



Veterans' Entitlements Act 1986

No. 27 of 1986

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Veterans' Entitlements Act 1986

No. 27 of 1986

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

[Assented to 19 May 1986]

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

PART I—PRELIMINARY

Short title

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

Commencement

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

Repeal

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 (1) The Acts specified in Parts I, II, III, IV and V of Schedule 1 are repealed.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

Extension of Act to external Territories

4. This Act extends to the external Territories.

Interpretation

5. (1) In this Act, unless the contrary intention appears—

“acting commissioner” means a person who is acting as a commissioner in pursuance of an appointment under section 191;

“Acting Deputy President” means a commissioner or acting commissioner who is acting as Deputy President in pursuance of an appointment under section 192;

“Acting President” means a commissioner or acting commissioner who is acting as President in pursuance of an appointment under section 192 or 193;

“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
- (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;

“approved Guide to the Assessment of Rates of Veterans’ Pensions” means—

- (a) the document, prepared by the Commission in accordance with section 29 under the title “Guide to the Assessment of Rates of Veterans’ Pensions”, that has been approved by the Minister and is for the time being in force; or
- (b) if an instrument varying that document has been approved by the Minister, that document as so varied;

“approved Treatment Principles” means—

- (a) the document, prepared by the Commission in accordance with section 90 under the title “Treatment Principles”, that has been approved by the Minister and is for the time being in force; or
- (b) if an instrument varying that document has been approved by the Minister, that document as so varied;

“Board” means the Veterans’ Review Board continued in existence by section 134 of this Act;

“child” means—

- (a) a person who has not attained the age of 16 years; or

(b) a person who—

- (i) has attained the age of 16 years but has not attained the age of 25 years;
- (ii) is undertaking full-time education at a school, college or university; and
- (iii) is not in receipt of a pension under Part III or IV, a benefit under Part IVAAA or VII or a rehabilitation allowance under Part VIII of the *Social Security Act 1947* or an allowance under section 9 of the *Tuberculosis Act 1948*;

“Commission” means the Repatriation Commission continued in existence by section 179 of this Act;

“commissioner” means a person holding an office of commissioner in pursuance of an appointment under section 182;

“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
- (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;

“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;
- (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 sub-paragraph (a) (i), (ii) or (iii);

“decision” includes a determination and an assessment;

“Deputy President” means the Deputy President of the Commission;

“disease” includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development, and the recurrence of such an ailment, disorder, defect or morbid condition, but does not include the aggravation of such an ailment, disorder, defect or morbid condition;

“enemy” means—

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- (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 includes persons assisting any of those forces;

“injury” means any physical or mental injury, and includes the recurrence of any physical or mental injury, but does not include a disease or the aggravation of a physical or mental injury;

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

“member of the Interim Forces” means a person who, on or after 1 July 1947 and before 1 July 1949—

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

“operational area” means an area described in column 1 of Schedule 2;

“organization representing veterans” means—

- (a) an organization—
 - (i) the members of which include veterans throughout the Commonwealth; and
 - (ii) the objects of which include the object of representing veterans throughout the Commonwealth; or
- (b) an organization—
 - (i) the members of which include persons throughout the Commonwealth who are in receipt of, or are eligible to receive, pensions under Part II as dependants of veterans; and
 - (ii) the objects of which include the object of representing persons referred to in sub-paragraph (i) throughout the Commonwealth;

“port” includes airport;

“President” means the President of the Commission;

“remunerative work” includes any remunerative activity;

“Secretary” means the Secretary to the Department;

“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) who is, by virtue of section 7, to be taken to have rendered eligible war service; or
- (b) a person (including a deceased person) in respect of whom a pension is, or pensions are, payable in pursuance of sub-section 13 (6);

“war to which this Act applies” means World War 1 or World War 2;

“World War 1” means the war that commenced on 4 August 1914, and includes any other war in which the Crown became engaged after that date and before 11 November 1918;

“World War 2” means the war that commenced on 3 September 1939, and includes any other war in which the Crown became engaged after that date and before 3 September 1945.

(2) Where a person who has attained the age of 16 years would, if the person lodged a claim for, and were qualified to receive, an unemployment benefit under Part VII of the *Social Security Act 1947*, be prevented, by reason of section 120A of that Act, from being paid that benefit for a period immediately following his or her ceasing to undertake full-time education at a school, college or university, the person shall be taken, for the purpose of paragraph (b) of the definition of “child” in sub-section (1), to continue, during that period, to undertake full-time education at a school, college or university.

(3) For the purposes of this Act—

- (a) World War 1 shall be deemed to have ended on 1 September 1921, being the date fixed by Proclamation under section 2 of the *Termination of the Present War (Definition) Act 1919*;
- (b) World War 2 shall be deemed to have ended on 28 April 1952, being the date on which the Treaty of Peace with Japan came into force; and
- (c) an operational area described in column 1 of Schedule 2 shall be deemed to have been an operational area during the period specified in column 2 of that Schedule opposite to the description of the area in column 1.

(4) In this Act, unless the contrary intention appears, a reference to a member of a unit of the Defence Force shall be read as a reference to a member of the Defence Force or other person who is a member of the unit, attached to the unit or appointed for continuous full-time service with the unit.

(5) For the purposes of this Act, a person (not being a person who was an indigenous inhabitant of the Territory of Papua or the Territory of New Guinea) who was residing in Papua New Guinea immediately before it

became an independent sovereign State, shall, until the person ceased or ceases so to reside, be deemed to be a resident of Australia.

(6) In this Act, unless the contrary intention appears, a reference to an eligible civilian who was killed, or was detained by the enemy, during World War 2, shall be read as a reference to a person who, at the time the person was killed, or commenced to be so detained, as the case may be, was—

- (a) a British subject; and
- (b) a resident, but not an indigenous inhabitant, of the Territory of Papua or the Territory of New Guinea,
other than such a person who was, at that time—
 - (c) rendering service as a member of the Defence Force; or
 - (d) employed by the Commonwealth on a special mission outside Australia.

(7) Where a man and a woman have been living together as husband and wife on a *bona fide* domestic basis although not legally married to each other, they shall be treated for the purposes of this Act, as so living together during any temporary absence of one of those persons or during 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 so living together during the period of that absence.

(8) For the purposes of this Act, a member of the Army Medical Corps Nursing Service who rendered service, either within or outside Australia during World War 1, as such a member in accordance with an acceptance or appointment by the Director-General of Medical Services for service outside Australia shall be deemed, while the member rendered that service, to have been serving as a member of the Defence Force.

(9) 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 sub-section 68 (1), from a defence-caused injury or a defence-caused disease,

shall be read as a reference to the effects of that injury or disease and not as a reference to that injury or disease itself.

(10) For the purposes of this Act, where a person has lost an eye or the Commission is of the opinion that the eyesight of a person in an eye is so defective that the person has no useful sight in that eye, the person shall be deemed to have been blinded in that eye.

(11) For the purposes of this Act—

- (a) where a claim, application or other document is forwarded to, or delivered at, a place (whether within or outside Australia) approved by the Commission for the purposes of this sub-section, it shall be

deemed to have been forwarded to, or delivered at, as the case may be, an office of the Department in Australia and to have been received at an office of the Department in Australia on the day on which it is received at that place;

- (b) where a claim, application or other document is delivered to a person approved by the Commission for the purposes of this subsection, it shall be deemed to have been delivered at an office of the Department in Australia and to have been received at an office of the Department in Australia on the day on which it is delivered to that person; and
- (c) a claim or application shall be deemed to have been made on the day on which it is received, or is, by virtue of paragraph (a) or (b), to be deemed to have been received, at an office of the Department in Australia.

(12) In this Act, a reference to a person, or a unit of the Defence Force, that was allotted for duty in an operational area shall be read as a reference to a person, or unit of the Defence Force—

- (a) that was so allotted for duty in accordance with administrative arrangements applicable in the part of the Defence Force in which the person was serving, or of which that unit formed a part, as the case may be; or
- (b) that is, by an instrument in writing signed by the Minister for Defence, deemed to have been allotted for duty in an area described in item 4 or 8 in Schedule 2 during the period specified in that item.

Operational Service

6. (1) For the purposes of this Act—

- (a) a person who has rendered, as a member of the Defence Force, continuous full-time service outside Australia during a war to which this Act applies shall be taken to have been rendering operational service while the person was so rendering continuous full-time service;
- (b) a person who has rendered, as a member of the Defence Force, continuous full-time service for a continuous period of not less than 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) during the period from and including 19 February 1942 to and including 12 November 1943 shall be taken to have been rendering operational service while the person was so rendering continuous full-time service;
- (c) a person who, while living on a Torres Strait Island, enlisted in the Defence Force and rendered, as a member of the Defence Force, continuous full-time service for a continuous period of not less than 3 months on that Island during World War 2 shall be taken to have been rendering operational service while the person was rendering

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any such service so rendered by the person during the period from and including 14 March 1942 to and including 18 June 1943;

- (d) a person who has rendered, as a member of the Defence Force, service of a kind described in paragraph (a), (b) or (c) during World War 1 or World War 2 shall be taken to have been rendering operational service during any period of continuous full-time service rendered by the person during that war, within Australia, immediately before, or immediately after, the person rendered that service of a kind so described;
- (e) a person who has, as a member of the Defence Force, rendered continuous full-time service outside Australia—
 - (i) as a member of a unit of the Defence Force that was allotted for duty; or
 - (ii) while the person was allotted for duty,
in an operational area, shall be taken to have been rendering operational service while the person was so rendering continuous full-time service;
- (f) subject to sub-section (2), a person who has rendered continuous full-time service as a member of the naval, military or air forces of a Commonwealth country or an allied country during a war to which this Act applies—
 - (i) outside that country; or
 - (ii) within that country in such circumstances that that service should, in the opinion of the Commission, be treated as service in actual combat with the enemy,
shall be taken to have been rendering operational service while the person was so rendering continuous full-time service;
- (g) subject to sub-section (2), a person who has rendered continuous full-time service as a member of the naval, military or air forces of a Commonwealth country or an allied country in an operational area shall be taken to have been rendering operational service while the person was so rendering continuous full-time service;
- (h) a person who was, during a war to which this Act applies, employed by the Commonwealth on a special mission outside Australia shall be taken to have been rendering operational service while the person was so employed by the Commonwealth;
- (j) a person, being a person who was an eligible civilian within the meaning of sub-section 5 (6), 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 shall be taken to have been rendering operational service when the occurrence, as a result of which the person was killed, happened;
- (k) a person, being a person who was an eligible civilian within the meaning of sub-section 5 (6), who was, during World War 2, detained

by the enemy shall be taken to have been rendering operational service while the person was so detained;

- (m) 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 shall be taken to have been rendering operational service when the occurrence as a result of which the person was injured, or contracted the disease, happened; and
- (n) a person who has rendered continuous full-time service as a member of the Defence Force within Australia during World War 2 in such circumstances that that service should, in the opinion of the Commission, be treated as service in actual combat against the enemy shall be taken to have been rendering operational service while the person was so rendering that continuous full-time service.

(2) Paragraph (1) (f) or (g) does not apply to any service rendered by a person as a member of the naval, military or air forces of a Commonwealth country or an allied country unless the person has satisfied the Commission, whether before or after the commencement of this Act, that the person was domiciled in Australia or an external Territory immediately before the person's appointment or enlistment in those forces.

(3) A person who rendered continuous full-time service in the Defence Force during World War 2 otherwise than as a member of the Interim Forces—

- (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) (a) or (d), to have been rendering operational service while the person was so rendering continuous full-time service on or after that date.

(4) In this Act, a reference to the operational service of a person in an operational area shall be read as a reference to the operational service that the person is to be taken to have rendered by virtue of paragraph (1) (e) or (g), as the case requires.

(5) For the purposes of this Act, the operational service of a person in an operational area, being the operational service of the person described in paragraph (1) (e)—

- (a) shall be taken to have commenced—

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- (i) if the person was in Australia on the day as from which the person was allotted for duty in that area—on the day on which the person departed from the last port of call in Australia for that service; or
 - (ii) if the person was outside Australia on the day as from which the person was so allotted for duty—on the day as from which the person was so allotted for duty; and
 - (b) shall be taken to have ended at the expiration of—
 - (i) if the person was allotted for duty from an operational area to another area outside Australia (not being an operational area)—on the day on which the person arrived at that other area or on the day as from which the person was allotted to that other area at a time when the person was in that other area; or
 - (ii) in any other case—on the day on which the person arrived at the first port of call in Australia on returning from operational service.
- (6) Where a person has, in the course of rendering operational service in an operational area while a member of the Defence Force—
- (a) returned to Australia in accordance with the Rest and Recuperation arrangements of the naval, military or air forces;
 - (b) returned to Australia on emergency or other leave granted on compassionate grounds;
 - (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,
- so much of the period of service of the person in Australia after his or her return and while the person—
- (e) continued to be a member of a unit of the Defence Force allotted for duty in an operational area; or
 - (f) continued to be allotted for duty in an operational area,
- as does not exceed 14 days shall, for the purpose of paragraph (1) (e), be deemed to be a period when the person was rendering continuous full-time service outside Australia.

Eligible War Service

7. (1) Subject to sub-section (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;
- (b) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War I shall be taken to have been rendering eligible war

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service while the person was so rendering continuous full-time service;

- (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.

(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.

War-caused death

8. (1) Subject to this section, 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

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(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 service rendered after the veteran suffered that injury or contracted that disease,

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) Sub-section (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 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.

War-caused injuries or diseases

9. (1) Subject to this section, 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 sub-section (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 rendered by the veteran, but not while the veteran was rendering eligible war service, and, in the opinion of the Commission, 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 the injury or contracted the 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) Sub-sections (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 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 sub-paragraph (b) (ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.

(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.

Child of a veteran or other person

10. (1) In this Act, unless the contrary intention appears, a reference to a child of a veteran, or of a deceased veteran, shall, if the veteran is, or the deceased veteran was, a man, be read as a reference to—

- (a) a child of whom the veteran is the father or a child adopted by the veteran or the veteran and his wife; or
- (b) any other child who is, or was immediately before the death of the veteran, wholly or substantially dependent on the veteran.

(2) In this Act, unless the contrary intention appears, a reference to a child of a veteran shall, if the veteran is a woman, be read as a reference to—

- (a) in the case of a veteran who is alive—
 - (i) a child of whom the veteran is the mother or a child adopted by the veteran or by the veteran and her husband; or
 - (ii) any other child who is wholly or substantially dependent on the veteran; or
- (b) in the case of a deceased veteran—
 - (i) a child referred to in sub-paragraph (a) (i); or

(ii) any other child who was, immediately before the death of the veteran, wholly or substantially dependent on the veteran, being a child who is not being maintained by a parent, adoptive parent or step-parent of the child.

(3) For the purposes of sub-sections (1) and (2), 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 sub-section 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 sub-section (4)) shall be read as a reference to a person who would, in accordance with sub-section (1) or (2), be a child of that person if that person were a veteran.

Dependants

11. (1) For the purposes of this Act, unless the contrary intention appears—

- (a) in respect of a male veteran (including a veteran who has died)—
 - (i) the wife or widow of the veteran;
 - (ii) a woman with whom the veteran is living, or was living immediately before his death, as her husband on a *bona fide* domestic basis although not legally married to her (whether or not his wife or widow is also alive); or
 - (iii) a child of the veteran,is a dependant of the veteran; and
- (b) in respect of a female veteran (including a veteran who has died), a child of the veteran is a dependant of the veteran.

(2) Without limiting the generality of sub-section (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, 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 sub-section (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 sub-section 68 (1).

(4) In this Act, unless the contrary intention appears, a reference to a dependant of a person (not being a person who is a veteran or member referred to in sub-section (3)) shall be read as a reference to a person who would, in accordance with sub-section (1), be a dependant of that person if that person were a veteran.

PART II—PENSIONS, OTHER THAN SERVICE PENSIONS, FOR VETERANS AND THEIR DEPENDANTS

Division 1—Interpretation

Interpretation

12. In this Part, unless the contrary intention appears, “pension” means pension under this Part.

Division 2—Eligibility for pension

Eligibility for pension

13. (1) Where—

- (a) the death of a veteran was war-caused; or
- (b) a veteran has become 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 to the dependants of the veteran; or
- (d) in the case of the incapacity of the veteran—pension 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 section 24 applied; or
 - (ii) a veteran to whom section 22, 23 or 25 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 to the dependants of the veteran in accordance with this Act.

(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, sub-section (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 sub-section (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 sub-section (1) to a veteran who is a veteran by reason only that he or she has rendered operational service of a kind described in paragraph 6 (1) (f) or (g) 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.

(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 sub-section (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 sub-sections (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.

(7) The Commonwealth is not liable to pay a pension—

- (a) to a dependant of a veteran, being a child of the veteran, under sub-section (1) or (2);
- (b) to a child of a veteran under sub-section (4); or
- (c) to a dependant of a person, being a child of the person, under sub-section (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) under the scheme known as the Tertiary Education Assistance Scheme;
- (e) under the scheme known as the Secondary Education Assistance Scheme;
- (f) under the scheme known as the Aboriginal Study Grants Scheme;
- (g) under the scheme known as the Post-Graduate Awards Scheme; or
- (h) under the scheme known as the Veterans' Children Education Scheme.

(8) Where a dependant of a deceased veteran (not being a child of the veteran) re-marries or marries 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 to grant a pension was made after the commencement of this Act by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, before that marriage or re-marriage 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 or the Administrative Appeals Tribunal after that re-marriage or marriage occurred (including a decision granting such a pension as from a date before that re-marriage or marriage occurred) is void and of no effect.

(9) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow of a deceased veteran, the Commonwealth is not liable to pay another pension to the person under this Part as the widow of another deceased veteran or under Part IV as the widow of a member of the Forces, or a member of a Peacekeeping Force, as defined by sub-section 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 sub-section, 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 sub-section 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 sub-section referred to as 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 sub-sections (8), (9) and (10)), a reference to a veteran shall be read as a reference to a veteran described in paragraph (a) of the definition of "veteran" in sub-section 5 (1).

Division 3—Claims for pensions and applications for increases in pensions

Claim for pension

14. (1) Subject to sub-section (2), a veteran, or a dependant of a deceased veteran, may make a claim for a pension in accordance with sub-section (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, sub-section (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) shall be made by forwarding to, or delivering at, an office of the Department in Australia the claim and the evidence referred to in paragraph (b).

(4) Sub-section (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) the Commission has made a decision refusing to grant a pension under this Part to—
 - (i) a veteran who made a claim in respect of incapacity from a particular injury or disease; or

(ii) a dependant of a deceased veteran who made a claim in respect of the death of the veteran; and

(b) either the time within which application may be made to the Board for a review of that decision has not expired or such an application has been made to, but has not yet been determined by, the Board, the veteran is not entitled to make a further claim for the grant of a pension under this Part in respect of incapacity from the same injury or disease, or the dependant of the veteran is not entitled to make a further claim for the grant of a pension under this Part in respect of the death of the veteran, as the case may be.

(6) Where—

(a) the Board has affirmed a decision of the Commission refusing to grant a pension under this Part to—

(i) a veteran who has made a claim in respect of incapacity from a particular injury or disease; or

(ii) a dependant of a deceased veteran who has made a claim in respect of the death of the veteran; and

(b) either the time within which application may be made to the Administrative Appeals Tribunal for a review of that decision of the Board has not expired or such an application has been made to, but has not yet been determined by, that Tribunal,

the veteran is not entitled to make a further claim for the grant of a pension under this Part in respect of incapacity from the same injury or disease or the dependant of the veteran is not entitled to make a further claim for the grant of a pension under this Part in respect of the death of the veteran, as the case may be.

Application for increase in pension

15. (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 sub-section (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 sub-section 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 sub-section (3) of this section, for a pension on the ground that the incapacity of the veteran has increased since the grant of a pension in respect of the incapacity was refused or last refused.

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

(a) shall be in 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) shall be made by forwarding to, or delivering at, an office of the Department in Australia the application and any evidence referred to in paragraph (b).

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

Who may make claim or application

16. A claim under sub-section 14 (1) for a pension for a veteran or for a dependant of a deceased veteran, an application under sub-section 15 (1) for an increase in the rate of pension payable to a veteran or an application under sub-section 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.

Investigation by the Secretary

17. (1) Where a claim is made for a pension under sub-section 14 (1), or an application is made for an increased pension under sub-section 15 (1) or for a pension under sub-section 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.

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

- (a) any evidence furnished by the claimant or applicant in 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 sub-section (1).

Duties of Commission in relation to pensions

18. 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.

Determination of claims and applications

19. (1) In this section, "claim" means a claim made in accordance with section 14 or an application made in accordance with section 15.

(2) Where a claim is submitted to the Commission in accordance with sub-section 17 (2), the Commission shall consider the claim and, after consideration of all matters that, in the opinion of the Commission, are relevant, including, but without limiting the generality of the foregoing, the evidence and documents that were submitted with the claim in accordance with sub-section 17 (3), any evidence subsequently submitted to the Commission in relation to the claim, and any evidence, documents or other material furnished to the Commission under section 32, shall, subject to sub-sections (3), (4), (5) and (7) of this section, determine the claim.

(3) 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.

(4) If, at the expiration of 6 months after a claimant has been informed under sub-section (3) 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 sub-section, be deemed to have been refused.

(5) If, at the expiration of 6 months after a claimant has been informed under sub-section (3) 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 sub-section, be deemed to have been refused.

(6) Where the Commission determines under sub-section (2) that the claimant is entitled to be granted a pension in respect of the death of a veteran that was war-caused, or a pension or increased pension in respect of the incapacity of a veteran from war-caused injury or war-caused disease, or both, the Commission shall assess the rate, or increased rate, at which the pension is to be payable to the claimant and approve the date as from which the pension, or the pension at the increased rate, is to be so payable to the claimant.

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

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

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

paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such defence-caused injury as war-caused injury and any such defence-caused disease as war-caused disease—

- (c) if the claimant is not in receipt of a pension under Part II or Part IV—determine whether the claimant is entitled to be granted a pension under Part II and, if it determines that the claimant is entitled to be granted such a pension, assess the rate of the pension to be granted to the claimant; or
- (d) if the claimant is in receipt of a pension under Part II or Part IV—re-assess the rate of that pension.

(8) Where the Commission is required by this section to assess the rate, or increased rate, of a pension in respect of the incapacity of a veteran from war-caused injury or war-caused disease, or both, it shall, subject to sections 26 and 27, assess the rate or increased rate in accordance with section 22, 23, 24 or 25, whichever applies to the veteran.

(9) Where the Commission is required by this section to assess the rate, or increased rate, of a pension of a dependant of a deceased veteran in respect of the death of the veteran that was war-caused, it shall assess the rate or increased rate in accordance with section 30.

(10) Where the Commission grants the whole or a part of a claim for a pension, or an application for an increased pension, or for a pension, made under this Part, the Commission may pay to the claimant or applicant an amount, calculated in accordance with a scale approved by the Commission, by determination in writing, in respect of the expenses (if any) incurred by the claimant or applicant in providing for the production of certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which he or she had received medical treatment, in support of the claim or application, being certificates, reports or documents reasonably used in support of the claim or application or, if a part only of the claim or application was granted, in support of that part of the claim or application.

Date of operation of grant of claim for pension

20. (1) Where a claim in accordance with section 14 for a pension is granted, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim for a pension, in accordance with 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, but otherwise than 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, approve payment of the pension from and including a date not earlier than 3 months before the date on which the claim referred to in paragraph (a) was received at an office of the Department in Australia.

Date of operation of grant of application under section 15

21. (1) The Commission may, subject to this Act, approve payment of pension at the increased rate, or payment of pension, from and including the date on which the application, in accordance with a form approved for the purposes of paragraph 15 (3) (a) was received at an office of the Department in Australia.

(2) Where—

- (a) a person makes an application in writing of a kind referred to in sub-section 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, approve payment of the increased pension, or of the pension, from and including the date on which the application referred to in paragraph (a) was received at an office of the Department in Australia.

Division 4—Rates of pensions payable to veterans

General rate of pension

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

(2) Subject to this Division, the rate at which pension is payable to a veteran to whom this section applies in respect of the incapacity of the

veteran from war-caused injury or war-caused disease, or both, is such rate, not exceeding the maximum rate per fortnight specified in sub-section (7), as is assessed by the Commission as provided in sub-section (3).

(3) The rate assessed by the Commission under sub-section (2) in respect of the incapacity of a veteran from war-caused injury or war-caused disease, or both, shall be a rate per fortnight that constitutes the same percentage of the maximum rate per fortnight specified in sub-section (7) as the percentage determined by the Commission in accordance with sub-section (4) 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.

(4) The Commission shall, subject to sub-sections (5) and (6), 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.

(5) Subject to sub-section (6), the degree of incapacity shall be determined as 10 per centum or a multiple of 10 per centum, but not exceeding 100 per centum.

(6) 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 per centum (including nought per centum) 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.

(7) For the purposes of this section, the maximum rate per fortnight is \$137.60 per fortnight.

Intermediate rate of pension

23. (1) This section applies to a veteran if—

- (a) there is in force in respect of the veteran a determination under this Act determining that the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is 100 per centum;
- (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)—

- (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.

(4) The rate at which pension is payable to a veteran to whom this section applies is \$251.20 per fortnight.

Special rate of pension

24. (1) This section applies to a veteran, other than a veteran to whom section 25 applies, if—

- (a) there is in force in respect of the veteran a determination under this Act determining that the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is 100 per centum;

- (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 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.
- (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.
- (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) The rate at which pension is payable to a veteran to whom this section applies is \$364.90 per fortnight.

Temporary payment at special rate

25. (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 specified in sub-section 24 (4).

(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 sub-section (1) in respect of the veteran.

Reduction in rate of pension in certain cases

26. (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 sub-section, 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 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 sub-section, 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 sub-section (1) to be reduced exceeds the rate that, but for that sub-section, 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 sub-section (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.

Increased rates of pension in certain cases

27. (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	227.30
2. Two legs and one arm amputated	227.30
3. Two legs amputated above the knee.	227.30
4. Two legs amputated and blinded in one eye	227.30
5. One arm and one leg amputated and blinded in one eye	227.30
6. One leg and one arm amputated	227.30
7. One leg amputated above, and one leg amputated below, the knee	76.60
8. Two legs amputated below the knee.	51.70
9. One arm amputated and blinded in one eye	44.50
10. One leg amputated and blinded in one eye	44.50
11. One leg amputated above the knee	22.10
12. One leg amputated below the knee	11.70
13. One arm amputated above the elbow	22.10
14. One arm amputated below the elbow	11.70
15. Blinded in one eye.	17.20

(2) Subject to sub-section (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

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- (b) the rate specified in column 2 of the table in sub-section (1) of this section opposite to the description of the kind of incapacity described in column 1 from which the veteran is suffering

(3) Where the rate calculated in accordance with sub-section (2) in respect of the pension payable to a veteran exceeds the rate specified in sub-section 24 (4), the rate so calculated shall be reduced by the amount of excess.

(4) For the purpose of the application of a table in sub-section (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.

Capacity to undertake remunerative work

28. 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, 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).

Guide to the assessment of rates of veterans' pensions

29. (1) The Commission may, from time to time, prepare a written document, to be known as the "Guide to the Assessment of Rates of Veterans' Pensions" 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.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke the approved "Guide to the Assessment of Rates of Veterans' Pensions" prepared by it.

(3) A document prepared by the Commission in accordance with sub-section (1), and an instrument under sub-section (2), have no force or effect unless and until approved by the Minister.

(4) Where the Commission, the Board or the Administrative Appeals 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 Appeals 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.

(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 any) to which incapacity resulting from the injury or disease may reasonably be capable of being reduced or removed.

(7) When a document prepared by the Commission in accordance with sub-section (1), or an instrument under sub-section (2), has been approved by the Minister, the Commission shall furnish copies of the document or instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.

(8) The Commission shall make copies of the "Guide to the Assessment of Rates of Veterans' Pensions" that has been approved by the Minister, and of any variation of that Guide that have been so approved, available upon application and payment of the prescribed fee (if any).

(9) Sections 48 (other than paragraphs (1) (a) and (b) and sub-section (2)), 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to a document, being the approved Guide to the Assessment of Rates of Veterans'

Pensions or an instrument varying or revoking that Guide that has been approved by the Minister, as if, in those sections, references to regulations were references to such a document and references to a regulation were references to a provision of such a document.

(10) For the purpose of the application the provisions of the *Acts Interpretation Act 1901* in accordance with sub-section (9) of this section, a document referred to in that sub-section shall be deemed to have been made on the date on which it is approved by the Minister under this section.

Division 5—Rates of pensions payable to dependants of deceased veteran

Rates at which pensions payable to dependants

30. (1) Subject to sub-section (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 of the veteran, is a rate per fortnight equal to the sum of—

- (a) \$195.80 per fortnight; and
- (b) \$24.00 per fortnight.

(2) Subject to sub-section (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 the spouse of the deceased veteran is also dead—\$82.00 per fortnight;
- (b) if the spouse of the deceased veteran is alive, but the child is not being maintained by a parent, adoptive parent or step-parent—\$82.00 per fortnight; or
- (c) in any other case—\$41.00 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 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.

(4) In this section, “widow” and “spouse” have the same respective meanings as they have in Part III.

Division 6—Reviews of pensions by Commission

Review by Commission

31. (1) Where—

- (a) the time has not expired for making application to the Board under section 135 for a review of a decision of the Commission with respect to—
 - (i) a claim for a pension in accordance with section 14; or
 - (ii) an application for an increased pension, or for a pension, in accordance with section 15; or
- (b) an application has been duly made to the Board under section 135 for a review of such a decision of the Commission but has not been determined by the Board,

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

(2) Where application has been duly made, otherwise than by the Commission, to the Administrative Appeals Tribunal under section 175 for a review of—

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

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

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

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

(5) For the purposes only of approving a date under sub-section (1) as the date as from which a variation of a decision to which paragraph (1) (a) applies shall operate, the Commission shall assume that an application had been made to the Board to review the decision on the date on which the Commission commenced its review of the decision.

(6) Where the Commission is satisfied that—

- (a) having regard to any matter that affects the payment of a pension, being a matter that was not before the Commission, the Board or the Administrative Appeals Tribunal, as the case requires, when the decision to grant the pension, or a decision to vary the rate of the pension, was made; or
- (b) by reason of a refusal or failure of any person to comply with a provision of this Act,

a pension should be cancelled or suspended, or the rate of a pension is higher than it should be, the Commission may, by determination in writing, cancel or suspend, or decrease the rate of, the pension with effect, subject to sub-section (7), from the date of the determination or such later date as is specified in the determination.

(7) Where a determination is made under sub-section (6)—

- (a) by reason of the refusal or failure of a person to comply with a provision of this Act, other than—
 - (i) sub-section 127 (4) in relation to a notice under paragraph 127 (1) (f); or
 - (ii) sub-section 128 (4); or
- (b) by reason that an amount has been paid by way of pension that, but for the false statement or misrepresentation of any person, would not have been paid,

a date earlier than the date of the determination may be specified in the determination as the date as from which the cancellation, suspension or decrease, as the case may be, is to take effect.

(8) Where the Commission is satisfied that, having regard to any matter that affects the payment of a pension, the rate of the pension is less than it should be, the Commission may, by determination in writing, increase the rate of the pension with effect from the date of the determination, or such earlier date (not being a date more than 3 months before the date of the determination), or such later date, as is specified in the determination.

(9) Where the Commission determines that a pension be suspended—

- (a) the Commission may, in the same determination, fix the date of re-commencement of the pension; or
- (b) if the Commission does not so fix the date of re-commencement, the Commission shall, in a subsequent determination, fix the date of re-commencement of the pension unless it makes a further determination cancelling the pension.

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

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

(12) This section applies to and in relation to a decision made before or after the commencement of this section but does not apply to or in relation to a decision of the Board referred to in sub-section 154 (1), or a decision of the Administrative Appeals Tribunal referred to in sub-section 178 (1), that is binding on the Commission by reason that the period specified in that sub-section has not expired.

Division 7—Procedural

Commission may take evidence

32. (1) Subject to sub-section (2), the Commission may, for the purposes of its consideration of a claim submitted to it in accordance with sub-section 17 (2) or of its review under section 31 of a decision in relation to a pension—

- (a) summon a person to appear before the Commission to give evidence and produce such documents (if any) as are referred to in the summons;
- (b) take evidence on oath or affirmation;
- (c) request—

- (i) in the case of consideration of a claim—the claimant or the Secretary; or

- (ii) in the case of a review under section 31—a person likely to be affected by the review or the Secretary,

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

- (d) request—

- (i) in the case of consideration of a claim—the claimant; or

- (ii) in the case of a review under section 31—the person likely to be affected by the review,

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

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

- (a) for the purpose of its consideration of a claim—the claimant; or

- (b) for the purpose of a review under section 31—a person likely to be affected by the review,

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

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

(a) to attend before the Commission and discuss 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 review under section 31—by a person to whom the Commission has delegated its powers under that section,

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

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

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

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

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

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

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

(10) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not, without reasonable excuse, refuse to produce documents or to answer a question that the person is required to answer by the Commission.

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

(11) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not, without reasonable excuse, give evidence that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(12) In this section—

“claim” includes application;

“claimant” includes applicant.

Withdrawal of claim or application

33. (1) A claimant or applicant may, at any time before the claim or application is determined by the Commission, by notice in writing forwarded to the Secretary at an office of the Department in Australia, 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.

Reasons for decisions to be given

34. (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 determining the date of commencement or cessation of a pension;
- (c) to vary a decision upon a review carried out under section 31;
- (d) to cancel or suspend a pension under sub-section 31 (6); or
- (e) to decrease the rate of a pension under sub-section 31 (6) or to increase the rate of a pension under sub-section 31 (8),

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

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

- (a) in the case of a decision in respect of a claim or application—on the claimant or applicant; or
- (b) in the case of a decision of a kind referred to in paragraph (1) (b), (c), (d) or (e)—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 sub-section (1), together with particulars of the right of the person on whom it is served to have the decision reviewed by the Board.

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

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

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

PART III—SERVICE PENSIONS

Division 1—Interpretation

Interpretation

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

“allied mariner” means a person who—

- (a) was, during the period of hostilities specified in paragraph (b) of the definition of “period of hostilities” in this sub-section—
 - (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;
 - (ii) a master, officer, seaman or apprentice employed in a lighthouse tender or pilot ship;
 - (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 of hostilities specified in paragraph (b) of the definition of “period of hostilities” in this sub-section, on a ship that was—
 - (i) operating from a port in Australia or from a port in a Commonwealth country or an allied country;
 - (ii) engaged in trading with Australia or with a Commonwealth country or an allied country;
 - (iii) engaged in providing assistance or support to the Defence Force, or to the forces, or any part of the

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forces, of a Commonwealth country or an allied country; or

- (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;
- (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;
 - (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 who has been appointed or enlisted as a member of the defence force established by an allied country and has rendered continuous full-time service as such a member during a period of hostilities, other than such a person who has served at any time—

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

“Australia” includes the external Territories;

“Australian mariner” means a person who was, during the period of hostilities specified in paragraph (b) of the definition of “period of hostilities” in this sub-section—

- (a) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered in Australia that was engaged in trading between a port in a State or Territory and any other port;
- (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;
- (c) a master, officer, seaman or apprentice employed on a lighthouse tender, or pilot ship of the Commonwealth or of a State;

- (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;
- (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;
- (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;

“benevolent home” means a home that is a benevolent home for the purposes of the *Social Security Act 1947*;

“carer’s service pension” means a carer’s service pension granted to a person under section 41;

“Commonwealth veteran” means a person who rendered continuous full-time service as a member of the naval, military or air forces, of the nursing or auxiliary services or of the women’s branch of the naval, military or air forces of a Commonwealth country during a period of hostilities;

“fishing vessel” means a ship employed in connection with the occupation of sea fishing for profit;

“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;

“Government rent” means—

- (a) rent payable to any of the following authorities:
 - (i) The Housing Commission of New South Wales;
 - (ii) the Director, within the meaning of the *Housing Act 1983* of Victoria;
 - (iii) The Queensland Housing Commission;
 - (iv) The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;
 - (v) the South Australian Housing Trust;
 - (vi) The State Housing Commission established by a law of Western Australia;

- (vii) the Director-General of Housing and Construction holding office under a law of Tasmania;
 - (viii) the Northern Territory Housing Commission;
 - (b) rent payable to the Commonwealth in respect of any accommodation in Glebe in New South Wales; and
 - (c) rent payable to the Commonwealth in respect of any accommodation in the Australian Capital Territory or in the Jervis Bay Territory, other than rent of a kind specified by the Minister for Social Security, by notice published in the *Gazette*, for the purposes of paragraph (c) of the definition of "Government rent" in sub-section 6(1) of the *Social Security Act 1947*;
- "income", in relation to any person, means any personal earnings, moneys, valuable consideration or profits earned, derived or received by that person for his or her own use or benefit by any means from any source whatsoever, within or outside Australia, and includes a periodical payment or benefit by way of gift or allowance, but does not include—
- (a) a payment under this Part, a payment under the *Social Security Act 1947*, the value of any treatment, training or goods provided under that Act, or a payment under section 9 of the *Tuberculosis Act 1948*;
 - (b) the value of emergency relief or like assistance;
 - (c) the value of any assistance provided by an eligible organization within the meaning of the *Homeless Persons Assistance Act 1974*, being assistance by way of the provision of accommodation or meals or of a ticket, voucher or token that may be exchanged for accommodation or meals;
 - (d) a payment under the *Handicapped Persons Assistance Act 1974*;
 - (e) a payment of domiciliary nursing care benefit under Part VB of the *National Health Act 1953*;
 - (f) a payment under a law of the Commonwealth, being a law having an object of assisting persons to purchase or build their own homes;
 - (g) a payment made to a person for, or in respect of, a child of the person;
 - (h) insurance or compensation payments made by reason of the loss of, or damage to, buildings, plant or personal effects;
 - (j) moneys from the investment of payments of the kind referred to in paragraph (h), being an investment for a period not exceeding 12 months or such longer period as the Commission, for any special reason in a particular case, allows after the receipt of those payments;

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- (k) in the case of a person who 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 is liable to pay, rent;
- (m) a payment received by a trainee in full-time training under a program included in the programs known as the Labour Force 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 unemployment benefit under Part VII of the *Social Security Act 1947*;
 - (ii) an amount known as the training component;
 - (iii) an amount by way of a living away from home allowance;
- (n) a payment received by a person under the scheme known as the New Enterprise Incentive Scheme;
- (o) a benefit under a law of the Commonwealth relating to the provision of pharmaceutical, sickness or hospital benefits, or of medical or dental services;
- (p) a payment made by an organization registered under a law referred to in paragraph (o) for or in respect of expenses incurred by a person for hospital, medical or dental treatment;
- (q) in the case of a member of—
 - (i) the Australian Naval Reserve;
 - (ii) the Naval Emergency Reserve Forces;
 - (iii) the Australian Army Reserve;
 - (iv) the Australian Air Force Reserve;
 - (v) the Air Force Emergency Force; and
 - (vi) the Regular Army Emergency 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) and, in the case of a member of a Force referred to in sub-paragraph (ii), (v) or (vi), any gratuity paid to the member by reason of a calling out for continuous service of that Force or of a part of that Force;
- (r) a payment to a veteran by way of—
 - (i) attendant allowance under section 98;
 - (ii) recreation transport allowance under section 104;
 - (iii) an allowance for the running and maintenance of a motor vehicle under the Vehicle Assistance Scheme referred to in section 105;
 - (iv) decoration allowance under section 102;
 - (v) Victoria Cross allowance under section 103; or

- (vi) clothing allowance under section 97;
 - (s) a payment to a mariner under the *Seamen's War Pensions and Allowances Act 1940* of a kind similar to a kind of payment referred to in paragraph (r);
 - (t) a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person; or
 - (u) that part of the value of board or lodging, or board and lodging, received by the person that exceeds \$65 per year;
- “married veteran” means a veteran who is a married person within the meaning of sub-section (6) of this section;
- “period of hostilities” means—
- (a) World War 1 from its commencement to and including 11 November 1918;
 - (b) World War 2 from its commencement to and including 29 October 1945;
 - (c) the period of hostilities in respect of Korea from 27 June 1950 to 19 April 1956 (both included);
 - (d) the period of hostilities in respect of Malaya from 29 June 1950 to 30 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);
- “prescribed person” means a person who is a prescribed person for the purposes of Part V;
- “prescribed student child” in relation to a person, means a child of the person, being a child in respect of whom a determination under sub-section (15) is in force;
- “property” includes property situated outside Australia;
- “remote area allowance” means an allowance granted to a service pensioner under section 57;
- “rent”, in relation to a person eligible to receive a service pension, a spouse's service pension or a carer's service pension, means rent, not being Government rent, in respect of premises, or a part of premises, occupied by the person as the person's home, and includes amounts payable by the person for—
- (a) lodging or board and lodging;
 - (b) the use of a site for—
 - (i) a caravan or other vehicle; or
 - (ii) a structure, occupied by the person as the person's home; or
 - (c) the right to moor a vessel that is occupied by the person as the person's home;

“rent assistance” means an allowance by way of rent assistance granted to a service pensioner under section 55;

“service pension” means a service pension granted to a veteran under section 38 or 39;

“service pensioner” means a person in receipt of a service pension, a wife’s service pension or a carer’s service pension;

“unmarried person” means a person who is not a married person for the purpose of this Part;

“veteran” means—

- (a) a veteran as defined by section 5;
- (b) a Commonwealth veteran;
- (c) an allied veteran;
- (d) an Australian mariner; or
- (e) an allied mariner;

“wife’s service pension” means a wife’s service pension granted to the wife of a veteran under section 40.

(2) In this Part—

(a) a reference to the defence force established by a Commonwealth country shall be read as a reference to the naval, military or air forces of the country, the nursing and auxiliary services of the naval, military or air forces of the country or the women’s branch of the naval, military or air forces of the country; and

(b) a reference to the defence force established by an allied country shall be read as a reference to—

- (i) the regular naval, military or air forces;
- (ii) the nursing or auxiliary services of the regular naval, military or air forces; and
- (iii) 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—

- (iv) were formally appointed to, or enlisted in, those forces or services;
- (v) were required to wear uniforms or insignia distinguishing them as members of those forces or services;
- (vi) were required to carry arms openly; and
- (vii) were subject to the rules and conventions of warfare.

(3) In relation to any period during which there was, with respect to an allied country, a government-in-exile, a reference in this Part to the defence force established by an allied country shall be read as including a reference to—

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

(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 sub-paragraphs (2) (b) (iv), (v), (vi) and (vii) were satisfied in respect of the members of those forces and services.

(4) Where a person, being the claimant for a service pension satisfies the Commission—

(a) that the person had been appointed or enlisted as a member of the forces or services of an allied country or of the government-in-exile of an allied country, being forces or services of a kind referred to in sub-paragraph (2) (b) (i), (ii) or (iii) or paragraph (3) (a), (b) or (c), as the case may be;

(b) that those forces or services were raised and operated in such a manner that sub-paragraphs (2) (b) (iv) and (vii) were satisfied in respect of those forces or services; 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, to carry arms at all or to carry arms openly, and that, 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 served, it would have been unreasonable for the person to have been required to wear such a uniform or insignia, to carry arms or to carry arms openly, as the case may be,

the Commission shall determine that the person shall, for the purposes of the definition of "allied veteran" in sub-section (1), 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, as the case may be.

(5) For the purposes of this Part, a person resident in Papua New Guinea after it became an independent sovereign state, being the spouse of a service pensioner who is, by virtue of sub-section 5 (5), to be deemed to be a resident of Australia, shall be deemed to be a resident of Australia.

(6) In this Part—

(a) a reference to the wife of a person shall be read as a reference—

(i) to a woman who is legally married to the person; or

(ii) if the person is a man—to a woman who is living with the person as his wife on a *bona fide* domestic basis although not legally married to the person, whether or not the person is legally married to another person who is still alive;

(b) a reference to the widow of a deceased person shall be read as a reference to a woman who was the wife of the person immediately before the person's death;

- (c) a reference to the husband of a person shall be read as a reference—
 - (i) to a man who is legally married to the person; or
 - (ii) if the person is a woman—to a man who is living with the person as her husband on a *bona fide* domestic basis although not legally married to the person, whether or not the person is legally married to another person who is still alive;
- (d) a reference to the widower of a deceased person shall be read as a reference to a man who was the husband of the person immediately before the person's death;
- (e) a reference to the spouse of a person (including a deceased person) shall be read as a reference—
 - (i) if the person is or was a man—to the wife or widow, as the case requires, of the person; or
 - (ii) if the person is or was a woman—to the husband or widower, as the case requires, of the person; and
- (f) a reference to a married person shall be read as a reference—
 - (i) to a person who is legally married to another person and is not living separately and apart from that other person on a permanent basis; or
 - (ii) to a person who is living, in the case of a man, with a woman as her husband, or, in the case of a woman, with a man as his wife, on a *bona fide* domestic basis although not legally married to that woman or man (whether or not the person is legally married to another person who is still alive),other than such a person in respect of whom a determination under sub-section (7) is in force.

(7) The Commission may, by instrument in writing, determine that, for any special reason, a person who, but for the determination, would be a married person for the purposes of this Part shall not be treated as such a person.

(8) Notwithstanding any other provision of this Act, a child shall not be treated, for the purposes of this Part, as a child of a person who is claiming or receiving a service pension, unless—

- (a) the child is living in Australia, whether or not the child is temporarily absent from Australia;
- (b) the child is living outside Australia, the person is living in Australia, the day that is the relevant day in relation to the person in respect of the child has not occurred and the Commission is satisfied that it is likely that the person will bring the child to live in Australia on or before that day; or
- (c) if the person is in receipt of a service pension—the child is living with the person outside Australia.

(9) Subject to sub-section (10), the relevant day, for the purposes of sub-section (8), in relation to a person in respect of a child, is the day that falls on the fourth anniversary of the earliest day that was a day on which—

- (a) the person was living in Australia;
- (b) the child was living outside Australia; and
- (c) the child was a child of the person.

(10) Where, for any special reason in any particular case, the Commission is of the opinion that, for the purposes of sub-section (8), the relevant day in relation to a person in respect of a child should be a later day than the day that would, but for this sub-section, be that relevant day, the Commission may determine that, for the purposes of that sub-section, that later day is the relevant day in relation to that person in respect of that child.

(11) If a law of a State or of the Northern Territory alters the name of an authority specified in paragraph (a) of the definition of "Government rent" in sub-section (1), the reference in that definition to that authority shall be read as a reference to that authority under its new name.

(12) For the purposes of this Part, unless the contrary intention appears—

- (a) the value of the property of, or of the property of a particular kind of, a married person shall be taken to be one-half of the sum of the value of the property of, or of property of that kind of, the person and the spouse of the person; and
- (b) the annual rate of the income of a married person shall be taken to be one-half of the sum of the annual rates of income of the person and the spouse of the person.

(13) A reference in this Part to the value of particular property of a person, or to the value of a charge or encumbrance on property of a person, shall, if the property is owned by the person jointly or in common with another person or other persons, be read as a reference to the value of the person's interest in the property, or to the value of that charge or encumbrance in so far as it relates to the person's interest in that property, as the case may be.

(14) Where a person who is eligible, under a particular section, to receive a service pension, a wife's service pension or a carer's service pension is granted that pension, then, for the purposes of this Act, that pension shall be deemed to have been granted under that section.

(15) Where the Commission is satisfied that payments under the scheme known as the Tertiary Education Assistance Scheme or the scheme known as the Secondary Allowance Scheme are being or will be made to or in respect of a student child, other than a child by reference to whom the rate of those payments is increased, the Commission shall, by determination in writing, declare that child to be a prescribed student child for the purposes of this Part as from a date specified in the determination, which may be a date before the date on which the determination is made but shall not be a date before 1 January 1986.

Meaning of qualifying service

36. For the purposes of this Part, a person has rendered qualifying service—

- (a) if the person has, as a member of the Defence Force—
 - (i) rendered service, during a period of hostilities specified in paragraph (a) or (b) of the definition of “period of hostilities” in sub-section 35 (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;
 - (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 Army General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp or the Bomb and Mine Clearance 1945-49 Clasp;
 - (iii) rendered service outside Australia—
 - (A) as a member of a unit of the Defence Force that was allotted for duty; or
 - (B) while the person was allotted for duty, in an area described in item 1, 2, 4, 5, 6, 7 or 8 of Schedule 2 (in column 1) during the period specified in column 2 of that Schedule opposite to that description; or
 - (iv) rendered service outside Australia—
 - (A) as a member of a unit of the Defence Force that was allotted for duty; or
 - (B) while the person was allotted for duty, in an area described in item 3 of Schedule 2 (in column 1) during the period specified in column 2 of that Schedule opposite to that description, being service in respect of which the person has been awarded, or has become eligible to be awarded, a British General Service Medal with the Malaya Clasp;
- (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;

- (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;
- (d) if the person was, during a period of hostilities specified in paragraph (a) or (b) of the definition of "period of hostilities" in sub-section 35 (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;
- (e) if the person is an eligible civilian within the meaning of sub-section 5 (6) who was, during a period of hostilities specified in paragraph (b) of the definition of "period of hostilities" in sub-section 35 (1), detained by the enemy;
- (f) if the person is a person in respect of whom a pension is payable in pursuance of sub-section 13 (6);
- (g) if the person is an Australian mariner as defined by sub-section 35 (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;
 - (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 veteran 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 sub-section 35 (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.

Method of calculation of income

37. (1) In calculating, for the purposes of this Part, the income of a veteran, where a child is a dependant of the veteran, the income of the veteran shall be reduced by—

- (a) if the veteran is an unmarried person or a married person whose spouse is not in receipt of a service pension, a wife's service pension, a carer's service pension, or a pension under Part III, a benefit under Part IVAAA, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*—\$312 per year less the annual amount of any payment, not being a payment under Part III of this Act, under the *Social Security Act 1947* or under the *Tuberculosis Act 1948*, received by the veteran, or, if the veteran is a married person, the spouse of the veteran, for or in respect of the child; or
 - (b) if the veteran is a married person whose spouse is in receipt of a pension, benefit or allowance referred to in paragraph (a)—\$156 per year less one-half of the annual amount of any payment, not being a payment under Part III of this Act, under the *Social Security Act 1947* or under the *Tuberculosis Act 1948*, received by the veteran, or the spouse of the veteran, for or in respect of the child.
- (2) Sub-section (1) shall not be taken into account in the calculation of income for the purpose of sub-section 47 (10) or (11) or 48 (5) or (6).
- (3) In calculating, for the purposes of this Part, the income of the spouse of a veteran, if, by virtue of paragraph (1) (b), the income of the veteran is required to be reduced by an amount, the income of the spouse of the veteran shall be reduced by an amount equal to that amount.
- (4) In calculating the income of a person for the purpose of the application of sub-section 47 (4), (5), (10) or (11) or 48 (4), (5) or (6), the following payments shall be disregarded:
- (a) a payment of an instalment of pension under Part II or IV;
 - (b) a payment of an instalment of a pension under the *Seamen's War Pensions and Allowances Act 1940*;
 - (c) a payment, other than a payment referred to in paragraph (a) or (b), 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;
 - (d) a payment by way of an allowance, not being loss of earnings allowance, under Part VI of this Act; and
 - (e) a payment, by way of an allowance, under regulation 37 of the *Seamen's War Pensions and Allowances Regulations*.

Division 2—Eligibility for service pension

Eligibility for service pension—age

38. (1) Subject to this Act, a veteran who has rendered qualifying service and has attained the age of—

- (a) in the case of a male veteran—60 years; or
- (b) in the case of a female veteran—55 years,

is eligible to receive a service pension under this Part.

(2) Subject to sub-section (3), a person who is a veteran by reason only that the person is a Commonwealth veteran, an allied veteran or an allied mariner is not eligible to receive a service pension under this Part unless the person has, at any time, been continuously resident in Australia for a period of not less than 10 years.

(3) Where—

- (a) a veteran has had more than 1 period of residence in Australia;
- (b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and
- (c) the aggregate of those periods exceeds 10 years,

in the application of sub-section (2) to the veteran, the period specified in that sub-section shall be deemed to be reduced by a period equal to the period by which that aggregate exceeds 10 years.

(4) A veteran who has ceased to reside in Australia after the veteran lodged a claim for a service pension is not eligible to receive a service pension under this Part unless, if the claim were granted, the earliest date as from which the pension could be authorized to be paid were a date not later than the date on which the veteran ceased to reside in Australia.

Eligibility for service pension—invalidity

39. (1) Subject to this Act, a veteran who—

- (a) has rendered qualifying service; and
- (b) is, in the opinion of the Commission, permanently incapacitated for work,

is eligible to receive a service pension under this Part.

(2) Subject to sub-sections (3) and (4), a person who is a veteran by reason only that the person is a Commonwealth veteran, an allied veteran or an allied mariner is not eligible to receive a service pension under this Part unless the person has, at any time, been continuously resident in Australia for a period of not less than 10 years.

(3) Where—

- (a) a veteran has had more than 1 period of residence in Australia;
- (b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and
- (c) the aggregate of those periods exceeds 10 years,

in the application of sub-section (2) to the veteran, the period specified in that sub-section shall be deemed to be reduced by a period equal to the period by which that aggregate exceeds 10 years.

(4) Where—

- (a) a veteran became permanently incapacitated for work while in Australia or during a temporary absence from Australia;

- (b) the veteran's permanent incapacity for work was not brought about with a view to obtaining a service pension or a pension under the *Social Security Act 1947*; 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,

sub-section (2) does not apply to or in relation to the veteran.

(5) A veteran who has ceased to reside in Australia after the veteran lodged a claim for a service pension is not eligible to receive a service pension under this Part unless, if the claim were to be granted, the earliest date as from which the pension could be authorized to be paid were a date not later than the date on which the veteran ceased to reside in Australia.

(6) For the purposes of this section, a person shall be deemed to be permanently incapacitated for work—

- (a) if the degree of permanent incapacity for work is not less than 85%;
or
- (b) if the person is permanently blinded in both eyes.

Eligibility for wife's service pension

40. (1) Subject to this Part—

- (a) the wife of a veteran is eligible to receive a wife's service pension under this Part if the veteran is in receipt of a service pension; or
- (b) the widow of a deceased veteran is eligible to receive a wife's service pension under this Part—
 - (i) if the veteran was, immediately before his death, in receipt of a service pension; or
 - (ii) if the veteran had made a claim for a service pension before the veteran died and the Commission determines that a service pension would have been granted to the veteran if the veteran had not died.

(2) Where a veteran who makes a claim for a service pension at a time when the veteran is in receipt of an age pension or invalid pension under the *Social Security Act 1947* dies before the claim is determined, the Commission shall, in determining, for the purposes of sub-paragraph (1) (b) (ii), whether or not a service pension would have been granted to the veteran if the veteran had not died, disregard the fact that the veteran was in receipt of that age pension or invalid pension.

(3) The wife of a veteran, or widow of a deceased veteran, who has ceased to reside in Australia after the wife, or widow, lodged a claim for a wife's service pension is not eligible to receive a wife's service pension unless, if the claim were granted, the earliest date as from which the pension could be authorized to be paid were a date not later than the date on which the wife, or widow, ceased to reside in Australia.

Eligibility for carer's service pension

41. (1) Subject to this Part, where a relative of a severely handicapped veteran who is in receipt of a service pension under this Part, personally provides constant care and attention for the veteran in a home of the relative and the veteran, the relative is eligible to receive a carer's service pension under this Part.

(2) Where a relative of a severely handicapped veteran who is providing constant care and attention for the veteran temporarily ceases to provide that care and attention—

- (a) for a period of not more than 4 weeks in any period of 12 months; or
- (b) for such other period as the Commission, for any special reason in any particular case, approves in writing,

the relative shall not be taken to cease to be eligible to receive a carer's service pension by reason only of that cessation.

(3) In this section—

“relative”, in relation to a veteran, means—

- (a) the spouse of the veteran;
- (b) a grandparent, parent, step-parent, parent-in-law, brother, sister, half-brother, half-sister, step-brother, step-sister, child, adopted child, step-child, son-in-law, daughter-in-law or grandchild of the veteran;
- (c) a person who has been a guardian of the veteran or a person to whom the veteran is guardian; or
- (d) any other person who the Commission determines in writing should, in the special circumstances of the case, be treated as a relative of the veteran for the purposes of this section;

“severely handicapped veteran” means a veteran who—

- (a) has a physical or mental disability;
- (b) by reason of that disability, needs constant care and attention; and
- (c) is likely to need constant care and attention permanently or for an extended period.

Restrictions on dual pensions

42. (1) Notwithstanding anything contained in this Part—

- (a) a person is not entitled to receive more than one service pension at the same time;
- (b) a person is not entitled to receive, at the same time, a service pension and—
 - (i) a pension under Part III or IV;
 - (ii) a benefit under Part IVAAA or VII;
 - (iii) an allowance under Part VIIA; or

- (iv) a rehabilitation allowance under Part VIII, of the *Social Security Act 1947*;
- (c) a person is not entitled to receive, at the same time, a service pension and an allowance under section 9 of the *Tuberculosis Act 1948*; and
- (d) a widow of a deceased veteran who is in receipt of a prescribed pension in respect of the death of the veteran is not entitled to receive, at the same time, a wife's service pension as the widow of that deceased veteran or as the wife of another veteran.

(2) In sub-section (1)—

“prescribed pension” means—

- (a) a pension payable under Part II or IV;
- (b) a pension payable under the *Seamen's War Pensions and Allowances Act 1940*, other than an attendant's allowance under section 21 of that Act;
- (c) pension, or compensation of a periodical nature, payable under section 13 of the *Defence (Transitional Provisions) Act 1946*, other than an attendant's allowance payable under that section,

and includes a pension that is payable under the law of a foreign country and is, in the opinion of the Commission, similar in character to a pension of a kind referred to in paragraph (a), (b) or (c).

“service pension” includes wife's service pension and carer's service pension.

(3) Sub-section (4) applies to a person in respect of a period that is a pension period in relation to the person if—

- (a) the person is entitled to receive, during that pension period—
 - (i) a payment of a service pension; and
 - (ii) a payment under the scheme known as the New Enterprise Incentive Scheme; and
- (b) in a case where the person is a married person—the spouse of the person is not entitled to receive, during that pension period—
 - (i) if the person is a man—a wife's service pension, or a carer's service pension by reason of being the wife of the man; or
 - (ii) if the person is a woman—a carer's service pension by reason of being the husband of the woman.

(4) Where this sub-section applies to a person in respect of a period that is a pension period in relation to the person, then—

- (a) in a case where the amount that, but for this sub-section, would be the amount of the payment (in this sub-section referred to as the “pension payment”) referred to in sub-paragraph (3) (a) (i) that the person is entitled to receive during that period is higher than the amount of the payment (in this sub-section referred to as the

“scheme payment”) referred to in sub-paragraph (3) (a) (ii) that the person is entitled to receive during that period—the amount of the pension payment shall be reduced by deducting the amount of the scheme payment; or

(b) in any other case—the pension payment shall be reduced to nil.

(5) Sub-sections (6) and (7) apply to a married person (in this sub-section and in sub-sections (6) and (7) referred to as the “relevant person”) and to the spouse of the relevant person, in relation to a period that is a pension period in relation to the relevant person if—

(a) the relevant person is entitled to receive, during that pension period—

(i) a payment of a service pension, of a wife's service pension or of a carer's service pension in respect of his or her spouse; and

(ii) a payment under the scheme known as the New Enterprise Incentive Scheme; and

(b) the spouse of the relevant person is entitled to receive, during that pension period, a payment of such a pension.

(6) Where this sub-section applies to a relevant person in respect of a period that is a pension period in relation to that person, then—

(a) in a case where the amount that, but for this sub-section, would be the amount of the payment (in this sub-section referred to as the “pension payment”) referred to in sub-paragraph (5) (a) (i) that the relevant person is entitled to receive during that period is higher than the amount that is one-half the amount of the payment (in this sub-section referred to as the “scheme payment”) referred to in sub-paragraph (5) (a) (ii) that the relevant person is entitled to receive during that period—the amount of the pension payment shall be reduced by deducting the amount that is one-half of the amount of the scheme payment; or

(b) in any other case—the pension payment shall be reduced to nil.

(7) Where this sub-section applies to the spouse of a relevant person in respect of a period that is a pension period in relation to a relevant person, then—

(a) in a case where the amount that, but for this sub-section, would be the amount of the payment (in this sub-section referred to as the “pension payment”) referred to in paragraph (5) (b) that the spouse is entitled to receive during that period is higher than the amount that is one-half of the amount of the payment (in this sub-section referred to as the “scheme payment”) referred to in sub-paragraph (5) (a) (ii) that the relevant person is entitled to receive during that period—the amount of the pension payment shall be reduced by deducting the amount that is one-half of the amount of the scheme payment; or

(b) in any other case— the pension payment shall be reduced to nil.

(8) In sub-sections (3), (4), (5), (6) and (7), “pension period”, in relation to a person, means a period of 2 weeks commencing on the day immediately following a day on which the person receives a payment of a service pension, a wife’s service pension or a carer’s service pension, as the case requires.

Division 3—Claims for service pensions

Claim for service pension, &c.

43. (1) A claim for a service pension, for a wife’s service pension or for a carer’s service 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;
- (c) shall be made by forwarding to, or delivering at, an office of the Department in Australia the application and any evidence referred to in paragraph (b).

(2) A claim for a service pension for a veteran, a wife’s service pension for the wife or widow of a veteran or a carer’s service pension for the relative of a veteran may be made—

- (a) by the prescribed person referred to in sub-section (3);
- (b) with the approval of that prescribed person, by another person on behalf of that prescribed person; or
- (c) in a case where that prescribed person is unable, by reason of physical or mental incapacity, to approve another person to make the claim on his or her behalf—by another person, being a person approved by the Commission, on behalf of that prescribed person.

(3) For the purpose of sub-section (2)—

- (a) if the claim is for a service pension for a veteran, the veteran is the prescribed person;
- (b) if the claim is for a wife’s service pension for the wife or widow of a veteran, the wife or widow is the prescribed person; or
- (c) if the claim is for a carer’s service pension for a relative of a veteran, the relative is the prescribed person.

(4) Subject to sub-section 63 (4), a veteran is not eligible to lodge a claim for a service pension unless the veteran is residing in, and is physically present in, Australia.

(5) Subject to sub-section 63 (4)—

- (a) the wife or widow of a veteran is not eligible to lodge a claim for a wife’s service pension unless she is residing in, and is physically present in, Australia; and

- (b) the relative of a veteran is not eligible to lodge a claim for a carer's service pension unless the relative is residing in, and is physically present in, Australia.
- (6) A veteran may, instead of making a claim for a service pension, make a claim for a decision that the veteran has rendered qualifying service and, if a veteran does so—
 - (a) the claim shall be made, dealt with and determined under this Act in like manner as a claim for a service pension is required to be made, dealt with and determined;
 - (b) a decision that the veteran has not rendered qualifying service is subject to review as if it were such a decision given in the course of determining a claim for a service pension; and
 - (c) a decision of the Commission, the Board or the Administrative Appeals Tribunal that the veteran has rendered qualifying service is, for all purposes of this Act, evidence that the veteran had rendered qualifying service.

Investigation of claim

44. (1) Where a claim for service pension is made in accordance with section 43, the Secretary shall cause an investigation to be made into the matters to which the claim relates.

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

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

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

(4) In this section, "service pension" includes wife's service pension and carer's service pension.

Duties of Commission in relation to service pensions

45. It is the duty of the Commission in considering a claim for a service pension, a wife's service pension or a carer's service pension submitted to it, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the determination of the claim.

Determination of claim for service pension

46. (1) Where a claim for a service pension is submitted to the Commission in accordance with sub-section 44 (2), the Commission shall consider the claim and, after consideration of all matters that, in the opinion of the Commission, are relevant, including, but without limiting the generality

of the foregoing, the evidence and documents submitted with the claim in accordance with sub-section 44 (3) and any further evidence subsequently submitted to the Commission in relation to the claim, shall determine the claim.

(2) Where a service pension is granted to a person under this Part, the Commission may, subject to this Act, approve payment of the pension from and including a date not earlier than the date on which the claim for service pension, in accordance with the form approved for the purposes of paragraph 43 (1) (a) was received at an office of the Department in Australia.

(3) Where—

- (a) a person makes a claim for a service pension in writing, but otherwise than in accordance with the form approved for the purposes of paragraph 43 (1) (a);
 - (b) the person subsequently makes a claim for a service pension in accordance with the 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 the form so approved; or
 - (ii) within 3 months after the person had been so notified; and
 - (c) a service pension is granted to the person under this Part upon consideration of that claim in accordance with the form so approved,
- the Commission may, subject to this Act, approve payment of the service pension from and including a date not earlier than the date on which the claim referred to in paragraph (a) was received at an office of the Department in Australia.

(4) In this section, “service pension” includes wife’s service pension and carer’s service pension.

Division 4—Rates of service pensions

Rate of veteran’s service pension

47. (1) The rate of a service pension granted to a veteran is—

- (a) in the case of an unmarried veteran or a married veteran whose spouse is not in receipt of—
 - (i) a pension under this Part;
 - (ii) a pension under Part III, a benefit under Part VII, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*; or
 - (iii) an allowance under section 9 of the *Tuberculosis Act 1948*, \$5,090.80 per year; or
 - (b) in any other case—\$4,245.80 per year,
- increased or reduced to the extent (if any) provided by sub-sections (3), (4), (5), (6), (7), (8), (9), (10) and (11).

(2) Where the Commission is satisfied that—

(a) the living expenses of a married veteran and the spouse of the veteran are, or are likely to be, greater than they would otherwise be by reason that those persons are unable, as a result of the illness or infirmity of either or both of them, to live together in a matrimonial home; and

(b) the inability is likely to continue indefinitely,

the Commission may direct that sub-section (1) is to apply to the veteran as if the veteran were an unmarried veteran.

(3) Where a child is a dependant of a veteran, or children are dependants of a veteran, the rate of service pension applicable to the veteran under sub-section (1) shall, subject to sub-section (4), be increased—

(a) in the case of an unmarried veteran or a married veteran in relation to whom a direction under sub-section (2) is in force—by an amount per year equal to the sum of \$520 per year and—

(i) \$832 per year in respect of each child who is a dependant of the veteran and is not a prescribed student child of the veteran; and

(ii) \$728 per year in respect of each child who is a dependant of the veteran and is a prescribed student child of the veteran; or

(b) in any other case by—

(i) \$832 per year in respect of each child who is a dependant of the veteran and is not a prescribed student child of the veteran; and

(ii) \$728 per year in respect of each child who is a dependant of the veteran and is a prescribed student child of the veteran.

(4) Where the rate of service pension applicable to a married veteran whose spouse is in receipt of a wife's service pension or a carer's service pension, a pension under Part III of the *Social Security Act 1947*, a benefit under Part IVAAA, an allowance under Part VIIA or an allowance under Part VIII of that Act (being, in the case of an allowance under Part VIII of that Act, an allowance the annual rate of which is determined by reference to Part III of that Act) is, subject to this sub-section, to be increased by sub-section (3)—

(a) the amount per year of the increase is reduced by—

(i) the amount (if any) per year by which the rate of income of the veteran exceeds \$1,300 per year; or

- (b) if the amount per year of the increase is reduced by an amount calculated under sub-paragraph (a) (i)—
 - (i) the annual rate of the income of the veteran and the annual rate of the income of the veteran's spouse shall each be deemed, for the purposes of sub-section (5) of this section and sub-section 48 (4), to be reduced by the amount per year of that reduction; and
 - (ii) no amount per annum is applicable in relation to the veteran under paragraph (5) (b) of this section or in relation to the spouse of the veteran under paragraph 48 (4) (b); and
- (c) if the amount per year of the increase is so reduced by an amount calculated under sub-paragraph (a) (ii)—
 - (i) the value of the property of the veteran and the veteran's spouse shall each be deemed, for the purposes of sub-section (5) of this section and sub-section 48 (4), to be reduced by an amount equal to 250 times the amount of that reduction

(7) Subject to sub-section (8), where a child is a dependant of a

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(a) has attained the age of 70 years;
(b) is in receipt of, or is qualified to receive, a service pension; and
(c) is not a veteran referred to in paragraph (10) (c),
the annual rate at which that pension is granted to the veteran shall not be less than—

(d) if the veteran has an annual rate of income exceeding \$8,658 per year—\$2,230.80 per year reduced by one-half of the amount per year by which the annual rate of income of the veteran exceeds \$8,658 per year; or

(e) in any other case—\$2,230.80 per year.

(12) Sub-section (10) or (11)—

(a) does not apply in relation to a veteran if the annual rate of pension that would be applicable to the veteran under that sub-section is greater than the annual rate of pension applicable to the veteran apart from that sub-section (being a rate that was reduced by virtue of paragraph (5) (b)) and, where sub-section (10) or (11) does not, by virtue of this paragraph, apply in relation to the veteran, paragraph (5) (a) does not apply in relation to the veteran; and

(b) does not apply in relation to a veteran if—

(i) the veteran would, if he or she had not attained the age of 70 years, be eligible to receive remote area allowance under section 57; and

(ii) the sum of the amount of the fortnightly instalment of service pension that would be payable to the veteran if sub-section (5) were applicable to the veteran and the amount per fortnight of remote area allowance that would be payable to the veteran if the veteran were eligible to receive that allowance is greater than the amount of a fortnightly instalment of service pension payable to the veteran in accordance with sub-section (10) or (11).

(13) On and after 1 May 1986, paragraph (3) (a) shall be read as if “\$520” were omitted and “\$624” were substituted.

Rate of wife's service pension

48. (1) Subject to this Part, the rate of a wife's service pension is the annual rate specified in paragraph 47 (1) (b) increased or reduced to the extent (if any) provided by sub-sections (3), (4), (5) and (6) of this section.

(2) Where a direction under sub-section 47 (2) is in force in respect of a married veteran, the Commission may determine a rate of wife's service pension, in respect of the wife of the veteran, not exceeding the annual rate specified in paragraph 47 (1) (a).

(3) Where—

(a) the annual rate of wife's service pension in respect of the wife of a veteran is determined in accordance with sub-section (2), being a

determination made by reason of the illness or infirmity of the veteran; and

(b) the rate of service pension applicable to the veteran would, but for this sub-section, be increased by virtue of sub-section 47 (3), sub-sections 47 (3), (4), (6) and (7) do not apply for the purpose of calculating the maximum rate of service pension applicable to the veteran, but the annual rate of wife's service pension in respect of the wife shall be increased by the amount per year by which the rate of pension applicable to the veteran would, but for this sub-section, be so increased and sub-section 47 (4) applies to the increase as if it were an increase in the rate of the veteran's service pension.

(4) The annual rate that would, but for this sub-section be the annual rate of wife's service pension applicable to the wife of a veteran, or the widow of a deceased veteran, by virtue of the preceding provisions of this section shall be reduced by—

(a) one-half of the amount (if any) per year by which the annual rate of income of the wife or widow exceeds \$1,300 per year; or

(b) an amount per year equal to 26 times the pension reduction amount (if any) applicable to the wife or widow divided by 250,

whichever is the greater, or, if the amount per year of the reduction calculated under paragraphs (a) and (b) are the same, by the amount calculated under paragraph (a).

(5) Where—

(a) the wife of a veteran, or the widow of a deceased veteran, has attained the age of 70 years;

(b) the wife or widow is in receipt of, or is qualified to receive, a wife's service pension; and

(c) in the case of the wife of a veteran, a direction under sub-section 47 (2) is not in force in respect of the veteran,

the annual rate at which wife's service pension is paid to the wife or widow shall not be less than—

(d) if the wife or widow has an annual rate of income exceeding \$8,658 per year—\$2,230.80 per year reduced by one-half of the amount per year by which the annual rate of her income exceeds \$8,658 per year; or

(e) in any other case—\$2,230.80 per year.

(6) Where—

(a) the wife of a veteran has attained the age of 70 years;

(b) the wife is in receipt of, or is eligible to receive, a wife's service pension; and

(c) a direction under sub-section 47 (2) is in force in respect of the veteran,

the annual rate at which a wife's service pension is payable to the wife shall not be less than—

- (d) if the wife has an annual rate of income exceeding \$8,658 per year—\$2,675.40 per year reduced by one-half of the amount per year by which her annual rate of income exceeds \$8,658 per year; or
 - (e) in any other case—\$2,675.40 per year.
- (7) Sub-section (5) or (6)—
- (a) does not apply to the wife of a veteran or the widow of a deceased veteran if the annual rate of wife's service pension that would be applicable to the wife or widow under that sub-section is greater than the annual rate of wife's service pension applicable to the wife or widow apart from that sub-section (being a rate that was reduced by virtue of paragraph (4) (b)) and, where sub-section (5) or (6) does not, by virtue of this paragraph, apply in relation to the wife or widow, paragraph (4) (a) does not apply in relation to the wife or widow; and
 - (b) does not apply in relation to a wife of a veteran or a widow of a deceased veteran if—
 - (i) the wife or widow would, if she had not attained the age of 70 years, be eligible to receive remote area allowance under section 57; and
 - (ii) the sum of the amount of the fortnightly instalment of wife's service pension that would be payable to the wife or widow if sub-section (4) were applicable to the wife or widow and the amount per fortnight of remote area allowance that would be payable to the wife or widow if she were eligible to receive that allowance is greater than the amount of a fortnightly instalment of wife's service pension payable to the wife or widow in accordance with sub-section (5) or (6).

Rate of carer's service pension

49. The rate of a carer's service pension payable to a person is a rate equal to the rate of service pension that would be payable to the person under this Part if the person were a veteran who—

- (a) was qualified to receive a service pension; and
- (b) was under the age of 70 years and was not permanently blind.

Calculation of value of property

50. (1) In calculating the value of the property of a person for the purposes of this Part—

- (a) there shall be disregarded—
 - (i) if the person is an unmarried person—the value of any right or interest of the person in relation to the principal home of the person (not being a right or interest of the kind referred to in sub-paragraph (iv));

- (ii) if the person is a married person—the value of any right or interest of the person in relation to one residence that is the principal home of the person, of the person's spouse or of both of them (not being a right or interest of the kind referred to in sub-paragraph (iv));
- (iii) the value of any life interest of the person (not being a life interest in relation to the principal home of the person, of the person's spouse or of both of them) or annuity (including a superannuation pension) of the person, not being, unless the Commission otherwise determines in writing, an annuity that is able to be disposed of or an annuity under which a substantial part of the income is, or may be, deferred;
- (iv) if the residence that is the principal home of the person is a private residence and the person has acquired for valuable consideration, or has retained, a right to accommodation for life in, or a life interest in, that residence—the value of that right or interest;
- (v) the value of any contingent or reversionary interest of the person (not being an interest created by the person or by the person's spouse);
- (vi) the value of any property (not being a contingent or reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;
- (vii) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;
- (viii) the value of one cemetery plot acquired by the person and of funeral expenses paid in advance by the person;
- (ix) if the person or the person's spouse, or a child who is dependent on the person or the person's spouse, is a disabled person—the value of any personal property of the person that is designed for use by a disabled person and any part of the value of the personal property of the person that is attributable to modifications made to that property to enable it to be used by a disabled person;
- (x) if the person is provided with a motor vehicle under the scheme administered by the Commonwealth known as the Vehicle Assistance Scheme—the value of that motor vehicle; and
- (xi) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the

sale as will be applied by the person in respect of the purchase of the other residence; and

- (b) where a charge or encumbrance, not being a charge or encumbrance that is a collateral security, exists on particular property of a person, not being property the value of which is to be disregarded under paragraph (a), the value of that property shall be reduced by the value of that charge or encumbrance.

(2) Where a charge or encumbrance exists on any property of a person the value of which is to be disregarded under paragraph (1) (a) and the same charge or encumbrance exists on other property of the person, the amount to be deducted under paragraph (1) (b) in respect of that other property of the person is the amount that bears to the value of the charge or encumbrance the same proportion as the value of that other property bears to the value of all the property of the person on which the charge or encumbrance exists.

(3) A reference in this section to the principal home of a person shall be read as including a reference to—

- (a) in the case of a dwelling-house—the private land adjacent to the dwelling-house to the extent that that private land, together with the area of the ground floor of the dwelling-house, does not exceed 2 hectares; or
- (b) in the case of 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.

(4) Where the area of private land adjacent to a dwelling-house exceeds substantially the average area of private land adjacent to other dwelling-houses in the same locality, so much only of the first-mentioned area as the Commission determines in writing not to be in excess of the average area shall be taken into account for the purposes of paragraph (3) (a).

(5) A reference in sub-section (3) or (4) to private land, in relation to a dwelling-house, shall be read as a reference to land used primarily for private or domestic purposes in association with that dwelling-house.

(6) For the purposes of this section, where the value of any property of a person or, in the case of a married person, of the person and the person's spouse, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home, being property that is used primarily for private or domestic purposes, does not exceed \$10,000, the value of that property shall be taken to be \$10,000 unless the person satisfies the Commission that the value of that property is less than \$10,000.

(7) A reference in sub-paragraph (1) (a) (i), (ii) or (iv) to a right or interest of a person in relation to a principal home shall be read as not including a reference to a right or interest that, in the opinion of the

Commission, does not give reasonable security of tenure in relation to that home.

(8) A residence of a person shall be taken to continue to be the principal home of a person during—

- (a) any period, not exceeding 12 months, during which the person is temporarily absent from that residence; and
- (b) any period, not exceeding 2 years, during which the person is—
 - (i) residing in a benevolent home or in premises at which accommodation is provided exclusively or principally for mentally ill persons;
 - (ii) residing in premises approved as an approved nursing home pursuant to section 40AA of the *National Health Act 1953*; or
 - (iii) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital.

Pension loans scheme

51. (1) In this section—

“exempt property” means property to which paragraph 50 (1) (a) applies;

“relevant interest rate” means such rate as is fixed from time to time by the Minister for Social Security by notice published in the *Gazette* for the purposes of sub-section 6AB (1) of the *Social Security Act 1947*;

“relevant property”, in relation to a person, means property of the person (other than exempt property)—

- (a) that cannot readily be sold or realized; or
- (b) that—
 - (i) the person does not wish to sell or realize; and
 - (ii) is not property of a kind that the person could reasonably be expected to sell or realize.

(2) Where—

- (a) a person is in receipt of, or is eligible to receive, a service pension, a wife's service pension or a carer's service pension;
- (b) the annual rate of that pension is determined under or by reference to paragraph 47 (5) (b) or 48 (4) (b);
- (c) the person is—
 - (i) a veteran who has, being a man, attained the age of 60 years or, being a woman, attained the age of 55 years; or
 - (ii) the spouse of a veteran referred to in sub-paragraph (i);
- (d) the property of the person or, if the person is a married person, of the person and the person's spouse consists of or includes relevant property; and

- (e) the value of the relevant property of the person or, if the person is a married person, of the person and the person's spouse is not less than 70 per centum of the value of the property (other than exempt property) of the person or of the person and the person's spouse, as the case may be,

the person may, by notice in writing, in a form approved by the Commission, forwarded to, or delivered at, any office of the Department in Australia, request that, for the purposes of determining the annual rate of the service pension, wife's service pension or carer's service pension, as the case may be, payable to the person, the value of the property of the person or of the person and the person's spouse, as the case may be, be disregarded.

(3) A request made by a person under sub-section (2) shall be signed by the person and, if the person is a married person, by the person's spouse.

(4) Subject to this section, where—

- (a) a request is made by a person in accordance with sub-section (2);
- (b) the value of the relevant property of the person or, if the person is a married person, of the person and the person's spouse is not less than 70 per centum of the value of the property (other than exempt property) of the person or of the person and the person's spouse, as the case may be; and
- (c) the Commission is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this section is readily recoverable,

the value of the property of the person or of the person and the person's spouse, as the case may be, shall, on and after the day on which the request is lodged, be disregarded for the purposes of this Act other than in calculating the value of the person's property for the purposes of section 83.

(5) Subject to sub-section (6), where sub-section (4) applies in relation to a person—

- (a) the amount (if any), together with interest on that amount at the relevant interest rate, by which the sum of the amount of service pension, wife's service pension or carer's service pension, as the case may be, paid to the person from time to time and any amount payable by the person under sub-section (9) exceeds the amount (if any) of service pension, wife's service pension or carer's service pension, as the case may be, that would have been paid to the person if sub-section (4) did not apply in relation to the person, reduced by any amounts repaid to the Commonwealth, is a debt payable by the person to the Commonwealth; and
- (b) the property, within Australia, of the person and, if the person is a married person and the person's spouse has signed a request under sub-section (2), of the person's spouse is subject to a charge in favour of the Commonwealth for the purposes of securing the repayment of the debt, but such a charge is not applicable in relation

to a *bona fide* purchaser for value who purchases any of that property without notice of the charge.

(6) An amount is not a debt payable by a person to the Commonwealth under paragraph (5) (a) unless the value of the property (including exempt property) of the person, or, if the person is a married person, of the person and the person's spouse, exceeds \$100,000, and the amount of the debt shall not exceed the amount by which the value of that property exceeds \$100,000.

(7) Where, by reason of the operation of paragraph (5) (b), a charge is created on any property situated in a State or Territory, the Commission may lodge with the appropriate officer of the State or Territory a notice of the charge in a form approved by the Commission, and the person with whom that notice is lodged may register the charge as if the notice were a bill of sale or an instrument of charge or encumbrance duly executed under the laws in force in that State or Territory.

(8) Where sub-section (4) applies in relation to a person, the person and, if the person is a married person, the person's spouse shall, if required to do so by the Commission, execute any instrument relating to the registration of a charge on the property of the person or the person's spouse.

(9) Costs incurred by the Commonwealth that are associated with the registration of a charge on property of a person or of the person's spouse or with the registration of the discharge of such a charge are payable by the person.

(10) Subject to sub-sections (11), (12) and (13), where, by reason of the operation of paragraph (5) (b), a charge exists on property of a person or on property of a person and the person's spouse, the Commonwealth is not, unless the Commission otherwise determines in writing, entitled to enforce the charge or otherwise recover the debt secured by the charge until after the death of the person.

(11) Subject to sub-sections (12) and (13), where—

(a) by reason of the operation of paragraph (5) (b), a charge exists on the property of a married person and of the person's spouse; and

(b) the person dies and the spouse—

(i) has the use of that property or part of that property; and

(ii) has, being a man, attained the age of 60 years or, being a woman, attained the age of 55 years,

the Commonwealth is not entitled to enforce the charge against that property or that part of that property, as the case may be, until after the death of the spouse.

(12) Where—

(a) by reason of the operation of paragraph (5) (b), a charge is created on property of a person; and

(b) any of the property on which the charge exists ceases to be property of the person,

then—

- (c) in a case where the property referred to in paragraph (b) was sold or otherwise disposed of by the person—the Commonwealth may recover from the person out of the proceeds (if any) of the sale or disposal the whole or any part of the debt secured by the charge; and
- (d) in a case where the person who is the new owner of the property referred to in paragraph (b) is not a *bona fide* purchaser for value without notice of the charge—the Commonwealth may enforce the charge against that property.

(13) Where—

- (a) by reason of the operation of paragraph (5) (b), a charge is created on the property of a person or on the property of a person and the person's spouse;
- (b) any of the relevant property of the person or the person's spouse ceases to be property of the person or the person's spouse, as the case may be, or the person or the person's spouse acquires property that is not relevant property or exempt property or the person, being an unmarried person, becomes a married person; and
- (c) as a result of an event referred to in paragraph (b), the value of the relevant property of the person or of the person and the person's spouse is less than 70 per centum of the value of the property (other than exempt property) of the person or of the person and the person's spouse, as the case may be,

sub-sections (4), (10) and (11) cease to apply in relation to the person unless the Commission determines in writing that those sub-sections continue to apply in relation to the person.

(14) Where, in accordance with this section, a charge may be enforced against property of a person, the charge may be enforced against that property, or any part of that property, in such a manner as the Commission determines in writing.

Disposal of property or income

52. (1) Subject to sub-sections (3), (6) and (7), where, on or after 1 June 1984, a married person has, during a pension year of the person or of the person's spouse, disposed of property of the person, 50 per centum of the amount (if any) by which the sum of the amount of that disposition of property and the amount of any other disposition of property by the person or by the person's spouse that took place during that pension year exceeds \$4,000 shall, for the purposes of this Act, be included in the value of the property of the person and of the property of the person's spouse.

(2) Subject to sub-section (3), where, on or after 1 June 1984, an unmarried person has, during a pension year of the person, disposed of property of the person, the amount (if any) by which the sum of the amount of that disposition of property and the amount of any other

disposition of property by the person that took place during that pension year exceeds \$2,000 shall, for the purposes of this Act, be included in the value of the property of the person.

(3) Where an amount (in this sub-section referred to as the "relevant amount") is included in the value of the property of a person under sub-section (1) or (2) by reason of a disposition of property that took place during a pension year of the person, the amount to be included in that value under that sub-section in subsequent pension years of the person shall, on each anniversary of the day on which that disposition took place, be reduced by an amount equal to 10 per centum of the relevant amount.

(4) Subject to sub-sections (6) and (7), where, on or after 1 June 1984, a married person has disposed of income of the person, one-half of the amount of that disposition shall, for the purposes of this Act, be included in the income of the person and in the income of the person's spouse.

(5) Where, on or after 1 June 1984, an unmarried person has disposed of income of the person, the amount of that disposition shall, for the purposes of this Act, be included in the income of the person.

(6) Where—

- (a) an amount is included under sub-section (1) in the value of the property, or under sub-section (4) in the income, of a married person and of the person's spouse by reason of a disposition of property or of income by the person; and
- (b) the person and the person's spouse cease to be married persons in relation to each other,

any amount that was included in the value of the property, or in the income, of the person's former spouse by reason of that disposition shall be included in the value of the property, or in the income, of the person.

(7) Where—

- (a) an amount is included under sub-section (1) in the value of the property, or under sub-section (4) in the income, of a married person and of the person's spouse by reason of a disposition of property or of income by the person; and
- (b) the person or the person's spouse dies,

then—

- (c) in the case of the death of the person—no amount shall be included in the value of the property, or in the income, of the person's spouse by reason of that disposition; or
- (d) in the case of the death of the person's spouse—any amount that would, if the person's spouse had not died, be included in the value of the property, or in the income, of the person's spouse by reason of that disposition shall be included in the value of the property, or in the income, of the person.

(8) Where—

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- (a) a person has, on or after 1 June 1984, disposed of property of the person;
- (b) the course of conduct that constituted that disposition of property also constituted a disposition of income and the income disposed of is attributable, in whole or in part, to that property; and
- (c) under sub-section (1) or (2), whichever is applicable to the person—
 - (i) no amount is included in the value of the property of the person by reason of that disposition of property; or
 - (ii) the amount that is included in the value of the property of the person by reason of that disposition of property is, in a case to which sub-section (1) applies, less than one-half of the amount of that disposition of property or, in a case to which sub-section (2) applies, less than the amount of that disposition,

then, for the purposes of sub-sections (4) and (5)—

- (d) in a case to which sub-paragraph (c) (i) of this sub-section applies—no amount shall be included in the income of a person by reason of that disposition of income; or
 - (e) in a case to which sub-paragraph (c) (ii) of this sub-section applies—an amount to be included in the income of a person by reason of that disposition of income shall be calculated disregarding so much of the amount of that disposition of income as the Commission determines in writing to be attributable to that part of the amount of that disposition of property that is not included in the value of the property of a person under sub-section (1) or (2).
- (9) This section does not apply to a disposition of property, or of income, that took place—
- (a) more than 5 years before the time when—
 - (i) the person who disposed of that property or income; or
 - (ii) if that person was, at the time when that disposition took place, a married person—the person's spouse, became eligible to receive a service pension, a wife's service pension or a carer's service pension; or
 - (b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of that property or income could reasonably have expected that the person or the person's spouse would become eligible to receive such a pension.

(10) For the purposes of this section, a person shall be taken to have disposed of property of the person if the person engages in a course of conduct (not being a course of conduct under which the person ceases employment or to engage in a business or profession or reduces the extent to which the person is employed or the extent to which the person engages

in a business or profession) that diminishes, directly or indirectly, the value of the property of the person where—

- (a) the person receives no consideration, or inadequate consideration, in money or money's worth; or
- (b) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was—
 - (i) to obtain a service pension, a wife's service pension or a carer's service pension, to enable the person's spouse to obtain a service pension, a wife's service pension or a carer's service pension or to obtain, or enable the person's spouse to obtain, a pension under Part III or IV, a benefit under Part IVAAA, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*;
 - (ii) to obtain, or enable the person's spouse to obtain, such a pension, benefit or allowance at a higher rate than that for which the person or the person's spouse would otherwise have been eligible; or
 - (iii) to ensure that the person or the person's spouse would become a person other than a prescribed person for the purposes of section 82 or of section 83CA of the *Social Security Act 1947*,

and the amount of that disposition of property shall be taken to be an amount equal to the amount of the diminution in the value of the property of the person reduced by the consideration (if any) received by the person in respect of that disposition.

(11) For the purposes of this section, a person shall be taken to have disposed of income of the person if the person engages in a course of conduct (not being a course of conduct under which the person ceases employment or to engage in a business or profession or reduces the extent to which the person is employed or the extent to which the person engages in a business or profession) that diminishes, directly or indirectly, the rate of income of the person where—

- (a) the person receives no consideration, or inadequate consideration, in money or money's worth; or
- (b) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was—
 - (i) to obtain a service pension, a wife's service pension or a carer's service pension, to enable the person's spouse to obtain a service pension, a wife's service pension or a carer's service pension or to obtain, or enable the person's spouse to obtain, a pension under Part III or IV, a benefit under Part IVAAA, an allowance under Part VIIA, or a rehabilitation allowance under Part VIII of the *Social Security Act 1947*;
 - (ii) to obtain, or enable the person's spouse to obtain, such a pension, benefit or allowance at a higher rate than that for

which the person or the person's spouse would otherwise have been eligible; or

- (iii) to ensure that the person or the person's spouse would become a person other than a prescribed person for the purposes of section 82 or of section 83CA of the *Social Security Act 1947*,

and the amount of that disposition of income shall be taken to be the amount that, in the opinion of the Commission, is the annual rate of that diminution reduced by such percentage of the consideration (if any) received by the person in respect of that disposition as the Commission determines in writing to be fair and reasonable in all the circumstances of the case.

(12) For the purposes of sub-sections (10) and (11), the value of a right or interest of the kind referred to in sub-paragraph 50 (1) (a) (iv) of a person shall be deemed not to be consideration received by the person.

(13) A reference in this section to a pension year, in relation to a person who is receiving a service pension, a spouse's service pension, a carer's service pension or a pension under Part III or IV, a benefit under Part IVAAA, an allowance under Part VIIA or a rehabilitation allowance under Part VIII of the *Social Security Act 1947* shall be read as a reference to—

- (a) in a case where the person is a married person and the person and the person's spouse were, immediately before they became married persons in relation to each other, receiving such a pension, benefit or allowance—the period of 12 months commencing on the day on which they so became married persons;
- (b) in a case (not being a case referred to in paragraph (a)) where the person is a married person and the person's spouse is receiving such a pension, benefit or allowance—the period of 12 months commencing on the day as from which such a pension, benefit or allowance first became payable to the person or to the person's spouse, whichever was the later; or
- (c) in any other case—the period of 12 months commencing on the day on which that pension, benefit or allowance first became payable to the person,

and to each succeeding and each preceding period of 12 months.

Financial hardship

53. (1) Where—

- (a) the annual rate of a service pension, a wife's service pension or a carer's service pension payable to a person is calculated under or by reference to paragraph 47 (5) (b) or 48 (4) (b);
- (b) section 52 does not apply in relation to the person or the Commission determines in writing that the application of section 52 in relation to the person should, for the purposes of this section, be disregarded;

- (c) any of the property of the person or, if the person is a married person, of the person and the person's spouse, is property that the person, or the person or the person's spouse, as the case may be—
 - (i) cannot sell or realize or could not reasonably be expected to sell or realize; and
 - (ii) cannot use as security for borrowing or could not reasonably be expected to use as security for borrowing; and
- (d) the Commission is satisfied that the person would suffer severe financial hardship if this section did not apply in relation to the person,

the Commission shall determine in writing that this section applies in relation to the person.

(2) Subject to sub-sections (3) and (4), where this section applies in relation to a person, the annual rate of the service pension, wife's service pension or carer's service pension payable to the person shall, notwithstanding sections 47 and 48, be determined in the following manner:

- (a) the value of any of the property of the person and, if the person is a married person, of the person's spouse, that is property referred to in paragraph (1) (c) shall be disregarded;
- (b) there shall be deducted from the maximum annual rate of service pension, wife's service pension or carer's service pension that would be payable to the person apart from the operation of sub-section 47 (4) or (5) or 48 (4), as the case requires (in this section referred to as the "maximum rate"), an amount per annum equal to the sum of—
 - (i) the annual rate of income of the person (other than income from property of the person or of the person's spouse that is not property referred to in paragraph (1) (c) or property to which paragraph 50 (1) (a) applies); and
 - (ii) an amount per year equal to \$26 for each \$250 of the value of the property of the person (other than property referred to in paragraph (1) (c) or property to which paragraph 50 (1) (a) applies).

(3) Where the Commission is of the opinion that the annual rate of service pension, wife's service pension or carer's service pension applicable to a person under sub-section (2) should, having regard to the annual rate of income that could reasonably be expected to be derived from, or produced with the use of, property of the person or the person's spouse that is property referred to in paragraph (1) (c), be reduced, the Commission may direct that the annual rate of service pension, wife's service pension or carer's service pension payable to the person be reduced by such amount per year as the Commission determines in writing.

(4) Where the sum of the annual rate of service pension, wife's service pension or carer's service pension that would, apart from this sub-section, be payable to a person under this section and the annual rate of income of

the person exceeds the maximum rate applicable to the person, the annual rate of the service pension, wife's service pension or carer's service pension so payable shall be reduced by the amount per year of that excess.

Pension reduction amounts

54. A pension reduction amount is applicable to a person who is eligible to receive a service pension, a wife's service pension or a carer's service pension where the value of the property of the person exceeds by not less than \$250—

- (a) in the case of an unmarried person to whom sub-paragraph 50 (1) (a) (i) applies—\$70,000;
- (b) in the case of any other unmarried person—\$120,000;
- (c) in the case of a married person to whom sub-paragraph 50 (1) (a) (ii) applies—\$50,000; or
- (d) in the case of any other married person—\$75,000,

and the amount of that pension reduction amount is an amount equal to that excess (disregarding any part of that excess that is not a multiple of \$250).

Division 5—Rent assistance and remote area allowance

Rent assistance

55. (1) This section applies to a service pensioner who pays, or is liable to pay, rent at an annual rate exceeding \$520, other than a service pensioner—

- (a) in respect of whom paragraph 47 (5) (b) or 48 (4) (b) is applicable in determining the rate of service pension payable to the pensioner; or
- (b) in relation to whom paragraph 47 (4) (c) applies.

(2) In applying this section to and in relation to a service pensioner, being a married person—

- (a) any income of the spouse of the pensioner shall be deemed to be income of the service pensioner;
- (b) if the service pensioner and the spouse of the service pensioner are living together in their matrimonial home—any rent that the spouse pays, or is liable to pay, in respect of the matrimonial home shall be deemed to be paid, or payable, by the service pensioner; and
- (c) if a direction under sub-section 47 (2) is in force in respect of the spouse of the service pensioner—any rent that the spouse of the service pensioner pays, or is liable to pay, in respect of the premises occupied by the service pensioner as his or her home shall be deemed to be paid, or payable, by the service pensioner.

(3) Subject to this section and to section 56, there is payable to a service pensioner to whom this section applies, in addition to service pension, wife's

service pension or carer's service pension, as the case may be, an allowance by way of rent assistance.

(4) Rent assistance is not payable to a service pensioner to whom this section applies in respect of any period during which the service pensioner is outside Australia.

(5) Rent assistance is not payable to a service pensioner to whom this section applies, being a service pensioner who is living with his or her spouse in their matrimonial home, during any period during which the spouse is in receipt of an incentive allowance under section 26 or 133JA of the *Social Security Act 1947*.

(6) Rent assistance is payable to a service pensioner to whom this section applies from a date determined by the Commission, which may be a date before the date of the determination.

(7) Where a service pensioner to whom this section applies (being a service pensioner in receipt of rent assistance) ceases to be a service pensioner, the Commission shall cancel the rent assistance as on and from such date as the Commission determines.

(8) The date determined by the Commission under sub-section (7) may, in the case of a service pensioner who has failed to comply with a requirement under section 127, be a date earlier than the date of the determination but not earlier than the first day after the expiration of the time within which the requirement could have been complied with, and, if any amount of rent assistance is received by the service pensioner in respect of a period after the date so determined—

- (a) the service pensioner is liable to refund that amount; and
- (b) the Commission may sue for and recover that amount in a court of competent jurisdiction as a debt due to the Commonwealth.

Rate of rent assistance

56. (1) Subject to sub-sections (2) and (3), the rate at which rent assistance is payable to a service pensioner to whom section 55 applies is an amount per year equal to—

- (a) one-half of the amount by which the amount of the annual rent paid, or payable, by the service pensioner exceeds \$520; or
- (b) \$780,

whichever is the lesser amount.

(2) The annual rate at which rent assistance is payable to a service pensioner under sub-section (1) shall be reduced by an amount equal to one-half of the annual rate of income of the service pensioner.

(3) Where—

- (a) rent assistance is payable to a service pensioner who is a married person living with his or her spouse in their matrimonial home; and
- (b) there is payable to the spouse of the service pensioner—

- (i) rent assistance;
- (ii) an allowance under section 30A of the *Social Security Act 1947*;
- (iii) an allowance by way of rent assistance under section 112A of the *Social Security Act 1947*;
- (iv) an allowance under section 9 of the *Tuberculosis Act 1948*; or
- (v) a rehabilitation allowance under Part VIII of the *Social Security Act 1947*, being an allowance the amount of which is calculated by reference to an allowance under section 30A or 112A of that Act,

the rate at which rent assistance is payable to the service pensioner is one-half of the rate at which it would be so payable but for this sub-section.

(4) For the purposes of this section, the rent paid, or payable, by a pensioner shall be calculated in the same manner as it is required by paragraphs 55 (2) (b) and (c) to be calculated for the purposes of section 55.

Remote area allowance

57. (1) In this section, "remote area" means an area described in paragraph 1 or 2 of Part I of Schedule 2 to the *Income Tax Assessment Act 1936*.

(2) Where a person, other than a person who is in receipt of a service pension the rate of which has been assessed in accordance with sub-section 47 (10) or (11), or of a wife's service pension the rate of which has been assessed in accordance with sub-section 48 (5) or (6)—

- (a) is in receipt of a service pension, a wife's service pension or a carer's service pension under this Part; and
- (b) is physically present in, and has his or her usual place of residence in, a remote area,

the person is eligible to receive an allowance, called remote area allowance, in accordance with this section.

(3) For the purposes of this section, where a person whose usual place of residence is situated in a remote area is absent from the area for a period, the person shall be taken to be physically present in that remote area during that period, or during the first 8 weeks of that period, whichever is the shorter.

(4) Sub-section (3) does not apply to a person in respect of any period during which the person is outside Australia.

(5) Subject to sub-sections (6) and (7), the rate at which remote area allowance is payable to a person is—

- (a) if the person—
 - (i) is an unmarried person; or

- (ii) is a married person whose spouse is not eligible to be granted remote area allowance under this section, an allowance under Part IIA of the *Social Security Act 1947* or an allowance under the *Tuberculosis Act 1948*, being an allowance the rate of which is determined having regard to residence in the remote area,

\$14 per fortnight; or

- (b) in any other case—\$12 per fortnight.

(6) Where a direction under sub-section 47 (2) is in force in relation to a veteran, the veteran and the spouse of the veteran shall each be taken to be an unmarried person for the purpose of the application of sub-section (5) in relation to the person.

(7) The rate of remote area allowance applicable to a veteran shall be increased by \$7 per fortnight in respect of each child of the veteran (within the meaning of sub-section 10 (1) or (2), whichever is applicable) in respect of whom the rate of the veteran's service pension is increased by virtue of sub-section 47 (3).

(8) Where, but for this sub-section, an increase under sub-section (7) would be payable to 2 veterans in respect of the same child, that increase is payable to a veteran in respect of that child only if the Commission directs that the increase be paid to that veteran.

(9) An increase under sub-section (7) is not payable to a veteran in respect of a child unless the child is physically present in Australia.

Division 6—Review of service pensions and decisions with respect to service pensions

Cancellation, suspension or variation of service pension

58. (1) Subject to sub-section (4), where the Commission is satisfied that—

- (a) having regard to any matter that affects the payment of a service pension; or
- (b) by reason of the refusal or failure of any person to comply with a provision of this Act,

a service pension should be cancelled or suspended, or the rate of a service pension is higher than it should be, the Commission may, by determination in writing, cancel or suspend, or decrease the rate of, the service pension with effect, subject to sub-section (2), from the date of the determination or such later date as is specified in the determination.

- (2) Where a determination is made under sub-section (1)—

- (a) by reason of the refusal or failure of a person to comply with a provision of this Act, other than—

- (i) sub-section 127 (4) in relation to a notice under paragraph 127 (1) (f); or
 - (ii) sub-section 128 (4); or
- (b) by reason that an amount has been paid by way of pension or allowance that, but for the false statement or misrepresentation of any person, would not have been paid,
- a date earlier than the date of the determination may be specified in the determination as the date as from which the cancellation, suspension or decrease, as the case may be, is to take effect.

(3) Where the Commission is satisfied that, having regard to any matter that affects the payment of a service pension, the rate of the service pension is less than it should be, the Commission may, by determination in writing, increase the rate of the service pension with effect from the date of the determination or such earlier or later date as is specified in the determination.

(4) Sub-section (1) does not apply in relation to—

- (a) any matter that affects the payment of a service pension; or
- (b) the refusal or failure of any person to comply with a provision of this Act,

if section 124 applies in relation to that matter, refusal or failure.

(5) In this section, “service pension” includes wife’s service pension, carer’s service pension, rent assistance and remote area allowance.

Review of decision, &c.

59. (1) Subject to sub-section (2)—

- (a) a claimant who is dissatisfied with a decision of the Commission in respect of a claim for a service pension; or
- (b) a service pensioner who is dissatisfied with a decision of the Commission cancelling or suspending a service pension, terminating the suspension of a service pension, reducing or increasing the rate of a service pension or refusing an application for an increase in the rate of a service pension,

may request the Commission, in writing, to review the decision, and, where such a request is duly made, the Commission shall review the decision or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

(2) A request under sub-section (1) to review a decision of the Commission shall set out particulars of the grounds on which the request is made and may be made within 3 months after service on the person to whom the decision relates of notice of the decision, but not otherwise.

(3) Where the Commission reviews a decision under sub-section (1), the Commission may affirm or set aside the decision and, if it sets aside the

decision, it shall, subject to sub-section (5), make such other decision as it considers to be in accordance with this Act.

(4) Where the Commission is satisfied that a person whose service pension has been suspended is eligible to receive a service pension, the Commission may, by determination in writing, terminate the suspension as from a date specified in the determination, which may be a date earlier than the date of the determination.

(5) Where the Commission, on a review under sub-section (1), sets aside a decision under sub-section 58 (1) to cancel or suspend, or reduce the rate of, a pension, or a decision under sub-section 58 (3) to increase the rate of a pension, the Commission need not substitute another decision for the decision so set aside.

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

(7) Where the Commission, upon reviewing a decision under sub-section (1)—

(a) grants a claim for a service pension; or

(b) sets aside a decision to cancel or suspend a service pension,

the Commission may pay to the person who requested the review, an amount, calculated in accordance with the scale approved by the Commission for the purposes of sub-section 19 (10), in respect of the expenses (if any) incurred by that person in providing for the production of certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which he or she had received medical treatment, being certificates, reports or documents reasonably used for the purposes of the review.

(8) In this section, "service pension" includes wife's service pension, carer's service pension, rent assistance and remote area allowance.

Powers of Commission on reviews under section 59

60. (1) The Commission, or a person to whom the Commission has delegated its powers under section 59, may—

(a) take evidence on oath or affirmation for the purposes of a review;
or

(b) adjourn a hearing of a review from time to time.

(2) Where the Commission is itself conducting a review, the presiding member of the Commission may, for the purposes of the review—

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

(3) Where a person to whom the Commission has delegated its powers under section 59 is conducting a review, the person may, for the purposes of the review—

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

(4) The applicant for a review by the Commission under section 59 is a competent and compellable witness upon the hearing of the review.

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

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

(7) Where a person other than the presiding member in relation to a review is authorized, in accordance with sub-section (6), to take evidence for the purposes of the review, the first-mentioned person has, for the purposes of taking that evidence, all the powers of the Commission under sub-section (1) and all the powers of the presiding member under sub-section (2).

(8) The power conferred by paragraph (1) (a) on a person to whom the Commission has delegated its powers under section 59 to take evidence on oath or affirmation for the purposes of a review may be exercised by that person or by another person authorized by that person and that power may be so exercised within or outside Australia, but the Commission may direct that the power is to be so exercised subject to limitations specified by the Commission.

(9) Where a person is authorized, in accordance with sub-section (8), to take evidence for the purposes of a review, the person has, for the purposes of taking the evidence, all the powers conferred, by sub-sections (1) and (2), on the person to whom the Commission has delegated its powers under section 59.

Division 7—Miscellaneous

Withdrawal of claim for service pension, &c.

61. (1) A claimant for service pension may, at any time before the claim is determined by the Commission, by notice in writing forwarded to the Secretary at an office of the Department in Australia, withdraw the claim.

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

(3) A claimant or service pensioner who has made a request under section 59 may, at any time before the request is determined, by notice in writing forwarded to the Secretary at an office of the Department in Australia, withdraw the request.

(4) Subject to sub-section 59 (2), the withdrawal of a request under that section does not prevent the claimant or service pensioner, as the case may be, from subsequently making another request in respect of the same decision.

(5) In this section, “service pension” includes wife’s service pension and carer’s service pension.

Reasons for decision to be given

62. (1) Where the Commission makes a decision upon a review of a decision under section 59, the Commission shall make a written record of its decision together with a statement, in writing, setting out its findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving its reasons for the decision.

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

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

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

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

Right to be paid service pension outside Australia

63. (1) Except as provided by this section, the right of a person to commence, or to continue, to be paid a service pension granted to the person is not affected by the fact that the person leaves Australia.

(2) Subject to sub-section (3), where—

- (a) a person who formerly resided in Australia has returned to Australia and, before the expiration of the period of 12 months that commenced on the date of the person's return, has made a claim for a service pension;
- (b) the person leaves Australia (whether before or after the claim is determined) before the expiration of that period; and
- (c) a service pension is granted to the person as a result of that claim,

the service pension so granted is not payable in respect of any period during which the person is outside Australia.

(3) Where the Commission considers that the reasons of a person (being a person in relation to whom sub-section (2) would, but for this sub-section, apply) for leaving, or wishing to leave, Australia before the expiration of the period referred to in paragraph (2) (a) arose from circumstances that could not reasonably have been foreseen at the time of the person's return to Australia, the Commission may, by instrument in writing, determine that sub-section (2) does not apply in relation to that service pension.

(4) Where—

- (a) a person who is physically outside Australia is in receipt of—
 - (i) a service pension;
 - (ii) a pension under Part III or IV of the *Social Security Act 1947*; or
 - (iii) a benefit under Part IVAAA of that Act; and
- (b) the person would, if that pension or benefit were cancelled, be eligible, if the person were residing in Australia, for the grant of a service pension under this Part,

then, on the cancellation of the pension or benefit that the person is receiving, the person may be granted and paid a service pension (excluding any rent assistance for which the person is eligible) as if the person were

residing in, and were physically present in, Australia notwithstanding the provisions of section 43 or sub-section 38 (4), 39 (5) or 40 (3).

(5) A service pension payable to a person who is physically outside Australia may be paid in such manner and in such instalments as the Commission determines.

(6) In this section, "service pension" includes wife's service pension and carer's service pension.

Persons resident in Papua New Guinea

64. (1) This section applies in relation to a service pensioner who is residing in Papua New Guinea and is, by virtue of sub-section 5 (5) or 35 (5), to be deemed to be resident in Australia.

(2) Where a service pensioner in relation to whom this section applies leaves the country where the pensioner is residing, except to go to Australia, without first having forwarded to, or delivered at, an office of the Department in Australia notice of his or her intention so to leave the country, the Commission may cancel the service pension, wife's service pension or carer's service pension, as the case may be, granted to that service pensioner.

Special temporary allowance

65. (1) In this section—

"pension" means—

- (a) a service pension, a wife's service pension, a carer's service pension, rent assistance or a remote area allowance;
- (b) a pension under Part III or a benefit under Part IVAAA of the *Social Security Act 1947*;
- (c) an allowance under Part VIIA or a rehabilitation allowance under Part VIII of that Act; or
- (d) an allowance under section 9 of the *Tuberculosis Act 1948*, and includes rent assistance under section 30A, an allowance under section 133JA and a remote area allowance under Part IIA of the *Social Security Act 1947*;

"pensioner" means a person in receipt of—

- (a) a service pension, a wife's service pension or a carer's service pension;
- (b) a pension under Part III of the *Social Security Act 1947*; or
- (c) if the person is a person referred to in paragraph (b) of the definition of "married person" in sub-section 83AAA (1) of that Act—a benefit under Part IVAAA of that Act,

and includes a person who would, but for paragraph 42 (1) (c) of this Act or of section 133N, sub-section 135B (3) or 135TJ (1A) of

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the *Social Security Act 1947*, be eligible to receive a pension or benefit referred to in paragraph (a), (b) or (c);

“service pensioner” means a person in receipt of a service pension, a wife’s service pension or a carer’s service pension.

(2) Where—

(a) the spouse of a service pensioner dies; and

(b) the spouse was, immediately before his or her death, a pensioner,

this section applies to the service pensioner during the period of 12 weeks commencing on the day after the date of death of the spouse.

(3) Subject to this section, during any period during which this section applies to a service pensioner—

(a) the amount (if any) per fortnight of service pension, wife’s service pension or carer’s service pension that would have been payable to the service pensioner if his or her spouse had not died continues to be payable to the service pensioner; and

(b) a special temporary allowance of an amount equal to the amount (if any) per fortnight of pension that would have been payable to the spouse of the service pensioner if the spouse had not died is payable to the service pensioner.

(4) For the purposes of sub-section (3), the amount of pension that would have been payable to a person shall be calculated as if the person and his or her spouse were living together.

(5) During any period during which this section applies to a person, the person is not entitled to receive a widow’s pension under Part IV, or a supporting parent’s benefit under Part IVAAA, of the *Social Security Act 1947* if the person was not eligible to receive that benefit before the death of the person’s spouse.

(6) Where the amount per fortnight payable to a person under sub-section (3) is less than the amount per fortnight of pension that would, if this sub-section did not apply to the person, be payable to the person, the amount per fortnight payable to the person under sub-section (3) is that higher amount per fortnight.

Payment of wife’s service pension after death of veteran

66. (1) Subject to this section, a wife’s service pension granted to the wife of a veteran (whether before or after the death of the veteran) is payable to the widow of the veteran after the death of the veteran.

(2) Where the widow of a deceased veteran re-marries, or marries, after the death of the veteran, any wife’s service pension payable to the widow shall be cancelled.

(3) The rate at which wife's service pension is payable to the widow of a veteran after the death of the veteran shall not exceed the rate specified in paragraph 47 (1) (b).

Suspension and forfeiture of service pension when pensioner imprisoned

67. (1) Where a service pensioner is imprisoned in connection with his or her conviction for an offence, the Commission may—

(a) if the spouse of the pensioner or a child of the pensioner is alive—direct that the whole, or a specified part, of each instalment of the pension that becomes payable during the period, or a specified part of the period, of his or her imprisonment be paid to—

(i) the spouse of the pensioner; or

(ii) the child of the pensioner,

as the case may be, or to some other person approved by the Commission for the benefit of that spouse or child, and that any part of such an instalment not so payable be forfeited or suspended; or

(b) in any other case—direct that each instalment of the service pension that, but for the direction, would be payable to the service pensioner during the period, or a specified part of the period, of the imprisonment be forfeited or suspended.

(2) A payment made to the spouse or child of a service pensioner, in pursuance of a direction under paragraph (1) (a), shall, for all purposes, be deemed to be a payment made to the service pensioner.

(3) In this section, unless the contrary intention appears, "service pension" includes wife's service pension, rent assistance and remote area allowance.

**PART IV—PENSIONS FOR MEMBERS OF DEFENCE FORCE
OR PEACEKEEPING FORCE AND THEIR DEPENDANTS**

Division 1—Interpretation

Interpretation

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

"Australian contingent", in relation to a Peacekeeping Force, means a contingent of that Force that has been authorized or approved by the Australian Government;

"Australian member", in relation to a Peacekeeping Force, means a member of that Force whose membership has been authorized or approved by the Australian Government;

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“authorized travel”, in relation to a member of a Peacekeeping Force, means travel authorized by the appropriate authority, being an authority approved by the Minister for the purpose;

“defence service” means—

- (a) continuous full-time service rendered as a member of the Defence Force on or after 7 December 1972 and before the terminating date; and
- (b) in the case of a person who—
 - (i) was rendering continuous full-time service as a member of the Defence Force immediately before the commencement of this Act;
 - (ii) continued so to render continuous full-time service until and including the day immediately before the terminating date; and
 - (iii) was, immediately before the terminating date, bound to render continuous full-time service as such a member for a term expiring on or after the terminating date, includes the continuous full-time service rendered by the person as a member of the Defence Force on and after the terminating date and before—
 - (iv) the expiration of that term or, if that term is deemed to have been extended by sub-section (4), (5) or (6), the expiration of the extension of that term; or
 - (v) the lawful termination of the person's service as a member of the Defence Force otherwise than by reason of the expiration of the term for which the person is bound to serve,

whichever occurs first,

but does not include any period of peacekeeping service;

“effective full-time service”, in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than—

- (a) a period exceeding 21 consecutive days during which the member was—
 - (i) on leave of absence without pay;
 - (ii) absent without leave;
 - (iii) awaiting or undergoing trial in respect of an offence of which the member was later convicted; or
 - (iv) undergoing detention or imprisonment; or
- (b) in the case of an officer of the Defence Force who, on appointment, was a student enrolled in a degree or diploma course at a university or other tertiary educational institution and was required by the appropriate authority of the Defence Force to continue his or her studies after appointment—the period of the officer's service during which, by reason of the

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requirement to engage in those studies or in activities connected with those studies, the officer was not regarded by the appropriate authority of the Defence Force as rendering effective full-time service;

“member of a Peacekeeping Force” means a person who is serving, or has served, with a Peacekeeping Force outside Australia as an Australian member, or as a member of the Australian contingent, of that Peacekeeping Force;

“member of the Forces” means a person to whom this Part applies by virtue of section 69;

“Peacekeeping Force” means—

(a) a Peacekeeping Force described in column 1 of Schedule 3; or

(b) a force raised or organized for the purpose of—

(i) peacekeeping in an area outside Australia; or

(ii) observing or monitoring any activities of persons in an area outside Australia that may lead to an outbreak of hostilities,

being a Force that is designated by the Minister, by notice published in the *Gazette*, as a Peacekeeping Force for the purposes of this Part;

“peacekeeping service”, in relation to a person, means service, whether before or after the commencement of this Act, with a Peacekeeping Force outside Australia, and includes—

(a) any period after the person's appointment or allocation to the Peacekeeping Force during which the person was travelling outside Australia for the purpose of joining the Peacekeeping Force; and

(b) any period (not exceeding 28 days) of authorized travel by the person outside Australia after the person has ceased to serve with the Peacekeeping Force;

“terminating date” means the date fixed by Proclamation for the purpose of this definition, being a date not earlier than the date of commencement of an Act establishing a Military Compensation Scheme.

(2) For the purposes of the definition of “peacekeeping service” in subsection (1)—

(a) a person who has travelled from a place in Australia to a place outside Australia shall be deemed to have commenced to travel outside Australia when the person departed from the last port of call in Australia; and

(b) a person who has travelled to Australia from a place outside Australia shall be deemed to have been travelling outside Australia until the person arrived at the first port of call in Australia.

(3) A Peacekeeping Force shall be taken to have become a Peacekeeping Force for the purposes of this Part—

- (a) in the case of a Peacekeeping Force described in column 1 of Schedule 3—on the date specified in column 2 of that Schedule opposite to the description of that Force in column 1; or
- (b) in the case of a Peacekeeping Force designated by notice published in the *Gazette*—on the date specified in the notice as the date on which it is to become, or is to be deemed to have become, a Peacekeeping Force for the purposes of this Part.

(4) For the purposes of the definition of “defence service” in sub-section (1), where—

- (a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this sub-section referred to as the “relevant term”) expiring on or after the terminating date; and
- (b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of this sub-section, the person becomes bound to serve as a member of the Defence Force for a further term commencing immediately after the expiration of the relevant term, or of the extension of the relevant term, as the case may be,

the relevant term shall be deemed to be extended, or further extended, as the case may be, until the expiration of that further term.

(5) Where a person who, immediately before the terminating date, was bound to render continuous full-time service as a member of the Defence Force for a term expiring on or after the terminating date is, before the expiration of that term or of an extension of that term by virtue of sub-section (4), discharged from the Defence Force for the purpose of being appointed an officer—

- (a) that discharge shall not be taken to be the lawful termination of the person's services as a member of the Defence Force for the purposes of the definition of “defence service” in sub-section (1); and
- (b) the relevant term, within the meaning of sub-section (4), in respect of the person shall be deemed to be extended until the expiration of the period of continuous full-time service that the person is bound to render by reason of his or her appointment as an officer.

(6) Where—

- (a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this sub-section referred to as the “relevant term”) expiring on or after the terminating date; and
- (b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of sub-

section (4) or (5), the person is discharged from the Army for the purpose of being appointed an officer of the Army, being an appointment that is not expressed to be for a specified period of service in a specified part of the Army or for such a period of service followed by a specified period of service in another part of the Army,

that discharge shall not be taken to be the lawful termination of the person's services as a member of the Defence Force for the purpose of the definition of "defence service" in sub-section (1) and the relevant term in respect of the person shall be deemed to be extended or further extended, as the case requires, until the lawful termination of that person's service in pursuance of that appointment.

(7) Sub-sections (4), (5) and (6) do not apply to a person who was bound to render continuous full-time service as a member of the Defence Force immediately before the terminating date unless the person—

- (a) was so rendering continuous full-time service immediately before the commencement of this Act; and
- (b) continued so to render continuous full-time service until and including the day immediately before the terminating date.

Application of Part to members of the Forces

69. (1) Subject to this section, where a person—

- (a) has served in the Defence Force for a continuous period that commenced on or after 7 December 1972 and before the terminating date; or
- (b) is serving in the Defence Force on or after the terminating date and has so served continuously since a date before that date,

this Part applies to the person—

- (c) if the person—
 - (i) has served on continuous full-time service as a member of the Defence Force after 6 December 1972; and
 - (ii) has, whether before or after that date, completed 3 years' effective full-time service as such a member;
- (d) if—
 - (i) the person has served as a member of the Defence Force under an engagement to serve for a period of continuous full-time service of not less than 3 years; and
 - (ii) the person's service as such a member was terminated before the person had completed 3 years' effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person's death or the person's discharge on the ground of invalidity or physical or mental incapacity to perform duties;
- (e) if—

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- (i) the person has served as an officer of the Defence Force otherwise than under an appointment to serve for a period of continuous full-time service of less than 3 years; and
 - (ii) the person's service as such an officer was terminated before the person had completed 3 years' effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person's death or the termination of the person's appointment on the ground of invalidity or physical or mental incapacity to perform duties; or
- (f) if the person—
 - (i) was, immediately before 7 December 1972, a national serviceman or a national service officer, for the purposes of the *National Service Act 1951*, serving in the Regular Army Supplement; and
 - (ii) on or after that date—
 - (A) completed the period of service in the Regular Army Supplement for which the person was to be deemed to have been engaged to serve or for which the person was appointed, as the case may be; or
 - (B) the person's service in the Regular Army Supplement was terminated by reason of the person's death, or of the person's discharge or the termination of the person's appointment, on the ground of invalidity or physical or mental incapacity to perform duties.

(2) Where—

- (a) a person has served in the Defence Force as set out in sub-section (1); and
- (b) after, but not immediately after, the termination of the period of service referred to in that sub-section, the person commenced or commences to render a further period of service in the Defence Force,

the person is not a person to whom this Part applies in respect of that further period of service unless, under sub-section (1), this Part would apply to the person by reason only of his or her having rendered that further period of service.

(3) Where a person renders continuous full-time service as a member of the Defence Force at some time after the commencement of this Act and before the terminating date but has not so rendered continuous full-time service continuously from and including the day immediately before the date of commencement of this Act to that time, sub-section (1) does not apply in respect of the person unless—

- (a) the person completes 3 years' effective full-time service as such a member before the terminating date; or

(b) the person's service as a member or officer of the Defence Force is terminated as provided by paragraph (1) (d) or (e), whichever is applicable, before the terminating date.

(4) For the purposes of paragraph (1) (c)—

(a) the service of a person as an officer of the Navy on the General List while the person was undertaking pre-employment training shall be disregarded unless the person has subsequently been promoted to the rank of sub-lieutenant or a higher rank;

(b) the service of a person—

(i) as an enlisted member of the Corps of Staff Cadets of the Army; or

(ii) as an officer cadet of the Army while undertaking a four-year course of training,

shall be disregarded unless the person has subsequently been appointed or promoted to the rank of second lieutenant or a higher rank; and

(c) the service of a person as an Air Cadet, or as an Officer Cadet of the Air Force, shall be disregarded unless the person has subsequently been appointed or promoted to the rank of pilot officer or a higher rank.

(5) Paragraph (1) (d) or (e) does not apply in respect of a person if the person's service as a member of the Defence Force was terminated by reason of the person's discharge, or the termination of the person's appointment—

(a) before the person had completed 12 months' effective full-time service; and

(b) on the ground of invalidity or physical or mental incapacity to perform duties, being invalidity or incapacity caused, or substantially contributed to, by a physical or mental condition that—

(i) existed at the time the person commenced continuous full-time service as a member of the Defence Force; and

(ii) had not been aggravated, or materially aggravated, by that service.

(6) Paragraph (1) (e) does not apply in respect of a person if the person's service as a member of the Defence Force was terminated by reason of the person's death, or the termination of the person's appointment, during a period of service of the person of a kind referred to in paragraph (b) of the definition of "effective full-time service" in sub-section 68 (1).

(7) Where a member of the Defence Force who has rendered continuous full-time service in pursuance of a voluntary undertaking given by the member and accepted by the appropriate authority of the Defence Force was not serving on continuous full-time service immediately before the member commenced to render that service—

- (a) if the member was an officer on the day on which the member so commenced—the member shall be deemed, for the purposes of paragraph (1) (e), to have been appointed as an officer of the Defence Force on that day for service for the period for which the member was bound to serve on continuous full-time service by virtue of that undertaking; or
- (b) in any other case—the member shall be deemed, for the purpose of paragraph (1) (d), to have been engaged to serve as a member of the Defence Force on that day for service for the period for which the member was bound to serve on continuous full-time service by virtue of that undertaking.

Division 2—Eligibility for pension

Eligibility for pension under this Part

70. (1) Where—

- (a) the death of a member of the Forces or member of a Peacekeeping Force was defence-caused; or
- (b) a member of the Forces or member of a Peacekeeping Force has become incapacitated from a defence-caused injury or a defence-caused disease,

the Commonwealth is, subject to this Act, liable to pay—

- (c) in the case of the death of the member—pension to the dependants of the member; or
- (d) in the case of the incapacity of the member—pension to the member,

in accordance with this Act.

(2) Where—

- (a) a member of the Forces or a member of a Peacekeeping Force has died;
- (b) the death of the member was not defence-caused; and
- (c) the member was, immediately before the member's death—
 - (i) a member to whom section 24 applied by virtue of section 73; or
 - (ii) a member to whom section 22 or 23 so 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 to the dependants of the member.

(3) Where a pension in respect of the incapacity of a member of the Forces or of a member of a Peacekeeping Force from defence-caused injury or defence-caused disease, or both, is granted, after the death of the member,

as from a date before the death of the member, sub-section (2) applies as if the member had been in receipt of that pension immediately before the member died.

(4) For the purposes of this Act, the death of a member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if the death, injury or disease, as the case may be, resulted from an occurrence that happened while the member was rendering peacekeeping service.

(5) For the purposes of this Act, the death of a member of the Forces or member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if—

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

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree or was aggravated by any defence service or peacekeeping service of the member, being service after the member suffered the injury or contracted the disease.

(6) Where, in the opinion of the Commission, the death of a member of the Forces or member of a Peacekeeping Force 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 defence service or peacekeeping service,

as the case may be, or but for changes in the member's environment consequent upon his or her having rendered any such service—

- (a) the death of the member shall be deemed to have resulted from that defence service or peacekeeping service, as the case may be; and
- (b) the death of the member shall be deemed to be defence-caused, for the purposes of this Act.

(7) Where, in the opinion of the Commission, the incapacity of a member of the Forces or member of a Peacekeeping Force 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 defence service or peacekeeping service, as the case may be, or but for changes in the member's environment consequent upon his or her having rendered any such service—

- (a) if the incapacity of the member was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the member as a result of the accident and the injury so suffered shall be deemed to be a defence-caused injury suffered by the member; 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 defence-caused disease contracted by the member, for the purposes of this Act.

(8) Paragraph (5) (b) does not apply—

- (a) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a journey from the member's place of duty in a case where the member 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 member'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 member of the Forces or member of a Peacekeeping Force 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 member's duty; or
 - (ii) in the circumstances of the particular case, the nature of the risk of sustaining injury, or contracting 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 member of the Forces or member of a Peacekeeping Force 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 member's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in sub-paragraph (b) (ii) was not substantially changed and the extent of that risk was not substantially increased, by reason of the interruption.
- (9) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease—
- (a) in a case where the death occurred, or the injury was suffered, or disease was contracted, by the member in circumstances described in sub-section (4) or in paragraph (5) (a), (b) or (c)—if the death, or the injury or disease, as the case may be—
 - (i) resulted from the member's serious default or wilful act; or
 - (ii) arose from a serious breach of discipline committed by the member or from an occurrence that happened while the member was committing a serious breach of discipline; or
 - (b) in the case of an injury suffered, or disease contracted, by the member to which paragraph (5) (d) applies—
 - (i) if the aggravation of the injury or disease—
 - (A) resulted from the member's serious default or wilful act; or
 - (B) arose from a serious breach of discipline by the member; or
 - (ii) unless the period of defence service or peacekeeping service that contributed to the injury or disease in a material degree, or by which the injury or disease was aggravated, was 6 months or longer.
- (10) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease, if the death or incapacity resulted from the serious default or wilful act of the member that happened after the member ceased, or last ceased, to render defence service or peacekeeping service.
- (11) Where a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force (not being a child of the member) re-marries or marries after the death of the member—
- (a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision to grant that pension was made by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, before that marriage or re-marriage occurred; and

- (b) a decision granting a pension to the dependant under this section made by the Commission, the Board or the Administrative Appeals Tribunal after that re-marriage or marriage occurred (including a decision granting such a pension as from a date before that re-marriage or marriage occurred) is void and of no effect.

(12) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow of a deceased member of the Forces or member of a Peacekeeping Force, the Commonwealth is not liable to pay another pension to the person under this Part as the widow of another deceased member of the Forces or member of a Peacekeeping Force or under Part II as the widow of a deceased veteran.

(13) 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 member of the Forces or a member of a Peacekeeping Force, would, but for this sub-section, become eligible to receive a pension under this Part or Part II as the child of another deceased person, being a member of the Forces, a member of a Peacekeeping Force or a veteran, the Commonwealth is liable to pay a pension to the person under this Part or Part II 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 sub-section referred to as 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 member of the Forces or a member of a Peacekeeping Force—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.

Application of certain provisions of Part II

71. (1) Divisions 3, 6 and 7 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as they apply to and in relation to pensions payable in accordance with Part II.

(2) For the purposes of the application of Divisions 3, 6 and 7 of Part II as provided in sub-section (1)—

- (a) a reference in those divisions to a pension shall be read as a reference to a pension payable in accordance with this Part;
- (b) a reference in those divisions to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces or a member of a Peacekeeping Force that was defence-caused;
- (c) a reference in those divisions to a war-caused injury shall be read as a reference to a defence-caused injury;

- (d) a reference in those divisions to a war-caused disease shall be read as a reference to a defence-caused disease; and
- (e) a reference in those divisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force.

(3) In the application of Division 3 of Part II in accordance with sub-sections (1) and (2) of this section, section 19 shall be read as if the following sub-section were substituted for sub-section (7) of that section:

“(7) Where—

- (a) the Commission, upon considering a claim for a pension in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from injury or disease determines, or is satisfied, that the member suffered the injury or contracted the disease as claimed and that the injury is a defence-caused injury or the disease is a defence-caused disease, as the case may be; and
- (b) the Commission is also satisfied that a determination under this Act is in force determining that the member 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 defence-caused injury, or is a war-caused injury for the purposes of Part II; or
 - (ii) that disease is a defence-caused disease, or is a war-caused disease for the purposes of Part II,as the case may be, whether or not a pension under Part IV or Part II, 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 IV or Part II in respect of incapacity resulting from the injury or disease referred to in paragraph (b), grant a separate and additional pension to the claimant in respect of incapacity resulting from the injury or disease referred to in paragraph (a), but the Commission shall, having regard to any incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such war-caused injury as defence-caused injury and any such war-caused disease as defence-caused disease—

- (c) if the claimant is not in receipt of a pension under Part IV or Part II—determine whether the claimant is entitled to be granted a pension under Part IV and, if it determines that the claimant is entitled to be granted a pension, assess the rate of the pension to be granted to the claimant; or
- (d) if the claimant is in receipt of a pension under Part IV or Part II—re-assess the rate of that pension.”.

(4) Notwithstanding anything in Divisions 3, 6 and 7 of Part II in their application in accordance with this section, where—

- (a) a member of the Forces, or a member of a Peacekeeping Force, has, or has had, both defence service and peacekeeping service; and
- (b) the Commission has determined that the death or incapacity of the member had or has reference to the member's defence service and also to the member's peacekeeping service,

the Commission shall not grant a pension under this Part in respect of the death or incapacity in so far as it had or has reference to the member's defence service and a separate pension under this Part in respect of the death or incapacity of the member in so far as it had or has reference to the member's peacekeeping service, but shall—

- (c) in the case of the death of the member—assess the rate of any pension granted under this Part in respect of the death as if the member's peacekeeping service formed part of the member's defence service; or
- (d) in the case of the incapacity of the member—assess the degree of incapacity of the member and the rate of pension (if any) to be granted in respect of the incapacity of the member as if the member's peacekeeping service formed part of the member's defence service.

Dual entitlement to pension

72. (1) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran or an Australian Mariner within the meaning of the *Seamen's War Pensions and Allowances Act 1940*, the member is not entitled to receive, at the same time—

- (a) a pension under this Part; and
- (b) a pension under Part II of this Act or under the *Seamen's War Pensions and Allowances Act 1940*, as the case may be,

in respect of his or her incapacity from the same injury or disease.

(2) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran or an Australian Mariner within the meaning of the *Seamen's War Pensions and Allowances Act 1940*, a dependant of the member is not entitled to receive, at the same time—

- (a) a pension under this Part; and
- (b) a pension under Part II of this Act or under the *Seamen's War Pensions and Allowances Act 1940*, as the case may be,

in respect of the death of the member.

Division 3—Rates of pension

Application of Divisions 4 and 5 of Part II

73. (1) The provisions of Divisions 4 and 5 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as those provisions apply in relation to pensions payable in accordance with Part II.

(2) For the purposes of the application of the provisions of Divisions 4 and 5 of Part II as provided in sub-section (1)—

- (a) a reference in those provisions to a war-caused injury shall be read as a reference to a defence-caused injury;
- (b) a reference in those provisions to a war-caused disease shall be read as a reference to a defence-caused disease;
- (c) a reference in those provisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force; and
- (d) a reference in those provisions to Part II shall be read as a reference to Part IV.

Division 4—Pension and other compensation

Payments by way of compensation or damages

74. (1) In this section, “compensation” includes—

- (a) any payment in the nature of compensation; and
- (b) any damages recoverable at law (including any amount paid under a compromise or settlement of a claim for damages at law), whether 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,

but does not include any amount that represents expenses incurred in medical or hospital treatment.

(2) This section applies in relation to a member of the Forces, or a member of a Peacekeeping Force, in respect of the death of the member that was defence-caused, or the incapacity of the member from a defence-caused injury or a defence-caused disease if—

- (a) a person is entitled, or 2 or more persons are each entitled, to receive payments by way of compensation in respect of the death of the member or of the incapacity of the member from that injury or disease; and
- (b) subject to this section, pension under this Part is being paid or is payable to a person, or to each of 2 or more persons, in respect of the death of the member or to the member in respect of the incapacity of the member from that injury or disease.

(3) For the purposes of this section, where—

- (a) a lump sum payment by way of compensation is made—
 - (i) to a person, being a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or
 - (ii) to a person, being a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the incapacity of that member from that injury or disease, or the death of that member from that injury or disease, as the case may be,
that person shall be deemed, by reason of that payment by way of compensation, to have been, or to be, in receipt of payments, by way of compensation, on and after—

(c) the date of commencement of the period in respect of which his or her pension is, or becomes, payable; or

(d) the date on which the lump sum payment is made,
whichever is the earlier date, for the life of the person, at such rate per fortnight as is determined by, or in accordance with the instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum payment and paid to the person on that earlier date.

(4) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person shall be deemed to have been made to that person.

(5) Where—

(a) an amount of damages payable to a member of the Forces or a member of a Peacekeeping Force, or to a dependant of such a member, is paid to the Commonwealth in pursuance of a notice under section 76; or

(b) the liability of the Commonwealth to pay damages to a member of the Forces or a member of a Peacekeeping Force or to a dependant of such a member, is, by virtue of section 77, to be deemed to have been discharged to the extent of a particular amount,

sub-section (3) of this section applies to and in relation to the member or dependant as if pension commenced to be payable, or commences to be payable, only after the member or dependant has received payments by way of instalments of pension aggregating the amount referred to in paragraph (a) or (b), whichever is applicable, of this sub-section.

(6) In the application of sub-sections (8) and (9) in respect of the death of a member of the Forces or a member of a Peacekeeping Force—

(a) if payments by way of compensation in respect of the death of the member are being made to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate per fortnight at which compensation is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those payments are being made; and

(b) if pensions under this Part in respect of the death of the member are being paid, or are payable, to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate at which pension under this Part is payable in respect of the death of the member shall be read as a reference to the aggregate of the

rates per fortnight at which those pensions are being paid or are payable.

(7) For the purposes of sub-section (6), the dependants of a member of the Forces or a member of a Peacekeeping Force constitute the relevant class of persons.

(8) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which compensation is payable in respect of the death or incapacity equals or exceeds the rate per fortnight at which pension under this Part is payable in respect of the death or incapacity, then, pension is not payable under this Part to any person in respect of the death of the member, or the incapacity of the member from that injury or disease, or both, as the case may be.

(9) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which pension under this Part, or the aggregate of the rates per fortnight at which pensions under this Part would, but for this sub-section, be payable in respect of the death or incapacity exceeds the rate per fortnight at which compensation is payable in respect of the death or incapacity, then—

- (a) if a pension under this Part is being paid, or is payable, to one person only in respect of the death or incapacity of the member—the rate per fortnight at which that pension is payable; or
- (b) if pensions under this Part are being paid, or are payable, to 2 or more persons in respect of the death of the member—the aggregate of the rates per fortnight at which those pensions are payable,

is an amount per fortnight equal to the amount of that excess.

(10) In giving effect to sub-section (9) as between 2 pensions in a case where one is required by sub-section (12) to be preferred to the other, the rate per fortnight of the pension that is to be so preferred shall not be reduced until the pension that is not to be so preferred has ceased to be payable by reason that its rate per fortnight has been reduced to nil.

(11) In giving effect to sub-section (9) as between 2 or more pensions in a case where sub-section (10) does not apply, the rate per fortnight of each of those pensions shall be reduced by an amount per fortnight that bears the same proportion to the amount per fortnight of the reduction required to be made to all those pensions as the rate per fortnight of that pension before the reduction bears to the aggregate rate per fortnight of all those pensions before the reduction.

(12) For the purposes of this section—

- (a) a pension payable under this Part to the spouse of a member of the Forces or a member of a Peacekeeping Force who is deceased shall

be preferred to such a pension payable to a child of the member;
and

- (b) a pension payable under this Part to a child of a member of the Forces or a member of a Peacekeeping Force shall be preferred to such a pension payable to a younger child of the member.

Proceedings against third party

75. (1) Where—

- (a) pension is, or has been, payable in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or in respect of the death of such a member that was defence-caused;
- (b) the incapacity from injury or disease, or the death, occurred in circumstances that appear to create a legal liability in a person other than the Commonwealth to pay damages in respect of the injury or disease, or the death; and
- (c) proceedings against that person for the purpose of recovering damages in respect of the injury or disease, or the death, have not been instituted by the member, or by or for the benefit of a dependant of the member, or have been so instituted but have been discontinued or have not been properly prosecuted,

the Commission may, by notice in writing to the member or dependant, request the member or dependant to institute proceedings or fresh proceedings against that person for that purpose, or properly to prosecute the proceedings, as the case may be.

(2) Where a member of the Forces or a member of a Peacekeeping Force or a dependant of such a member is requested, in accordance with sub-section (1), to institute proceedings against a person—

- (a) if the member or dependant refuses or fails within a reasonable time after the making of the request to institute the proceedings or, having instituted the proceedings, discontinues the proceedings—the Commonwealth may institute proceedings or fresh proceedings, as the case may be, against the person in the name of the member or dependant for the recovery of damages in respect of the incapacity or death; or
- (b) if the member or dependant, having instituted proceedings, fails properly to prosecute the proceedings—the Commonwealth may take over the conduct of the proceedings.

(3) Where a member of the Forces or a member of a Peacekeeping Force, or a dependant of such a member, who is requested, in accordance with sub-section (1), properly to prosecute proceedings instituted against a person refuses, or fails within a reasonable time after the making of the request, to do so, the Commonwealth may take over the conduct of the proceedings.

(4) The Commonwealth is liable to pay all the costs of or incidental to proceedings referred to in sub-section (1), (2) or (3), being costs payable

by the plaintiff in those proceedings, but not including costs unreasonably incurred by the plaintiff.

(5) Where, in accordance with this section, the Commonwealth institutes proceedings in the name of a member of the Forces or a member of a Peacekeeping Force or of a dependant of such a member, or takes over the conduct of proceedings that have been instituted in the name of such a member or of a dependant of such a member—

(a) the Commonwealth may—

- (i) settle the proceedings either with or without obtaining judgment in the proceedings; and
- (ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce that judgment; and

(b) the member or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that a person acting in the proceedings on behalf of the Commonwealth requires that member or dependant to sign and, if he or she fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for the purpose.

Payment of damages to Commonwealth

76. (1) Where—

(a) a person other than the Commonwealth appears to be liable—

- (i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury or disease to the member; or
- (ii) to pay damages to a dependant of a deceased member of the Forces or a deceased member of a Peacekeeping Force in respect of the death of the member; and

(b) pension under this Part is payable or has been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member,

the Commission may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the member in respect of the injury or disease, or to pay damages to the dependant in respect of the death, or in the event of damages against the person being awarded to the member in proceedings instituted in respect of the injury or disease, or to the dependant in proceedings instituted in respect of the death, to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease, or to the dependant in respect of the death of the member, and the person shall comply with the notice.

(2) Subject to sub-section (3), where—

(a) a person other than the Commonwealth has agreed—

- (i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or
- (ii) to pay damages to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member,

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member; or

(b) damages against a person other than the Commonwealth have been awarded—

- (i) to a member of the Forces or member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or
- (ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member,

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member,

the Commission may, by notice in writing to the person, require the person to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member, and the person shall comply with the notice.

(3) Where, before a notice under sub-section (2) was received by a person, the person had paid to or in respect of the member or dependant the whole or any part of the damages to which the notice relates—

- (a) if the whole of the damages had been paid—the notice has no force or effect; or
- (b) if part only of the damages had been paid—the reference in that sub-section to the amount of the damages shall be read as a reference to so much of that amount as has not been paid.

(4) If a person fails to pay an amount to the Commonwealth in pursuance of a notice under this section, the Commonwealth may recover that amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(5) The payment of an amount to the Commonwealth in pursuance of a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the member or dependant.

(6) In this section, "damages" does not include an amount that has been paid in pursuance of a notice under section 102 of the *Compensation (Commonwealth Government Employees) Act 1971*.

Discharge of liability of Commonwealth to pay damages

77. Where—

(a) damages against the Commonwealth have been awarded—

(i) to a member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of an injury suffered by, or a disease contracted by, the member; or

(ii) to a dependant of a deceased member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of the death of the member; and

(b) pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member,

the liability of the Commonwealth to pay those damages, or such part of them as does not represent expenses incurred in medical or hospital treatment, shall be deemed to have been discharged to the extent of the aggregate of the amounts of that pension that have been paid to the member or the dependant, as the case may be.

Other payments of compensation

78. (1) If, after any pension under this Part has been paid—

(a) to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from a defence-caused injury or a defence-caused disease; or

(b) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member that was defence-caused,

any compensation is paid under the law of a country other than Australia, or by, or under a scheme arranged by, an international organization, to or in respect of the member in relation to the injury suffered by, or the disease contracted by, the member, or to or in respect of the dependant in relation to the death of the member, the Commonwealth may recover from the member or dependant, as the case may be, by action in a court of competent jurisdiction, an amount equal to so much of the amount of compensation so paid as does not exceed the aggregate of the amounts of pension under this Part that have been so paid to the member or dependant, as the case may be.

(2) The Commission may, by notice in writing to a person (being a claimant for pension under this Part, or a person in receipt of pension under

this Part, in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or the death of such a member), require the person to furnish to the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation has been paid to or in respect of the person, or 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 organization, in respect of the injury suffered, or the disease contracted, by the member, or the death of the member, as the case may be.

(3) Where a person refuses or fails to comply with a notice under sub-section (2), the right of the person to pension under this Part in respect of the injury, disease or death to which the notice relates, and the right of the person to institute or take any proceedings under this Act in relation to that pension or a claim for that pension, are suspended until the statutory declaration is furnished.

(4) Where a person's right to pension under this Part is suspended under sub-section (3), the person is not entitled to be paid pension under this Part in respect of the period of the suspension.

(5) In this section—

“compensation” has the same meaning as it has in section 74;

“international organization” means—

(a) an organization—

- (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 organization that is—

- (i) an organ of, or office within, an organization described in paragraph (a);
- (ii) a commission, council or other body established by an organization so described or such an organ; or
- (iii) a committee, or sub-committee of a committee, of an organization described in paragraph (a), or of such an organ, council or body.

Overpayments of pension

79. (1) Where—

(a) an amount has been paid—

- (i) to a member of the Forces or a member of a Peacekeeping Force as pension under this Part in respect of the incapacity of the member from a defence-caused injury or defence-caused disease; or

- (ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force as pension under this Part in respect of the death of the member that was defence-caused; and

- (b) by reason of section 74, that amount was not payable to the member or dependant,

an amount equal to the amount so paid is recoverable from the member or dependant by deduction from any amount of pension under this Part payable to the member or dependant in respect of the incapacity from that injury or disease or of the death of the member, as the case may be.

(2) Sub-section (1) does not prevent the recovery of an amount referred to in that sub-section otherwise than as provided in that sub-section, but an amount shall not be recovered as so provided and also otherwise than as so provided.

PART V—MEDICAL AND OTHER TREATMENT

Interpretation

80. (1) In this Part, unless the contrary intention appears, “treatment” means treatment provided, or action taken, with a view to—

- (a) restoring a person to, or maintaining a person in, physical or mental health;
- (b) alleviating a person’s suffering; or
- (c) ensuring a person’s social well-being,

and, without limiting the generality of the foregoing, includes—

- (d) the provision of accommodation, medical procedures, nursing care, social or domestic assistance or transport;
- (e) the supply, renewal, maintenance and repair of artificial replacements, and surgical and other aids and appliances; and
- (f) the provision of diagnostic and counselling services,

for the purposes of, or in connection with, any such treatment or action.

(2) In this Part—

- (a) references to a married person and to an unmarried person have the same respective meanings as they have in Part III by virtue of sub-sections 35 (6) and 35 (1), respectively;
- (b) a reference to a country area of a State shall be read as a reference to a part of that State, outside the metropolitan area of the capital city of that State, determined by the Commission, by instrument in writing, to be a country area of that State for the purposes of this Part;
- (c) a reference to a veteran shall be read as a reference to a veteran as defined by sub-section 5 (1), other than a person who is a veteran as so defined by reason only that the person has rendered service of a kind described in paragraph 6 (1) (f) or (g); and

- (d) a reference to a veteran who is in receipt of a service pension shall be read as a reference to a veteran, within the meaning of paragraph (c), who is in receipt of a service pension or a wife's service pension.

Application of Part V

81. (1) Without prejudice to its effect apart from this sub-section, this Part has effect in relation to a person who is, or has been—

- (a) a member of the Forces as defined by sub-section 68 (1); or
- (b) a member of a Peacekeeping Force as defined by sub-section 68 (1), and in relation to a dependant of such a person who has died, in like manner as it has effect in relation to a veteran and a dependant of a deceased veteran, respectively.

(2) For the purpose of the application of this Part in accordance with sub-section (1)—

- (a) a reference in this Part to a veteran shall be read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by sub-section 68 (1);
- (b) a reference in this Part to a pension, not being a service pension, a wife's service pension or a carer's service pension, shall be read as a reference to a pension under Part IV;
- (c) a reference in this Part to a war-caused injury shall be read as a reference to a defence-caused injury;
- (d) a reference in this Part to a war-caused disease shall be read as a reference to a defence-caused disease; and
- (e) a reference in this Part to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces, or member of a Peacekeeping Force, as defined by sub-section 68 (1), that was defence-caused.

Prescribed persons

82. (1) A person is a prescribed person for the purposes of this Part if the annual rate of the person's income, calculated as provided by sub-section 35 (12) and section 37, is equal to, or exceeds, the prescribed rate of income applicable to the person by virtue of sub-section 83 (1).

(2) A person, not being a person who is a prescribed person for the purposes of this Part by virtue of sub-section (1) or a person who is permanently blinded in both eyes, is a prescribed person for the purposes of this Part if—

- (a) the person is in receipt of a service pension, a wife's service pension or a carer's service pension the annual rate of which is determined by reference to paragraph 47 (5) (b) or 48 (4) (b), as the case requires; or
- (b) the person is not in receipt of such a pension but, if the person were a veteran who was eligible to receive a service pension, the

annual rate of that pension would be determined by reference to paragraph 47 (5) (b),
and the value of the person's property, calculated as provided by sub-sections 35 (12) and (13) and section 50, is equal to, or exceeds the prescribed property value applicable to the person by virtue of sub-section 83 (2).

Prescribed rate of income and property value

83. (1) For the purposes of this Part, the prescribed rate of income applicable to a person is—

- (a) in the case of an unmarried person—
 - (i) if the person has a child or children wholly or substantially dependent on the person—\$3,380 per year plus \$1,040 per year in respect of that child or of each of those children, as the case may be; or
 - (ii) in any other case—\$3,380 per year; or
- (b) in the case of a married person—
 - (i) if the person has a child or children wholly or substantially dependent on the person—\$2,756 plus \$520 per year in respect of that child or of each of those children, as the case may be; or
 - (ii) in any other case—\$2,756 per year.

(2) For the purposes of this Part, the prescribed property value applicable to a person is—

- (a) in the case of an unmarried person—
 - (i) if, in calculating the value of the property of the person for the purposes of Part III, a value of the kind referred to in sub-paragraph 50 (1) (a) (i) has been or would be disregarded—\$80,000; or
 - (ii) in any other case—\$130,000; or
- (b) in the case of a married person—
 - (i) if, in calculating the value of the property of the person for the purposes of Part III, a value of the kind referred to in sub-paragraph 50 (1) (a) (ii) has been or would be disregarded—\$57,500; or
 - (ii) in any other case—\$82,500.

Provision of treatment

84. (1) The Commission may arrange for the provision of treatment for veterans and other persons eligible to be provided with treatment under this Part—

- (a) at a hospital or other institution operated by the Commission under paragraph 89 (1) (a);
- (b) at another hospital or other institution in accordance with arrangements referred to in paragraph 89 (1) (b) or (c); or

(c) otherwise.

(2) Subject to sub-section (3), the Commission shall not be taken to have arranged for the provision of treatment for a person otherwise than at a hospital or institution referred to in paragraph (1) (a) unless the Commission approved the provision of the treatment before the treatment was given, or commenced to be given, as the case may be.

(3) Where the Commission is satisfied that treatment was provided, or commenced to be provided, without the prior approval of the Commission, for an injury suffered, or disease contracted by a person—

- (a) at any time during the period from and including the date as from which the person has become eligible to be provided with treatment for that injury or disease to and including the date on which the determination was made by virtue of which the person has become eligible to be provided with treatment under this Part for that injury or disease; or
- (b) in circumstances in which it would be proper for the Commission to approve provision of the treatment after it had been given or had commenced to be given,

the Commission may, in its absolute discretion, approve the provision of that treatment and, if it does so, the Commission shall be deemed to have arranged for the provision of that treatment.

(4) Nothing in this Part shall be taken to—

- (a) impose a duty on the Commission to arrange for the provision of; or
- (b) confer a right on a person to be provided, under arrangements made by the Commission, with,

treatment for a particular injury or disease, treatment of a particular kind for an injury or disease or treatment for an injury or disease outside Australia.

(5) Nothing in this Part shall be taken to confer on a person a right to be provided with treatment for an injury or disease—

- (a) by the Commonwealth; or
- (b) by the Commission otherwise than to the extent that, and in a manner that, it may be provided under arrangements made by, or with the approval of, the Commission.

(6) Subject to section 93, where a person, other than a person included in a prescribed class of persons, is provided with treatment under section 87 or 88, the person is liable to pay to the Commonwealth in respect of that treatment—

- (a) unless paragraph (b) applies—charges in accordance with a scale of charges determined by the Commission, by instrument in writing, being charges based on charges payable for treatment as private patients in public hospitals in Australia; or

- (b) if the person is not ordinarily resident in Australia—the cost (as determined by the Commission by instrument in writing) of and incidental to that treatment.

Veterans eligible to be provided with treatment

85. (1) Where a determination under this Act is in force determining that an injury suffered by a veteran is a war-caused injury or that a disease contracted by a veteran is a war-caused disease, the veteran is eligible to be provided with treatment under this Part for that injury or disease from and including—

- (a) the date as from which a pension, or increased pension, is granted to the veteran under Part II in respect of his or her incapacity from that injury or disease; or
- (b) the date as from which such a pension or increased pension would have been granted to the veteran if the extent of the incapacity of the veteran from the injury or disease had not been insufficient to justify the grant of, or increase of, a pension under Part II.

(2) A veteran is eligible to be provided with treatment under this Part for malignant neoplasia or pulmonary tuberculosis from and including the date that is 3 months before the date on which the application to be provided with that treatment is received at an office of the Department in Australia.

(3) Where a veteran—

- (a) is in receipt of a pension under Part II at the rate specified in sub-section 22 (7) or at a higher rate; or
- (b) is in receipt of a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the table in sub-section 27 (1),

the veteran is eligible to be provided, from and including the date as from which a pension is so payable to the veteran, with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(4) Where—

- (a) a veteran rendered, while a member of the Defence Force, continuous full-time service during World War 1;
- (b) a veteran was, while a member of the Defence Force, detained by the enemy during a War to which this Act applies or while serving on operational service; or
- (c) the veteran is a person who was an eligible civilian within the meaning of sub-section 5 (6) and was, while he or she was such a civilian, detained by the enemy during World War 2,

the veteran is eligible to be provided, from and including the date on which the veteran's application to be provided with treatment is received at an office of the Department in Australia, with treatment under this Part for

any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(5) A veteran (not being a veteran who has been permanently blinded in both eyes or a veteran who is a prescribed person) who is in receipt of a service pension is, from and including—

- (a) in a case where the annual rate of that pension is determined under, or by reference to, paragraph 47 (5) (b)—the date as from which the veteran was granted a service pension at a rate calculated, or the rate of the service pension granted to the veteran was increased, on the basis that the value of the veteran's property (calculated as provided by sub-sections 35 (12) and (13) and section 50) was less than the prescribed property value applicable to the veteran by virtue of section 83; or
- (b) in any other case—the date as from which the veteran was granted a service pension at a rate calculated, or the rate of the service pension granted to the veteran was increased, on the basis that the annual rate of income of the veteran, calculated as provided by sub-section 35 (12) and section 37, was less than the prescribed rate of income applicable to the veteran by virtue of section 83,

eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(6) Where a veteran in receipt of a service pension under Part III is permanently blinded in both eyes, the veteran is, from and including the date as from which the veteran was granted the service pension, or the date on which the veteran became so blinded, whichever is the later date, eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(7) Where a veteran—

- (a) is in receipt of a pension under Part II at a rate not less than 50 per centum of the rate specified in sub-section 22 (7); and
- (b) is also in receipt of a service pension or a wife's service pension under Part III,

the veteran is, from and including—

- (c) the date as from which that pension under Part II became so payable to the veteran; or
- (d) the date as from which that service pension or wife's service pension became payable to the veteran,

whichever is the later date, eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(8) Where a service pension, or wife's service pension, is suspended, the Commission may, by instrument in writing, determine, for the purposes of the application of the provisions of this section to and in relation to the

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person to whom the pension was granted, that that person shall be treated as if he or she were continuing to receive that pension during the period, or a specified part of the period, of the suspension.

(9) Where—

(a) a veteran, while a member of the Defence Force, rendered continuous full-time service outside Australia in the area described in item 4 or 8 of Schedule 2 (in column 1) while that area was an operational area, whether or not the veteran rendered that service—

(i) as a member of a unit of the Defence Force that was allotted for duty; or

(ii) while allotted for duty,
in that area; and

(b) the Commission is satisfied that the veteran requires urgent treatment for an injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act,

the veteran is eligible to be provided with treatment under this Part for that injury or disease—

(c) at a hospital operated and maintained by the Commission, if the Commission is satisfied that provision of that treatment will not adversely affect the capacity of the Commission to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of a preceding sub-section or dependants of veterans eligible to be provided with treatment by virtue of sub-section 86 (1), (2), (3) or (4);

(d) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89 (1) (b); or

(e) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89 (1) (b).

(10) Where a veteran has been provided with treatment at a hospital under sub-section (9) for an injury or disease, the Commission may provide further treatment for that injury or disease otherwise than at a hospital of a kind referred to in that sub-section if it is of the opinion that that further treatment is desirable.

(11) Where a veteran would, but for the operation of section 26 or 74, be in receipt of a pension under Part II—

(a) at a rate referred to in paragraph (3) (a) or (7) (a) of this section;
or

(b) in respect of incapacity of a kind referred to in paragraph (3) (b) of this section,

sub-section (3) or (7), as the case requires, of this section applies to the veteran as if the veteran were in receipt of that pension.

(12) Where a veteran is, under a preceding sub-section of this section, eligible to be provided with treatment under this Part for an injury suffered, or disease contracted, by the veteran from and including a particular date and is also, under another preceding sub-section of this section, eligible to be provided with treatment under this Part for that injury or disease from and including an earlier date, the Commission may arrange for the veteran to be provided with treatment for that injury or disease from and including that earlier date.

Dependants eligible to be provided with treatment

86. (1) Where a determination under this Act is in force determining that the death of a veteran is war-caused, a dependant of the deceased veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act.

(2) A dependant of a deceased veteran is eligible to be provided with treatment under sub-section (1)—

(a) if—

- (i) the deceased veteran was, immediately before the veteran's death, in receipt of a pension under Part II at the rate specified in sub-section 24 (4) or at a rate that had been increased under section 27 by reason that the veteran's pension was in respect of incapacity of a kind described in items 1, 2, 3, 4, 5, 6, 7 or 8 of the table in sub-section 27 (1); or
- (ii) a pension has been granted under Part II, after the death of the veteran, in respect of the veteran at the rate specified in sub-section 24 (4) or at a rate that had been increased under section 27 by reason that the veteran's pension was in respect of incapacity of a kind described in items 1, 2, 3, 4, 5, 6, 7 or 8 of the table in sub-section 27 (1),

from and including the day immediately following the day on which the veteran died; or

- (b) in any other case—from and including the date as from which a pension is granted to the dependant of the deceased veteran under Part II.

(3) A child of a deceased veteran who is in receipt of, is eligible to receive or would, but for sub-section 13 (7), be eligible to receive a pension under Part II by virtue of sub-section 13 (2) or (4) is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the child, whether before or after the commencement of this Act.

(4) A child of a deceased veteran is eligible to be provided with treatment under sub-section (3) from and including—

- (a) subject to paragraph (b)—the day (in this sub-section referred to as the “relevant day”) immediately following the day on which the veteran died; or

- (b) if the Commission is satisfied that the child was then being maintained by a parent, adoptive parent or step-parent, the earliest day after the relevant day as from which the Commission is satisfied that the child was not being so maintained.

(5) Where the Commission is satisfied that a dependant of a veteran referred to in paragraph 85 (9) (a) requires urgent treatment for an injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act, the dependant is eligible to be provided with treatment under this Part for that injury—

- (a) at a hospital operated and maintained by the Commission, if the Commission is satisfied that provision of the treatment will not affect the capacity of the Commission to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of sub-section 85 (1), (2), (3), (4), (5), (6), (7) or (8) or dependants of veterans eligible to be provided with treatment by virtue of a preceding sub-section of this section; or
- (b) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89 (1) (b); or
- (c) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89 (1) (b).

(6) Where a dependant of a veteran has been provided with treatment at a hospital under sub-section (5) for an injury or disease, the Commission may provide further treatment for the dependant for that injury or disease otherwise than at a hospital of a kind referred to in that sub-section if it is of the opinion that that further treatment is desirable.

Additional treatment for veterans

87. (1) The Commission may provide, at a hospital or institution operated by the Commission under paragraph 89 (1) (a), a veteran with treatment for any injury suffered, or disease contracted, by the veteran notwithstanding that the veteran is not eligible under section 85, to be provided with that treatment under this Part if the Commission is satisfied that the provision of the treatment will not adversely affect the capacity of the Commission to provide treatment for veterans and dependants of veterans eligible to be provided with treatment by virtue of section 85 or 86.

(2) Where a veteran has been provided with treatment at a hospital or institution under sub-section (1) for an injury or disease, the Commission may provide further treatment for the veteran for that injury or disease otherwise than at a hospital or institution operated by the Commission under paragraph 89 (1) (a) if it is of the opinion that that further treatment is desirable.

Treatment for other persons

88. (1) The Commission may provide, at a hospital or institution operated by the Commission under paragraph 89 (1) (a), a person with treatment for any injury suffered, or disease contracted, by the person, if the Commission is satisfied that the provision of that treatment will not adversely affect the capacity of the Commission to provide treatment for veterans and dependants of veterans eligible to be provided with treatment by virtue of section 85, 86 or 87.

(2) Sub-section (1) does not apply in relation to the provision of treatment by the Commission for an injury suffered or a disease contracted by a person if treatment of the person for that injury or disease may be provided by the Commission under another provision of this Part.

(3) Where a person has been provided with treatment at a hospital or institution under sub-section (1) for an injury or disease, the Commission may provide further treatment for the person for that injury or disease otherwise than at a hospital or institution operated by the Commission under paragraph 89 (1) (a) if it is of the opinion that that further treatment is desirable.

Treatment at hospitals and other institutions

89. (1) For the purposes of this Part, the Commission may—

- (a) establish, operate and maintain hospitals or other institutions for the care and welfare of persons eligible to be provided with treatment under this Part;
- (b) enter into arrangements with the appropriate authority of the Commonwealth, a State or a Territory for the provision, at a hospital or other institution operated by the Commonwealth, the State or the Government of the Territory, as the case may be, of care and welfare for persons eligible to be provided with treatment under this Part; and
- (c) enter into arrangements with the body (other than an authority referred to in paragraph (b)) operating a hospital or other institution for the provision, at that hospital or institution, of care and welfare for persons eligible to be provided with treatment under this Part.

(2) In sub-section (1) a reference to a hospital or other institution shall be read as including a reference to a home, a hostel, a medical centre, an out-patient clinic and a rehabilitation or training establishment.

(3) The provisions of a relevant law of a State or Territory apply, with such modifications (if any) as are prescribed, to and in relation to a person (whether appointed or employed under the *Public Service Act 1922* or not) who is employed, or provides services, at a hospital or other institution established, operated or maintained by the Commission under paragraph (1) (a) that is situated in the State or Territory.

(4) In sub-section (3), “relevant law”, in relation to a State or Territory, means—

- (a) a law of a State or Territory that came into operation before, or comes into operation after, the commencement of this Act; or
- (b) such a law of a State or Territory, as amended and in force from time to time,

that is declared by the regulations to be a relevant law for the purposes of that sub-section.

(5) Nothing in sub-section (3) shall be taken to affect the operation of a law of a State or Territory that is not a relevant law of that State or Territory.

(6) The regulations may provide that the provisions of a law of a State or Territory, as in force at a particular time, or as in force from time to time, apply, in accordance with their tenor, to and in relation to—

- (a) a hospital or other institution operated and maintained by the Commission under paragraph (1) (a) in that State or Territory; or
- (b) to the Commonwealth place in that State or Territory where that hospital or institution is situated.

(7) Sub-section (6) does not apply to the provisions of a law of a State that apply to the Commonwealth place referred to in paragraph (6) (b) by virtue of the *Commonwealth Places (Application of Laws) Act 1970*.

(8) The regulations may provide that such of the provisions referred to in sub-section (6) as are specified in the regulations apply with such modifications, being modifications necessary or convenient to enable the applied provisions to operate in or in relation to that hospital, institution or Commonwealth place.

(9) In this section—

“Commonwealth place”, in relation to a hospital or other institution, means the land on which the hospital or institution is erected and other land surrounding that land or adjacent to that land used in connection with, or for the purposes of, the hospital or institution, being land with respect to which the Parliament, by virtue of section 52 of the Constitution, has, subject to the Constitution, power to make laws for the peace, order and good government of the Commonwealth;

“modification” includes the omission or addition of a provision or the substitution of a provision for another provision.

Guide to the provision of treatment

90. (1) The Commission may, from time to time, prepare a written document, to be known as the “Treatment Principles”, setting out circumstances in which, and conditions subject to which, treatment of a particular kind, or included in a particular class of treatment, may be provided under this Part for, or in respect of, eligible persons—

- (a) by the Commission at a hospital or other institution operated by the Commission;
- (b) at a hospital or other institution in respect of which the Commission has entered into arrangements under paragraph 89 (1) (b) or (c); or
- (c) otherwise under this Part.

(2) Without limiting the generality of sub-section (1), a document referred to in that sub-section may specify kinds or classes of treatment that will not be provided for, or in respect of, eligible persons under this Part, or will not be so provided at places, or in circumstances, specified or described in the document.

(3) The provisions of the approved Treatment Principles are binding on the Commission in the exercise by it of its powers and discretions under this Part.

(4) The Commission may, from time to time, by instrument in writing, vary or revoke the document prepared by it in accordance with sub-section (1).

(5) A document prepared by the Commission in accordance with sub-section (1), and an instrument under sub-section (3), have no force or effect unless and until approved by the Minister.

(6) When a document prepared by the Commission in accordance with sub-section (1), or an instrument under sub-section (4) has been approved by the Minister, the Commission shall furnish copies of the document or instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives those copies.

(7) The Commission shall make copies of the approved Treatment Principles available upon application and payment of the prescribed fee (if any).

(8) In this section "eligible person" means a person eligible under section 85, 86, 87 or 88 to be provided with treatment.

Pharmaceutical benefits

91. (1) The Commission may, from time to time, by instrument in writing, prepare a scheme for the provision of pharmaceutical benefits to persons eligible to be provided with treatment under this Part.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke an instrument prepared in accordance with sub-section (1).

(3) A scheme prepared by the Commission under sub-section (1), and an instrument under sub-section (2), have no force or effect unless and until approved by the Minister.

(4) When an instrument prepared by the Commission in accordance with sub-section (1), or an instrument under sub-section (2), has been approved by the Minister, the Commission shall furnish copies of the instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives those copies.

(5) The Commission shall make copies of a scheme prepared in accordance with sub-section (1) that has been approved by the Minister, and of any variations of such a scheme that have been so approved, available upon application and payment of the prescribed fee (if any).

(6) Where the Pharmaceutical Benefits Remuneration Tribunal established under the *National Health Act 1953* is holding, or proposes to hold, an inquiry under that Act to ascertain whether the Commonwealth price of all or any pharmaceutical benefits under that Act should be varied, the Minister may request that Tribunal to extend its inquiry to include the question whether the prices payable to pharmaceutical chemists in respect of the supply by them, in accordance with an approved scheme, of pharmaceutical benefits of the kinds specified by the Minister in his or her request should be varied and, where such a request is made, the Tribunal shall comply with the request.

(7) After completion of an inquiry referred to in sub-section (6), the Pharmaceutical Benefits Remuneration Tribunal shall submit to the Minister—

- (a) the recommendations of the Tribunal on the question the subject of the request made by the Minister under sub-section (6); and
- (b) where the Tribunal has submitted to the Minister administering Part VII of the *National Health Act 1953* a report in connection with that inquiry—a copy of that report.

(8) Where the Pharmaceutical Benefits Remuneration Tribunal submits to the Minister the recommendations and copy of a report referred to in sub-section (7), the Commission may prepare an instrument under sub-section (2) varying the approved scheme under sub-section (1) in such manner as it considers desirable as a result of its consideration of those recommendations and that report.

(9) In this section—

“approved scheme” means a scheme prepared under sub-section (1) and approved by the Minister under sub-section (3) or, if the scheme so approved has been varied by the Commission and the variation has been approved by the Minister, the scheme as so varied;

“pharmaceutical benefits” means drugs, medicinal preparations and other pharmaceutical items (including aids to treatment and dressings) for the treatment of sicknesses or injuries suffered by human beings.

Counselling services

92. The Commission may, with the approval of the Minister, arrange for the provision of counselling services for veterans and dependants of veterans.

Recovery of cost of treatment

93. (1) In this section—

“compensation”, in relation to a person who is being, or has been, provided with treatment by the Commission under this Part, means an amount that is by way of compensation or damages, or is, in the opinion of the Commission, in the nature of compensation or damages, in respect of the disease, disability or condition by reason of which that treatment is being, or has been, provided, but does not include an amount for which the person has made contributions;

“cost”, in relation to treatment provided by the Commission under this Part, means the cost (as determined by the Commission by instrument in writing) of and incidental to that treatment.

(2) Where a person (in this section referred to as the “patient”) who is being, or has been, provided with treatment under this Part recovers or receives compensation from another person, the patient is liable under this sub-section to pay to the Commonwealth an amount equal to the cost of the treatment so provided or, if the Commission, by notice in writing served on the patient, notifies the patient that payment of a lesser amount is claimed by the Commission, that lesser amount.

(3) The Commission may, by notice in writing served on a person (in this section referred to as the “person liable to pay compensation”) who is liable to pay compensation to, or for the benefit of, the patient, inform the person liable to pay compensation that the Commonwealth proposes to recover from him or her the cost of the treatment provided by the Commission for the patient under this Part.

(4) The Commission may, by the same notice or in a subsequent notice in writing served on the person liable to pay compensation, specify—

- (a) the cost of the treatment that is being, or has been, provided by the Commission for the patient under this Part; and
- (b) the amount (not exceeding the amount of that cost) payment of which is claimed by the Commonwealth,

and, thereupon, the person liable to pay compensation becomes liable under this sub-section to pay to the Commonwealth the amount so specified or the amount of the compensation, whichever is the less.

(5) Where—

- (a) a notice under sub-section (3) is served on the person liable to pay compensation; and

(b) the notice does not specify the matters referred to in paragraphs (4) (a) and (b),
the person shall not, until served with a notice under sub-section (4), pay the compensation, or any part of the compensation, to, or for the benefit of, the patient without the permission of the Commission.

(6) Payment of an amount to the Commonwealth under sub-section (4) operates, to the extent of the payment, as a discharge to the person liable to pay compensation of the person's liability to pay compensation to the person entitled to receive the compensation.

(7) The Commonwealth may recover in a court of competent jurisdiction an amount that a person is liable to pay to the Commonwealth under sub-section (2) or (4).

(8) The reference in sub-section (2) to another person, and the reference in sub-section (3) to a person (first occurring), include a reference to the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

(9) The reference in sub-section (3) to a person who is liable to pay compensation to, or for the benefit of, the patient includes a reference to an insurer who, under a contract of insurance, is liable to indemnify the person liable to pay compensation against that liability.

PART VI—ALLOWANCES AND OTHER BENEFITS

Division 1—Preliminary

Interpretation

94. In this Part, unless the contrary intention appears—

- (a) a reference to a hospital or other institution shall be read as including a reference to a home, a hostel, a medical centre, an out-patient clinic and a rehabilitation or training establishment; and
- (b) “treatment” has the same meaning as it has in Part V.

Prescribed persons

95. A person who is a prescribed person for the purpose of Part V is a prescribed person for the purposes of this Part.

Application

96. (1) Without prejudice to its effect apart from this section, this Part has effect in relation to a person who is, or has been—

- (a) a member of the Forces as defined by sub-section 68 (1); or
- (b) a member of a Peacekeeping Force as defined by sub-section 68 (1), and in relation to a dependant of such a person who has died, in like manner as it has effect in relation to a veteran and a dependant of a deceased veteran, respectively.

(2) For the purpose only of applying this Part as provided in sub-section (1)—

- (a) a reference in this Part to a veteran shall be read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by sub-section 68 (1);
- (b) a reference in this Part to a war-caused injury shall be read as a reference to a defence-caused injury;
- (c) a reference in this Part to a war-caused disease shall be read as a reference to a defence-caused disease;
- (d) a reference in this Part to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces, or a member of a Peacekeeping Force, as defined by sub-section 68 (1), that was defence-caused;
- (e) a reference in this Part to a pension under Part II shall be read as a reference to a pension under Part IV;
- (f) the references in sub-paragraph 102 (1) (b) (ii) and sub-sections 107 (5) and (6) and 108 (8) and (9) to section 26 shall be read as references to section 26 (in its application to pensions under Part IV) or sub-section 74 (8); and
- (g) a reference in this Part to a claim or application under Part II shall be read as a reference to a claim or application made under section 14 or 15, in its application to pensions under Part IV.

Division 2—Eligibility for allowances and other benefits

Clothing allowance

97. (1) Where a veteran is being paid a pension under Part II 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, the Commission may grant to the veteran an allowance, called clothing allowance, at the rate specified in column 2 of that table opposite to the description of that kind of incapacity in column 1:

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Column 1	Column 2
Kinds of incapacity	Rate per fortnight
	\$
1. One leg and one arm amputated	4.90
2. One leg or one arm amputated	2.30
3. Both legs or both arms amputated	3.20
4. One leg amputated, causing essential hip disarticulation	3.20
5. Blinded in both eyes	2.30

(2) Where the Commission is satisfied that it is necessary for a veteran who is being paid a clothing allowance under sub-section (1) by reason of a kind of incapacity described in item 2, 3 or 4 (in column 1) of the table in sub-section (1) to use a crutch or crutches in addition to any artificial aid, that sub-section has effect as if the rate specified in that item (in column 2) were \$4.90 per fortnight.

(3) Where—

- (a) a veteran is being paid a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind other than a kind described in column 1 of the table in sub-section (1); and
- (b) exceptional wear and tear, or exceptional damage, to the clothing of the veteran occurs by reason of the kind of incapacity from which the veteran is suffering,

the Commission may grant to the veteran a clothing allowance at such rate, not exceeding \$2.30 per fortnight, as the Commission deems fit.

(4) Where a veteran is granted a clothing allowance under sub-section (1) and is also granted a clothing allowance under sub-section (3), clothing allowance shall be paid to the veteran at a rate per fortnight equal to the sum of—

- (a) the rate per fortnight at which the allowance was granted under sub-section (1); and
- (b) the rate per fortnight at which the allowance was granted under sub-section (3).

(5) For the purpose of this section—

- (a) amputation of a hand of a veteran shall be treated as amputation of an arm of the veteran; and
- (b) amputation of a foot of a veteran shall be treated as amputation of a leg of the veteran.

(6) Clothing allowance may be paid to a veteran by fortnightly instalments, or in such other manner as is determined by the Commission, but the amount, or sum of the amounts, of clothing allowance paid to a veteran in any period of 12 consecutive months shall not exceed an amount equal to the sum of 26 fortnightly instalments.

Attendant allowance

98. (1) Where a veteran is being paid a pension under Part II 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, the Commission may grant to the veteran an allowance, called attendant allowance, at the rate specified in column 2 of that table opposite to the description of that kind of incapacity in column 1, for or towards the cost of the services of an attendant to assist the veteran:

Column 1	Column 2
Kinds of incapacity	Rate per fortnight
	\$
1. Blinded in both eyes	57.40
2. Blinded in both eyes together with total loss of speech or total deafness.	114.80
3. Both arms amputated	114.80
4. Both legs amputated and one arm amputated.	57.40
5. Both legs amputated at the hip or one leg amputated at the hip and the other leg amputated in the upper third	57.40

(2) Where—

(a) a veteran is being paid a pension under Part II in respect of incapacity—

- (i) from a war-caused injury or a war-caused disease affecting the cerebro-spinal system; or
- (ii) from a war-caused injury or a war-caused disease that has caused a condition similar in effect or severity to an injury or disease affecting the cerebro-spinal system; and

(b) the Commission is of the opinion that the veteran has a need for the services of an attendant to assist the veteran,

the Commission may grant to the veteran an allowance, called attendant allowance, at the rate of \$57.40 per fortnight, for or towards the cost of the services of an attendant to assist the veteran.

(3) For the purposes of the application of the table in sub-section (1) to and in relation to a veteran, a leg, foot, hand or arm that has been rendered permanently and wholly useless shall be treated as having been amputated.

(4) Where a veteran is cared for, at public expense, in a public hospital or other public institution, attendant allowance is not payable to the veteran in respect of the period commencing on the first pension pay-day occurring after the veteran commences to be so cared for and ending on the day on which the veteran ceases to be so cared for.

(5) Where the Commission makes a decision with respect to an application for attendant allowance under this section, section 34 applies to and in relation to the decision in like manner as it applies to and in relation

to a decision with respect to a claim for pension in accordance with section 14.

Funeral benefits—veterans

99. (1) The Commission may grant a benefit, called a funeral benefit, towards the funeral expenses incurred in respect of the funeral of—

- (a) a veteran whose death was war-caused;
- (b) a veteran who, immediately before his or her death, was being paid pension under Part II as a veteran to whom section 24 applied;
- (c) a veteran who, immediately before his or her death, was being paid pension under Part II at a rate that had been increased under section 27 by reason that the veteran was incapacitated from a war-caused injury or a war-caused disease of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in sub-section 27 (1);
- (d) a veteran who has died in indigent circumstances; or
- (e) subject to sub-section (3), a veteran who has died—
 - (i) in an institution;
 - (ii) while travelling to or from an institution;
 - (iii) after having been discharged from an institution in which the veteran was being treated for a terminal illness; or
 - (iv) while being treated for a terminal illness at the veteran's home instead of at an institution.

(2) Where—

- (a) 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; or
- (b) the rate of a pension granted to a veteran in respect of war-caused injury or war-caused disease, or both, is increased, after the death of the veteran but as from a date before the death of the veteran,

sub-section (1) applies as if the veteran had been in receipt of that pension, or of pension at that increased rate, as the case may be, immediately before the veteran died.

(3) A funeral benefit shall not be granted under sub-section (1) in respect of a veteran described in paragraph (1) (e)—

- (a) if the veteran died in an institution—unless the Commission has approved the admission of the veteran to the institution for treatment;
- (b) if the veteran died while travelling to or from an institution—unless the Commission has approved the provision of treatment for the veteran at that institution;
- (c) if the veteran has been discharged from an institution in which the veteran was being treated for a terminal illness—unless the Commission has approved his or her discharge from the institution; or

- (d) if the veteran died while being treated for a terminal illness at the veteran's home—unless the Commission has approved his or her being so treated.

(4) A funeral benefit under this section in respect of a deceased veteran consists of—

- (a) a sum of \$550 or an amount equal to the amount paid or payable in respect of the funeral of the deceased veteran, whichever is the less; and

- (b) subject to sub-section (5), if—

- (i) the veteran died at a place other than the veteran's ordinary place of residence;
- (ii) the veteran was absent from the veteran's ordinary place of residence for the purpose of obtaining medical treatment;
- (iii) the Commission has approved the provision of that medical treatment; and
- (iv) a charge was made by the funeral director expressly for transporting the body of the deceased veteran from the place where the veteran died to the place where the veteran ordinarily resided immediately before the veteran died,

a sum equal to a reasonable charge for so transporting the body of the deceased veteran.

- (5) Paragraph (4) (b) does not apply—

- (a) in respect of the funeral of a deceased veteran if funeral benefit is payable under sub-section (1) only by reason that the veteran died in indigent circumstances; or
- (b) to a charge made by a funeral director for transporting the body of the deceased veteran outside Australia or from one place in the metropolitan area of a capital city to another place in the metropolitan area of that city.

(6) For the purposes of sub-paragraph (4) (b) (ii), but without limiting the generality thereof, a person shall be deemed to be absent from the veteran's ordinary place of residence for the purpose of obtaining medical treatment—

- (a) if the veteran is travelling from his or her ordinary place of residence for the purpose of obtaining medical treatment;
- (b) if the veteran is returning to his or her ordinary place of residence after having obtained medical treatment;
- (c) if the veteran is being provided with medical treatment at a place other than his or her ordinary place of residence; or
- (d) if the veteran is away from his or her ordinary place of residence on the recommendation of his or her doctor by way of treatment for an injury or disease.

(7) In paragraph (4) (a), the amount paid or payable in respect of the funeral of a deceased veteran means, in a case where the deceased veteran

was, immediately before his or her death, a member of a contributory funeral benefit fund, the amount by which the cost of the funeral exceeds the amount of the benefit payable from that fund in relation to the deceased veteran.

Funeral benefits—dependants of deceased veterans

100. (1) Where a dependant of a deceased veteran, being—

- (a) a veteran whose death was war-caused;
- (b) a veteran who, immediately before his or her death, was being paid pension under Part II as a veteran to whom section 24 applied; or
- (c) a veteran who, immediately before his or her death, was being paid pension under Part II at a rate that had been increased under section 27 by reason that the veteran was incapacitated from a war-caused injury or a war-caused disease of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in sub-section 27 (1),

has died in indigent circumstances, the Commission may grant a benefit, called funeral benefit, towards the funeral expenses incurred in respect of the funeral of the dependant.

(2) A funeral benefit under this section in respect of a deceased dependant of a deceased veteran is a sum of \$550 or an amount equal to the amount paid or payable in respect of the funeral of the deceased dependant, whichever is the less.

(3) In sub-section (2), the amount paid or payable in respect of the funeral of a deceased dependant means, in a case where the dependant was, immediately before his or her death, a member of a contributory funeral benefit fund, the amount by which the cost of the funeral exceeds the amount of the benefit payable from that fund in relation to the deceased dependant.

Funeral benefits—service pensioners

101. (1) In this section—

“deceased pensioner” means a deceased person—

- (a) who, immediately before his or her death, was in receipt of a service pension under section 38 or 39;
- (b) who had, before his or her death, made a claim for service pension under section 43 and would, but for his or her death, have been granted a service pension under section 38 or 39; or
- (c) who—
 - (i) had, before his or her death, made a claim for an allowance under section 9 of the *Tuberculosis Act 1948* and would, but for his or her death, have been granted such an allowance; and
 - (ii) would, if the person had, before his or her death, made a claim for service pension under section 43 of

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this Act instead of a claim under section 9 of the *Tuberculosis Act 1948*, been granted a service pension under section 38 or 39 of this Act,

other than such a deceased person who was, immediately before he or she died, a prescribed person;

“pensioner” means a person—

- (a) who is in receipt of a service pension under section 38 or 39; or
- (b) who is in receipt of an allowance under section 9 of the *Tuberculosis Act 1948* and would, but for being in receipt of that allowance, be eligible to be paid a service pension under section 38 or 39 of this Act,

but does not include a person who is a prescribed person.

(2) Where an amount has been paid, or is payable, out of a contributory funeral benefit fund in relation to the funeral of a deceased person, this section applies as if—

- (a) a reference to the cost of the funeral of the deceased person were read as a reference to the amount by which the cost of the funeral of the deceased person exceeds the amount so payable from that fund; and
- (b) the sum so paid or payable out of that fund were deemed not to be a sum paid or liable to be paid in respect of the cost of the funeral of the deceased person.

(3) Subject to sub-section (10), the Commission may grant a benefit, called a funeral benefit, to a pensioner who has paid, or is liable to pay, a sum in respect of the cost of the funeral of a deceased person, being—

- (a) the deceased spouse of the pensioner;
- (b) a deceased child of the pensioner; or
- (c) another pensioner,

if the pensioner was a pensioner at the time of the death of the person or became a pensioner within 6 months after the death of the person.

(4) In the application of sub-section (3)—

- (a) a reference in that sub-section (other than in paragraph (3) (c)) to a pensioner shall be read as including a reference to a person in receipt of a wife's service pension under section 40 or a carer's service pension under section 41, other than such a person who is a prescribed person; and
- (b) a reference in paragraph (3) (b) to a deceased child of the pensioner shall be read as a reference—
 - (i) if the pensioner is a person in receipt of a service pension, a wife's service pension or a carer's service pension—to a person who was, immediately before the person's death, a child of the pensioner within the meaning of section 10; or

- (ii) in any other case—to a deceased child of the pensioner for the purposes of Part IVA of the *Social Security Act 1947*.

(5) Subject to sub-section (10), the Commission may grant a funeral benefit to a person (not being a person who is a prescribed person) who has paid, or is liable to pay, a sum in respect of the cost of the funeral of a deceased pensioner if the person was, on the date of the death of the pensioner, in receipt of an age pension, an invalid pension, a wife's pension or a widow's pension under the *Social Security Act 1947* or commenced to receive such a pension from a date not later than 6 months after the date of the death of the pensioner.

(6) A funeral benefit granted to a person under sub-section (3) or (5) in respect of the cost of the funeral of a deceased person is—

(a) an amount of \$40; or

(b) an amount equal to the amount that the person has paid, or is liable to pay, in respect of the cost of that funeral,

whichever is the lesser amount, less the amount of the funeral benefit (if any) granted under sub-section (7) in respect of the cost of that funeral.

(7) Where a person who has paid, or is liable to pay, a sum in respect of the cost of the funeral of a deceased pensioner is not eligible to be granted a funeral benefit under sub-section (3) or (5) in relation to the funeral, the Commission may, subject to sub-sections (9) and (10), grant a funeral benefit to the person under this sub-section.

(8) A funeral benefit granted to a person under sub-section (7) in respect of the funeral of a deceased person is—

(a) an amount of \$20; or

(b) an amount equal to the amount that the person has paid, or is liable to pay, in respect of the cost of that funeral,

whichever is the lesser amount.

(9) A funeral benefit shall not be granted to a person under sub-section (7) in respect of the cost of the funeral of a deceased pensioner—

(a) if a funeral benefit has previously been granted under sub-section (3) or (5) in respect of the cost of that funeral; or

(b) if the person has paid, or is liable to pay, the sum in respect of the cost of that funeral out of a contributory funeral benefit fund.

(10) A funeral benefit shall not be granted under sub-section (3), (5) or (7) in respect of the cost of the funeral of a deceased person if a funeral benefit has been granted under section 99 or 100 of this Act, or under the *Social Security Act 1947*, in respect of the funeral.

Decoration allowance

102. (1) Subject to this section, the Commission may grant an allowance, called decoration allowance, to a veteran who has been awarded any one or more of the decorations specified in sub-section (5) if the veteran—

- (a) is in receipt of a pension under Part II; or
- (b) would be in receipt of a pension under Part II but for—
 - (i) the cancellation, under sub-section 124 (1), of a pension that had been granted to the veteran under Part II; or
 - (ii) section 26.

(2) Where a veteran who has been granted a decoration allowance under sub-section (1) is paid an amount by way of gratuity by Australia, a State or an overseas country in respect of the award to the veteran of a decoration specified in sub-section (5), decoration allowance is not payable to the veteran under this section on and after the date on which that gratuity is paid to the veteran until the sum of the amounts of decoration allowance that would, but for this sub-section, have been payable to the veteran, equals or exceeds the amount so paid to the veteran by way of gratuity.

(3) Decoration allowance is not payable to a veteran under this section in respect of any period in respect of which the veteran is entitled to be paid, by Australia or an overseas country, an allowance or annuity that is of a similar kind to decoration allowance payable under this section.

(4) Decoration allowance granted to a veteran under this section is payable at the rate of \$2 per fortnight.

(5) The decorations specified in this sub-section are—

- (a) the following decorations awarded for gallantry during a war to which this Act applies or during warlike operations:
 - (i) the Victoria Cross;
 - (ii) the Cross of Valour;
 - (iii) the Star of Courage;
 - (iv) the Distinguished Service Order;
 - (v) the Distinguished Service Cross;
 - (vi) the Military Cross;
 - (vii) the Distinguished Flying Cross;
 - (viii) the Distinguished Conduct Medal;
 - (ix) the Conspicuous Gallantry Medal;
 - (x) the Distinguished Service Medal;
 - (xi) the Military Medal;
 - (xii) the Distinguished Flying Medal;
- (b) the George Cross; and
- (c) the George Medal.

(6) A reference in this section to a decoration specified in sub-section (5) shall be read as not including a reference to a bar to such a decoration.

Victoria Cross allowance

103. (1) Subject to this section, the Commission may grant an allowance, called Victoria Cross allowance, to a veteran who has been awarded the Victoria Cross.

(2) Victoria Cross allowance granted to a veteran under this section is in addition to any decoration allowance that has been or may be granted to the veteran under section 102.

(3) Victoria Cross allowance is not payable to a veteran in respect of any period in respect of which the veteran is entitled to be paid, by Australia or an overseas country, an allowance or annuity that is of a similar kind to Victoria Cross allowance payable under this section.

(4) Victoria Cross allowance granted to a veteran under this section is payable at the rate of \$250 per year.

(5) In this section, a reference to the award of the Victoria Cross shall be read as not including a reference to the award of a bar to the Victoria Cross.

Recreation transport allowance

104. (1) Subject to this section, the Commission may grant an allowance, called recreation transport allowance, to a veteran who is suffering an 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
Description of incapacity	Rate per fortnight
	\$
1. Both legs amputated above the knees	30.40
2. Negligible powers of locomotion so as to be capable of moving, with the aid of crutches or walking sticks, for short distances only.	30.40
3. Handicapped with regard to locomotion to a degree that, in the opinion of the Commission, is similar to the degree of handicap with regard to locomotion associated with a disability described in item 1 or 2	30.40
4. Both arms amputated at or above the wrists.	15.20
5. Both legs amputated below the knees	15.20
6. One leg amputated above the knee and the other below the knee	15.20
7. One leg amputated above or below the knee and one arm amputated below the elbow	15.20
8. Blinded in both eyes	15.20
9. Incapacitated to an extent that, in the opinion of the Commission, is similar in effect or severity to the extent of incapacity associated with a disability described in item 4, 5, 6, 7 or 8	15.20
10. Handicapped with regard to locomotion to a degree that, in the opinion of the Commission, is similar in degree to the handicap with regard to locomotion associated with a disability described in item 5, 6, 7 or 8	15.20

(2) For the purposes of sub-section (1)—

(a) a leg that has been rendered permanently and wholly useless above the knee or below the knee shall be treated as if it had been amputated above the knee or below the knee, as the case may be; and

- (b) an arm that has been rendered permanently and wholly useless at or above the wrist or below the elbow, shall be treated as if it had been amputated at or above the wrist, or below the elbow, as the case may be.
- (3) Recreation transport allowance is payable to a veteran, in respect of the costs incurred by the veteran in travelling for recreational purposes, at the rate specified in column 2 of the table in sub-section (1) opposite to the kind of incapacity described in column 1 from which the veteran is suffering.
- (4) Recreation transport allowance is not payable to a veteran under sub-section (1) in respect of any period—
 - (a) during which the veteran is being cared for, at public expense, in a public hospital or other public institution; or
 - (b) in respect of which the veteran is paid an allowance under section 105.

Vehicle assistance scheme

105. (1) The Commission may, by instrument in writing, prepare a scheme, called the Vehicle Assistance Scheme, for the provision of motor vehicles to veterans eligible under this section to participate in the scheme and for the payment of allowances towards the cost of running and maintaining vehicles so provided.

(2) The Commission may, by instrument in writing, vary or revoke a scheme prepared under sub-section (1) and approved under sub-section (3).

(3) A scheme prepared by the Commission under sub-section (1), and an instrument varying or revoking such a scheme, have no force or effect unless approved by the Minister.

(4) Where a scheme prepared by the Commission in accordance with sub-section (1), or an instrument under sub-section (2), has been approved by the Minister, the Commission shall furnish copies of the scheme or instrument to the Minister, and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.

(5) A veteran is, subject to sub-section (7), eligible to participate in the Vehicle Assistance Scheme if the veteran is incapacitated from war-caused injury or war-caused disease by reason of—

- (a) amputation of both legs above the knee;
- (b) amputation of one leg above the knee and, in addition—
 - (i) amputation of the other leg at or above the ankle and amputation of one arm at or above the wrist; or
 - (ii) amputation of both arms at or above the wrists;
- (c) complete paraplegia resulting in the total loss of voluntary power in both legs to the extent that there is insufficient power for purposeful use for stance or locomotion; or

- (d) a condition that, in the opinion of the Commission, is similar in effect or severity to a condition described in paragraph (a) or (b).

(6) The Commission may provide benefits for veterans eligible to participate in the Vehicle Assistance Scheme under and in accordance with the provisions of that Scheme.

(7) For the purposes of sub-section (5)—

- (a) a leg that has been rendered permanently and wholly useless above the knee shall be treated as if it had been amputated above the knee;
- (b) a veteran shall not be taken to be incapacitated by reason of the disability described in paragraph (5) (c) unless the disability is such that surgical or other therapeutic measures are not reasonably capable of restoring power for purposeful use for stance or locomotion; and
- (c) a reference to the Vehicle Assistance Scheme shall, unless the contrary intention appears, be read as a reference to—
 - (i) the Vehicle Assistance Scheme prepared under sub-section (1) and approved by the Minister, but not being such a Scheme that has been revoked; or
 - (ii) if that Scheme has been varied under sub-section (2) by an instrument approved by the Minister—that Scheme as so varied.

Special assistance

106. (1) Subject to sub-section (2), the Commission may, in such circumstances, and subject to such conditions (if any), as are prescribed, in its discretion, grant to a veteran, or to a dependant of a veteran or deceased veteran, assistance or benefits of such a kind, and of such an amount or value, as it deems fit in all the circumstances of the case.

(2) The Commission shall not grant assistance or benefits to a person under sub-section (1) in circumstances in which the person is eligible to be granted an allowance or assistance under another provision of this Act.

Temporary incapacity allowance

107. (1) The Commission may grant an allowance, called temporary incapacity allowance, to a veteran who is admitted to a hospital or other institution for treatment in respect of a war-caused injury or a war-caused disease if the conditions specified in sub-section (2) are fulfilled in relation to the incapacity of the veteran.

(2) The conditions referred to in sub-section (1) in relation to an incapacity of a veteran from a war-caused injury or a war-caused disease are—

- (a) that the veteran has undergone treatment for the incapacity as an inpatient of a hospital or other institution;
- (b) that, for a continuous period in excess of 4 weeks (being a period commencing on the date on which the veteran was admitted to that

hospital or other institution for treatment for that incapacity), the veteran has undergone treatment for that incapacity either as an inpatient of, or after discharge from, that hospital or other institution or has undergone rest and recuperation, after the completion of that treatment, on the recommendation of a medical practitioner; and

- (c) that, by reason of that treatment, or of that treatment and that rest and recuperation, the veteran was incapable, during a period (in this section referred to as the "relevant period applicable to the incapacity"), being the whole or part of the continuous period referred to in paragraph (b), of continuing to undertake remunerative work that the veteran would have continued to undertake but for that treatment or that treatment and that rest and recuperation, as the case may be.

(3) The condition specified in paragraph (2) (c) shall be taken not to have been fulfilled in relation to the incapacity of a veteran during any part of the relevant period applicable to the incapacity during which the veteran was capable of undertaking remunerative work for periods aggregating more than 8 hours per week, being work that the veteran would have continued to undertake but for the treatment, or the treatment and the rest and recuperation, as the case may be.

(4) Where temporary incapacity allowance is granted to a veteran in respect of a veteran's incapacity from a war-caused injury or a war-caused disease, the allowance is payable in respect of the relevant period applicable to the incapacity.

(5) Subject to sub-section (6), the rate at which temporary incapacity allowance is payable to a veteran is—

- (a) if the veteran is in receipt of a pension under Part II, or would, but for the operation of section 26, be in receipt of such a pension—
an amount per fortnight equal to the amount by which the amount specified in sub-section 24 (4) exceeds the amount per fortnight of the pension that is, or would be, payable; or
- (b) in any other case—the rate specified in sub-section 24 (4).

(6) The rate at which temporary incapacity allowance is payable to a veteran who is also in receipt of loss of earnings allowance is—

- (a) if the veteran is in receipt of a pension under Part II, or would, but for the operation of section 26, be in receipt of such a pension—
an amount per fortnight equal to the amount by which the amount specified in sub-section 24 (4) exceeds an amount equal to the sum of—
 - (i) the amount per fortnight of the pension that is, or would be, payable; and
 - (ii) the amount per fortnight at which loss of earnings allowance is payable to the veteran; or

- (b) in any other case—an amount per fortnight equal to the amount by which the amount specified in sub-section 24 (4) exceeds the amount per fortnight at which loss of earnings allowance is payable to the veteran.

(7) Temporary incapacity allowance is not payable to a veteran unless the veteran furnishes to the Commission such information (including certificates of medical practitioners or other persons) as is required by the regulations to be so furnished.

(8) Where—

- (a) temporary incapacity allowance is payable to a veteran in respect of the relevant period applicable to the veteran's incapacity from a war-caused injury or a war-caused disease; and
- (b) after the commencement of that period, whether before or after the end of that period—
 - (i) the rate of the veteran's pension under Part II is increased; or
 - (ii) a pension under Part II is granted to the veteran, payable from a date before the end of that period; and
- (c) the veteran would not have been entitled to be paid the whole or part of the amount of temporary incapacity allowance that was paid to the veteran in respect of that period if that pension had been increased or granted on the day as from which it was payable,

an amount equal to the amount of temporary incapacity allowance that the veteran would not have been entitled to be paid shall be deducted from amounts of pension payable to the veteran in a lump sum or by instalments as the Commission determines.

Loss of earnings allowance

108. (1) The Commission may grant an allowance, called loss of earnings allowance, to a person in accordance with the provisions of this section.

(2) Loss of earnings allowance may be granted to a veteran, in respect of any loss of salary or wages, or loss of earnings on his or her own account from an occupation in which he or she is engaged, suffered by reason of—

- (a) the veteran's undergoing treatment for incapacity from a war-caused injury or a war-caused disease;
 - (b) the veteran's having to wait for the supply of, or repairs to, an artificial replacement or other surgical aid or appliance necessitated by such an incapacity;
 - (c) an investigation of a claim or application made by the veteran under Part II or of a pension granted to the veteran under that Part; or
 - (d) the veteran's undergoing treatment associated with such an investigation,
- for the period in respect of which the veteran suffered that loss.

(3) Where—

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- (a) a veteran, or a dependant of a veteran, travels for the purpose of—
 - (i) obtaining treatment;
 - (ii) restoration of his or her health;
 - (iii) being fitted with surgical aids or appliances or artificial replacements;
 - (iv) an investigation referred to in paragraph (2) (c); or
 - (v) any other matter related to the payment of a pension; and
- (b) the Commission authorizes a person to accompany the veteran as his or her attendant,

loss of earnings allowance may be granted to the attendant, in respect of any loss of salary or wages, or loss of earnings on his or her own account, suffered by reason of having so accompanied the veteran, for the period in respect of which the attendant suffered that loss.

(4) Where a claim for pension for a veteran or a dependant of a veteran—

- (a) is made by another person, as provided by section 16, on behalf of the veteran or dependant; or
- (b) is prosecuted by a person who is the legal personal representative of the claimant, or by a person approved under section 126, following the death of the claimant,

loss of earnings allowance may be granted to the person, in respect of any loss of salary or wages, or loss of earnings on his or her own account, suffered by reason of an investigation under section 17 of the claim for the period in respect of which the person suffered that loss.

(5) Subject to sub-section (6), where, in any year, a veteran who is an employee of another person—

- (a) was granted leave of absence on account of illness for a period in respect of which the veteran was absent from his or her employment for a reason referred to in paragraph (2) (a), (b), (c) or (d);
- (b) was, during a subsequent period of that year, absent from his or her employment by reason of—
 - (i) any illness or disease; or
 - (ii) undergoing treatment related to any illness or disease, other than a war-caused illness or a war-caused disease; and
- (c) has incurred loss of salary or wages as a result of absence from his or her employment referred to in paragraph (b) of this sub-section,

loss of earnings allowance may be granted to the veteran, in respect of that loss of salary or wages, for the period in respect of which the veteran suffered that loss.

(6) Where, in a year, the period, or aggregate of the periods, for which loss of earnings allowance is payable to a veteran by virtue of sub-section (5) has equalled—

- (a) the period, or aggregate of the periods, referred to in paragraph (5) (a) for which the veteran has been absent from his or her employment in that year; or
- (b) a period equal to the period credited, or notionally credited, in respect of the veteran for that year, under the terms and conditions of his or her employment, by way of sick leave credit (however described),

whichever is the less, loss of earnings allowance is not payable to the veteran by virtue of sub-section (5) in respect of any part of the remainder of that year.

(7) Loss of earnings allowance is not payable to a person under this section in respect of any period in respect of which the person is paid pension under Part II at the rate specified in sub-section 24 (4).

(8) The amount of loss of earnings allowance payable to a veteran by virtue of sub-section (2) or (5) in respect of loss of salary or wages, or of earnings on his or her own account, (in this sub-section referred to as the "relevant loss of remuneration") suffered by the veteran in respect of a period (in this sub-section referred to as the "relevant period") is—

(a) an amount equal to—

- (i) unless sub-paragraph (ii) or (iii) applies—the amount of pension that would be payable to the veteran in respect of the relevant period if the veteran were a veteran to whom section 24 applied and the veteran's pension were required to be calculated at the rate specified in sub-section 24 (4) (in this sub-section that amount of pension is referred to as the "maximum amount in respect of the relevant period");
- (ii) if the veteran is in receipt of a pension under Part II—the amount by which the maximum amount in respect of the relevant period exceeds the amount of pension under Part II that is payable to the veteran in respect of the relevant period; or
- (iii) if the veteran is not in receipt of a pension under Part II but would be in receipt of such a pension but for the provisions of section 26 or is in receipt of a pension under Part II that has been reduced in accordance with the provisions of that section—the amount by which the maximum amount in respect of the relevant period exceeds the amount of pension under Part II that would be payable to the veteran in respect of the relevant period if section 26 were omitted from this Act; or

(b) an amount equal to the amount that the veteran would have earned, or could reasonably be expected to have earned, from the occupation referred to in sub-section (2) of this section or from the employment referred to in sub-section (5) of this section, as the case may be, in respect of the relevant period by way of salary or wages or of

earnings on his or her own account less an amount equal to the sum of—

- (i) the amount (if any) earned by the veteran from that occupation or employment, or from any other occupation or employment, in respect of the relevant period by way of salary or wages or earnings on his or her own account;
- (ii) the amount (if any) that the veteran receives, or is entitled to receive, in respect of the relevant period, by way of compensation for the relevant loss of remuneration, under a law of the Commonwealth, a State, a Territory or a country other than Australia that makes provision for the payment of compensation or other benefits to persons in respect of incapacities arising out of, or in the course of, employment or caused by, or arising out of, the use of motor vehicles;
- (iii) the amount (if any) that the veteran receives, or is entitled to receive, from his or her employer by way of gratuity or other payment in respect of the relevant loss of remuneration suffered by the veteran in respect of the relevant period; and
- (iv) the amount (if any) that the veteran receives, or is entitled to receive, in respect of the relevant loss of remuneration suffered by the veteran in respect of the relevant period, under a contract, arrangement or agreement (including a contract of insurance), whether or not the veteran is a party to the contract, arrangement or agreement, but not being an amount of a kind referred to in sub-paragraph (ii) or (iii),

whichever is the lesser amount.

(9) The amount of loss of earnings allowance payable to a person by virtue of sub-section (3) in respect of a period is—

- (a) the amount that would be payable to the person in respect of the period in accordance with paragraph (8) (b) if the person were a veteran who was entitled to be paid that allowance by virtue of sub-section (2); or
- (b) the amount that would be payable to the person in respect of the period by way of pension under Part II if the person were eligible to be paid a pension under that Part, section 24 applied to the person and section 26 did not apply to the person,

whichever is the lesser amount.

(10) The amount of loss of earnings allowance payable to a person by virtue of sub-section (4) in respect of a period is such amount as the Commission considers reasonable in all the circumstances but not exceeding the amount that the person would have earned, or could reasonably be expected to have earned, in the period by way of salary and wages, or earnings on his or her own account.

(11) Loss of earnings allowance is not payable to a person under this section unless the person furnishes to the Commission such information

(including certificates of medical practitioners or other persons) as is required by the regulations to be so furnished.

(12) In this section—

“leave of absence on account of illness”, in relation to a veteran who is an employee of another person, means leave of absence from the veteran’s employment granted to the veteran without loss of earnings by reason of any illness or incapacity or treatment provided for an illness or incapacity;

“year”, in relation to a veteran who is an employee of another person, means the period of 12 months that commenced on the date on which, under his or her terms and conditions of employment, the veteran was last credited, or last notionally credited, with a period by way of sick leave (however described).

Advances on account of loss of earnings allowance

109. (1) Where the Commission is satisfied—

- (a) that a person may reasonably be expected to become entitled to be paid loss of earnings allowance under section 108 in respect of a period (in this section called the period of entitlement); and
- (b) that it is, in all the circumstances, appropriate for the person to be paid an advance on account of the loss of earnings allowance that the person is expected to become entitled to be paid in respect of a period (in this section called the period of advance), being the whole or a part of the period of entitlement,

the Commission may authorize payment to the person of an advance accordingly in respect of the period of advance.

(2) The amount paid to a person by way of advance under sub-section (1) in respect of a period of advance, or the aggregate of the amounts so paid to a person in respect of the periods of advance included in a period of entitlement, as the case may be, shall not exceed the amount estimated by the Commission to be the amount of loss of earnings allowance likely to be payable to the person in respect of that period of advance or those periods of advance, as the case may be.

(3) If the amount of the advance, or the sum of the amounts of advances, paid to a person in relation to a period of entitlement exceeds the amount of loss of earnings allowance that becomes payable to the person in respect of that period of entitlement, the person is liable to pay an amount equal to the excess to the Commonwealth.

Travelling expenses

110. (1) Where a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, for the purpose of—

- (a) obtaining treatment;
- (b) restoration of his or her health; or
- (c) being fitted with surgical aids or appliances or artificial replacements,

the veteran, or the dependant, as the case may be, is, subject to this section and to such conditions as are prescribed, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

(2) Subject to such conditions as are prescribed, where—

- (a) a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, as described in sub-section (1); and
- (b) the Commission authorizes a person to accompany the veteran or dependant as his or her attendant,

the attendant is, subject to this section, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

(3) Travelling expenses are not payable under this section in respect of travel outside Australia.

(4) Where the Commission is satisfied—

- (a) that a person may reasonably be expected to become entitled to be paid travelling expenses under this section; and
- (b) that it is in all the circumstances appropriate for the person to be paid an advance on account of the travelling expenses that the person is expected to become entitled to be paid,

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

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

Division 3—Procedural

Application

111. (1) Each of the following allowances or benefits is a benefit to which this section applies, namely:

- (a) clothing allowance;
- (b) attendant allowance;
- (c) funeral benefit under section 99, 100 or 101;
- (d) Victoria Cross allowance;
- (e) recreation transport allowance;
- (f) temporary incapacity allowance;
- (g) loss of earnings allowance;
- (h) travelling expenses.

(2) An application for a benefit to which this section applies—

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

- (b) shall be accompanied by such certificates and other evidence (relevant to the applicant's entitlement to the benefit) as are required to be furnished by this Act, the regulations or the form of application; and
 - (c) shall be made by forwarding to, or delivering at, an office of the Department in Australia the application and any certificates and evidence referred to in paragraph (b).
- (3) An application for a benefit to which this section applies may be made—
- (a) by the person eligible to be granted the benefit; or
 - (b) with the approval of that person or of the Commission under sub-section (4), by another person on behalf of that person.
- (4) Where a person eligible to be granted a benefit to which this section applies is unable, by reason of physical or mental ailment, to approve a person to make an application for that benefit on his or her behalf, the Commission may approve a person to make the application on his or her behalf.
- (5) Where an application for a benefit to which this section applies is made by a person on behalf of another person, the other person on whose behalf the application is made, and not the person making the application on behalf of that other person, shall be treated as the applicant.
- (6) For the purposes of this Division, where—
- (a) a person makes an application in writing for an allowance or benefit to which this section applies, but otherwise than in accordance with a form approved for the purposes of sub-section (2); and
 - (b) the person subsequently makes an application for the allowance or benefit in accordance with a form so approved—
 - (i) at a time when the person had not been notified by the Department, in writing, that it would be necessary to make the application in accordance with a form so approved; or
 - (ii) within 3 months after the person had been so notified,
- the Commission may treat the application referred to in paragraph (b) as having been received at an office of the Department in Australia on the date on which the application referred to in paragraph (a) was so received.

Time for applying for certain benefits

112. (1) An application for temporary incapacity allowance in respect of a veteran's incapacity from a war-caused injury or a war-caused disease shall be made within 12 months after the commencement of the period that is the relevant period applicable to the incapacity for the purposes of section 107.

(2) An application for loss of earnings allowance for a period in respect of which a person has suffered a loss of salary or wages, or loss of earnings on his or her own account, as set out in sub-section 108 (2), (3), (4) or

(5), shall be made within 12 months after the commencement of that period.

(3) An application for travelling expenses in connection with travel referred to in sub-section 110 (1) or (2) shall be made within 3 months after the completion of that travel.

(4) An application made to the Commission for the grant of—

(a) temporary incapacity allowance;

(b) loss of earnings allowance; or

(c) travelling expenses,

after the expiration of the period applicable to the application by virtue of sub-section (1), (2) or (3), as the case requires, is of no force or effect.

Time for applying for funeral benefit

113. (1) Subject to this section, application may be made to the Commission for the grant of a funeral benefit under section 99, 100 or 101 in respect of the funeral of a person, being—

(a) a deceased veteran;

(b) a deceased dependant of a deceased veteran;

(c) a deceased spouse of a pensioner or a deceased child of a pensioner;
or

(d) a deceased pensioner,

within 12 months after the death of the person.

(2) Where, after the death of a veteran, a determination is made under this Act determining that the death was war-caused, application may be made to the Commission for the grant of a funeral benefit under section 99 in respect of the funeral of the veteran within 12 months after the date of that determination.

(3) Where, after the death of a veteran, the Commission gives an approval of a kind referred to in sub-section 99 (3) in relation to the veteran, application may be made to the Commission for the grant of a funeral benefit under section 99 in respect of the funeral of the veteran within 12 months after the date on which that approval was given.

(4) Where, after the death of a person, a determination is made under this Act of such a kind as to establish that the person is a deceased pensioner within the meaning of section 101, application may be made to the Commission for the grant of a funeral benefit under section 101 in respect of the funeral of the person within 12 months after the date of that determination.

(5) Application made to the Commission for the grant of a funeral benefit under section 99, 100 or 101 in respect of the funeral of a person after the expiration of the period specified in sub-section (1), (2), (3) or (4) of this section, whichever is applicable, is of no force or effect.

Commencement of payment of certain allowances

114. (1) Sub-section (2) applies to—

- (a) clothing allowance;
- (b) attendant allowance; and
- (c) recreation transport allowance.

(2) An allowance to which this sub-section applies payable to a veteran by reason that the veteran is suffering incapacity from a war-caused injury or a war-caused disease is payable—

- (a) if application for the allowance is made within 3 months after the date on which the determination was made under this Act determining that the injury was a war-caused injury or the disease was a war-caused disease, as the case may be—as from the date on which that determination was made; or
- (b) in any other case—as from the first pension pay-day after the date on which the veteran's application for the allowance in respect of that war-caused injury or war-caused disease is received at an office of the Department in Australia.

Review of decision, &c.

115. (1) Subject to sub-section (2), a person who is dissatisfied with a decision of the Commission in respect of an application for—

- (a) clothing allowance;
- (b) funeral benefits under section 99, 100 or 101;
- (c) decoration allowance;
- (d) Victoria Cross Allowance;
- (e) recreation transport allowance;
- (f) temporary incapacity allowance; or
- (g) loss of earnings allowance,

may request the Commission, in writing, to review the decision, and, where such a request is duly made, the Commission shall review the decision, or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

(2) A request under sub-section (1) to review a decision of the Commission shall set out particulars of the grounds on which the request is made, and may be made within 3 months after service on the person to whom the decision relates of notice of the decision, but not otherwise.

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

(4) Where the Commission makes a decision, in substitution for the decision set aside, granting an application for an allowance specified in sub-section (1), it may approve payment of the allowance as from a date not

earlier than the date as from which the Commission could have approved payment of the allowance if it had made the substituted decision in place of the original decision.

(5) Sections 60 and 62 apply to a review under this section in like manner as they apply to a review under section 59 and, for the purpose of their application to a review under this section—

- (a) references in sections 60 and 62 to section 59 shall be read as references to this section; and
- (b) references in section 60 to a review shall be read as references to a review under sub-section (1) of this section.

(6) A reference in sub-section (1) to a decision in respect of an application for funeral benefits under section 99 shall be read as not including a reference to a decision of the Commission to grant, or refuse to grant, an approval of a kind referred to in paragraph 99 (3) (a), (b), (c) or (d).

PART VII—VETERANS' CHILDREN EDUCATION SCHEME

Interpretation

116. In this Part, unless the contrary intention appears—

“eligible child” means—

- (a) an eligible child of a member of the Forces, or of a member of a Peacekeeping Force; or
- (b) an eligible child of a veteran;

“eligible child of a member of the Forces, or of a member of a Peacekeeping Force” means—

- (a) a child of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, whose death was defence-caused;
- (b) a child of a member of the Forces, or of a member of a Peacekeeping Force, who is in receipt of a pension under Part IV at the rate specified in sub-section 24 (4); or
- (c) a child of a member of the Forces, or of a member of a Peacekeeping Force, who is in receipt of a pension under Part IV in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in sub-section 27 (1);

“eligible child of a veteran” means—

- (a) a child of a deceased veteran whose death was war-caused;
- (b) a child of a veteran who is in receipt of pension under Part II at the rate specified in sub-section 24 (4);
- (c) a child of a veteran who is in receipt of pension under Part II in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in sub-section 27 (1); or

- (d) a child of a deceased veteran, being a child who is in receipt of, or is eligible to be granted, a pension under sub-section 13 (4);

“member of the Forces” and “member of a Peacekeeping Force” have the same respective meanings as they have in Part IV;

“Scheme” means—

- (a) the Veterans' Children Education Scheme prepared by the Commission in pursuance of this Part and approved by the Minister, other than such a scheme that has been revoked; or
- (b) if that Scheme has been varied and the variation has been approved by the Minister, that Scheme as so varied.

Preparation of the Scheme

117. (1) The Commission may, from time to time, by instrument in writing, prepare a scheme, to be called the Veterans' Children Education Scheme, for providing education and training for eligible children.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke the scheme.

(3) A scheme prepared by the Commission in pursuance of sub-section (1), and an instrument varying or revoking such a scheme, have no force or effect unless approved by the Minister.

(4) Where a scheme prepared by the Commission in accordance with sub-section (1); or an instrument under sub-section (2), has been approved by the Minister, the Commission shall furnish copies of the scheme or instrument to the Minister, and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.

(5) Without limiting the powers of the Commission under sub-section (1), the Scheme may make provision for and in relation to—

- (a) the provision of free scholarships at schools, colleges and universities for allocation, under the Scheme, to eligible children;
- (b) the payment of maintenance allowances in respect of eligible children for whom education or training is being provided under the Scheme;
- (c) the making of applications for the provision of education or training for eligible children;
- (d) the investigation and determination of applications referred to in paragraph (c); and
- (e) the establishment, membership and operation of Education Boards to perform such functions, and exercise such powers, in, and in connection with, the operation of the Scheme as are conferred on them by or under the Scheme.

Provision of education and training

118. The Commission may provide benefits for, and in respect of, eligible children under and in accordance with the Scheme.

PART VIII—GENERAL PROVISIONS APPLICABLE TO PENSIONS, &c.

Commission not bound by technicalities

119. (1) In considering, hearing or determining, and in making a decision in relation to—

- (a) a claim or application;
- (b) a review, under section 59, of a decision of the Commission with respect to a service pension, a wife's service pension or a carer's service pension;
- (c) a review, under section 31, of a decision of the Commission with respect to a pension under Part II or IV;
- (d) the suspension or cancellation, under sub-section 31 (6), of a pension under Part II or IV, the decrease in the rate of such a pension under that sub-section or the increase in the rate of such a pension under sub-section 31 (8); or
- (e) the suspension, cancellation or variation of a service pension, a wife's service pension or a carer's service pension,

the Commission—

- (f) is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just;
- (g) shall act according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities; and
- (h) without limiting the generality of the foregoing, shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to—
 - (i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and
 - (ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the service of a veteran, or of a member of the Defence Force or of a Peacekeeping Force, as defined by sub-section 68 (1), was not reported to the appropriate authorities.

(2) In sub-section (1)—

“application” means—

- (a) an application to increase the rate of a pension granted under Part II or IV or of a service pension, a wife's service pension or a carer's service pension granted under Part III;
- (b) an application for a pension under Part II or IV made in accordance with sub-section 15 (2);
- (c) an application to be provided with treatment under Part V; or
- (d) an application for an allowance or benefit specified in sub-section 111 (1);

"claim" means—

- (a) a claim for a pension under Part II or IV; or
- (b) a claim for service pension, wife's service pension, carer's service pension or other benefit under Part III.

Standard of proof

120. (1) Where a claim under Part II for a pension in respect of the incapacity from injury or disease of a veteran, or of the death of a veteran, relates to the operational service rendered by the veteran, the Commission shall determine that the injury was a war-caused injury, that the disease was a war-caused disease or that the death of the veteran was war-caused, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.

(2) Where a claim under Part IV—

- (a) in respect of the incapacity from injury or disease of a member of a Peacekeeping Force or of the death of such a member relates to the peacekeeping service rendered by the member; or
- (b) in respect of the incapacity from injury or disease of a member of the Forces, or of the death of such a member, relates to the hazardous service rendered by the member,

the Commission shall determine that the injury was a defence-caused injury, that the disease was a defence-caused disease or that the death of the member was defence-caused, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.

(3) In applying sub-section (1) or (2) in respect of the incapacity of a person from injury or disease, or in respect of the death of a person, related to service rendered by the person, the Commission shall be satisfied, beyond reasonable doubt, that there is no sufficient ground for determining—

- (a) that the injury was a war-caused injury or a defence-caused injury;
- (b) that the disease was a war-caused disease or a defence-caused disease; or
- (c) that the death was war-caused or defence-caused,

as the case may be, if the Commission, after consideration of the whole of the material before it, is of the opinion that the material before it does not

raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person.

(4) Except in making a determination to which sub-section (1) or (2) applies, the Commission shall, in making any determination or decision in respect of a matter arising under this Act or the regulations, including the assessment or re-assessment of the rate of a pension granted under Part II or Part IV, decide the matter to its reasonable satisfaction.

(5) Nothing in the provisions of this section, or in any other provision of this Act, shall entitle the Commission to presume that—

- (a) an injury suffered by a person is a war-caused injury or a defence-caused injury;
- (b) a disease contracted by a person is a war-caused disease or a defence-caused disease;
- (c) the death of a person is war-caused or defence-caused; or
- (d) a claimant or applicant is entitled to be granted a pension, allowance or other benefit under this Act.

(6) Nothing in the provisions of this section, or in any other provision of this Act, shall be taken to impose on—

- (a) a claimant or applicant for a pension or increased pension, or for an allowance or other benefit, under this Act; or
- (b) the Commonwealth, the Department or any other person in relation to such a claim or application,

any onus of proving any matter that is, or might be, relevant to the determination of the claim or application.

(7) In this section—

- (a) “member of a Peacekeeping Force”, “member of the Forces” and “peacekeeping service”, have the same respective meanings as they have in Part IV; and
- (b) a reference to hazardous service shall be read as a reference to service in the Defence Force of a kind determined by the Minister for Defence, by instrument in writing, to be hazardous service for the purposes of this section.

Instalments of pension

121. (1) Pensions are payable in fortnightly instalments, which may be paid in advance.

(2) Subject to this section, the amount of a fortnightly instalment of a pension or benefit under Part III shall be ascertained by dividing the annual rate of the pension or benefit by 26.

(3) Where the fortnightly instalment of a pension or benefit under Part III, ascertained in accordance with sub-section (2), is not a multiple of 10 cents, the instalment of pension shall be increased or decreased to the

nearest multiple of 10 cents except where the instalment is a multiple of 5 cents in which case the instalment shall be increased by 5 cents.

(4) Where, but for this sub-section, the amount of the fortnightly instalment of a pension or benefit under Part III would be less than \$1, the amount of that instalment shall be increased to \$1.

(5) An instalment of a pension, allowance or pecuniary benefit under this Act covering a period of less than a fortnight shall be in proportion to the number of days in a fortnight.

Payments of pensions

122. (1) Subject to sub-section (2), a pension shall be paid to the pensioner.

(2) The Commission may, if it thinks it proper to do so in the circumstances of a particular case—

- (a) approve payment of a pension to such person, other than the pensioner, and for such period, as the Commission, from time to time, determines, to be applied by that person for the benefit of the pensioner; or
- (b) approve—
 - (i) payment to the pensioner of such part of the pension as the Commission, from time to time, determines; and
 - (ii) payment to such other person as the Commission so determines for such period as the Commission so determines of the balance of the pension, to be applied by that other person for the benefit of the pensioner.

(3) Where a pension has been granted to a person, a payment of that pension made to another person in accordance with paragraph (2) (a), or a payment of a part of that pension made to another person in accordance with sub-paragraph (2) (b) (ii), shall, for all purposes, be deemed to be a payment of the pension or a payment of that part of the pension, as the case may be, to the pensioner, and neither the Commonwealth nor the Commission is bound to oversee the application of the payment by the person to whom it is paid.

(4) A pension shall be paid in such manner as the Commission determines.

(5) Where, by reason of a public holiday or a bank holiday or for any other reason, an instalment of, or the amount of, a pension cannot be paid on the day on which it would normally be paid, the instalment or amount of the pension may be paid on an earlier day.

(6) In this section, “pension” means a pension, allowance or other pecuniary benefit payable under this Act, and includes an instalment of such a pension, allowance or other benefit.

Payment of pension, &c., on death of person

123. (1) Where an amount of a pension, allowance or other pecuniary benefit payable under this Act to a person who has died—

- (a) has accrued, and was unpaid, on the death of the person; or
- (b) has become payable after the death of the person, in respect of a period before the death of the person, by reason of the grant, after his or her death, of a claim for the pension, allowance or benefit made before his or her death,

the Commission—

- (c) if there is a legal personal representative of that person—may approve payment of that amount to that legal personal representative; or
- (d) in any other case—
 - (i) if that person was survived by a dependant—may approve payment of that amount to a dependant of the person or among any 2 or more of the dependants of that person as it deems proper in all the circumstances of the particular case; or
 - (ii) if that person was not survived by a dependant—may approve payment of that amount to the person, or among the persons, to whom it would, in the opinion of the Commission, be appropriate, in all the circumstances of the case, to pay that amount.

(2) Where the Commission approves payment of an amount among 2 or more persons, it shall approve the share in that amount to be paid to each of those persons.

(3) The Commission may, in giving an approval for the purposes of subparagraph (1) (d) (i), approve payment to a dependant or among dependants to the exclusion of another dependant or other dependants.

(4) Where an amount referred to in sub-section (1) is paid in accordance with an approval given under that sub-section, the Commonwealth is not liable to any action, claim or demand for payment in respect of that amount.

Termination of pension

124. (1) Where a veteran or a dependant of a veteran has requested the Commission, in writing, to cancel a pension payable under Part II, III or IV, or an allowance under Part VI, the Commission may cancel the pension or allowance.

(2) Where a veteran or a dependant of a veteran has, for a continuous period of not less than 6 months, failed to draw instalments of a pension granted to the veteran or dependant under Part II, III or IV, or of an allowance under Part VI, the Commission may suspend or cancel the pension or allowance.

(3) Where the Commission suspends a pension or allowance under sub-section (2), it may, at any time, terminate the suspension from the date as from which the pension or allowance was suspended or such later date as the Commission deems proper.

(4) Where—

(a) a person in receipt of a pension under Part II, III or IV notifies the occurrence of an event or change of circumstances in accordance with a notice under sub-section 127 (1); and

(b) by reason of the occurrence of that event or change of circumstances, the person ceases to be eligible to receive that pension,

that pension ceases to be payable to the person as from the day after the last day on which the person could, in accordance with that notice, have notified the occurrence of that event or change of circumstances.

(5) Where—

(a) a person who is in receipt of a pension under Part II, III or IV or of rent assistance is required to notify the occurrence of an event or a change in circumstances in accordance with a notice under sub-section 127 (1);

(b) the person does not notify the occurrence of that event or that change in circumstances within the period specified in the notice; and

(c) by reason of the occurrence of that event or that change in circumstances—

(i) the person ceases to be eligible to receive that pension or rent assistance; or

(ii) that pension or rent assistance is payable to the person at a lower rate,

that pension or rent assistance ceases to be payable to the person, or becomes payable to the person at the lower rate, as the case may be, as from the day after the day on which that event or that change in circumstances occurred.

(6) In this section—

(a) a reference to a pension under Part III shall be read as including a reference to rent assistance and remote area allowance under that Part; and

(b) 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 sub-section 68 (1).

Pensions, &c., absolutely inalienable

125. (1) Subject to this Act, a pension, allowance or other pecuniary benefit under this Act is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

(2) At the request of the pensioner to whom a service pension, a wife's service pension or a carer's service pension has been granted, or in accordance with the *Income Tax Assessment Act 1936*, deductions may be made from instalments of that pension payable to the pensioner and the amounts so deducted shall be paid to the Commissioner of Taxation for the purpose of enabling the collection of tax that is, or may become, payable by the pensioner.

(3) At the request of a pensioner to whom a pension has been granted under this Act, deductions may be made from instalments of that pension to meet amounts payable by the pensioner to the Defence Service Homes Corporation under a mortgage securing a loan made by that Corporation to the pensioner or to the pensioner and the spouse of the pensioner.

Death of claimant

126. (1) On the death of a claimant, the claim does not lapse in respect of any period before the death of the claimant, but the legal personal representative of the claimant, or a person approved by the Commission, may take such action in respect of the claim as the claimant could have taken if the claimant had not died and, for that purpose, the legal personal representative or person so approved shall be treated as the claimant.

(2) On the death of a pensioner, the legal personal representative of the pensioner, or a person approved by the Commission, may take such action in respect of a variation of, or the suspension or cancellation of, the pensioner's pension effected before the death of the pensioner, or effected after the death of the pensioner as from a date before the death of the pensioner, as the pensioner could have taken if he or she had not died and, for that purpose, the legal personal representative or person so approved shall be treated as the pensioner.

(3) If there is a legal personal representative of a deceased claimant or deceased pensioner, the Commission shall not approve a person for the purpose of sub-section (1) or (2) unless it is satisfied that—

- (a) the person has notified the legal personal representative of the deceased claimant, or deceased pensioner, that the legal personal representative has, or may have, a right under sub-section (1) or (2), as the case may be; and
- (b) the legal personal representative has refused, or failed within a reasonable time after having been so notified, to take any action in respect of the claim or pension, as the case may be.

(4) In this section, "claim" means a claim in accordance with section 14 or 43, an application in accordance with section 15, and an application for review under section 59, 135 or 175, and "claimant" has a corresponding meaning.

Power to obtain information

127. (1) The Secretary may serve on—

- (a) a person to whom a pension, allowance or other benefit under this Act is being paid, including a person to whom the whole or a part

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of such a pension, allowance or benefit is being paid for the purpose of being applied for the benefit of the pensioner;

- (b) a person whose claim or application for a pension, attendant allowance or recreation transport allowance under this Act is under consideration by the Commission, the Board or the Administrative Appeals Tribunal;
- (c) a person who is being provided with treatment under Part V; or
- (d) a person whose application to be provided with treatment under Part V is under consideration by the Commission,

a notice, in writing—

- (e) requiring that person, if an event or change of circumstances specified in the notice occurs or the person becomes aware that an event or change of circumstances so specified is likely to occur, to notify the Secretary, or the officer specified in the notice, of the occurrence, or likely occurrence, of that event or change of circumstances within such period after the occurrence of that event or change of circumstances or after the person becomes aware that that event or change of circumstances is likely to occur, as the case may be, as is specified in the notice; or
- (f) requiring that person to furnish to the Secretary, or to an officer specified in the notice, within the period specified in the notice, a statement, in accordance with a form approved by the Commission, relating to any matter specified in the notice, being a matter that might affect the payment to that person of the pension, allowance or other pecuniary benefit under this Act or the provision of treatment under Part V.

(2) An event or change of circumstances shall not be specified in a notice referred to in paragraph (1) (e) unless the occurrence of that event or change of circumstances might affect the payment of a pension, allowance or other pecuniary benefit under this Act or the provision of treatment under Part V.

(3) The period for compliance specified in a notice in accordance with sub-section (1) shall not be less than 14 days.

(4) A person to whom a notice has been given in accordance with sub-section (1) shall not refuse or fail to comply with the notice to the extent that the person is capable of complying with it.

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

(5) A person to whom a notice has been given in accordance with sub-section (1) shall not, in purported compliance with the notice, knowingly furnish information that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Secretary may obtain information

128. (1) Where the Secretary has reason to believe that a person is capable of furnishing information, producing documents or giving evidence in relation to any matter that might affect, or might have affected, the grant or payment of a pension, allowance or other pecuniary benefit under this Act to that person or any other person, or the provision of treatment under Part V for that person or any other person, the Secretary may, by notice, in writing, served on that person, require that person—

- (a) to furnish, within a reasonable period and in a reasonable manner specified in the notice (being a period that ends not less than 14 days after the date of service of the notice), any such information specified in the notice to the officer specified in the notice;
- (b) to produce, within a reasonable period and in a reasonable manner specified in the notice (being a period that ends not less than 14 days after the date of service of the notice), any such documents specified in the notice to the officer specified in the notice; or
- (c) to appear on a reasonable date and at a reasonable time and place, specified in the notice (being a date not less than 14 days after the date of service of the notice), before the officer specified in the notice, to give any such evidence, either orally or in writing and to produce any such documents specified in the notice.

(2) The officer specified in a notice given in pursuance of paragraph (1) (c) may require any evidence that is to be given to the officer in compliance with the notice to be given on oath or affirmation and, for that purpose, the officer may administer an oath or affirmation.

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

(4) A person shall not refuse or fail to comply with a notice under sub-section (1) to the extent that the person is capable of complying with it.

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

(5) A person shall not, in purported compliance with a notice under sub-section (1), knowingly furnish information or give evidence that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(6) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(7) This section does not require a person to furnish information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

Self-incrimination

129. A person is not excused from furnishing information, producing a document or giving evidence in pursuance of a notice under section 128 on the ground that the information or evidence, or the production of the document, may tend to incriminate the person, but any information furnished, evidence given or document produced in pursuance of a notice under section 128 is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against sub-section 128 (4) or (5).

Furnishing of information

130. Nothing in a law of a State or of a Territory shall operate so as to prevent a person from furnishing any information, producing any documents, or giving any evidence to an officer for the purposes of this Act.

Interpretation

131. In sections 127 to 130 (inclusive), unless the contrary intention appears—

“officer” means a person performing duties, or exercising powers or functions, under, or in relation to, this Act;

“person” includes an unincorporated body.

Payment of travelling expenses in certain cases

132. (1) Subject to such conditions as are prescribed, where—

- (a) a claimant; or
- (b) a person likely to be affected by a review under section 31,

travels, within Australia—

- (c) for the purpose of attending, at the request of the Commission or a delegate of the Commission, before the Commission or such a delegate for a discussion in relation to the claim or review; or
- (d) for the purpose of attending, at the request of the Secretary or the Commission, for a medical examination or medical investigation related to the claim or review,

he or she is entitled to receive such travelling expenses in connection with that travel as are prescribed.

(2) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying a claimant or person likely to be affected by a review under section 31 to a discussion, or for a medical examination or a medical investigation referred to in sub-section (1) of this section, is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(3) Subject to such conditions as are prescribed, a person summoned under section 32 or 60 to give evidence or produce documents, or both, is entitled to receive such travelling expenses in connection with his or her

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travel to give that evidence or produce those documents, or both, as are prescribed.

(4) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying a person referred to in sub-section (3) when that person gives evidence or produces documents, or both, in pursuance of a summons under section 32 or 60 is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(5) Subject to such conditions as are prescribed, an applicant for a review under section 135 is entitled, if the applicant travels in Australia for the purpose of attending a hearing of the review by the Board, to receive such travelling expenses in connection with that travel as are prescribed.

(6) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying an applicant referred to in sub-section (5) to a hearing of a review is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(7) Subject to such conditions as are prescribed, where—

(a) the party (not being the Commission) to proceedings for a review of a reviewable decision who made application for the review under section 175; or

(b) if the Commission made application for the review—the other party to the proceedings for the review whose interests are affected by the reviewable decision,

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

(8) Subject to such conditions as are prescribed, an attendant who travels within Australia for the purpose of accompanying a party referred to in sub-section (7) on an attendance before the Administrative Appeals Tribunal referred to in that sub-section is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(9) Where a claim for a pension—

(a) is made on behalf of the claimant—

(i) by a person who is a dependant of the claimant; or

(ii) by a person approved under paragraph 16 (b), (c) or (d) to make the claim on behalf of the claimant; or

(b) is prosecuted by a person who is the legal personal representative of the claimant, or by a person approved under section 126, following the death of the claimant,

and that person travels within Australia with the approval of the Commission for the purpose of—

(c) an investigation, by the Department or the Commission, of the claim; or

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(d) attending at a hearing of a review of a decision, in respect of the claim, of the Commission by the Board,
the person is, subject to such conditions as are prescribed, entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(10) Travelling expenses to which a person is entitled to under this section are payable by the Commonwealth.

(11) Where a person who has travelled in Australia is entitled to be paid travelling expenses under this section in connection with that travel, application for payment of travelling expenses in respect of that travel—

(a) may be made—

(i) by that person; or

(ii) with the approval of that person or, if that person is, by reason of physical or mental ailment or of that person's death, unable to approve a person to make the application on his or her behalf, with the approval of the Commission, by another person on behalf of that person;

(b) shall be made in writing and in accordance with a form approved by the Commission;

(c) shall be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application;

(d) shall be made by forwarding to, or delivering at, an office of the Department in Australia the application and the evidence referred to in paragraph (c); and

(e) shall be made within 3 months after the completion of that travel, and not otherwise.

(12) In this section "claim" means a claim in accordance with section 14 or 43, an application in accordance with section 15 and an application for a review under section 59, 115 or 135 and "claimant" has a corresponding meaning.

PART IX—VETERANS' REVIEW BOARD

Division 1—Preliminary

Interpretation

133. In this Part, unless the contrary intention appears—

"applicant" means a person who makes an application;

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

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

"pension" means pension under Part II or IV;

"Principal Member" means the Principal Member of the Board;

"review" means a review of a decision;

"Senior Member" means a Senior Member of the Board;

"Services member" means a member who, on the occasion of his or her appointment, or on any occasion of his or her re-appointment, as a member, was a person selected from lists submitted in accordance with a request made under sub-section 158 (3);

"veteran" means—

(a) a veteran as defined by sub-section 5 (1); or

(b) a member of the Forces or a member of a Peacekeeping Force, as defined by sub-section 68 (1).

Division 2—Continuance of Veterans' Review Board

Continuance of Veterans' Review Board

134. (1) The Veterans' Review Board, being the Board established by section 107VB of the *Repatriation Act 1920*, is continued in existence.

(2) The Board consists of a Principal Member and such number of Senior Members, and such number of other members, as are appointed in accordance with this Act.

Division 3—Review by the Board of decisions

Review of decisions in respect of pensions

135. (1) Where a person—

(a) who has made a claim for a pension in accordance with section 14;

(b) who has made application for a pension, or for an increased pension, in accordance with section 15; or

(c) who has made an application for attendant allowance under section 98,

is dissatisfied with any decision of the Commission in respect of the claim or application (including a decision under section 20 or 21 approving a date from which payment of a pension, or payment of a pension at a higher rate, may be made, but not being a decision under sub-section 19 (3)), the person may, subject to this Act, make application to the Board for a review of the decision of the Commission.

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

(a) of the further decision of the Commission revoking that previous decision; or

(b) of that previous decision as varied by the further decision of the Commission,

as the case may be.

(3) Where the Commission makes a determination—

- (a) under sub-section 31 (6) cancelling or suspending, or decreasing the rate of, a pension;
- (b) under sub-section 31 (8) increasing the rate of a pension; or
- (c) under sub-section 31 (9) fixing the date of re-commencement of a pension that has been suspended,

the veteran, or the dependant of a veteran, as the case may be, affected by that determination may make application to the Board for a review of that decision of the Commission to cancel or suspend that pension, to decrease or increase the rate of that pension or fixing the date of re-commencement of that pension that has been suspended, as the case may be.

(4) Subject to sub-section (5), an application under sub-section (1) or (2) to the Board to review a decision of the Commission may be made within 12 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 34 (2), but not otherwise.

(5) An application under sub-section (1), (2) or (3) to the Board to review a decision of the Commission—

- (a) assessing a rate of pension or increased rate of pension;
- (b) refusing to grant a pension on the ground that the extent of the incapacity of the veteran is insufficient to justify the grant of a pension;
- (c) refusing to increase the rate of a pension;
- (d) reducing the rate of a pension; or
- (e) cancelling or suspending a pension, or fixing the date of re-commencement of a pension that has been suspended,

may be made within 3 months after service on the person to whom the decision relates of a copy of that decision in accordance with sub-section 34 (2), but not otherwise.

(6) Where the Commission, upon a review under section 31 of a decision (in this sub-section referred to as the “original decision”) of a kind referred to in sub-section (1), (2) or (3), has made a further decision varying that decision—

- (a) in a case where application had not, before the further decision was made, been made to the Board for a review of the original decision—application shall not be made for a review of the original decision but may be made for a review of the original decision as varied by the further decision; and
- (b) in a case where an application had been made for a review of the original decision but the hearing of that application had not been commenced, or had been commenced but had not been completed, before the further decision was made—that application shall be treated as if it were an application made for a review of the original decision as varied by the further decision.

Application for review

136. (1) An application to the Board for a review—

(a) shall be in writing; and

(b) shall be made by forwarding the application to, or delivering the application at, an office of the Department in Australia,

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

(2) An application under sub-section (1) relating to a pension granted to, or claimed for, a veteran, or a dependant of a deceased 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 an application on his or her behalf—on behalf of the veteran or dependant, by a person approved by the Commission; or

(d) in the case of a dependant who is under the age of 18 years, on behalf of the dependant—

(i) by a parent or guardian of the dependant;

(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 an application on behalf of the dependant—by another person, being a person approved by the Commission.

(3) Sub-section (2) does not limit the application of section 126 in relation to applications under sub-section (1) of this section.

Secretary to prepare report

137. (1) Within 6 weeks after an application for review made under sub-section 135 (1), (2) or (3) is received at an office of the Department in Australia, the Secretary shall—

(a) cause to be prepared a report referring to the evidence under the control of the Department that is relevant to the review; and

(b) subject to sub-section (2), cause a copy of that report to be served on the applicant.

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

(a) that, in the opinion of the Secretary, is of a confidential nature; or

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

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

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

(4) The Secretary shall forward to the Principal Member of the Board all the relevant documents, including any comments furnished to the Secretary by the applicant concerning the report served on the applicant and, if a further investigation has been made in consequence of those comments of the applicant, a supplementary report referring to any evidence obtained in that further investigation—

- (a) if the applicant duly furnishes comments in accordance with sub-section (3) and no further investigation is made in consequence of those comments—as soon as practicable after receipt of those comments;
- (b) if a further investigation is made in consequence of comments furnished by the applicant—as soon as practicable after the completion of that further investigation; or
- (c) in any other case—as soon as practicable after the expiration of the period or extended period referred to in sub-section (3).

Board not bound by technicalities, &c.

138. (1) The Board, in conducting a review, in hearing a review or in making a decision on a review of a decision—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) shall act according to substantial justice and the merits and all the circumstances of the case and, without limiting the generality of the foregoing, shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to—
 - (i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; or
 - (ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the service of a veteran, or of a member of the Forces, or a member of a Peacekeeping Force, as defined by sub-section 68 (1), was not reported to the appropriate authorities.

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

- (a) statements of principles applied by the Commission in deciding claims for pension and applications for pension and increased pension and in conducting reviews under section 31; and

- (b) such other material as the Commission considers may be of assistance to the Board in the exercise of its powers or the performance of its functions under this Act.

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

Decision of Board

139. (1) On review of a decision, the Board shall have regard to the evidence that was before the Commission when the decision was made and to any further evidence before the Board on the review that was not before the Commission, being further evidence relevant to the review.

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

(3) For the purpose of reviewing a decision of the Commission, the Board may exercise all the powers and discretions that are conferred by this Act on the Commission in like manner as they are required by this Act to be exercised by the Commission, and shall make a decision, in writing—

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

(4) Where the Board sets aside a decision of the Commission refusing to grant a pension to a person and substitutes for it a decision granting a pension to the person, the Board shall assess the rate at which the pension is to be paid to the person or remit the matter to the Commission to assess the rate at which the pension is to be paid to the person.

Statements of decisions of the Board, &c.

140. (1) Where the Board reviews a decision of the Commission, the Board shall—

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

the Administrative Appeals Tribunal for a review of the decision of the Commission affirmed by that decision of the Board or the decision of the Board in substitution for the decision of the Commission set aside by the Board, as the case may be.

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

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

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

(3) In this section—

- (a) a reference to the relevant persons, in relation to a review, shall be read as a reference to—
 - (i) the applicant for the review, or a person authorized by that applicant; and
 - (ii) the Commission; and
- (b) a reference to a decision of the Board on a review shall be read as including a reference to any assessment made by the Board on the review in pursuance of sub-section 139 (3) or (4).

Division 4—Organization of the Board

Constitution of Board for exercise of powers

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

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

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

- (a) the Principal Member or a Senior Member; or
- (b) one member, not being the Principal Member or a Senior Member, only.

Principal Member responsible for arrangement of business

142. (1) The Principal Member is responsible for the efficient operation of the Board.

(2) The Principal Member may give directions—

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

Members to constitute Board

143. (1) The Principal Member may give directions, from time to time in writing, as to the persons who are to constitute the Board—

- (a) for the purpose of a particular review or particular reviews; or
- (b) for the purposes of reviews listed for hearing at a specified place during a specified period, or during specified periods, being reviews so listed for hearing by, or in accordance with the directions of, the Principal Member.

(2) Where the Board, constituted in accordance with a direction given under sub-section (1), completes its hearing of a review listed for hearing at the place and during a period specified in that direction but does not make its decision on the review, those members who constitute the Board in accordance with that direction, by force of this sub-section, continue to constitute the Board, unless the Principal Member otherwise directs, for the purpose of making a decision in writing on that review.

Member ceasing to be member, &c.

144. (1) Where one of the members constituting the Board by virtue of a direction under section 143 ceases to be a member or ceases, for any reason, to be available for the purposes of a review at the place where the review is to be, or is being, heard or continued, the 2 remaining members shall be deemed to constitute the Board by virtue of the direction given under section 143 until the Principal Member re-allocates the review, under section 143, for further hearing.

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

(3) Where—

- (a) the hearing of a review has been commenced but has not been completed before the Board; and
- (b) the review has not been re-allocated as mentioned in sub-section (1),

the review may be listed for further hearing at a particular place and time in accordance with directions given by the Principal Member with respect to the listing of reviews for hearing or further hearing and, if it is so listed—

- (c) the Board constituted by the members directed to constitute the Board for the hearing of reviews listed for hearing at that place during the period in which that time occurs may continue the hearing of the review and decide the review; and
- (d) the review shall be deemed to have been re-allocated for further hearing and decision accordingly.

(4) The Board to which a review is deemed to have been re-allocated under sub-section (3) may, but need not, include a member who was one of the members who constituted the Board for the purpose of hearing the review before the re-allocation took place.

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

Places of sitting

145. Sittings of the Board shall be held from time to time as required, and at such places in Australia as may be convenient.

Division 5—Proceedings before the Board

Principal Member or Senior Member to preside at hearing

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

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

Parties to review before Board

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

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

(2) A party to a review may—

- (a) appear in person, or be represented at the party's own expense by a person other than a legal practitioner, at any hearing of the review; and
- (b) make such submissions, in writing, to the Board as the party, or the party's representative, considers relevant to the review.

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

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

Procedure of Board

148. (1) The Principal Member shall, upon receipt of the relevant documents relating to a review of a decision of the Commission, cause to be served on each party to the review a notice informing the party that the Board is to review the decision of the Commission and requesting the party to inform the Principal Member, in writing, within a reasonable time specified in the notice, whether the party wishes to appear on the hearing of the review and, if the party wishes so to appear, whether the party intends to appear on the hearing personally or by another person under section 147.

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

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

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

(4) Where a party to a review of a decision of the Commission does not inform the Principal Member, within the time specified in the notice served on the party under sub-section (1), that the party wishes to appear on the hearing of the review, the review may be heard and determined in the absence of that party.

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

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

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

Questions to be decided by majority of Board

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

(2) Where the Board is constituted for the purposes of a review by 2 members only and the 2 members cannot agree on a question arising in the review, the Board shall adjourn the review and refer the matter to the Principal Member for the giving of any necessary directions, or the taking of any other action, under section 143 or 144.

Hearing to be in private except in special circumstances

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

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

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

Powers of Board

151. (1) The Board may—

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

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

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

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

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

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

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

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

Request to Secretary for documents, &c.

152. (1) The Board may, at any time, request the Secretary—

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

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

Information may be made available to parties

153. (1) Subject to sub-sections (2) and (3), where, after the relevant documents relating to a review have been forwarded to the Principal Member of the Board in accordance with sub-section 137 (4) and before the commencement of the hearing of the review, a party to the review furnishes any information to the Board for the purposes of the review, the Board shall make that information available to the other party to the review.

(2) Where the Board is of the opinion—

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

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

(3) Sub-section (1) does not apply to information furnished, as set out in that sub-section, by a party to a review other than the Commission unless the Board is of the opinion that it contains, or foreshadows the presentation of, evidence or a submission that has not been considered by the Commission in connection with the review.

Period of operation of certain decisions of Board

154. (1) A decision of the Board on a review of a decision of the Commission of a kind referred to in paragraph 135 (5) (a), (b), (c) or (d) shall, unless reviewed by the Administrative Appeals Tribunal and, subject to sub-section (2) of this section, be binding upon the applicant and the Commission for a period of 6 months commencing on the day on which the Board makes that decision.

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

- (a) the applicant from making application under sub-section 15 (1) or (2) for an increased pension or for a pension; or
- (b) the grant of an increased pension, or a pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board upon review of the decision of the Commission on such an application.

Withdrawal of application

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

(2) The withdrawal of an application to review a decision of the Commission does not prevent the applicant from subsequently making another application under section 135 to review that decision within the time allowed by that section.

Division 6—Date of operation of decisions of Board

Board to specify date of operation

156. The Board shall specify in a decision on a review under this Part the date from which the decision is to operate, being a date fixed in accordance with section 157.

Dates that may be specified

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

- (a) if the person made application for the review within 3 months after service on him of a copy of the decision of the Commission—a date not earlier than the earliest date from which the Commission could, if it had not made that decision, have approved payment of a pension to the person; or

- (b) in any other case—a date not more than 6 months before the date on which the person's application for review of that decision was received at an office of the Department in Australia.

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

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

(4) Where the Board, on a review of a decision of the Commission under sub-section 31 (6) to cancel or suspend, or to reduce the rate of a pension, or under sub-section 31 (8) to increase the rate of a pension, sets aside that decision, the Board may fix, as the date as from which its decision (including any decision made by it in substitution for that decision of the Commission) is to operate, a date not earlier than the date as from which the decision under review was to operate.

(5) Where the Board fixes, as the date from which a decision of the Board to set aside a decision of the Commission to cancel a pension is to have operated, a date (in this sub-section referred to as the "later date") after the date (in this sub-section referred to as the "earlier date") from which that pension was to be cancelled, that decision to cancel that pension shall, by force of this sub-section, have effect as if it had not cancelled that pension but had suspended it from that earlier date until that later date.

Division 7—Membership of the Board

Appointment of members of Board

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

(2) The members of the Board shall include—

- (a) persons who were selected from lists submitted in accordance with a request made under sub-section (3); and
- (b) persons who are registered or licensed as medical practitioners under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

(3) The Minister may, from time to time, request organizations representing veterans throughout Australia to submit to the Minister lists of

names of persons from which the organization concerned recommends that a selection be made of persons to serve as Services members of the Board.

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

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

Terms of appointment

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

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

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

Remuneration and allowances of members

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

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

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

Acting members

161. (1) The Minister may appoint a person to act as a member—

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

(2) The Minister may—

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

(3) Where a person is acting as a member in accordance with paragraph (1)(a) or (b) and the office of that member becomes vacant while the person is so acting, that person may continue so to act until the Minister

otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

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

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

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

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

(8) Section 162 applies to and in relation to a person appointed under sub-section (1) to act in place of a member on a full-time basis as if the person were a member, and section 165 applies to any person appointed under sub-section (1) to act in place of a member as if the person were a member.

Leave of absence

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

Resignation

163. A member may resign office by writing signed by the member and delivered to the Governor-General.

Removal from office

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

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

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

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

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

(5) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;
- (b) a member, being a member who has been appointed as a full-time member—
 - (i) engages, except with the approval of the Minister, in paid employment outside the duties of the member's office; or
 - (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months; or
- (c) a member fails, without reasonable excuse, to comply with the member's obligations under section 165,

the Governor-General shall remove the member from office.

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

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

Disclosure of interests

165. (1) Where a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 143, or of a re-allocation as mentioned in sub-section 144 (1) or deemed to have been made under sub-section 144 (3), for the purposes of a review has or acquires any interest,

pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review—

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

(2) Where the Principal Member becomes aware that a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 143 or of a re-allocation as mentioned in sub-section 144 (1) or deemed to have been made under sub-section 144 (3), for the purposes of a review has in relation to that review such an interest as is mentioned in sub-section (1) of this section—

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

Division 8—Miscellaneous

Delegation

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

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

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

Protection of members and witnesses

167. (1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

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

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

Failure of witness to attend

168. A person who has been served, as prescribed, with a summons to appear as a witness before the Board and tendered reasonable expenses shall not, without reasonable excuse—

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

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

Refusal to be sworn or to answer questions, &c.

169. (1) A person appearing as a witness before the Board shall not, without reasonable excuse—

- (a) when required in pursuance of section 151 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that the person is required to answer by the presiding member; or
- (c) refuse or fail to produce a document that the person is required to produce by a summons under this Part served on the person as prescribed.

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

(2) A person appearing as a witness before the Board shall not knowingly give evidence that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Contempt of Board

170. (1) A person shall not—

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

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) In sub-section (1), “member” includes an acting member.

Fees for witnesses

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

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

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

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

Staff to assist Board

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

Oath or affirmation of office

173. (1) A person who is appointed or re-appointed as a member, or to act as a member, shall not discharge the duties of the office unless the person has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 4.

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

PART X—REVIEW OF DECISIONS BY ADMINISTRATIVE APPEALS TRIBUNAL

Interpretation

174. (1) In this Part, unless the contrary intention appears, “reviewable decision” means a decision in respect of which application may be made to the Administrative Appeals Tribunal under section 175.

(2) In this Part, a reference to a veteran shall be read as a reference to—

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

Applications for review

175. (1) Where a decision made by the Commission has been reviewed by the Board upon a request made under section 135 and affirmed or set aside, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review—

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

as the case may be.

(2) Where the Commission, under section 59, affirms a decision of the Commission made under section 46 or 58 or sets aside a decision made under section 46 or 58 and substitutes another decision for it, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review—

- (a) of the decision so affirmed; or
- (b) of the decision made by the Commission under section 59 in substitution for the decision previously made by the Commission under section 46 or 58.

(3) Where the Commission varies a decision under sub-section 31 (2) after an application had been made to the Administrative Appeals Tribunal for a review of that decision but before the determination of that application, then, unless the applicant for the review withdraws the application, the application shall be treated as if it were an application for a review of the decision as so varied.

(4) Where the Commission, under section 115, affirms a decision of the Commission in respect of an application for an allowance or benefit referred to in sub-section 115 (1), or sets aside such a decision and substitutes another decision for it, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review—

- (a) of the decision so affirmed; or
- (b) of the decision made by the Commission under section 115 in substitution for the decision so set aside.

Application of Administrative Appeals Tribunal Act

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

(2) For the purposes of the application of section 27 of the *Administrative Appeals Tribunal Act 1975* to and in relation to a reviewable decision, the Commission shall be taken to be a person whose interests are affected by a decision of the Board to set aside a decision of the Commission under section 19 or 31 of this Act and by the decision of the Board made in substitution for the decision so set aside.

(3) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to or in relation to a person whose interests are affected by a reviewable decision if the person has been served with a copy of that decision and with the statement related to that decision in accordance with section 34, 62 or 140, whichever was applicable.

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

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

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

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

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

(7) Notwithstanding sub-section 43 (1) of the *Administrative Appeals Tribunal Act 1975*, where the Administrative Appeals Tribunal sets aside a decision under sub-section 31 (6) to cancel or suspend, or reduce the rate of, a pension, or a decision under sub-section 31 (8) to increase the rate of a pension, being—

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

the Administrative Appeals Tribunal need not make another decision in substitution for the decision so set aside.

(8) Notwithstanding sub-section 43 (1) of the *Administrative Appeals Tribunal Act 1975*, where the Administrative Appeals Tribunal sets aside a decision under sub-section 58 (1) to cancel or suspend, or reduce the rate of, a service pension, a wife's service pension or a carer's service pension, or a decision under sub-section 58 (3) to increase the rate of such a pension, being—

- (a) a decision that has been affirmed by the Commission under section 59; or
- (b) a decision of the Commission made in substitution for a decision set aside under section 59,

the Administrative Appeals Tribunal need not make another decision in substitution for the decision so set aside.

Effective dates of payment of pension or increased pension

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

(2) Where the Administrative Appeals Tribunal, upon application made under sub-section 175 (1) for a review of a decision, grants a pension (not being a service pension), or increases the rate at which a pension (not being a service pension) is to be paid, the Tribunal may approve payment of the pension, or payment of the pension at the increased rate, as the case may be—

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—
from a date not earlier than the earliest date as from which the Board could, if it had not made that decision, have approved payment of the pension, or payment of the pension at the increased rate, as the case may be; or
- (b) in any other case—
 - (i) if the review relates to a claim in accordance with section 14, from a date not more than 6 months before the date on which the application under sub-section 175 (1) was made; or
 - (ii) if the review relates to an application in accordance with section 15, from the date on which the application under sub-section 175 (1) was made.

(3) Where the Administrative Appeals Tribunal, on a review of a decision of a kind described in sub-section 176 (7) or (8), varies or sets aside that decision, the Administrative Appeals Tribunal may fix, as the date as from which its decision (including any decision made by it in substitution for the decision set aside) is to operate, a date, being—

- (a) if application for the review was made within 3 months after service on the applicant of a copy of the decision of the Board or the Commission, as the case may be—a date not earlier than the date as from which the decision under review was to operate; or
- (b) in any other case—a date not earlier than the date on which the application was made to the Administrative Appeals Tribunal.

(4) Where the Administrative Appeals Tribunal fixes, as the date from which its decision to set aside a decision of the Commission, or of the Board, to cancel a pension is to have operated, a date (in this sub-section referred to as the “later date”) after the date (in this sub-section referred to as the “earlier date”) on which that pension was to be cancelled, that decision to cancel that pension shall, by force of this sub-section, have effect, and be deemed to have had effect, as if it had not cancelled that pension but had suspended it from that earlier date until that later date.

(5) Where the Administrative Appeals Tribunal, upon application under sub-section 175 (2) for a review of a decision, grants a service pension or increases the rate at which a service pension is to be paid, the Tribunal may approve payment of the service pension, or service pension at the increased rate, as the case may be—

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—from a date not earlier than the earliest date as from which the Commission could, if it had not made that decision, have approved payment of the pension, or payment of the pension at the increased rate, as the case may be, under section 59; or
- (b) in any other case—from the date on which the application under sub-section 175 (2) was made.

(6) Where the Administrative Appeals Tribunal, upon application under sub-section 175 (4) for a review of a decision made by the Commission with respect to an application for an allowance under section 97, 102, 103 or 104, grants the allowance referred to in that section, or increases the rate at which the allowance so referred to is to be paid, the Tribunal may approve payment of the allowance, or of the allowance at the increased rate, as the case may be—

- (a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—from a date not earlier than the earliest date as from which the Commission could, if it had not made that decision, have approved payment of the allowance, or payment of the allowance at the increased rate, as the case may be; or
- (b) in any other case—from the date on which the application under sub-section 175 (4) was made.

Period of operation of certain decisions of Administrative Appeals Tribunal

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

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

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

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

- (a) the person from making application for an increased pension or for a pension; or

- (b) the grant of increased pension or of a pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board on a review of the decision of the Commission on such an application.
- (3) In this section, "pension" does not include service pension.

PART XI—THE REPATRIATION COMMISSION

Division 1—Establishment, functions and powers

Continuance of Commission

179. (1) The body corporate that was, immediately before the commencement of this Act, in existence, by virtue of section 7 of the *Repatriation Act 1920*, under the name Repatriation Commission continues in existence, by force of this sub-section, under and subject to the provisions of this Act.

(2) The Commission—

- (a) is a body corporate with perpetual succession;
- (b) shall have a seal; and
- (c) may sue and be sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Commission appearing on a document and shall presume that the document was duly sealed.

(4) Debts incurred by the Commission in the performance of its functions shall, for all purposes, be deemed debts incurred by the Commonwealth.

Functions of Commission

180. (1) The functions of the Commission are—

- (a) to grant pensions, allowances and other benefits to veterans, dependants of veterans and certain other persons under and in accordance with the provisions of this Act;
- (b) to establish, operate and maintain hospitals and other institutions for the provision of treatment for veterans, dependants of veterans and other persons eligible to be provided with treatment under Part V;
- (c) to arrange for the provision of treatment and other services for veterans, dependants of veterans and other persons in accordance with this Act;
- (d) to provide the Minister with information concerning, and to advise the Minister on, matters relating to the operation of this Act, including, but without limiting the generality of the foregoing, matters relating to pensions, allowances and other benefits for veterans, and

dependants of veterans, incapacitated from injury or disease suffered as a result of service in a war or in war-like operations and for dependants of veterans whose deaths are attributable to any such service; and

- (e) such other functions as are conferred on the Commission by this or any other Act.

(2) The Commission shall, subject to the control of the Minister, have the general administration of this Act.

Powers of Commission

181. (1) The Commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions, duties and powers.

(2) The generality of sub-section (1) shall not be taken to be limited by any other provision of this Act conferring a power on the Commission.

(3) The Commission has power, for or in connection with the performance of its functions—

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real or personal property;
- (c) to erect buildings and structures and carry out works; and
- (d) to engage persons to perform services for the Commission.

Division 2—Constitution and meetings of Commission

Membership of the Commission

182. (1) The Commission shall consist of not less than 3 and not more than 5 commissioners.

(2) The commissioners shall be appointed by the Governor-General.

(3) The Minister may, from time to time, request organizations representing veterans to submit to the Minister lists of names of persons from which the organization concerned recommends that a selection be made of persons to serve as commissioners.

(4) The Governor-General shall, in appointing a person to be a commissioner, ensure that, when the proposed appointment takes effect, one of the commissioners, at least, will be a person whose name was, when the person was appointed, on a list submitted in accordance with a request made under sub-section (3).

(5) Subject to section 184, a commissioner holds office on a full-time basis.

(6) A person who has attained the age of 65 years shall not be appointed as a commissioner, and a person shall not be appointed as a commissioner

for a period that extends beyond the date on which the person will attain the age of 65 years.

(7) A commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

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

(9) The appointment of a commissioner is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment.

(10) In this section, "appointment" includes re-appointment.

President and Deputy President

183. (1) The Governor-General shall appoint one of the commissioners to be the President and another commissioner to be the Deputy President.

(2) The commissioner appointed to be the President or the Deputy President holds office as President or Deputy President until the expiration of the term of office that is current or commences at the time of his or her appointment, but ceases to be the President or Deputy President if the commissioner ceases to be a commissioner or resigns the office of President or Deputy President in accordance with sub-section (3).

(3) The commissioner appointed to be the President or the Deputy President may resign the office of President or Deputy President by writing signed by the commissioner and delivered to the Governor-General.

(4) A commissioner is eligible to be re-appointed as the President or Deputy President.

Appointment of Secretary as a Commissioner and President

184. The person holding office under the *Public Service Act 1922* as Secretary to the Department may be appointed as a commissioner and as President while retaining the office of Secretary to the Department and, in that event—

- (a) the person shall perform his or her duties as commissioner and President concurrently with the performance of his or her duties as Secretary;
- (b) the person shall cease to hold the offices of commissioner and President if the person ceases to hold office as Secretary;
- (c) the person shall not be paid remuneration or allowances in the capacity of commissioner and President, but, for the purpose of the payment of allowances to the person, his or her duties as Secretary shall be deemed to include his or her duties as commissioner and President;

- (d) subject to this section, the provisions of this Act, other than the provisions of section 185, apply to and in relation to the person as commissioner and President; and
- (e) the provisions of Part IV of the *Public Service Act 1922* do not apply to or in relation to the person in respect of the appointments as commissioner and President.

Remuneration and allowances

185. (1) A commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, the commissioner shall be paid such remuneration as is prescribed.

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

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

Leave of absence

186. The Minister may grant a commissioner or an acting commissioner leave of absence upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

187. A commissioner may resign office by writing signed by the commissioner and delivered to the Governor-General.

Termination of appointment

188. (1) The Governor-General may remove a commissioner from office on an address praying for his or her removal on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

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

(3) Where the Minister suspends a commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, an address under sub-section (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.

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

(6) If—

- (a) a commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) a commissioner engages, except with the approval of the Minister, in paid employment outside the duties of his or her office;
- (c) a commissioner is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months; or
- (d) a commissioner fails, without reasonable excuse, to comply with his or her obligations under section 189 or 190,

the Governor-General shall remove that commissioner from office.

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

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

Commissioner to disclose any interest in claims for pensions, &c.

189. (1) For the purposes of this section—

- (a) a claim or application for a pension that the Commission is considering or is to consider;
- (b) a pension that the Commission is reviewing or is to review; and
- (c) a decision in relation to—
 - (i) a pension; or
 - (ii) a claim or application for a pension,

that the Commission is reviewing or is to review,

are each a matter to which this section applies.

(2) Where a commissioner has, or acquires, any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions in relation to a matter to which this section applies, the commissioner—

- (a) shall disclose the interest to the claimant, applicant or person receiving the pension, as the case requires, and to the Minister; and
- (b) except with the consent of the claimant, applicant or person receiving the pension, as the case requires, and of the Minister, shall not take part in the consideration or review of the matter by the Commission.

(3) Where the Minister becomes aware that—

- (a) the Commission is, or is to, consider or review a matter to which this section applies; and
- (b) a commissioner has, in relation to the matter, an interest of a kind described in sub-section (2),

the Minister shall—

- (c) if the Minister considers that the commissioner should not take part in, or continue to take part in, the consideration or review of the matter by the Commission—give a direction to the commissioner accordingly; or
- (d) in any other case—cause the interest of the commissioner to be disclosed to the claimant, applicant or person receiving the pension, as the case requires.

(4) In this section a reference to the Commission reviewing a decision shall be read as including a reference to the Commission considering whether to review the decision.

(5) In this section—

“commissioner” includes an acting commissioner;

“pension” means a pension under Part II or IV, a service pension, a wife’s service pension, a carer’s service pension, or an allowance or other benefit under this Act.

Commissioner to disclose other interests

190. (1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Commission (not being a matter to which section 189 applies) shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the commissioner shall not, unless the Minister or the Commission otherwise determines—

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

(3) For the purpose of the making of a determination by the Commission under sub-section (2) in relation to a commissioner who has made a disclosure under sub-section (1), a commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or
- (b) take part in the making by the Commission of the determination.

(4) In this section, “commissioner” includes an acting commissioner.

Acting commissioners

191. (1) The Minister may appoint a person to act in the office of a commissioner—

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the holder of that office—
 - (i) is absent from duty or from Australia;
 - (ii) is suspended under section 188; or
 - (iii) is, for any other reason, unable to perform the functions of that office.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed to act during a vacancy in an office of commissioner shall not continue so to act for more than 12 months.

(4) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) at any time, terminate such an appointment.

(5) Where a person is acting in the office of a commissioner in accordance with paragraph (1)(b) and that office becomes vacant while that person is so acting, that person may, subject to sub-sections (2) and (6), continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act in the office of a commissioner ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) While a person is acting in an office of a commissioner, the person has, and may exercise, all the powers, and shall perform all the functions, of the commissioner in whose office the person is acting.

(8) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the person's appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Acting President or Deputy President

192. (1) In this section, an office to which this section applies is—

- (a) the office of President of the Commission; or
- (b) the office of Deputy President of the Commission.

(2) Subject to section 193, the Minister may appoint one of the commissioners to act in an office to which this section applies—

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the holder of that office—
 - (i) is absent from duty or from Australia;
 - (ii) is suspended under section 188;
 - (iii) being the Deputy President, is acting in the office of President of the Commission in pursuance of an appointment under this section or section 193; or
 - (iv) is, for any other reason, unable to perform the functions of that office.

(3) An appointment of a commissioner under sub-section (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) A commissioner appointed to act during a vacancy in an office to which this section applies shall not continue so to act for more than 12 months.

(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a commissioner appointed, under this section, to act in an office to which this section applies; and
- (b) at any time, terminate the appointment.

(6) The appointment of a commissioner to act in an office to which this section applies ceases to have effect—

- (a) if the commissioner ceases to be a commissioner;
- (b) if the commissioner is suspended from office under section 188; or
- (c) if the commissioner resigns the appointment by writing signed by the commissioner and delivered to the Minister.

(7) Where a commissioner is acting in an office to which this section applies in accordance with paragraph (2) (b) and that office becomes vacant while the commissioner is so acting, that commissioner may, subject to sub-sections (3) and (6), continue so to act until the Minister otherwise determines, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(8) While a commissioner is acting in an office to which this section applies, the commissioner has, and may exercise, all the powers, and shall perform all the functions, of that office.

(9) The validity of anything done by a commissioner purporting to act under sub-section (2) shall not be called in question on the ground that the occasion for the commissioner's appointment had not arisen, that there is a defect or irregularity in or in connection with the commissioner's appointment,

that the commissioner's appointment had ceased to have effect or that the occasion for the commissioner to act had not arisen or had ceased.

(10) The Minister may appoint a person who holds an appointment as acting commissioner under section 191 to act in an office to which this section applies as if the reference in sub-section (2) of this section to one of the commissioners included a reference to a person holding an appointment as acting commissioner under section 191 and, if the Minister does so—

- (a) sub-sections (3) to (9), inclusive, of this section apply to and in relation to the person as if the references in those sub-sections to a commissioner included references to an acting commissioner; and
- (b) without limiting the application of those sub-sections in accordance with paragraph (a) of this sub-section, the person so appointed is not entitled to act in that office in pursuance of the appointment under sub-section (2) of this section at any time when the person is not acting in an office of commissioner in pursuance of an appointment under section 191.

Appointment to act as President and also Secretary

193. (1) This section applies to—

- (a) the office of President of the Commission; and
- (b) the office, under the *Public Service Act 1922*, of Secretary to the Department of Veterans' Affairs.

(2) The Governor-General may appoint a commissioner to act in both of the offices to which this section applies—

- (a) during a period, or during all periods, when there are vacancies in both of those offices; or
- (b) if another commissioner holds both of those offices—during any period, or during all periods, when that other commissioner—
 - (i) is absent from duty or from Australia;
 - (ii) is suspended under section 188; or
 - (iii) is, for any other reason, unable to perform the functions of those offices.

(3) An appointment of a commissioner under this section may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) A commissioner appointed to act during vacancies in both of the offices to which this section applies shall not continue so to act for more than 12 months.

(5) An appointment under sub-section (2), by reason of vacancies in both of the offices to which this section applies, shall not be made after the expiration of a period of 12 months after the date of the occurrence of the vacancies or, if the vacancies did not both occur on the same date, after the date of the occurrence of the vacancy in the office that last became vacant.

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(6) Where a commissioner is acting in both of the offices to which this section applies in accordance with paragraph (2) (b), and those offices both become vacant at the same time while the commissioner is so acting, the commissioner may continue so to act until the Governor-General otherwise directs, the vacancy in either of the offices is filled or a period of 12 months from the date on which those vacancies occurred expires, whichever first happens.

(7) Subject to this section, the Governor-General may—

- (a) determine the terms and conditions of appointment of a commissioner appointed under this section; and
- (b) at any time terminate such an appointment.

(8) A person appointed under sub-section (2)—

- (a) shall, in the capacity of a person appointed to act as Secretary to the Department of Veterans' Affairs, be paid such remuneration and allowances as the Governor-General determines; and
- (b) shall not be paid remuneration or allowances in the capacity of commissioner or in the capacity of Acting President.

(9) For the purpose of payment of allowances under paragraph (8) (a) to a person appointed under sub-section (2), the duties appertaining to the office of Secretary to the Department of Veterans' Affairs shall be deemed to include the duties appertaining to the office of commissioner and to the office of President of the Commission.

(10) The appointment of a commissioner under this section ceases to have effect if the commissioner resigns the appointment by writing signed by the commissioner and delivered to the Governor-General.

(11) While a commissioner is acting in the offices to which this section applies, the commissioner has, and may exercise, all the powers, and shall perform all the functions, of the holder of each of those offices.

(12) The validity of anything done by or in relation to a commissioner appointed under this section shall not be called in question on the ground that the occasion for the commissioner's appointment had not arisen, that there is a defect or irregularity in or in connection with the commissioner's appointment, that the commissioner's appointment (not being an appointment to act during vacancies in both of the offices to which this section applies) had ceased to have effect or that the occasion for the commissioner to act had not arisen or had ceased.

(13) The Governor-General may appoint a person who holds an appointment as acting commissioner under section 191 to act in both the offices to which this section applies as if the reference in sub-section (2) of this section to a commissioner (first occurring) included a reference to a person holding an appointment as an acting commissioner under section 191 and, if the Governor-General does so—

- (a) sub-sections (3) to (12), inclusive, of this section apply to and in relation to the person as if the references in those sub-sections to a commissioner included references to an acting commissioner; and
- (b) without limiting the application of those sub-sections in accordance with paragraph (a) of this sub-section, the person so appointed is not entitled to act in those offices in pursuance of the appointment under sub-section (2) of this section at any time when the person is not acting in an office of commissioner in pursuance of an appointment under section 191.

Appointments

194. (1) The Governor-General may, in the same instrument—

- (a) appoint a person, under section 182, to be a commissioner and appoint the person, under section 183, to be the President or Deputy President; or
- (b) appoint a person, under section 182, to be a commissioner and appoint the person, under section 193, to act in both the offices to which that section applies,

and, if the Governor-General does so, the appointment under section 183 or 193, as the case may be, (in this sub-section called the second appointment) shall take effect—

- (c) if a date, being a date after the date on which the appointment under section 182 takes effect, is specified in the instrument of appointment as the date on which the second appointment is to take effect—on the date so specified; or
- (d) in any other case—immediately after the appointment under section 182 takes effect.

(2) The Minister may, in the same instrument, appoint a person, under section 191, (in this sub-section called the first appointment) to act in the office of a commissioner and appoint the person, under section 192, (in this sub-section called the second appointment) to act in an office to which that section applies and, if the Minister does so, the second appointment shall take effect—

- (a) if a date, being a date after the date on which the first appointment takes effect, is specified in the instrument of appointment as the date on which the second appointment is to take effect—on the date so specified; or
- (b) in any other case—immediately after the first appointment takes effect.

Meetings

195. (1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The President—

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- (a) shall convene such meetings of the Commission as the President considers necessary for the efficient performance of its functions; and
 - (b) shall convene a meeting of the Commission on receipt of a written request signed by a number of commissioners equal to or exceeding a majority of the commissioners for the time being holding office.
- (3) The President shall preside at all meetings of the Commission at which the President is present.
- (4) In the absence of the President from a meeting of the Commission, the Deputy President shall preside at the meeting if the Deputy President is present.
- (5) In the absence of both the President and Deputy President from a meeting of the Commission, the commissioners present at the meeting shall elect one of their number to preside at the meeting.
- (6) At a meeting of the Commission—
- (a) a quorum is constituted by—
 - (i) if the Commission is constituted by 3 commissioners—2 commissioners; or
 - (ii) in any other case—3 commissioners;
 - (b) all questions shall be decided by a majority of the votes of the commissioners present and voting;
 - (c) the commissioner presiding has a deliberative vote and, in the event of an equality of votes, does not have a casting vote; and
 - (d) in the event of an equality of votes on a question, the question shall be taken to have been decided in the negative.
- (7) The Commission may, subject to this section, regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.
- (8) In this section—
- “commissioner” includes an acting commissioner;
 - “Deputy President” includes an acting Deputy President;
 - “President” includes an acting President.

Division 3—Staff

Staff

196. The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary.

PART XII—MISCELLANEOUS

Pensions, &c., not for certain members of the Defence Force

197. (1) A male indigenous inhabitant of the Territory of Papua or the Territory of New Guinea who served in the Defence Force during World War 2 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, is not eligible—

- (a) to be paid pension under Part II, or service pension under Part III;
- (b) to be provided with treatment under Part V; or
- (c) to receive any allowances or other benefits under Part VI,

in respect of that service as a member of the Defence Force during World War 2.

(2) A dependant of a person to whom sub-section (1) applies, being a person who has died, is not eligible—

- (a) to be paid pension under Part II or a service pension under Part III;
- (b) to be provided with treatment under Part V; or
- (c) to receive any allowances or benefits under Part VI or Part VII,

by reason only that the person served as a member of the Defence Force during World War 2.

Variation of rates of certain pensions

198. (1) In this section, unless the contrary intention appears—

“index number”, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Statistician in respect of that quarter;

“relevant amount” means the amount specified in paragraph 54 (a), (b), (c) or (d), sub-paragraph 83 (2) (a) (i) or (ii) or sub-paragraph 83 (2) (b) (i) or (ii);

“relevant period” means the period of 6 months commencing on 1 May 1986, and each subsequent period of 6 months;

“relevant rate” means—

- (a) the rate specified in sub-section 22 (7);
- (b) the rate specified in sub-section 23 (4);
- (c) the rate specified in sub-section 24 (4);
- (d) the rate specified in item 1, 2, 3, 4, 5 or 6 in the table in sub-section 27 (1) (in column 2);
- (e) the rate specified in paragraph 30 (1) (a);
- (f) the rate specified in paragraph 47 (1) (a);
- (g) the rate specified in paragraph 47 (1) (b); or
- (h) a rate specified in paragraph 83 (1) (a) or (b) (other than the rate of \$1,040 per year or the rate of \$520 per year);

“relevant year” means the period of 12 months commencing on 1 May 1986 and each subsequent period of 12 months;

“Statistician” means the Australian Statistician.

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

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

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

(a) subject to paragraph (b)—a rate calculated by multiplying by that factor—

(i) in the case to which sub-paragraph (ii) does not apply—the relevant rate; or

(ii) if, by virtue of another application or several other applications of this section, this Act has had effect as if another rate were substituted, or other rates were successively substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or

(b) where the rate so calculated (in this paragraph referred to as the “calculated rate”) is not a multiple of \$0.10 per fortnight—a rate equal to—

(i) if the calculated rate exceeds the next lower rate that is such a multiple by \$0.05 per fortnight or more—the next higher rate that is such a multiple; or

(ii) if the calculated rate exceeds the next lower rate that is such a multiple by less than \$0.05 per fortnight—that next lower rate.

(5) The factor to be ascertained for the purposes of sub-section (4) in relation to a relevant period—

(a) is the number, calculated to 3 decimal places, ascertained by dividing—

(i) if the relevant period commences on 1 May—the index number for the last preceding December quarter; or

(ii) if the relevant period commences on 1 November—the index number for the last preceding June quarter,

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or

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

(6) Where the factor ascertained under sub-section (7) in relation to a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor—

- (a) in a case where paragraph (b) does not apply—the relevant amount; or
- (b) if, by virtue of another application or other applications of this section, this Act has effect as if another amount or amounts were substituted for that relevant amount—the substituted amount or the last substituted amount.

(7) The factor to be ascertained for the purposes of sub-section (6) in relation to a relevant year is the number (calculated to 3 decimal places) ascertained by dividing the index number for the December quarter immediately preceding that relevant year by the index number for the December quarter immediately preceding that first-mentioned December quarter.

(8) Where the factor ascertained in accordance with sub-section (7) in relation to a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that sub-section in relation to that relevant year shall be taken to be the factor calculated to 3 decimal places in accordance with that sub-section and increased by 0.001.

(9) Where this Act would have effect in relation to a relevant year as if an amount had been substituted for each relevant amount, being an amount that is not a multiple of \$250, then, for the purposes of paragraph (6) (b)—

- (a) in a case where that amount is a multiple of \$125—that amount shall be increased by \$125; or
- (b) in any other case—that amount shall be increased or reduced to the nearest multiple of \$250.

(10) Where, by virtue of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a relevant period or relevant year, the substitution, in so far as it affects instalments of a pension under this Act, has effect in relation to every instalment of the pension that falls due on or after the first day of that period or year, as the case may be.

Appropriation

199. The Consolidated Revenue Fund is appropriated to the extent necessary for the payment of—

- (a) pensions granted under Part II, III or IV;
- (b) rent assistance and remote area allowances granted under Part III; and
- (c) allowances and other pecuniary benefits granted under this Act, being allowances and benefits the rates or amounts of which, or the maximum rates or amounts of which, are fixed by this Act.

Commission may accept contributions

200. (1) The Commission may accept from a person contributions of money and other property made to it—

- (a) for a purpose specified by the person, if application of the money or other property for that purpose is necessary or convenient to be done for, or in connection with, the performance of its functions or duties; or
- (b) for application by the Commission, as it deems fit, for, or in connection with, the performance of its functions or duties.

(2) Contributions accepted by the Commission in accordance with sub-section (1) may be applied—

- (a) if the person making the contribution specified that he or she desired the contribution to be applied for a particular purpose, for the benefit of a particular class of persons or for the benefit of a particular institution maintained by the Commission—for the purpose so specified; or
- (b) in any other case—by the Commission as it deems fit, for, or in connection with, the performance of its functions or duties.

(3) Subject to sub-section (2), contributions accepted by the Commission in accordance with sub-section (1) shall be dealt with as prescribed and, subject to the regulations (if any) prescribing the manner in which those contributions are to be dealt with, as determined by the Commission.

Commission may administer trusts

201. (1) Subject to this section, the Commission may be appointed, and may in its corporate name, act as, trustee—

- (a) under a will, settlement or other instrument creating a trust for the benefit of veterans, dependants of veterans, or other persons who were dependent on veterans; or
- (b) under the will of a veteran creating a trust for beneficiaries under that will.

(2) The Commission may decline to accept, or accept subject to such conditions as it deems fit, a trust or appointment to act as trustee.

(3) Where the Commission accepts appointment as trustee of a trust, the Commission—

- (a) has the same powers, duties and liabilities;
- (b) is entitled to the same rights and immunities; and
- (c) is subject to the same control by a court,

as a natural person would have, be entitled to and be subject to if appointed to be, and acting as, trustee of that trust.

(4) The regulations may make provision for and in relation to the investment of moneys vested in the Commission as trustee pending application in accordance with the trust or for the purpose of deriving income for application in accordance with the trust.

(5) In this section “veteran” means—

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

Trustees for pensioners

202. (1) Where the Commission is satisfied that—

- (a) having regard to the age, infirmity, ill health or improvidence of a pensioner, it is desirable that payment of a pension or allowance payable to the pensioner be made to another person as trustee for the pensioner; or
- (b) a pensioner consents, in writing, to payment of a pension or allowance payable to the pensioner being made to another person as trustee for the pensioner,

the Commission may, by instrument in writing, appoint a person to be the trustee, or itself assume the office of trustee, of instalments of the pension or allowance, upon trust to apply them as provided in this section.

(2) Where an instrument is in force under sub-section (1) in respect of a pension or allowance payable to a pensioner—

- (a) instalments of that pension or allowance shall be paid to that trustee;
- (b) the trust funds held by the trustee consisting of the instalments of that pension or allowance received by the trustee, investments representing those instalments and interest received by the trustee on those investments shall be dealt with by the trustee, as follows:
 - (i) subject to sub-paragraph (ii) and to sub-section (3), during the life of the pensioner—those trust funds may be applied for the benefit of the pensioner, or any member of the family, or person dependent on, the pensioner, as the trustee sees fit;
 - (ii) upon the termination of the trust during the life of the pensioner—the trust funds held by the trustee upon the termination of the trust shall be paid or transferred, as the case requires, to the pensioner; and

- (iii) upon the death of the pensioner before the termination of the trust—those trust funds shall be paid or transferred to the legal personal representative of the deceased pensioner as part of the estate of the deceased pensioner or, if there is no legal personal representative of the deceased pensioner and the Commission is satisfied that application will not be made for probate of the will or letters of administration of the estate of the deceased pensioner, to the person whom the Commission determines to be best entitled to them.

(3) Where an instrument is in force under sub-section (1) in respect of a pension or allowance payable to a pensioner, the trustee may accumulate so much of the instalments of that pension or allowance received by the trustee as is not required for application in accordance with sub-paragraph (2) (b) (i) and may invest any trust funds so accumulated in any investments authorized for the investment of trust funds by the law of the State or Territory where the pensioner resides.

(4) The Commission may, at any time, by instrument in writing, revoke—

- (a) an appointment of a person to be the trustee under sub-section (1);
or

(b) the assumption by it of the office of trustee under sub-section (1), and, where it does so, it may, in the same instrument, exercise, in relation to that pension or allowance, any of its powers under sub-section (1).

(5) Where a person appointed to be a trustee under this section—

- (a) dies; or
- (b) resigns his or her office by instrument in writing delivered to the Commission,

the Commission may, within 3 months after the death or receipt of the instrument, as the case may be, exercise any of its powers under sub-section (1) in relation to the pension or allowance concerned.

(6) Where the Commission exercises its powers under sub-section (1) by appointing a person to be the trustee, or itself assuming the office of trustee, of instalments of a pension or allowance in the circumstances referred to in sub-section (4) or (5), the trust funds related to instalments of that pension or allowance held by the previous trustee shall, by force of this sub-section, become vested in the new trustee.

(7) Where the Commission does not, in the circumstances referred to in sub-section (4) or (5), exercise its powers under sub-section (1) in relation to a pension or allowance, the trust related to the instalments of that pension or allowance shall be deemed to have been terminated.

(8) Where—

- (a) the Commission assumes the office of trustee under this section; or
- (b) an officer of the Australian Public Service is appointed under this section as trustee in his or her capacity as such an officer,

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

(9) The fees and expenses payable under sub-section (8) in respect of services rendered as trustee of a pension or allowance may be paid from moneys held by the trustee in respect of instalments of that pension or allowance.

Arrangements with Governments of other countries

203. The Governor-General may enter into arrangements with the Government of a country that is, or has at any time been, a part of the Dominions of the Crown—

- (a) by which the same assistance and benefits (not being pensions) may be granted in the Commonwealth to, or in relation to, persons who are, or have been, members of the naval, military or air forces of that country and have been employed on active service during a war to which this Act applies or in warlike operations in an area described in Schedule 2 during a period during which that area was an operational area as are granted in that country to, or in relation to, persons who have been members of the Defence Force of the Commonwealth and have rendered operational service during such a war or in that operational area, as the case may be; and
- (b) the Commission may act as the agent of the Government of that country in the granting of assistance, benefits and pensions to, or in relation to, persons who are, or have been, members of the naval, military or air forces of that country.

Profits from canteens

204. (1) Where a canteen is operated at a hospital or other institution operated by the Commission under paragraph 89 (1) (a), the Commission may apply—

- (a) if the canteen is operated by or on behalf of the Commission—any profits derived by it, directly or indirectly, from the operation of the canteen; or
- (b) if the canteen is operated, by arrangement with the Commission, by another person—amounts received by the Commission by way of rent, licence fees or otherwise for, or in connection with, the permission or right to operate the canteen,

as if they were moneys accepted by the Commission for the care and welfare of veterans and dependants of veterans, and those profits or amounts may be dealt with under section 200 accordingly.

(2) In sub-section (1), “veteran” includes a member of the Forces, or a member of Peacekeeping Force, as defined by sub-section 68 (1).

Recovery of overpayments

205. (1) Where—

- (a) in consequence of a false statement or representation, or of a failure or omission to comply with a provision of this Act or of the Regulations, an amount has been paid by way of pension, allowance or other pecuniary benefit under this Act that would not have been paid but for the false statement or representation or but for the failure or omission; or
- (b) an amount has purported to have been paid by way of pension, allowance or other pecuniary benefit under this Act that was not lawfully so payable,

an amount equal to the amount so paid shall, unless the Commission takes action under paragraph 206 (1) (a) or (b) in respect of that amount, be recovered in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth.

(2) Where an amount that has been paid by way of pension, allowance or other pecuniary benefit under this Act is recoverable under sub-section (1), the amount may be recovered by deductions from—

- (a) any pension, allowance or pecuniary benefit payable to that person under this Act;
- (b) any amount payable under section 123 on the death of that person; or
- (c) with the consent of another person, any pension, allowance or pecuniary benefit payable to that other person under this Act.

(3) Where—

- (a) a pension or allowance (in this sub-section referred to as the “new pension or allowance”) becomes payable, or becomes payable at an increased rate, to a person under this Act; and
- (b) an amount (in this sub-section referred to as the “previous amount”) has been paid by way of—

- (i) pension or allowance under this Act or under the provisions of any other Act administered by the Minister; or
- (ii) pension, benefit or allowance under of the *Social Security Act 1947* or the *Tuberculosis Act 1948*,

that would not have been paid if the new pension or allowance had then been payable or payable at the higher rate, as the case may be,

an amount equal to the amounts of previous pension or allowance paid to the person in respect of that period, or that part of that period, shall be deducted from amounts of new pension or allowance payable to the person either in a lump sum or by instalments as the Commission determines.

Waiver, &c., of debts

206. (1) The Commission may, on behalf of the Commonwealth, by determination in writing—

- (a) write off debts arising under or as a result of this Act, or debts arising under or as a result of this Act that are included in a class of debts specified by the Minister by notice in writing published in the *Gazette*;
- (b) waive or defer the right of the Commonwealth—
 - (i) to recover from a person the whole or a part of a debt that is payable by the person under or as a result of this Act; or
 - (ii) to recover debts under or as a result of this Act included in a class of debts specified by the Minister by notice in writing published in the *Gazette*; or
- (c) allow an amount that is payable by a person to the Commonwealth under or as a result of this Act to be paid in instalments.

(2) Subject to sub-section (3), proceedings for the recovery from a person of any amount that is payable by the person to the Commonwealth under or as a result of this Act shall not be commenced after the end of the period of 6 years commencing on the day on which that amount became payable.

(3) Where an amount becomes payable by a person to the Commonwealth under or as a result of this Act because of—

- (a) a false statement or representation made by any person; or
- (b) a failure or omission by any person to comply with a provision of this Act,

proceedings for the recovery of that amount may be commenced at any time within the period of 6 years commencing on the day on which an officer of the Department becomes aware that the statement or representation was false or that the person had not complied with that provision, as the case may be.

Service pensioner in a public institution

207. (1) In this section—

“pensioner contribution” means an amount per year equal to the product of 364 and an amount equal to the amount in force, from time to time, for the purposes of sub-paragraph 47 (2) (b) (iii) of the *National Health Act 1953*, or, if that product is not a multiple of \$2.60, the next lower amount that is such a multiple;

“service pension” includes rent assistance and remote area allowance;

“wife’s portion”, in relation to a male service pensioner who is a married person and the maximum rate of whose service pension is increased by reason of the operation of sub-paragraph 47 (3) (a) (i) or (ii), paragraph 47 (3) (b) or sub-section 47 (7), means the amount per year by which the amount per year of his service pension is greater

than the amount that, but for the operation of those sub-sections, would be the amount per year of his service pension.

(2) If an applicant for service pension is, or a service pensioner becomes, an inmate of a benevolent home, his or her service pension shall, so long as he or she remains an inmate of a benevolent home, be dealt with as follows:

- (a) in the case of a male service pensioner referred to in the definition of "wife's portion" in sub-section (1), there shall be paid to his wife so much of his service pension as does not exceed the wife's portion in relation to him;
- (b) there shall be paid to the person controlling the benevolent home for the maintenance of the service pensioner in the benevolent home so much of his or her service pension, or so much of the remainder of his service pension after deducting any wife's portion, as does not exceed the pensioner contribution;
- (c) the balance (if any) of his or her service pension shall be paid to the service pensioner.

(3) A service pension dealt with in accordance with sub-section (2) shall be so dealt with—

- (a) where it is granted in pursuance of an application made by a person who is an inmate as specified in sub-section (2)—as from the date of the application; and
- (b) where a service pensioner becomes such an inmate—on and after the first pension pay-day after the pensioner becomes such an inmate.

(4) This section does not apply to a veteran who is suffering from pulmonary tuberculosis and is undergoing treatment for that disease in a benevolent home.

Offences

208. (1) A person shall not—

- (a) knowingly make, whether orally or in writing, a false or misleading statement—
 - (i) in connection with, or in support of, a claim or application made under this Act by that person or by another person for a pension, allowance or other benefit or for an increased pension, allowance or other benefit;
 - (ii) to deceive an officer doing duty in relation to this Act; or
 - (iii) to affect the rate of a pension, allowance or other pecuniary benefit payable under this Act;
- (b) knowingly obtain payment of a pension, allowance or other pecuniary benefit under this Act, or of an instalment of such a pension, allowance or benefit, that is not payable;
- (c) knowingly obtain payment of a pension, allowance or other pecuniary benefit under this Act, or of an instalment of such a pension,

allowance or benefit, by means of a false or misleading statement or of impersonation or a fraudulent device;

- (d) knowingly obtain a benefit (not being a pension, allowance or pecuniary benefit) under this Act by means of a false or misleading statement or of impersonation or a fraudulent device; or
- (e) knowingly make or present to the Commission or an officer a statement or document that is false in a material particular.

(2) A person shall not forge the signature of another person on a claim or application made under this Act for a pension, allowance or other benefit or for an increased pension, allowance or other pecuniary benefit, or on any other document connected with, or in support of, such a claim or application, or connected with payment of a pension, allowance or other pecuniary benefit under this Act or the provision of any other benefit under this Act.

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

(3) A person shall not sign his or her name on a document intended to be presented to an officer for the purposes of this Act as his or her signature to the document unless the document has been completely filled in so as to be ready to be presented to an officer without further addition.

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

(4) A person to whom assistance by way of a gift or loan of goods has been granted under this Act for any purpose shall not, without having first obtained the consent of the Commission—

- (a) use the goods for any other purpose; or
- (b) sell or otherwise dispose of, or pledge, mortgage or deposit by way of security any of those goods.

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

(5) An offence against sub-section (1) is an indictable offence and, subject to sub-section (6), is punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(6) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(7) Where, in accordance with sub-section (6), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

Multiple offences

209. (1) Charges against the same person for any number of offences against section 208 may be joined in one complaint or information if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.

(2) Where 2 or more charges are included in the same complaint or information, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is convicted of more than one offence against section 208, the court may, if it thinks fit, impose one penalty in respect of all the offences of which the person is convicted, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.

Time for prosecuting offences

210. (1) Subject to sub-section (2), proceedings for an offence against section 208 may be commenced at any time within 3 years after the commission of the offence.

(2) Proceedings for an offence against sub-section 208 (1) or (2) may be commenced at any time within 5 years after the commission of the offence.

(3) An offence against this Act shall not be prosecuted without the written consent of the Minister, the Secretary, the Director of Public Prosecutions or a person authorized in writing by the Secretary or the Director of Public Prosecutions to consent to prosecutions for offences against this Act.

Order for repayment of pension, &c.

211. (1) Where—

- (a) a person is convicted of an offence against sub-section 208 (1) or (2); or
- (b) a person is charged before a court with an offence against sub-section 208 (1) or (2) but the Court, being satisfied that the charge has been proved, dismisses the charge or discharges the person without proceeding to a conviction,

the court may (in the case of a person convicted of the offence, in addition to imposing a penalty in respect of that offence) order the person to repay to the Commonwealth an amount equal to the amount paid by way of pension, allowance or other pecuniary benefit under this Act in consequence of the act, failure or omission in respect of which the person was charged with the offence.

(2) For the purposes of sub-section (1), a certificate, under the hand of the Secretary, that an amount specified in the certificate is the amount that has been paid to a person by way of pension, allowance or other pecuniary benefit in consequence of an act, failure or omission specified in the certificate is *prima facie* evidence of the matters specified in the certificate.

Delegation by Minister

212. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate—

- (a) to a commissioner, or to an officer or employee of the Australian Public Service, all or any of the Minister's powers under this Act, other than this power of delegation; and
- (b) to the Principal Member of the Board, all or any of the Minister's powers under section 162 of this Act.

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

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

(4) In this section, "commissioner" includes an acting commissioner.

Delegation by Commission

213. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a commissioner, or to an officer or employee of the Australian Public Service, all or any of its powers under this Act or under the regulations, other than this power of delegation.

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

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

(4) In this section, "commissioner" includes an acting commissioner.

Delegation by Secretary

214. (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Secretary, delegate to an officer or employee of the Australian Public Service, all or any of the Secretary's powers under this Act or the regulations, other than this power of delegation.

(2) A power delegated under this section, when exercised by a delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Secretary.

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

Annual report

215. (1) The Commission shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the operation of this Act during the year that ended on that 30 June.

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(2) The Minister shall cause a copy of a report furnished to the Minister under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) The first report to be prepared and furnished under sub-section (1) shall be a report—

- (a) on the administration and operation of the *Repatriation Act 1920* in respect of the period that commenced on 1 July 1985 and ended on the day immediately preceding the date fixed under section 2; and
- (b) on the operation of this Act in respect of the period that commenced on the date fixed under section 2 and ends on 30 June 1986.

(4) The Principal Member of the Board shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the operations of the Board during the year that ended on that 30 June.

(5) The Minister shall cause a copy of a report furnished to the Minister under sub-section (4) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(6) The first report to be prepared and furnished to the Minister under sub-section (4) shall be a report on the operations of the Board—

- (a) under the *Repatriation Act 1920* in respect of the period that commenced on 1 July 1985 and ended on the day immediately preceding the date fixed under section 2; and
- (b) under this Act in respect of the period that commenced on the date fixed under section 2 and ends on 30 June 1986.

Regulations

216. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not exceeding a fine of \$500 for a contravention of the regulations.

SCHEDULE 1

Section 3

REPEALED ACTS

PART I—REPATRIATION ACTS

Australian Soldiers' Repatriation Act 1920
Australian Soldiers' Repatriation Act 1921
Australian Soldiers' Repatriation Act 1922
Australian Soldiers' Repatriation Act 1929
Australian Soldiers' Repatriation Act 1930
Australian Soldiers' Repatriation Act 1934
Australian Soldiers' Repatriation Act 1935
Australian Soldiers' Repatriation Act 1936
Australian Soldiers' Repatriation Act 1937
Australian Soldiers' Repatriation Act (No. 2) 1937
Australian Soldiers' Repatriation Act (No. 3) 1937
Australian Soldiers' Repatriation Act 1938
Australian Soldiers' Repatriation Act 1940
Australian Soldiers' Repatriation Act (No. 2) 1940
Australian Soldiers' Repatriation Act 1941
Australian Soldiers' Repatriation Act 1943
Australian Soldiers' Repatriation Act 1946
Australian Soldiers' Repatriation Act 1947
Australian Soldiers' Repatriation Act (No. 2) 1947
Australian Soldiers' Repatriation Act 1948
Australian Soldiers' Repatriation Act 1949
Australian Soldiers' Repatriation Act 1950
Repatriation Act 1951
Repatriation Act 1952
Repatriation Act 1953
Repatriation Act 1954
Repatriation Act 1955
Repatriation Act 1956
Repatriation Act (No. 2) 1956
Repatriation Act 1957
Repatriation Act 1958
Repatriation Act 1959
Repatriation Act 1960
Repatriation Act 1961
Repatriation Act 1962
Repatriation Act (No. 2) 1962
Repatriation Act 1963
Repatriation Act 1964
Repatriation Act (No. 2) 1964
Repatriation Act 1965
Repatriation Act 1966
Repatriation Act 1967
Repatriation Act 1968

SCHEDULE 1—continued

Repatriation Act 1969
Repatriation Act 1970
Repatriation Act (No. 2) 1970
Repatriation Act 1971
Repatriation Act (No. 2) 1971
Repatriation Act 1972
Repatriation Act (No. 2) 1972
Repatriation Act 1973
Repatriation Act (No. 2) 1973
Repatriation Act (No. 3) 1973
Repatriation Act 1974
Repatriation Act (No. 2) 1974
Repatriation (Pharmaceutical Benefits) Amendment Act 1981
Repatriation Amendment Act 1982

**PART II—REPATRIATION (FAR EAST STRATEGIC RESERVE)
ACTS**

Repatriation (Far East Strategic Reserve) Act 1956
Repatriation (Far East Strategic Reserve) Act 1962
Repatriation (Far East Strategic Reserve) Act 1964
Repatriation (Far East Strategic Reserve) Act 1972
Repatriation (Far East Strategic Reserve) Act 1973

PART III—INTERIM FORCES BENEFITS ACTS

Interim Forces Benefits Act 1947
Interim Forces Benefits Act 1950
Interim Forces Benefits Act 1964
Interim Forces Benefits Act 1973

**PART IV—REPATRIATION (SPECIAL OVERSEAS SERVICE)
ACTS**

Repatriation (Special Overseas Service) Act 1962
Repatriation (Special Overseas Service) Act 1964
Repatriation (Special Overseas Service) Act 1965
Repatriation (Special Overseas Service) Act 1968
Repatriation (Special Overseas Service) Act 1972
Repatriation (Special Overseas Service) Act 1973

SCHEDULE 1—continued

PART V—REPATRIATION (TORRES STRAIT ISLANDERS) ACT

Repatriation (Torres Strait Islanders) Act 1972

PART VI—AMENDMENTS OF CERTAIN ACTS

Column 1 Act	Column 2 Provision	Column 3 Amendment
<i>Repatriation Acts Amendment Act 1974</i>	Parts II, III, IV, V and VII	Repeal the Parts
<i>Repatriation Acts Amendment Act 1975</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act (No. 2) 1975</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act 1976</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act (No. 2) 1976</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act 1977</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act 1978</i>	Parts II, III, IV and V Schedules 1 and 2	Repeal the Parts Repeal the Schedule
<i>Repatriation Acts Amendment Act 1979</i>	Parts II, III, IV, V and VII	Repeal the Parts
<i>Repatriation Acts Amendment Act (No. 2) 1979</i>	Schedule Part II	Repeal the Schedule Repeal the Part
<i>Repatriation Acts Amendment Act 1980</i>	Part II	Repeal the Part
<i>Repatriation Acts Amendment Act 1981</i>	Parts II, V, VI, VII, VIII and IX Schedules 1, 3, 5, 6 and 7	Repeal the Parts Repeal the Schedule
<i>Repatriation Legislation Amendment Act 1982</i>	Part II	Repeal the Part
<i>Repatriation Legislation Amendment Act 1983</i>	Parts IV, V, VI and VII Part II	Repeal the Parts Repeal the Part
<i>Repatriation Legislation Amendment Act 1984</i>	Part IV	Repeal the Part
<i>Repatriation Legislation Amendment Act 1984</i>	Parts II, III, IV and V Schedules 1, 2 and 3	Repeal the Parts Repeal the Schedules
<i>Repatriation Legislation Amendment Act 1985</i>	Parts II, IV, V and VI Schedule	Repeal the Parts Repeal the Schedule
<i>Social Security and Repatriation Legislation Amendment Act 1983</i>	Part III	Repeal the Part
<i>Social Security and Repatriation Legislation Amendment Act 1984</i>	Part IV	Repeal the Part
<i>Social Security and Repatriation (Budget Measures and Assets Test) Act 1984</i>	Division 2 of Part II Division 2 of Part III	Repeal the Division Repeal the Division
<i>Social Security and Repatriation Legislation Amendment Act (No. 2) 1984</i>	Part V	Repeal the Part
<i>Social Security and Repatriation Legislation Amendment Act 1985</i>	Parts XII, XIII, XIV, XV and XVI Schedule 3	Repeal the Parts Repeal the Schedule

SCHEDULE 2

Sub-section 5 (1) and
paragraph 5 (3) (c)

OPERATIONAL AREAS

Description of operational areas Column 1	Period Column 2
1. The area of Korea, including the waters contiguous to the coast of Korea for a distance of 185 kilometres seaward from the coast.	The period from and including 27 June 1950 to and including 19 April 1956
2. The area of Malaya, including the waters contiguous to the coast of Malaya for a distance of 18.5 kilometres seaward from the coast.	The period from and including 29 June 1950 to and including 30 August 1957
3. The area comprising the territories of the countries then known as the Federation of Malaya and the Colony of Singapore, respectively.	The period from and including 1 September 1957 to and including 27 May 1963
4. Vietnam (Southern Zone).	The period from and including 31 July 1962 to and including 11 January 1973
5. All that part of the Federation of Malaya contained within the area bounded by a line commencing at the intersection of the western shore of the Federation of Malaya at high-water mark and the boundary between the States of Perlis and Kedah; thence proceeding generally north-easterly along that boundary to its intersection with the railway line from Arau to Penang Tunggal; thence following that railway line generally southerly to its intersection with the northern boundary between the States of Penang and Kedah; thence proceeding along the boundary between those States generally easterly, southerly and westerly to the intersection of the boundaries of the States of Penang, Kedah and Perak; thence following the boundary between the States of Penang and Perak to its intersection with the railway line from Penang Tunggal to Taiping; thence following that railway line generally southerly, easterly and southerly to its intersection with the parallel 4 degrees 51 minutes north latitude; thence proceeding due south in a straight line to the intersection of that line with the parallel 4 degrees 30 minutes north latitude; thence proceeding along that parallel to its intersection with the	The period from and including 31 July 1962 to and including 11 January 1973

SCHEDULE 2—continued

Description of operational areas Column 1	Period Column 2
<p>eastern bank of the Perak River; thence following that bank of that river to its intersection with the parallel 4 degrees 47 minutes north latitude; thence proceeding in a straight line to the intersection of the boundaries of the States of Perak, Kelantan and Pahang; thence proceeding along the boundary between the States of Kelantan and Pahang to its intersection with the meridian 101 degrees 48 minutes east longitude; thence proceeding in a straight line to the intersection of the eastern bank of the Raya River with the eastern bank of the Nenggiri River; thence following that bank of that river to its intersection with the western bank of the Galas River; thence proceeding in a straight line due east to the eastern bank of that river; thence following that bank of that river and the eastern bank of the Kelantan River to its intersection with the eastern shore of the Federation of Malaya at high-water mark; thence following that shore at high-water mark to its intersection with the boundary between the Federation of Malaya and Thailand; thence proceeding along that boundary to the western shore of the Federation of Malaya and Thailand at high-water mark; thence following that shore of the Federation of Malaya at high-water mark to the point of commencement.</p>	
<p>6. All that area of land and waters (other than islands and waters forming part of the territory the Republic of the Philippines) bounded by a line commencing at the intersection of the northern shore of Borneo at high-water mark with the boundary between Kalimantan and Sarawak; thence proceeding generally south-easterly, easterly and northerly along that boundary to its junction with the boundary between Kalimantan and Sabah; thence proceeding generally</p>	<p>The period from and including 31 July 1962 to and including 11 January 1973</p>

SCHEDULE 2—continued

Description of operational areas Column 1	Period Column 2
<p>easterly along that boundary to its intersection with the eastern shore of Borneo at high-water mark; thence proceeding in a straight line easterly to the intersection of the western shore of the island of Sebatik at high-water mark with the boundary between that part of that island that forms part of Sabah and that part of that island that forms part of Kalimantan; thence proceeding generally easterly along that boundary to its intersection with the eastern shore of the island of Sebatik at high-water mark; thence proceeding in a straight line easterly to a point 80.5 kilometres east (true) of the intersection of the eastern shore of Borneo at high-water mark with the boundary between Kalimantan and Sabah; thence proceeding generally northerly and south-westerly parallel to and at a distance of 80.5 kilometres from the eastern and northern shores, respectively, of Borneo at high-water mark to a point 80.5 kilometres north (true) of the point of commencement; thence proceeding in a straight line southerly to the point of commencement.</p>	
<p>7. The territory of Malaysia, the territory of Singapore and the waters adjacent to those countries (other than the part of Malaysia described in item 5 of this Schedule and any land and waters forming part of the territory of Indonesia) contained within the area bounded by a line commencing at the intersection of the boundary between Malaysia and Thailand with the western shore of the Malay Peninsula at high-water mark; thence proceeding in a straight line to a point 80.5 kilometres west (true) of that intersection; thence proceeding generally southerly, easterly and northerly parallel to, and at a distance of 80.5 kilometres from, that western, southern and eastern shores, respectively, of Malaysia at high-water mark to a point 80.5 kilometres east</p>	<p>The period from and including 31 July 1962 to and including 11 January 1973</p>

SCHEDULE 2—continued

Description of operational areas Column 1	Period Column 2
(true) of the intersection of the boundary between Malaysia and Thailand with the eastern shore of the Malay Peninsula at high-water mark; thence proceeding in a straight line to that intersection; thence proceeding along the boundary between Malaysia and Thailand to the point of commencement.	
8. All that area of land and waters (other than land or waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam (Southern Zone) with the shore of Vietnam (Southern Zone) at high-water mark; thence proceeding in a straight line to a point 161 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 161 kilometres from, the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; thence proceeding along that parallel westerly to its intersection with the shore of Vietnam at high-water mark to the point of commencement.	The period from and including 31 July 1962 to and including 11 January 1973

SCHEDULE 3

Sub-section 68 (3)

PEACEKEEPING FORCES

Description of Peacekeeping Force Column 1	Date commenced to be Peacekeeping Force Column 2
Security Council Commission of Investigation on the Balkans Committee of Good Offices	29 January 1947 25 August 1947
United Nations Special Commission on the Balkans	26 November 1947
United Nations Military Observer Group in India and Pakistan	1 January 1949
United Nations Commission for Indonesia	28 January 1949
United Nations Truce Supervision Organisation	1 June 1956
United Nations Operations in the Congo	1 August 1960
United Nations Yemen Observation Mission	1 January 1963
United Nations Force in Cyprus	14 May 1964
United Nations Disengagement Observer Force	1 January 1974

SCHEDULE 3—continued

Description of Peacekeeping Force Column 1	Date commenced to be Peacekeeping Force Column 2
United Nations Emergency Force Two	1 July 1976
Commonwealth Monitoring Force in Zimbabwe	24 December 1979
Sinai Multinational Force and Observers established by the Protocol between the Arab Republic of Egypt and the State of Israel dated 3 August 1981	18 February 1982

SCHEDULE 4

Section 173

OATH

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

AFFIRMATION

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

[*Minister's second reading speech made in—
House of Representatives on 16 October 1985
Senate on 13 November 1985*]