act to have elected to receive the social security pension in the event that it is granted to him or her.

(4) In this section:

backdating provision, in relation to a determination under the Social Security Act relating to a social security pension, means:

(a) in the case of an age pension—subsection 80(2) or (4) of the Social Security Act; or

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(b) in the case of a disability support pension—subsection 115(2) or (4) of the Social Security Act; or

(c) in the case of a wife pension—subsection 184(2) or (4) of the Social Security Act; or

(d) in the case of a carer payment—subsection 209(2) or (4) of the Social Security Act; or

(e) in the case of disability wage supplement—subsection 431(2) or (4) of the Social Security Act.

45H Review of decision concerning rate of social security pension paid to war widower or war widow pending at commencement of Part

(1) This section applies if:

(a) immediately before the day (***commencing day***) on which this Part commences, a social security pension was payable to a war widower or war widow; and

(b) on the commencing day:

(i) a decision (***adverse decision***) under the Social Security Act affecting the rate at which the pension should be paid to the war widower or war widow (or a decision confirming the adverse decision) is still subject to review following an application for review under Chapter 6 of the Social Security Act; or

(ii) an application for review of an adverse decision (or of a decision confirming the adverse decision) may still be made under Chapter 6 of that Act, as a result of which a favourable determination may be made under that Act that will take effect (if made) as provided under whichever backdating provision is applicable to the determination; and

(c) the war widower or war widow does not make an election under subsection 45E(2).

(2) Chapter 6 of the Social Security Act continues to apply until no further application for review of the adverse decision can be made under that Chapter.

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(3) This Act has effect as if on the commencing day:

(a) the war widower or war widow had made a claim for income support supplement under section 45I; and

(b) the Commission had determined under section 45Q that:

(i) the claim was to be granted; and

(ii) income support supplement was payable to the war widower or war widow at a rate equal to the rate (***operative rate***) at which the social security pension was payable to him or her immediately before the commencing day; and

(c) in the event that the operative rate of the social security pension is varied as a result of the review—the war widower or war widow had made, as provided in subsection (4), an application for review of the decision of the Commission concerning the rate of which income support supplement was to be paid to him or her.

(4) For the purposes of paragraph (3)(c), an application for review by the war widower or war widow is taken to have been made:

(a) if immediately before the commencing day the adverse decision under the Social Security Act was being reviewed by the Administrative Appeals Tribunal—to the Administrative Appeals Tribunal under section 175 of this Act; and

(b) in any other case—to the Commission under section 57A of this Act.

(5) In this section:

backdating provision, in relation to a determination under the Social Security Act relating to a social security pension, means:

(a) in the case of an age pension—subsection 80(2) or (4) of the Social Security Act; or

(b) in the case of a disability support pension—subsection 115(2) or (4) of the Social Security Act; or

(c) in the case of a wife pension—subsection 184(2) or (4) of the Social Security Act; or

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(d) in the case of a carer payment—subsection 209(2) or (4) of the Social Security Act; or

(e) in the case of disability wage supplement—subsection 431(2) or (4) of the Social Security Act.

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Division 2—Claim for income support supplement

45I Need for a proper claim

Subject to section 45N, a person is not entitled to be granted income support supplement unless the person has made a proper claim for that supplement.

45J Who can claim?

(1) Subject to subsection (2), the claim must be made by:
  (a) the person (***claimant***) who wants to be granted income support supplement; or
  (b) with the approval of the claimant—another person on the claimant's behalf.

(2) If the claimant is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

45K Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by any evidence that the person making the claim considers may be relevant to the claim; and
  (d) lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:
  (a) the pension bonus scheme (see Part IIIAB); or

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(b) the corresponding scheme under Part 2.2A of the Social Security Act.

45M Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and

(b) in Australia;

on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

(2) Subsection (1) does not apply to a claim if the person making the claim, or on whose behalf the claim is being made:

(a) is outside Australia; and

(b) is receiving a service pension, a veteran payment or a social security pension; and

(c) would, if that pension or payment were cancelled, be eligible for income support supplement.

Note: If the person ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (see section 36), the person's eligibility is not affected.

45N Not necessary to make a claim in certain circumstances

(1) This section applies to:

(a) a war widower or war widow:

(i) to whom section 45E applies; and

(ii) who has not made, or is not taken to have made, an election under subsection 45E(2); and

(b) a war widower or war widow:

(i) to whom section 45F or 45G applies; and

(ii) who has not made, or is not taken to have made, an election under subsection 45F(2) or 45G(2) (as the case may be); and

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(iii) to whom a social security pension is granted; and

(ba) a war widower or war widow who:

(i) is granted a pension under Part II or Part IV, at a rate determined under or by reference to subsection 30(1), on or after the commencement of Part 3 of Schedule 1 to the *Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Act 2004*; and

(ii) immediately before being granted the pension was receiving an age pension under Part 2.2 of the Social Security Act from the Department, acting on behalf of the Commonwealth, under an arrangement with the Department administered by the Minister administering that Part; and

(c) a war widower or war widow who, immediately before being granted a pension under Part II or Part IV at a rate determined under or by reference to subsection 30(1), was receiving a partner service pension or a veteran payment; and

(d) a war widower or war widow who, immediately before receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA), or a lump sum mentioned in subsection 236(5) of the MRCA, was receiving a partner service pension or a veteran payment.

(2) A person to whom this section applies does not have to make a proper claim under section 45I to be entitled to income support supplement unless the Commission asks him or her to do so.

(3) If this section applies to the person other than because of paragraph (1)(ba) and the person is not required by the Commission to make a claim for income support supplement, this Act applies to the person as if:

(a) the person had made a claim for income support supplement under section 45I on the day on which this Part commenced; and

(b) the Commission had, on that day, determined under section 45Q that the claim was to be granted.

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(4) If this section applies to the person because of paragraph (1)(ba), and the person is not required by the Commission to make a claim for income support supplement, this Act applies to the person as if:

(a) the person had made a claim for income support supplement under section 45I on the day on which the person was granted the pension under Part II or Part IV; and

(b) the Commission had, on that day, determined under section 45Q that the claim was to be granted.

45NA Claim may be withdrawn

(1) A claimant for income support supplement or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

45NC Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

45ND Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of a claim has been made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day on which the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

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45NE Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, the claimant, or a person on behalf of the claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under section 45NE has the effect of reactivating the claim. In particular the commencement day of the claim stays the same.

45NF Secretary may require claimant or claimant's partner to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed income support supplement; and

(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(1A) If:

(a) a person has claimed income support supplement; and

(b) the Secretary is satisfied that the claimant's partner (if any) may be entitled to a comparable foreign pension if the partner applied for that pension;

the Secretary may give the claimant a notice that requires the partner to take reasonable action to obtain the comparable foreign pension.

(2) A notice under subsection (1) or (1A):

(a) must be in writing; and

(b) must be given personally or by post; and

(c) must state the period within which reasonable action must be taken.

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(3) The period stated under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:

(a) the claimant is given a notice under subsection (1) or (1A); and

(b) the Commission is satisfied that the claimant, or the claimant's partner, has not taken reasonable action to obtain the comparable foreign pension within the period stated in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

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Division 3—Investigation of claim

45P Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for income support supplement, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:

(a) any evidence supplied by the claimant in support of the claim; and

(b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and

(c) any other documents or other evidence under the control of the Department that are relevant to the claim.

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Division 4—Consideration and determination of claim

45Q Duties of Commission in relation to claim

Determination of claim

(1) When the claim is submitted to the Commission, the Commission must:
  (a) consider the claim; and
  (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
  (c) determine all matters requiring determination before the claim can be determined; and
  (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
  (a) the evidence submitted with the claim under section 45P; and
  (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:
  (a) first, the Commission must determine whether income support supplement is to be granted to the person; and
  (b) if the Commission determines that income support supplement is to be granted to the person, the Commission then must:
    (i) work out the person's income support supplement rate under section 45S; and
    (ii) determine that income support supplement is payable to the person at that rate; and
  (c) if:
    (i) the person's claim states the person is permanently incapacitated for work; and

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(ii) at the time the Commission determines that income support supplement is to be granted to the person, the Commission is satisfied that the person is permanently incapacitated for work in accordance with a determination under section 45QA;

the Commission must determine that income support supplement is payable to the person on the grounds of permanent incapacity.

Note: Section 52-65 of the *Income Tax Assessment Act 1997* provides for payments of income support supplement to be exempt from income tax in certain situations if the supplement is received on the grounds of permanent incapacity.

Record of determination and reasons

(5) When the Commission determines the claim it must make a written record of its determination.

(6) The Commission must also make a statement in writing about the determination that:

(a) sets out the Commission's findings on material questions of fact; and

(b) refers to the evidence or other material on which those findings are based; and

(c) provides reasons for the Commission's determination.

Notification of determination

(7) As soon as practicable after the Commission determines a claim under subsection (1), the Commission must give the person who made the claim:

(a) a copy of the record of the Commission's determination; and

(b) subject to subsection (8), a copy of the statement about the determination referred to in subsection (6); and

(c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

(8) If the statement referred to in paragraph (7)(b) contains any matter that, in the opinion of the Commission:

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(a) is of a confidential nature; or

(b) might, if communicated to the person who made the claim, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

45QA Commission must determine circumstances in which persons are permanently incapacitated for work

(1) The Commission must, by legislative instrument, determine the circumstances in which persons are permanently incapacitated for work for the purposes of subparagraph 45Q(4)(c)(ii).

(2) The Commission may, by legislative instrument, vary or revoke a determination under subsection (1).

45R Date of effect of determination

(1) If the Commission determines under section 45Q that income support supplement is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, income support supplement is payable to the person at the rate specified in the determination.

Note: Income support supplement is not payable to a person who is receiving a service pension, a veteran payment or a social security pension or benefit (see section 45D).

(2) Despite paragraph (1)(a), if:

(a) any of the following applies:

(i) a pension is payable to a person under Part II or IV at a rate determined under or by reference to subsection 30(1) from a particular day (the ***benefit day***); or

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(ii) a lump sum mentioned in subsection 236(5) of the MRCA is payable to a person, in respect of the death of a deceased member on a particular day (the ***benefit day***); or

(iii) the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) is payable to a person from a particular day (the ***benefit day***); and

(b) as a result, a social security pension or a social security benefit that was payable to the person immediately before the benefit day is no longer payable; and

(c) the person makes a claim for income support supplement on a day (the ***ISS claim day***) after the benefit day; and

(d) had the person made a claim for income support supplement on the benefit day, he or she would have been eligible for income support supplement throughout the period beginning on the benefit day and ending on the ISS claim day;

the determination takes effect on, and income support supplement is payable to the person on and from, the benefit day.

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Division 5—Rate of income support supplement

45S How to work out the rate of income support supplement

(1) The rate of income support supplement is to be calculated in accordance with the Rate Calculator.

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Part IIIAA—Veteran payment

45SA Simplified outline

The Commission may make a legislative instrument providing for a payment to a person who has made a claim for certain mental injuries or mental diseases.

The payment is made before the claim is determined.

Payments may also be made under the instrument to the partner of such a person.

45SB Veteran payment

(1) The Commission may, by legislative instrument, make provision for and in relation to the making of a payment (a ***veteran payment***) to a person (the ***primary person***) for whom the following criteria are met:

(a) the primary person has made:

(i) a claim under section 319 of the *Military Rehabilitation and Compensation Act 2004* of a kind covered by paragraph 319(1)(a) of that Act; or

(ii) a claim under section 54 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(b) for a claim under section 319 of the *Military Rehabilitation and Compensation Act 2004*—the claim is for:

(i) an injury (within the meaning of that Act) sustained by the primary person that is a mental injury, including the recurrence of a mental injury; or

(ii) a disease (within the meaning of that Act) contracted by the primary person that is a mental ailment, disorder, defect or morbid condition (whether of sudden onset or

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gradual development), including the recurrence of such an ailment, disorder, defect or morbid condition;

(c) for a claim under section 54 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*—the claim is for:

(i) an injury (within the meaning of that Act) suffered by the primary person that is a mental injury, including an aggravation of a mental injury; or

(ii) an injury (within the meaning of that Act) that is a disease (within the meaning of that Act) suffered by the primary person that is a mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), including an aggravation of such a mental ailment, disorder, defect or morbid condition;

(d) the primary person is incapable of undertaking remunerative work for periods aggregating more than 8 hours per week;

(e) the primary person is an Australian resident, and is in Australia, on the day the claim referred to in paragraph (a) is made;

(f) the primary person has not reached pension age (within the meaning of subsections 5QB(2), (3), (4) and (5)) on the day the claim referred to in paragraph (a) is made;

(g) the Military Rehabilitation and Compensation Commission has not determined the claim.

Payment to partner

(2) An instrument under subsection (1) must also make provision for and in relation to the making of a payment (also a ***veteran payment***) to the primary person's partner (if any) in the following circumstances:

(a) the primary person is receiving a veteran payment referred to in subsection (1);

(b) the primary person's partner is an Australian resident, and is in Australia, on the day the claim referred to in paragraph (1)(a) is made.

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(3) An instrument under subsection (1) may also make provision for the making of a payment (also a ***veteran payment***) to the primary person's partner in the following circumstances:

(a) the primary person dies;

(b) the primary person is receiving a veteran payment referred to in subsection (1) immediately before his or her death;

(c) the primary person's partner is receiving a veteran payment referred to in subsection (2) immediately before that death.

Matters instrument may deal with

(4) Without limiting subsection (1), an instrument under subsection (1) may make provision for and in relation to the following:

(a) further eligibility criteria for a veteran payment;

(b) what a person has to do to get a veteran payment;

(c) the duration of a veteran payment (which may include a period before or after the claim referred to in paragraph (1)(a) is determined);

(d) the conditions that apply to a person receiving a veteran payment;

(e) the suspension or cancellation of a veteran payment;

(f) the effect of the death of the primary person before the Commission has decided whether the primary person is eligible for a veteran payment;

(g) administrative matters, such as determination of entitlement to a veteran payment and how and when payments of a veteran payment will be made.

(5) Without limiting paragraph (4)(a), the criteria may depend on the Commission being satisfied of one or more specified matters.

Rate

(6) The rate of a veteran payment referred to in subsection (1), (2) or (3) is worked out in accordance with the Rate Calculator.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the

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calculation of the component amounts used in the overall rate calculation process.

Restriction on dual payments

(7) A veteran payment referred to in subsection (1), (2) or (3) is not payable to a person if the person:

(a) is receiving a service pension; or

(b) is receiving a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); or

(c) is receiving compensation under Part 3 or 4 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004* or receiving Special Rate Disability Pension under Part 6 of that chapter; or

(d) is receiving compensation under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

(8) A veteran payment referred to in subsection (2) or (3) is not payable to a person if the person is a wholly dependent partner (within the meaning of the *Military Rehabilitation and Compensation Act 2004*) of a deceased member (within the meaning of that Act).

(9) If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

a veteran payment referred to in subsection (1), (2) or (3) is not payable to the person in respect of any part of the period.

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Incorporation of other instruments

(10) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (1) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Part IIIAB—Pension bonus

Division 1—Introduction

45T Simplified outline

The following is a simplified outline of this Part:

- A person may be able to get a single lump-sum ***pension bonus*** if:
  - (a) the person becomes eligible for an age service pension, but defers claiming it; or
  - (b) the person is eligible for a partner service pension after reaching pension age, but defers claiming it; or
  - (c) the person is eligible for income support supplement after reaching qualifying age, but defers claiming it.
- A person who wants to get a pension bonus must ***register*** as a ***member of the pension bonus scheme***. An application for registration cannot be made on or after 1 July 2014.
- To get a pension bonus, a person must accrue between 1 and 5 ***bonus periods*** while deferring age service pension, partner service pension or income support supplement.
- Generally, a bonus period runs for 1 year.
- To accrue a bonus period, the person must ***pass the work test*** for that period.
- To pass the work test for a year, either the person, or the person's partner, must ***gainfully work*** for at least 960 hours during that year.

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- The amount of a person's pension bonus depends on the number of accrued bonus periods and the person's annual rate of age service pension, partner service pension or income support supplement. A person may get a bigger bonus by accruing more bonus periods.
- Division 12 modifies the other provisions of the Part to deal with the case where a person was, before becoming a war widow/war widower—pensioner, either registered, or eligible to be registered, as a member of the pension bonus scheme under Part 2.2A of the *Social Security Act 1991*.

45TA Definitions

In this Part:

accruing member of the pension bonus scheme has the meaning given by section 45TM.

bonus period has the meaning given by section 45TR.

carer payment means carer payment under the Social Security Act.

carer preclusion period has the meaning given by section 45UU.

designated pension means:
(a) age service pension; or
(b) partner service pension; or
(c) income support supplement.

disposal preclusion period has the meaning given by section 45UT or 45UTA.

full-year period means a continuous period of 365 days.

gainful work has the meaning given by sections 45TV to 45TZ (inclusive).

non-accruing member of the pension bonus scheme has the meaning given by sections 45TN and 45TO.

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part-year period means a continuous period of less than 365 days.

passing the work test has the meaning given by sections 45TS and 45TT.

PBBP employment income (short for pension bonus bereavement payment employment income) has the meaning given by section 45UUC.

post-70/75 member of the pension bonus scheme has the meaning given by section 45TQ.

registration as a member of the pension bonus scheme means registration under section 45TI.

special date of eligibility, in relation to a designated pension, has the meaning given by section 45TB.

45TB Special date of eligibility for a designated pension

Age service pension

(1) For the purposes of this Part, a person's ***special date of eligibility*** for an age service pension is the first day on which the person becomes eligible for an age service pension.

Partner service pension

(2) For the purposes of this Part, a person's ***special date of eligibility*** for a partner service pension is worked out as follows:
   (a) identify the day (the ***pension age day***) on which the person reached pension age;
   (b) the special date of eligibility is the first day occurring on or after the pension age day on which the person is eligible for a partner service pension.

Income support supplement

(3) For the purposes of this Part, a person's ***special date of eligibility*** for income support supplement is worked out as follows:

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(a) identify the ***threshold day*** as whichever of the following days is applicable:
  (i) the day the person reached qualifying age;
  (ii) if the person was granted a pension under Part II or IV after the person reached qualifying age because the person is a war widow or war widower—the day the pension commenced;
  (iii) if, after reaching the qualifying age, the person became entitled to be paid the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or a lump sum mentioned in subsection 236(5) of the MRCA—the date of the death of the member in respect of whom the weekly amount or lump sum was payable;

(b) the special date of eligibility is the first day occurring on or after the threshold day on which the person is eligible for income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5).

Note: For ***qualifying age*** see section 5Q.

Residency assumption

(4) For the purposes of this Part, a person's ***special date of eligibility*** for a designated pension is to be worked out on the assumption that:
  (a) being an Australian resident; and
  (b) being in Australia;

were additional requirements for the designated pension.

2 or more special dates of eligibility

(5) For the purposes of this section, if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.

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Division 2—Qualification for pension bonus

45TC Qualification for pension bonus

Deferral of age service pension

(1) A person is qualified for a pension bonus if:

(a) the person starts to receive an age service pension at or after the time when the person makes a claim for the pension bonus; and

(b) the person has not received an age service pension at any time before making a claim for the pension bonus; and

(c) the person is registered as a member of the pension bonus scheme; and

(d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and

(e) the person has not received:

(i) a social security pension (other than a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than an age service pension or a carer service pension); or

(iv) income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5);

at any time after the person's special date of eligibility for an age service pension; and

(f) the person has not already received:

(i) another pension bonus; or

(ii) a pension bonus within the meaning of the Social Security Act.

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Deferral of partner service pension

(2) A person is qualified for a pension bonus if:

(a) the person starts to receive a partner service pension at or after the time when the person makes a claim for the pension bonus; and

(b) the person has not received a partner service pension at any time during the period:

(i) beginning on the person's special date of eligibility for a partner service pension; and

(ii) ending immediately before the time when the person makes a claim for the pension bonus; and

(c) the person is registered as a member of the pension bonus scheme; and

(d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and

(e) the person has not received:

(i) a social security pension (other than a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than a partner service pension or a carer service pension);

at any time after the person's special date of eligibility for a partner service pension; and

(f) the person has not already received:

(i) another pension bonus; or

(ii) a pension bonus within the meaning of the Social Security Act.

Deferral of income support supplement

(3) A person is qualified for a pension bonus if:

(a) the person starts to receive income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) at or after the

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time when the person makes a claim for the pension bonus; and

(b) the person has not received income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) at any time during the period:
   (i) beginning on the person's special date of eligibility for income support supplement; and
   (ii) ending immediately before the time when the person makes a claim for the pension bonus; and

(c) the person is registered as a member of the pension bonus scheme; and

(d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and

(e) the person has not received:
   (i) a social security pension (other than a carer payment); or
   (ii) a social security benefit; or
   (iii) a service pension (other than a carer service pension);
   at any time after the person's special date of eligibility for income support supplement; and

(f) the person has not already received:
   (i) another pension bonus; or
   (ii) a pension bonus within the meaning of the Social Security Act.

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Division 3—Registration as a member of the pension bonus scheme

Subdivision A—Membership of the pension bonus scheme

45TD Application for registration

(1) A person may apply for registration as a member of the pension bonus scheme.

(2) However, a person cannot make an application on or after 1 July 2014.

45TE Making an application

(1) An application:
  (a) must be in writing; and
  (b) must be in accordance with a form approved by the Commission; and
  (c) must be lodged at an office of the Department in Australia in accordance with section 5T.

(2) An application lodged in accordance with section 5T is taken to have been made on a day determined under that section.

45TF Relevant information

(1) An approved form may require the applicant to provide relevant information (see subsection (4)).

(2) The Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, within a specified period, further relevant information. The Commission may refuse to register the applicant until the applicant gives the Secretary the information.

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(3) A period specified for the purposes of subsection (2) must run for at least 14 days after the notice was given.

(4) For the purposes of this section, ***relevant information*** includes (but is not limited to):

(a) information that would be likely to assist the Secretary in advising the applicant about the operation of this Part; and

(b) information that is relevant to determining whether a disposal preclusion period or carer preclusion period has arisen, or is likely to arise, in relation to the applicant; and

(c) a statement of the applicant's present expectations in relation to any or all of the following matters:

(i) the number of bonus periods that the person is likely to accrue while registered as a member of the pension bonus scheme;

(ii) the likely nature and extent of the person's participation in the workforce during those periods;

(iii) if the person has a partner—the likely nature and extent of the partner's participation in the workforce during those periods.

45TH Timing of application and registration

Special date of eligibility for designated pension on or after 1 July 1998

(1) If a person's special date of eligibility for a designated pension occurs on or after 1 July 1998:

(a) the person must lodge an application during the period that begins 13 weeks before the person's special date of eligibility for the designated pension and ends 13 weeks after that date; and

(b) if registration occurs as a result of an application lodged within that period—the registration takes effect on the person's special date of eligibility for the designated pension.

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Special date of eligibility for designated pension before 1 July 1998

(2) If a person's special date of eligibility for a designated pension occurs before 1 July 1998:

(a) the person must lodge an application during the period that begins on the commencement of this section and ends 13 weeks after 1 July 1998; and

(b) if registration occurs as a result of an application lodged within that period—the registration takes effect on 1 July 1998.

2 or more special dates of eligibility

(8) For the purposes of this section, if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.

45TI Registration

(1) If an application is made in accordance with this Subdivision, the Commission must register the applicant as a member of the pension bonus scheme.

(1A) However, the Commission must not register a person as a member of the pension bonus scheme if the person's special date of eligibility for a designated pension occurs on or after 20 September 2009.

(1B) For the purposes of subsection (1A), if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.

(2) This section has effect subject to subsection 45TF(2).

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45TJ Duration of membership

A person's membership of the pension bonus scheme begins on the date on which the registration of that membership takes effect and continues until the membership is cancelled under this Act.

45TK Cancellation of membership

A person's membership of the pension bonus scheme is cancelled if:

(a) the person's claim for pension bonus is determined; or

(b) in a case where the person is eligible for an age service pension—the person starts to receive:

(i) a social security pension (other than a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than an age service pension or a carer service pension); or

(iv) income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5);

at any time after the person's special date of eligibility for an age service pension; or

(c) in a case where the person is eligible for a partner service pension—the person starts to receive:

(i) a social security pension (other than a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than a partner service pension or a carer service pension);

at any time after the person's special date of eligibility for a partner service pension; or

(d) in a case where the person is eligible for income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5)—the person starts to receive:

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(i) a social security pension (other than a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than a carer service pension);

at any time after the person's special date of eligibility for income support supplement; or

(e) the person does not make a proper claim for a pension bonus when the person claims a designated pension; or

(f) the person requests the Commission, in writing, to cancel the person's membership.

45TL Application for registration is not to be treated as a claim

To avoid doubt, an application for registration as a member of the pension bonus scheme is not to be treated as a claim for the purposes of any law of the Commonwealth.

Subdivision B—Classification of membership of the pension bonus scheme

45TM Accruing membership

For the purposes of this Part, a person's membership of the pension bonus scheme at a particular time is ***accruing*** unless the person's membership is non-accruing or post-70/75 at that time.

45TN Non-accruing membership—preclusion periods

Disposal preclusion period

(1) For the purposes of this Part, if a person is subject to a disposal preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is ***non-accruing*** at that time.

Note: ***Disposal preclusion period*** is defined by sections 45UT and 45UTA.

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Carer preclusion period

(2) For the purposes of this Part, if a person is subject to a carer preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is ***non-accruing*** at that time.

Note: ***Carer preclusion period*** is defined by section 45UU.

45TO Non-accruing membership—Commission's discretion

(1) The Commission may, by legislative instrument, declare that, for the purposes of this Part, a specified kind of member of the pension bonus scheme is a ***non-accruing*** member throughout a period ascertained in accordance with the declaration.

(1A) A period ascertained in accordance with a declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act.

(1B) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to a declaration made under subsection (1).

(2) The kinds of members that may be specified under subsection (1) include (but are not limited to):

(a) a member who is a participant in the Community Development Employment Program; and

(b) a member who is in gaol; and

(c) a member who is not a participant in the workforce, but whose partner:

(i) is a participant in the workforce; and

(ii) is not a registered member of the pension bonus scheme or of the corresponding scheme under Part 2.2A of the Social Security Act; and

(iii) intends to become a registered member of the pension bonus scheme or of the corresponding scheme under Part 2.2A of the Social Security Act; and

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(d) a member who is on sick leave for a continuous period of at least 4 weeks and not more than 26 weeks.

45TP Continuity of accruing membership is not broken by a period of non-accruing membership

If:

(a) a person has been an accruing member of the pension bonus scheme for a continuous period (the ***first accruing membership period***) (including a period that is applicable because of one or more applications of this section); and

(b) the first accruing membership period is followed by a continuous period of non-accruing membership of the scheme; and

(c) the period of non-accruing membership is followed by a further continuous period of accruing membership of the scheme (the ***second accruing membership period***);

the first accruing membership period and the second accruing membership period are together taken to constitute a continuous period of accruing membership of the scheme.

45TQ Post-70/75 membership

A person's membership of the pension bonus scheme is ***post-70/75*** at all times on or after:

(a) if the person is eligible for an age service pension or income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) on the day the person reaches age 70—that day; or

(b) in any other case—the day the person reaches age 75.

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Division 4—Accrual of bonus periods

45TR Accrual of bonus periods

Full-year bonus period

(1) The first ***bonus period*** that accrues to a person is the full-year period of the person's accruing membership of the pension bonus scheme:

(a) that began on whichever of the following dates is applicable:

(i) if the person was an accruing member of the pension bonus scheme on the date the person's registration as a member took effect—the date the registration took effect;

(ii) in any other case—the date on which the person first became an accruing member of the pension bonus scheme; and

(b) for which the person passes the work test.

Note: ***Accruing membership*** is defined by section 45TM.

(2) Each succeeding full-year period of the person's accruing membership of the pension bonus scheme:

(a) that is specified in the person's claim for pension bonus; and

(b) for which the person passes the work test;

is a ***bonus period*** that accrues to the person.

Part-year bonus period

(3) A part-year period of the person's accruing membership of the pension bonus scheme is a ***bonus period*** that accrues to the person if:

(a) the person passes the work test for that period; and

(b) the person specifies the period in the person's claim for pension bonus; and

(c) the period begins immediately after the end of a full-year bonus period that accrues to the person; and

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(d) the period is the last bonus period that accrues to the person.

Note: ***Accruing membership*** is defined by section 45TM.

Bonus periods must be consecutive

(4) A person cannot accrue more than one bonus period unless:

(a) the bonus periods are consecutive; or

(b) the bonus periods are separated only by a period of non-accruing membership.

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Division 5—Passing the work test

Subdivision A—The work test

45TS Work test—full-year period

For the purposes of this Part, a person ***passes the work test*** for a full-year period of the person's accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Commission that the total number of hours gainfully worked by the person during that period was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Commission that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Commission that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:

(i) accruing members, or post-70/75 members, of the pension bonus scheme; or

(ii) accruing members, or post-75 members, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least 960 and that at least 640 of that total number of hours were worked in Australia;

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and either:

(d) the person satisfies the Commission that the applicable record-keeping requirements (see section 45UA) have been complied with in relation to that period; or

(e) the Commission decides to waive compliance with the applicable record-keeping requirements in relation to that period.

45TT Work test—part-year period

(1) For the purposes of this Part, a person ***passes the work test*** for a part-year period of the person's accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Commission that the total number of hours gainfully worked by the person during that period was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Commission that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Commission that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:

(i) accruing members, or post-70/75 members, of the pension bonus scheme; or

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(ii) accruing members, or post-75 members, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia;

and either:

(d) the person satisfies the Commission that the applicable record-keeping requirements (see section 45UA) have been complied with in relation to that period; or

(e) the Commission decides to waive compliance with the applicable record-keeping requirements in relation to that period.

(2) For the purposes of this section, the ***pro-rated number of hours*** applicable to a period is worked out using the formula:

$$960 \times \frac{\text{Number of days in the period}}{365}$$

45TU Commission's discretion to treat gainful work outside Australia as gainful work in Australia

(1) If a person satisfies the Commission that:

(a) the person, or the person's partner, has carried on gainful work outside Australia; and

(b) because of special circumstances, the gainful work should be treated as gainful work carried on in Australia;

the Commission may determine that this Part has effect as if the gainful work were carried on in Australia.

(2) The determination has effect accordingly.

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Subdivision B—Gainful work

45TV Gainful work—basic rule

(1) For the purposes of this Part, ***gainful work*** is work for financial gain or reward, whether as an employee, a self-employed person or otherwise, where:

(a) the work involves a substantial degree of personal exertion on the part of the person concerned; and

(b) the work is carried on within or outside Australia.

(2) Subsection (1) is to be ignored in determining the meaning of an expression used in a provision of this Act other than this Part.

45TW Commission's discretion to treat activity as gainful work

(1) If a person satisfies the Commission that:

(a) the person, or the person's partner, has engaged in a particular activity; and

(b) the activity involves a substantial degree of personal exertion on the part of the person or the person's partner, as the case may be; and

(c) the activity does not consist of voluntary work for a charitable, welfare or community organisation; and

(d) because of special circumstances, the activity should be treated as gainful work;

the Commission may determine that this Part has effect as if the activity were ***gainful work***.

(2) The determination has effect accordingly.

45TX Irregular, infrequent and minor absences from a workplace count as gainful work

For the purposes of this Part, if a person is engaged in gainful work, the total hours gainfully worked by the person during a period are to be determined as if the person had been engaged in

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gainful work during any absences from the workplace that are irregular, infrequent and minor.

45TY Management of family financial investments does not count as gainful work

(1) Unless the Commission otherwise determines, work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Part to the extent to which the work consists of the management or administration of one or more financial investments in which any of the following has a legal or equitable interest:

(a) a member of the person's family group (see subsection (2));

(b) a company that is a family company in relation to the person (see subsection (2));

(c) the trustee or trustees of a trust that is a family trust in relation to the person (see subsection (2)).

Note: ***Financial investment*** is defined by subsection 5J(1).

(2) In this section:

family company, in relation to a person, means a company where:

(a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or

(b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or

(c) both:

(i) the company has one or more shareholders; and

(ii) each shareholder is a member of the person's family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has

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no family members, the person is taken to be a family group in his or her own right.

Note: ***Family member*** is defined by subsection 5L(1).

family trust, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

45TZ Domestic duties in relation to a person's place of residence do not count as gainful work

(1) Unless the Commission otherwise determines, work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Part if the work consists of carrying out:

(a) domestic tasks; or

(b) household maintenance tasks; or

(c) gardening tasks; or

(d) similar tasks;

in relation to:

(e) the person's place of residence; or

(f) if the person has 2 or more places of residence—any of those places of residence.

(2) For the purposes of this section, a ***place of residence*** includes:

(a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or

(b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

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45U Evidentiary certificate

Hours worked during full-year period

(1) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

(a) the member was an accruing member of the scheme throughout a specified full-year period; and

(b) the total number of hours gainfully worked by the member during that period was at least a specified number of hours; and

(c) the total number of hours gainfully worked in Australia by the member during that period was at least a specified number of hours.

(2) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

(a) the member was an accruing member of the scheme throughout a specified full-year period; and

(b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least a specified number of hours; and

(c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least a specified number of hours.

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Hours worked during part-year period

(3) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
  (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
  (b) the total number of hours gainfully worked by the member during that period; and
  (c) the total number of hours gainfully worked in Australia by the member during that period.

(4) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
  (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
  (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
    (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
    (ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act; and
  (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
    (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
    (ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act.

Record-keeping requirements

(5) If:

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(a) a person makes a request for a certificate under subsection (1), (2), (3) or (4) relating to a particular period; and

(b) the applicable record-keeping requirements have not been complied with in relation to that period (see section 45UA);

the Commission may refuse to issue the certificate.

Non-accruing membership

(6) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that the member was a non-accruing member of the scheme throughout a specified period.

Evidence

(7) In any proceedings relating to this Part, a certificate under this section is prima facie evidence of the matters in the certificate.

Subdivision C—Record-keeping requirements

45UA Record-keeping requirements

Record-keeping requirements for person

(1) For the purposes of the application of paragraph 45TS(a) or 45TT(1)(a) or subsection 45U(1) or (3) to a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

(a) in a case where the person has:

(i) been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the person during that period; or

(ii) lodged an income tax return that relates to any gainful work carried on by the person during that period;

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the person would be in a position to produce a copy of the certificate or of the return, as the case may be, to the Secretary if the Secretary were to require the person to produce that copy; and

(b) both:

(i) the person has kept a recognised work record (see subsection (3)) in relation to gainful work carried on by the person during that period; and

(ii) the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Record-keeping requirements for partner of person

(2) For the purposes of the application of paragraph 45TS(b) or (c) or 45TT(1)(b) or (c) or subsection 45U(2) or (4) to a partner of a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

(a) in a case where the partner has been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

the person would be in a position to produce a copy of the certificate to the Secretary if the Secretary were to require the person to produce that copy; and

(b) in a case where the partner has lodged an income tax return that relates to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

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(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

the person would be in a position to produce a copy of the return to the Secretary if the Secretary were to require the person to produce that copy; and

(c) in any case—the partner has kept a recognised work record (see subsection (3)) in relation to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

and the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Recognised work record

(3) For the purposes of this section, a ***recognised work record***, in relation to a person, is a written statement signed by the person that sets out, in relation to gainful work carried on by the person during a particular period:

(a) the nature of the gainful work; and

(b) the dates on which the gainful work was carried on; and

(c) the total number of hours gainfully worked; and

(d) the total number of hours gainfully worked in Australia; and

(e) in a case where any of the gainful work was carried on in the capacity of employee—the name or names of the employer or employers concerned; and

(f) such other particulars as the Secretary requires.

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Division 6—Amount of pension bonus

45UB How to calculate the amount of pension bonus

(1) To calculate the amount of a person's pension bonus:

(a) work out which of the person's bonus periods count as qualifying bonus periods (see section 45UC);

(b) work out the person's overall qualifying period (see section 45UD);

(c) work out the person's pension multiple (see section 45UE);

(d) work out the person's annual pension rate (see section 45UF);

(e) apply the appropriate formula in section 45UG.

Note: ***Bonus period*** is defined by section 45TR.

(2) For the purposes of this Division, a number of years is to be calculated to 3 decimal places. However, if a number worked out in accordance with this subsection would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the number is to be increased by 0.001.

45UC Qualifying bonus periods

(1) For the purposes of this Division, if a person has accrued only one bonus period, that bonus period is the person's ***qualifying bonus period***.

(2) For the purposes of this Division, if a person has accrued only 2 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(3) For the purposes of this Division, if a person has accrued only 3 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

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(4) For the purposes of this Division, if a person has accrued only 4 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(5) For the purposes of this Division, if a person has accrued only 5 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(6) For the purposes of this Division, if:

(a) a person has accrued more than 5 bonus periods; and

(b) the last bonus period is a full-year period;

each of the 5 most recent bonus periods are ***qualifying bonus periods***.

(7) For the purposes of this Division, if:

(a) a person has accrued more than 5 bonus periods; and

(b) the last bonus period is a part-year period;

each of the 5 most recent full-year bonus periods are ***qualifying bonus periods***.

45UD Overall qualifying period

(1) For the purposes of this Division, if a person has only one qualifying bonus period, that period is the person's ***overall qualifying period***.

(2) For the purposes of this Division, if a person has 2 or more qualifying bonus periods, the person's ***overall qualifying period*** is the period:

(a) beginning at the start of the first qualifying bonus period; and

(b) ending at the end of the last qualifying bonus period.

However, any period of non-accruing membership of the pension bonus scheme is taken not to form part of the person's overall qualifying period.

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45UE Pension multiple

For the purposes of this Division, a person's ***pension multiple*** is worked out using the formula:

$$0.094 \times \frac{\text{No. of years in the person's overall qualifying period}}{}$$

45UF Annual pension rate

(1) For the purposes of this Division, a person's ***annual pension rate*** is set out in the following table:

Annual pension rate

Item	In this case:	The person's annual pension rate is:
1	The person: (a) is granted an age service pension or a partner service pension; and (b) is not permanently blind; and (c) is not a war widow/war widower—pensioner	the rate that would be the person's provisional payment rate under method statement 1 in subpoint SCH6-A1(2), ascertained as at the date of the grant, if it were assumed that the person's maximum payment rate were the sum of: (a) the person's maximum basic rate under Module B of the Rate Calculator; and (b) the person's pension supplement basic amount
2	The person: (a) is granted an age service pension or a partner service pension; and (b) is permanently blind; and (c) is not a war widow/war widower—pensioner	the sum of: (a) the person's maximum basic rate under Module B of the Rate Calculator; and (b) the person's pension supplement basic amount; ascertained as at the date of the grant

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Annual pension rate		
Item	**In this case:**	**The person's annual pension rate is:**
3	The person: (a) is granted an age service pension; and (b) is not permanently blind; and (c) is a war widow/war widower—pensioner	the lesser of the following rates (or, if the rates are the same, the first rate): (a) the person's ceiling rate under point SCH6-A4, ascertained as at the date of the grant; (b) the rate that would be the person's provisional payment rate under method statement 1 in subpoint SCH6-A1(2), ascertained as at the date of the grant, if it were assumed that the method statement applied and the person's maximum payment rate were the sum of: (i) the person's maximum basic rate under Module B of the Rate Calculator; and (ii) the person's pension supplement basic amount
4	The person: (a) is granted an age service pension; and (b) is permanently blind; and (c) is a war widow/war widower—pensioner	the person's ceiling rate under point SCH6-A4, ascertained as at the date of the grant

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Annual pension rate		
Item	**In this case:**	**The person's annual pension rate is:**
5	The person: (a) is granted income support supplement; and (b) is not permanently blind	the rate that would be the person's provisional payment rate under method statement 5 in subpoint SCH6-A1(6), ascertained as at the date of the grant, if it were assumed that the person's maximum payment rate were the sum of: (a) the person's maximum basic rate under Module B of the Rate Calculator; and (b) the person's pension supplement basic amount
6	The person: (a) is granted income support supplement; and (b) is permanently blind	the person's ceiling rate under point SCH6-A4, ascertained as at the date of the grant

(2) The annual pension rate is to be worked out under subsection (1) by disregarding the amendments made by Part 1 of Schedule 1 to the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020*.

45UG Amount of pension bonus

No change in couple status during overall qualifying period

(1) If:

(a) a person either:

(i) was a member of a couple throughout the person's overall qualifying period; or

(ii) was not a member of a couple at any time during that period; and

(b) the person remained eligible for the same pension throughout that period; and

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(c) if the person is a war widow/war widower—pensioner—the person was such a person during the whole of the person's overall qualifying period;

the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

$$\text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{}$$

(1A) If:

(a) a person either:

(i) was a member of a couple throughout the person's overall qualifying period; or

(ii) was not a member of a couple at any time during that period; and

(b) the person is a war widow/war widower—pensioner; and

(c) the person was not a war widow/war widower—pensioner throughout some or all of the person's overall qualifying period;

the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

$$\text{Apportioned amount} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{}$$

where:

apportioned amount has the meaning given by section 45UIA.

Change in couple status during overall qualifying period

(2) If neither subsection (1) nor (1A) applies to a person, the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

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$$\left[\text{Annual notional single pension rate} \times \text{Pension multiple} \times \text{No. of single years during overall qualifying period}\right] + \left[\text{Annual notional partnered pension rate} \times \text{Pension multiple} \times \text{No. of partnered years during overall qualifying period}\right]$$

where:

annual notional single pension rate has the meaning given by section 45UH.

annual notional partnered pension rate has the meaning given by section 45UI.

(3) For the purposes of this section:

(a) the number of ***single years*** during the overall qualifying period is the number of years during the overall qualifying period when the person was not a member of a couple; and

(b) the number of ***partnered years*** during the overall qualifying period is the number of years during the overall qualifying period when the person was a member of a couple.

Rounding up

(4) An amount calculated under subsection (1), (1A) or (2) is to be rounded to the nearest 10 cents (with 5 cents being rounded up).

45UH Annual notional single pension rate

(1) For the purposes of this Division, a person's ***annual notional single pension rate*** is set out in the following table:

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Annual notional single pension rate		
Item	**In this case:**	**The person's annual notional single pension rate is:**
1	The person: (a) is not permanently blind; and (b) is not a war widow/war widower—pensioner	the sum of the adjusted percentage of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date
2	The person: (a) is permanently blind; and (b) is not a war widow/war widower—pensioner	the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, ascertained as at the date of grant of the designated pension, if it were assumed that the person was not a member of a couple as at that date
3	The person: (a) is a war widow/war widower—pensioner; and (b) was a war widow/war widower—pensioner throughout so much of the overall qualifying period as occurred when the person was not a member of a couple	the person's annual pension rate worked out as at the date of grant of the designated pension
4	The person: (a) is a war widow/war widower—pensioner; but (b) was not a war widow/war widower—pensioner for some or all of the overall qualifying period occurring while the person was not a member of a couple	the apportioned single amount worked out under subsection (2)

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(2) For the purposes of this section, the ***apportioned single amount*** is:

$$\left[\frac{\text{Period not a war widow or war widower}}{\text{Single part of overall qualifying period}} \times \text{Provisional payment rate}\right] + \left[\frac{\text{Period a war widow or war widower}}{\text{Single part of overall qualifying period}} \times \text{Annual pension rate}\right]$$

where:

period not a war widow or war widower is the number of days in so much of the single part of overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

single part of overall qualifying period is the number of days in so much of the overall qualifying period as occurred when the person was not a member of a couple.

provisional payment rate is:

(a) if the person:

(i) has, during some or all of the single part of the person's overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) the person is not permanently blind;

the sum of the adjusted percentage of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

(b) if the person:

(i) has, during some or all of the single part of the person's overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) the person is permanently blind;

the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, worked out as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

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(c) if the person:

(i) has, during some or all of the single part of the person's overall qualifying period, deferred an age pension; and

(ii) is not permanently blind;

the sum of:

(iii) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1 of the *Social Security Act 1991*; and

(iv) the person's pension supplement basic amount;

worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

(d) if the person:

(i) has, during some or all of the single part of the person's overall qualifying period, deferred an age pension; and

(ii) is permanently blind;

the sum of:

(iii) the maximum basic rate under Table B in point 1065-B1 of the *Social Security Act 1991*; and

(iv) the person's pension supplement basic amount;

worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date.

period a war widow or war widower is the number of days in so much of the single part of overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

annual pension rate is the person's annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

Note: There may be circumstances where one or other of the bracketed parts of the formula will have a nil value.

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(3) For the purposes of this section, a person's ***adjusted percentage*** is the percentage worked out using the following formula (for rounding up, see subsection (4)):

$$\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100$$

where:

maximum basic rate is the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, ascertained as at the date of grant of the designated pension.

(4) A percentage worked out under subsection (3) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (3) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

45UI Annual notional partnered pension rate

(1) For the purposes of this Division, a person's ***annual notional partnered pension rate*** is set out in the following table:

Annual notional partnered pension rate

Item	In this case:	The person's annual notional partnered pension rate is:
1	The person: (a) is not permanently blind; and (b) is not a war widow/war widower—pensioner	the sum of the adjusted percentage of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date

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Annual notional partnered pension rate		
Item	**In this case:**	**The person's annual notional partnered pension rate is:**
2	The person: (a) is permanently blind; and (b) is not a war widow/war widower—pensioner	the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, ascertained as at the date of grant of the designated pension, if it were assumed that the person was a member of a couple as at that date
3	The person: (a) is a war widow/war widower—pensioner; and (b) was a war widow/war widower—pensioner throughout so much of the overall qualifying period as occurred when the person was a member of a couple	the person's annual pension rate worked out as at the date of grant of the designated pension
4	The person: (a) is a war widow/war widower—pensioner; but (b) was not a war widow/war widower—pensioner for some or all of the overall qualifying period occurring while the person was a member of a couple	the apportioned partnered amount worked out under subsection (2)

(2) For the purposes of this section, the ***apportioned partnered amount*** is:

$$\left[\frac{\text{Period not a war widow or war widower}}{\text{Partner part of overall qualifying period}} \times \text{Provisional payment rate}\right] + \left[\frac{\text{Period a war widow or war widower}}{\text{Partner part of overall qualifying period}} \times \text{Annual pension rate}\right]$$

where:

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period not a war widow or war widower is the number of days in so much of the partner part of overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

partner part of overall qualifying period is the number of days in so much of the overall qualifying period as occurred when the person was a member of a couple.

provisional payment rate is:

(a) if the person:

(i) has, during some or all of the partnered part of the person's overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) is not permanently blind;

the sum of the adjusted percentage of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or

(b) if the person:

(i) has, during some or all of the partnered part of the person's overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) the person is permanently blind;

the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, worked out as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or

(c) if the person:

(i) has, during some or all of the partnered part of the person's overall qualifying period, deferred an age pension; and

(ii) is not permanently blind;

the sum of:

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(iii) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1 of the *Social Security Act 1991*; and

(iv) the person's pension supplement basic amount;

worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or

(d) if the person:

(i) has, during some or all of the partnered part of the person's overall qualifying period, deferred an age pension; and

(ii) is permanently blind;

the sum of:

(iii) the maximum basic rate under Table B in point 1065-B1 of the *Social Security Act 1991*; and

(iv) the person's pension supplement basic amount;

worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date.

period a war widow or war widower is the number of days in so much of the partner part of overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

annual pension rate is the person's annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

Note: There may be circumstances where one or other of the bracketed parts of the formula will have a nil value.

(3) For the purposes of this section, a person's ***adjusted percentage*** is the percentage worked out using the following formula (for rounding up, see subsection (4)):

$$\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100$$

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where:

maximum basic rate is the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, ascertained as at the date of grant of the designated pension.

(4) A percentage worked out under subsection (3) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (3) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

45UIA Apportioned amount

For the purposes of subsection 45UG(1A), the ***apportioned amount*** is:

$$\left[\frac{\text{Period not a war widow or war widower}}{\text{Overall qualifying period}} \times \text{Provisional payment rate}\right] + \left[\frac{\text{Period a war widow or war widower}}{\text{Overall qualifying period}} \times \text{Annual pension rate}\right]$$

where:

annual pension rate is the person's annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

period a war widow or war widower is the number of days in so much of the overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

period not a war widow or war widower is the number of days in so much of the overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

provisional payment rate is:

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(a) if the person has, during some or all of the person's overall qualifying period, deferred:
  (i) an age service pension; or
  (ii) a partner service pension; and
the person is not permanently blind—the person's provisional payment rate under method statement 1 in subpoint SCH6-A1(2), worked out as at the date of grant of the designated pension, if it were assumed that the person's maximum payment rate were the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount; or

(b) if the person has, during some or all of the person's overall qualifying period, deferred:
  (i) an age service pension; or
  (ii) a partner service pension; and
the person is permanently blind—the sum of the person's maximum basic rate under point SCH6-B1 and the person's pension supplement basic amount, worked out as at the date of grant of the designated pension; or

(c) if the person has, during some or all of the person's overall qualifying period, deferred age pension and is not permanently blind—the person's provisional annual payment rate under the method statement in point 1064-A1 of the *Social Security Act 1991*, worked out as at the date of grant of the designated pension, if it were assumed that the person's maximum payment rate were the sum of the person's maximum basic rate under Table B in point 1064-B1 of the *Social Security Act 1991* and the person's pension supplement basic amount; or

(d) if the person has, during some or all of the person's overall qualifying period, deferred age pension and is permanently blind—the sum of the maximum basic rate under Table B in point 1065-B1 of the *Social Security Act 1991* and the person's pension supplement basic amount, worked out as at the date of grant of the designated pension.

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Note: If the person did not accrue any pension bonus in relation to the designated pension, the latter bracketed part of the formula for the ***apportioned amount*** will have a nil value.

45UIB Top up of pension bonus for increased rate of designated pension

(1) The Commission may determine (a ***top up determination***) that a person's pension bonus is to be increased if:

(a) the Commission makes a determination (a ***rate determination***) increasing the rate of the person's designated pension; and

(b) the rate determination takes effect on a day that is not more than 13 weeks after the date (the ***effective date***) on which the determination granting the pension bonus takes effect; and

(c) the rate determination is made because of a reduction since the effective date in either or both of the following:

(i) the value of the person's assets;

(ii) the person's ordinary income.

Note: Any reduction in the value of a person's assets or the person's income will be determined by applying the assets test and the ordinary/adjusted income test in the Rate Calculator in Schedule 6.

(2) The person's pension bonus is increased by the difference between:

(a) the person's amount of pension bonus on the effective date; and

(b) the amount that would have been the person's amount of pension bonus on the effective date if the rate of the person's designated pension on that date had been the highest rate at which the designated pension was payable to the person during the 13 weeks after the effective date.

(3) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.

(4) A top up determination is not a legislative instrument.

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45UIC Top up of pension bonus in specified circumstances

(1) The Commission may determine (a ***top up determination***) that a person's pension bonus is to be increased if:

(a) the Commission makes a determination (a ***rate determination***) increasing the rate of the person's designated pension; and

(b) the rate of the designated pension is increased in circumstances specified in an instrument made under subsection (6).

(2) The person's pension bonus is increased by the amount specified by the Commission in the top up determination.

(3) The Commission must not specify an increase that would be greater than the difference between:

(a) the person's amount of pension bonus on the day on which the determination granting the bonus takes effect; and

(b) the amount that would have been the person's amount of pension bonus on that day if the rate of the person's designated pension on that day had been the rate specified in the rate determination.

(4) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.

(5) A top up determination is not a legislative instrument.

(6) The Commission may, by legislative instrument, specify circumstances (other than circumstances specified in subsection 45UIB(1)) for the purposes of paragraph (1)(b).

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Division 7—Claim for pension bonus

45UJ Need for a claim

A person who wants to be granted a pension bonus must make a proper claim for the bonus.

45UK Proper claim

(1) To be a proper claim, a claim for pension bonus must be:
  (a) in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) one of the following:
    (i) attached to, or submitted in relation to, a proper claim made by the person for a designated pension;
    (ii) made in accordance with an invitation under subsection (3);
    (iii) the subject of a determination under subsection (5); and
  (d) lodged at an office of the Department in Australia in accordance with section 5T within the applicable lodgment period (see section 45UL).

(1A) A claim for pension bonus can only be attached to a proper claim for a designated pension in accordance with subparagraph (1)(c)(i) if neither claim is transmitted electronically.

(1B) A claim for pension bonus lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) A claim for pension bonus is a proper claim even though it is not certain whether the person will start to receive a designated pension at or after the time when the person makes the claim. The claim has effect as a claim that is contingent on the person receiving a designated pension.

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(3) If:

(a) a person makes a proper claim for a designated pension; and

(b) the claim is in accordance with a form that does not require the claimant to disclose whether the claimant is a registered member of:

(i) the pension bonus scheme; or

(ii) the corresponding scheme under Part 2.2A of the Social Security Act; and

(c) the person is, to the knowledge of the Secretary, registered as a member of the pension bonus scheme; and

(d) a claim by the person for pension bonus is not attached to the claim for the designated pension;

the Secretary must give the claimant a written notice inviting the claimant to lodge a claim for pension bonus at an office of the Department in Australia in accordance with section 5T, within such period after the lodgment of the claim for the designated pension as is specified in the invitation.

(3A) A claim for pension bonus lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(4) If a claim for pension bonus is made in accordance with an invitation under subsection (3), this Part (other than this section) has effect as if the person had claimed the pension bonus at the same time as the person claimed the designated pension.

(5) If:

(a) a person who is a registered member of the pension bonus scheme lodges a claim for a designated pension; and

(b) a claim for pension bonus for the person is lodged after the claim for the designated pension; and

(c) the Commission is satisfied that, having regard to guidelines (if any) made under subsection (6), special circumstances apply in relation to the lodgment of the claim for pension bonus;

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the Commission may determine that this Part (other than this section) has effect as if the claim for the pension bonus had been made at the time the person claimed the designated pension.

(6) The Commission may, by legislative instrument, make guidelines for the purposes of subsection (5).

45UL Lodgment period for claim

(1) This section sets out rules for determining the period (the ***lodgment period***) within which a claim for pension bonus must be made.

(1A) However, the Commission may in special circumstances allow a person a longer period to make a claim than the period determined under this section. If the Commission does so, the ***lodgment period*** for the person's claim is the period allowed by the Commission.

(1AB) Subsection (1A) does not apply in relation to a claim for which the lodgment period is determined under subsection (3).

Lodgment period where last bonus period is a full-year period

(2) If a person's last bonus period is a full-year period, the ***lodgment period*** applicable to the person's claim for pension bonus is the period of 13 weeks beginning at the end of that bonus period. However, this rule does not apply if:

(a) the person is an exempt partnered person (see subsection (8)) as at the end of the person's last bonus period; or

(b) the person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period; or

(c) the person is a post-70/75 member of the pension bonus scheme and has a post-70/75 work period (see subsection (9)).

Note: For the rule in these cases, see subsections (5), (6) and (7).

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Lodgment period where last bonus period is a part-year period

(3) If a person's last bonus period is a part-year period, the ***lodgment period*** applicable to the person's claim for pension bonus is:

(a) the period of 13 weeks beginning at the end of that bonus period; or

(b) if the Commission allows a longer period—that longer period.

However, this rule does not apply if:

(c) the person is an exempt partnered person (see subsection (8)) as at the end of the person's last bonus period; or

(d) the person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period; or

(e) the person is a post-70/75 member of the pension bonus scheme and has a post-70/75 work period (see subsection (9)).

Note: For the rule in these cases, see subsections (5), (6) and (7).

(4) If:

(a) subsection (3) applies to a person's claim for pension bonus; and

(b) the claim is lodged within a period allowed under paragraph (3)(b);

Division 6 has effect, in relation to the calculation of the amount of that pension bonus, as if the person had not accrued the part-year bonus period.

Lodgment period for exempt partnered person

(5) If a person is an exempt partnered person as at the end of the person's last bonus period because the person is a member of a couple, the ***lodgment period*** applicable to the person's claim for pension bonus is the period:

(a) beginning at the end of that bonus period; and

(b) ending at:

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(i) the time of the last occasion on which the person's partner could have lodged a claim for a pension bonus; or

(ii) the end of the period of 13 weeks after the person ceases to be a member of the same couple (whether because of the death of the person's partner or for any other reason);

whichever comes first.

Lodgment period for non-accruing member

(6) If a person's membership of the pension bonus scheme becomes non-accruing immediately after the end of the person's last bonus period, the ***lodgment period*** applicable to the person's claim for pension bonus is the period:

(a) beginning at the end of the person's last bonus period; and

(b) ending 13 weeks after the time when the person's membership of the scheme ceases to be non-accruing.

Lodgment period for post-70/75 member who has a post-70/75 work period

(7) If a post-70/75 member of the pension bonus scheme has a post-70/75 work period, the ***lodgment period*** applicable to the person's claim for pension bonus is the period of 13 weeks beginning at the end of the period nominated in the claim as the person's post-70/75 work period.

Exempt partnered person

(8) For the purposes of this section, a person is an ***exempt partnered person*** at a particular time if, at that time, the person is a member of a couple, and:

(a) the person's partner is an accruing or non-accruing member of the pension bonus scheme; or

(b) the person's partner is an accruing or non-accruing member of the corresponding scheme under Part 2.2A of the Social Security Act.

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Post-70/75 member with a post-70/75 work period

(9) For the purposes of this section, a post-70/75 member of the pension bonus scheme has a ***post-70/75 work period*** if:

(a) the person's claim for pension bonus nominates a particular period as the person's post-70/75 work period; and

(b) the nominated period begins immediately after the end of the person's last bonus period; and

(c) if it were assumed that the person had been an accruing member of the pension bonus scheme throughout each test period that is applicable to the person, the person would have passed the work test for each test period.

Note: ***Test period*** is defined by subsection (10).

(10) For the purposes of subsection (9), to work out what is a ***test period***:

(a) identify the ***extended period***, which is that part of the nominated period when the person was neither:

(i) subject to a carer preclusion period; nor

(ii) covered by a declaration under section 45TO;

(b) if the extended period is 365 days or less—the extended period is the only test period;

(c) if the extended period is longer than 365 days—each of the following periods is a test period:

(i) the full-year period beginning at the start of the extended period;

(ii) if 2 or more succeeding full-year periods are included in the extended period—each of those full-year periods;

(iii) the remainder (if any) of the extended period.

(11) In addition to its effect apart from this subsection, section 45U (evidentiary certificates) also has the effect it would have if each reference in paragraph 45U(1)(a), (2)(a), (3)(a) or (4)(a) to an accruing member of the pension bonus scheme were a reference to a post-70/75 member of the scheme.

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Last bonus period

(12) For the purposes of this section, if a person has accrued only one full year bonus period, that period is the person's ***last bonus period***.

45UM Withdrawal of claim

(1) A claimant for a pension bonus may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken not to have been made.

(3) A withdrawal may be made orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(3A) A withdrawal made by lodging a document in accordance with section 5T is taken to have been so made on a day determined in accordance with that section.

(4) If:

(a) a person claims both a pension bonus and a designated pension; and

(b) the claim for the designated pension is withdrawn;

the claim for pension bonus is taken to have been withdrawn.

(5) If:

(a) a person claims both a pension bonus and a designated pension; and

(b) the claim for the designated pension is rejected as a direct or indirect result of the operation of Subdivision BA or BB of Division 11 of Part IIIB (dispositions of assets);

the claim for pension bonus is taken to have been withdrawn.

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Division 8—Determination of claim

45UN Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a pension bonus, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission, it must be accompanied by:

(a) any evidence supplied by the claimant in support of the claim; and

(b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and

(c) any other documents or other evidence under the control of the Department that are relevant to the claim.

45UO Commission to determine claim

(1) The Commission must, in accordance with this Act, determine a claim for pension bonus.

(2) If a person claims both a pension bonus and a designated pension, the Commission must not determine the claim for pension bonus until the claim for the designated pension has been granted.

45UP Grant of claim

The Commission must determine that a claim for pension bonus is to be granted if the Commission is satisfied that the person is qualified for the pension bonus.

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Division 9—Payment of pension bonus

45UQ Payment of pension bonus

If a claim for pension bonus is granted, the bonus is payable to the person concerned on:

(a) the first pension payday after the grant; or

(b) if the Commission considers that it is not practicable to pay the bonus on that payday—the next practicable day.

45UR Payment of bonus after death

(1) This section sets out the only circumstances in which a pension bonus will be payable after the death of the person concerned.

Note: A person's surviving partner may be qualified for a pension bonus bereavement payment under Division 11A of this Part.

Later top up of pension bonus received before death

(1A) If:

(a) a person claims a pension bonus; and

(b) the person dies; and

(c) at the time of the person's death, the person had received the bonus; and

(d) after the person's death, the Commission determines that the person's bonus is to be increased under section 45UIB or 45UIC;

the increase is payable to the legal personal representative of the person.

Claim granted before death

(2) If:

(a) a person claims a pension bonus; and

(b) the person dies; and

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(c) at the time of the person's death, the claim had been granted, but the person had not received the bonus;

the bonus is payable to the legal personal representative of the person.

Claim not granted before death

(3) If:

(a) a person claims a pension bonus; and

(b) the person dies; and

(c) at the time of the person's death, the claim had not been determined;

then:

(d) the Commission must determine the claim after the person's death as if the person had not died; and

(e) if the claim is granted—the bonus is payable to the legal personal representative of the person.

(4) If:

(a) under paragraph (3)(d), the Commission is required to determine a claim for pension bonus after a person's death; and

(b) at the time of the person's death, the person's claim for a designated pension had not been determined;

then, in determining the claim for pension bonus, this Part is modified as set out in the following table:

Modifications

Item	This provision:	Is modified in this way:
1	Paragraph 45TC(1)(a)	The condition in this paragraph is taken to be satisfied if the person would have started to receive an age service pension if the person had not died.

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Modifications		
Item	**This provision:**	**Is modified in this way:**
2	Paragraph 45TC(2)(a)	The condition in this paragraph is taken to be satisfied if the person would have started to receive a partner service pension if the person had not died.
3	Paragraph 45TC(3)(a)	The condition in this paragraph is taken to be satisfied if the person would have started to receive income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) if the person had not died.
4	Division 6	A reference in the Division to a particular rate is taken to be a reference to the rate that would have been applicable to the person if the person had not died.
5	Division 6	A reference in the Division to the date of grant of the designated pension is taken to be a reference to the date that the designated pension would have been granted if the person had not died.
6	Subsection 45UK(2)	The subsection is to be disregarded.
7	Subsection 45UO(2)	The subsection is to be disregarded.

Top up of pension bonus also payable

(4A) If a pension bonus is payable to the legal personal representative of a person under subsection (2) or (3), any increase in that bonus determined by the Commission under section 45UIB or 45UIC is also payable to that legal personal representative.

Liability of Commonwealth

(5) If a pension bonus is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus.

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Division 10—Protection of pension bonus

45US Pension bonus to be absolutely inalienable

(1) A pension bonus is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise. This subsection has effect subject to subsections (2) and (3) and section 58J.

Deduction from bonus to pay tax debts that are unrelated to the bonus

(2) The Commission may make a deduction from a pension bonus payable to a person if the person asks the Commission:

(a) to make the deduction; and

(b) to pay the amount to be deducted to the Commissioner of Taxation.

Note 1: The Commission must make deductions from a person's pension or pension bonus if requested by the Commissioner of Taxation—see section 58J.

Note 2: Under the *Income Tax Assessment Act 1997*, pension bonus is exempt from income tax.

Deduction from bonus at recipient's request

(3) The Commission may make a deduction from a pension bonus payable to a person if the person consents under paragraph 205(2)(e) to the Commission making the deduction.

Note: Paragraph 205(2)(e) enables the Commission to recover a debt from a person other than the debtor if the person is receiving a benefit under this Act.

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Division 11—Preclusion periods

45UT Disposal preclusion period—dispositions before 1 July 2002

(1) For the purposes of this Part, if:

(a) either:

(i) a person has, during a designated year of the person, disposed of an asset of the person; or

(ii) the partner of a person has, during a designated year of the person, disposed of an asset of the partner; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person and/or the person's partner during that designated year, exceeds $10,000;

the person is subject to a ***disposal preclusion period*** throughout the period of 5 years that starts on the day on which the disposition referred to in paragraph (a) took place.

Note: ***Designated year*** is defined by subsection (3).

(1A) This section applies only to dispositions of assets that took place before 1 July 2002.

(2) For the purposes of this Part, if:

(a) a person ceases to be a member of a couple (whether because of the death of the person's partner or for any other reason); and

(b) immediately before the cessation, the person was subject to a particular disposal preclusion period that arose wholly because the person's partner disposed of a particular asset; and

(c) if that disposition had been disregarded, the person would not have been subject to that disposal preclusion period;

then, despite subsection (1), that disposal preclusion period ends at the cessation.

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(3) For the purposes of this section, a ***designated year*** of a person is:
  (a) the 12-month period ending on the person's special date of eligibility for a designated pension; and
  (b) each preceding 12-month period; and
  (c) each succeeding 12-month period.

(4) This section applies to a disposal even if the disposal took place before the commencement of this section.

(5) No period after 30 June 2002 is, or is a part of, a designated year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a designated year of a person, the part of that period that ends immediately before that date is taken to be a ***designated year*** of the person.

45UTA Disposal preclusion period—dispositions on or after 1 July 2002

A person is subject to a ***disposal preclusion period*** throughout any period for which an amount is included in the value of the person's assets under Subdivision BB of Division 11 of Part IIIB.

45UU Carer preclusion period

(1) For the purposes of this Part, if a person receives:
  (a) a carer payment; or
  (b) a carer service pension; or
  (c) income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5;

during a particular period, the person is subject to a ***carer preclusion period*** throughout that period.

(2) This section applies to a carer payment, a carer service pension or income support supplement even if it was received before the commencement of this section.

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Division 11A—Pension bonus bereavement payment

45UUA Qualification for pension bonus bereavement payment

A person is qualified for a pension bonus bereavement payment if:

(a) the person stopped being a member of a couple because the person's partner died; and

(b) immediately before the partner died, the partner was a registered member of the pension bonus scheme; and

(c) the partner had not made a claim for a designated pension or pension bonus before the partner died.

45UUB Amount of pension bonus bereavement payment

(1) The amount of a person's pension bonus bereavement payment is worked out:

(a) by working out the amount of pension bonus that would have been payable to the legal personal representative of the partner had the partner made claims for a designated pension and pension bonus just before the partner died (see subsections 45UR(3) and (4)); and

(b) by disregarding, in working out the amount referred to in paragraph (a):

(i) any PBBP employment income of the person (see section 45UUC); and

(ii) any income of a kind specified in an instrument made under subsection (2).

(2) The Commission may, by legislative instrument, specify kinds of income for the purposes of subparagraph (1)(b)(ii).

45UUC Definition of *PBBP employment income*

(1) ***PBBP employment income***, of a person:

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(a) means ordinary income that is, or is taken to be, earned, derived or received by the person or the person's partner from gainful work; and

(b) includes (without limitation) any of the following that is, or is taken to be, earned, derived or received by the person or the person's partner:

(i) salary, wages, commissions and employment-related fringe benefits;

(ii) leave payments;

(iii) payments to the person or the person's partner by a former employer of the person or person's partner in relation to the termination of the person's or partner's employment.

(2) For the purposes of subparagraph (1)(b)(ii), a ***leave payment***:

(a) includes a payment in respect of sick leave, personal leave, carer's leave, annual leave, maternity leave, long service leave or special leave; and

(aa) includes an instalment of parental leave pay; and

(b) may be made as a lump sum payment, a series of regular payments or otherwise; and

(c) is taken to be made to a person if it is made to another person:

(i) at the direction of the person or of a court; or

(ii) on behalf of the person; or

(iii) for the benefit of the person; or

(iv) if the person waives or assigns his or her right to the payment.

45UUD Need for a claim for pension bonus bereavement payment

A person who wants to be granted a pension bonus bereavement payment must make a proper claim for the payment.

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45UUE Proper claim

(1) To be a proper claim, a claim for pension bonus bereavement payment must be:
  (a) in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) lodged at an office of the Department in Australia in accordance with section 5T within the applicable lodgment period (see section 45UUF).

(2) A claim for pension bonus bereavement payment lodged in accordance with section 5T is taken to have been made on a day determined under that section.

45UUF Lodgment period for claim

(1) The ***lodgment period*** for a person's claim for pension bonus bereavement payment is the period of 26 weeks beginning on the day of death of the partner in respect of whom the person is qualified for pension bonus bereavement payment.

(2) However, the Commissioner may in special circumstances allow a person a longer period to make a claim than the period under subsection (1). If the Commissioner does so, the ***lodgment period*** for the person's claim is the period allowed by the Commissioner.

45UUG Withdrawal of claim

(1) A claimant for a pension bonus bereavement payment may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken not to have been made.

(3) A withdrawal may be made orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

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(4) A withdrawal made by lodging a document in accordance with section 5T is taken to have been made on a day determined in accordance with that section.

45UUH Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a pension bonus bereavement payment, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission, it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

45UUI Commission to determine claim

The Commission must, in accordance with this Act, determine a claim for pension bonus bereavement payment.

45UUJ Grant of claim

The Commission must determine that a claim for pension bonus bereavement payment is to be granted if the Commission is satisfied that the person is qualified for the payment.

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45UUK Payment of pension bonus bereavement payment

If a claim for pension bonus bereavement payment is granted, the payment is payable to the person concerned on:

(a) the first pension payday after the grant; or

(b) if the Commission considers that it is not practicable to pay the payment on that payday—the next practicable day.

45UUL Payment of pension bonus bereavement payment after death

(1) This section sets out the only circumstances in which pension bonus bereavement payment will be payable after the death of the person concerned.

(2) If:

(a) a person claims a pension bonus bereavement payment; and

(b) the person dies; and

(c) at the time of the person's death, the claim had been granted, but the person had not received the payment;

the payment is payable to the legal personal representative of the person.

(3) If:

(a) a person claims a pension bonus bereavement payment; and

(b) the person dies; and

(c) at the time of the person's death, the claim had not been determined;

then:

(d) the Commission must determine the claim after the person's death as if the person had not died; and

(e) if the claim is granted—the payment is payable to the legal personal representative of the person.

(4) If a pension bonus bereavement payment is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus.

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Division 12—Modification of this Part in relation to certain persons previously qualified for age pension under social security law

45UV Persons to whom this Division applies

This Division applies to a person:

(a) who is a war widow/war widower—pensioner; and

(b) who registers under this Act as a member of the pension bonus scheme in respect of income support supplement; and

(c) who either:

(i) was registered as a member of the pension bonus scheme under Part 2.2A of the *Social Security Act 1991* (the ***SSA pension bonus scheme***) with effect from a date before becoming a war widow/war widower—pensioner; or

(ii) although not so registered, could, in the opinion of the Commission, have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration; and

(d) who has not received age pension under the social security law; and

(e) who has not claimed pension bonus under that law before becoming a war widow/war widower—pensioner.

45UW Commission may request the provision of information

The Commission may, by notice in writing, request a person to whom this Division applies to provide to the Commission, within a period specified in the notice, any information that it considers would have been relevant:

(a) for the purpose of determining whether the person:

(i) was registered as a member of the SSA pension bonus scheme; or

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(ii) in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration; and

(b) for the purpose of working out the bonus periods that the person would have accrued under the social security law:

(i) if the person was registered as a member of the SSA pension bonus scheme—if the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and

(ii) if the person was not so registered but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration—if the person had been so registered from the earliest day that the person could have been so registered and, immediately before becoming a war widow/war widower—pensioner, had made a claim for pension bonus under that law.

45UX Commission may determine whether periods occurring before becoming a war widow/war widower—pensioner are bonus periods under the social security law

(1) If a person:

(a) is a person to whom this Division applies; and

(b) was registered as a member of the SSA pension bonus scheme;

the Commission may, subject to subsection (3), determine, having regard to information supplied to it under this Act or the social security law, that if:

(c) the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and

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(d) the claim had been made in respect of a period the whole or part of which the Commission determines would have been a period of accruing membership of that scheme;

that period, or that part of that period, would have accrued to the person as a bonus period under that law.

(2) If a person:

(a) is a person to whom this Division applies; and

(b) was not registered as a member of the SSA pension bonus scheme but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration;

the Commission may, subject to subsection (3), determine, having regard to information supplied to it under this Act or the social security law, that if:

(c) the person had been so registered from the earliest possible date that the person could have been so registered; and

(d) the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and

(e) the claim had been made in respect of a period the whole or part of which the Commission determines would have been a period of accruing membership of that scheme;

that period, or that part of that period, would have accrued to the person as a bonus period under that law.

(3) If the Commission determines, in respect of a person to whom this Division applies, that:

(a) a period would have been:

(i) if the person was registered as a member of the SSA pension bonus scheme—a part-year period of accruing membership of that scheme; or

(ii) if the person was not, but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration and had the

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person been so registered from the earliest possible date that the person could have been so registered—such a part-year period of accruing membership of that scheme; and

(b) the period was not immediately preceded by another period that would have accrued to that person as a bonus period under the social security law;

the Commission may, despite the terms of subsection 92T(3) of the *Social Security Act 1991*, treat that part-year period as a bonus period under the social security law if, had the person made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner, the person would have passed the work test under that law in respect of that period.

45UY Modification of provisions of this Part in respect of persons to whom this Division applies

(1) For the purposes of working out the amount of the pension bonus payable under this Part to a person to whom this Division applies and subject to subsection (2), if the Commission determines, under section 45UX, that a period would have accrued to the person as a bonus period under the social security law, then:

(a) that bonus period is to be treated as if it were a bonus period that had accrued to the person under this Act; and

(b) that bonus period, or if more than one, the last such bonus period, is to be treated as if it were continuous with the first bonus period (if any) that accrues to the person under this Act after the person becomes a war widow/war widower—pensioner.

(2) Subsection (1) applies in relation to a part-year period that the Commission determines is a bonus period that would have accrued, under the social security law, to a person to whom this Division applies only if:

(a) that bonus period is immediately preceded by a period that the Commission determines would have been another bonus period accruing to the person under that law; or

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(b) that bonus period, when aggregated with any bonus period or bonus periods accruing to the person under this Act after the person becomes a war widow/war widower—pensioner, would amount to at least one year.

(3) If:

(a) a person to whom this Division applies has a part-year period of accruing membership of the pension bonus scheme under this Act; and

(b) the part-year period does not begin immediately after a bonus period accruing to that person under this Act;

then, for the purposes of applying subsection 45TR(3) of this Act in determining whether that part-year period is a bonus period under this Act, the Commission may treat that part-year period as if it were immediately preceded by a bonus period accruing to that person under this Act.

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