

EXPLANATORY STATEMENT

STATUTORY RULES NO. 49

Issued by Authority of the Minister of State for Veterans' Affairs

Seamen's War Pensions and Allowances Regulations (Amendment)

Under section 59 of the Seamen's War Pensions and Allowances Act 1940 (the Act), the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

These regulations are consequential upon the provisions of the Repatriation Legislation Amendment Act 1984 which came into operation on 1 January 1985 and which provides for a restructuring of the Repatriation determining system.

Details of the regulations are set out below.

Regulation 1 - Repeal of regulation 9

Former regulation 9 of the Seamen's War Pensions and Allowances Regulations specified addresses for the lodgement of claims. This regulation had been made pursuant to paragraph 58B(b) of the Act. Section 58B of the Act was repealed in 1981 and there was no longer an authority in the Act for this regulation.

Regulation 1 provided for the repeal of former regulation 9 of the Seamen's War Pensions and Allowances Regulations.

Regulation 2 - Repeal of regulations 14, 15, 16 and 17

Former regulations 14, 15, 16 and 17 of the Seamen's War Pensions and Allowances Regulations related to the payment of instalments of pensions by methods which no longer operate. These included payment in person, the issue of receipts and the presentation of orders and declarations.

Regulation 2 has repealed former regulations 14, 15, 16 and 17 of the Seamen's War Pensions and Allowances Regulations.

Regulation 3 - Attendance Allowance

Existing regulation 33 of the Seamen's War Pensions and Allowances Regulations provides for the payment of a loss of earnings allowance in respect of a member who attends a medical or other appointment, at the request of a Deputy Commissioner. Former sub-regulation 33(2) provided that the allowance was to be calculated in accordance with former sub-regulation 46A(2) or (4) of the Repatriation Regulations. As a consequence of the Repatriation Legislation Amendment Act 1984 former Repatriation

Regulation 46A has been repealed. The substance of sub-regulations 46A(2) and (4) of the Repatriation Regulations has been included in sub-regulations 74A(2) and (4) of the Repatriation Regulations.

Regulation 3 has amended former sub-regulation 33(2) of the Seamen's War Pensions and Allowances Regulations to delete the reference to former sub-regulation 46A(2) or (4) of the Repatriation Regulations and substitute a reference to sub-regulation 74A(2) or (4) of the Repatriation Regulations.

Regulation 4 - Application of certain provisions of the Repatriation Regulations

Existing regulation 38B of the Seamen's War Pensions and Allowance Regulations applies certain Repatriation Regulations to eligible mariners under the Seamen's War Pensions and Allowances Regulations. Former regulation 38B referred to regulation 72 of the Repatriation Regulations which has been repealed. Former sub-regulation 38B(2) of the Seamen's War Pensions and Allowances Regulations also contained a drafting error. When sub-regulation 38B(2) was inserted in 1978, reference to regulation 72A of the Repatriation Regulations which, by virtue of sub-regulation 38B(1) applies to eligible mariners within the meaning of the regulations, was inadvertently omitted.

Regulation 4 has amended former regulation 38B of the Seamen's War Pensions and Allowances Regulations to delete the references to regulation 72 of the Repatriation Regulations and insert a reference to regulation 72A of the Repatriation Regulations in sub-regulation 38B(2).

Regulation 5 - Repeal of regulation 39

Former regulation 39 of the Seamen's War Pensions and Allowances Regulations provided that whenever the Repatriation Commission considered it expedient to review a grant of pension, a Deputy Commissioner should arrange for the grant to be investigated.

Under section 55 of the Act the Repatriation Commission may review a decision of the Repatriation Commission in relation to a grant of pension where the time for making application to the Veterans' Review Board under section 35 of the Act has not expired; where an application has been made to the Veterans' Review Board, but not determined; or where an application has been made to the Administrative Appeals Tribunal under section 39 of the Act, but not determined. Former regulation 39 of the Seamen's War Pensions and Allowances Regulation was, therefore, probably invalid because it was inconsistent with section 55 of the Act to the extent that it dealt with the same subject matter.

Regulation 5 has repealed former regulation 39 of the Seamen's War Pensions and Allowances Regulations.

Regulation 6 - Repeal of regulation 42A

Former regulation 42A of the Seamen's War Pensions and Allowances Regulations provided for the Repatriation Commission to delegate its powers and functions under the regulations. Section 57A of the Act provides for the Repatriation Commission to delegate its powers and functions under the Act or the regulations.

Regulation 6 has repealed former regulation 42A of the Seamen's War Pensions and Allowances Regulations to avoid duplication between the regulations and the Act.

Regulation 7 - Exercise or performance by Commission
of powers or functions of Deputy Commissioner

Former sub-regulation 43(1) of the Seamen's War Pensions and Allowances Regulations provided that the Repatriation Commission could exercise any power or authority vested by the regulations in a Deputy Commissioner. Former sub-regulation 43(2) provided that where the exercise of a power or authority, was dependent upon the belief or opinion of a Deputy Commissioner, the exercise of that power or authority by the Repatriation Commission would depend upon the belief or opinion of the Repatriation Commission.

Regulation 7 has repealed former regulation 43 of the Seamen's War Pensions and Allowances Regulations and substituted a new regulation 43 which does not contain the terms 'power or authority' but includes the terms 'power or function' instead. This has provided consistency between the language used in section 57A of the Act and regulation 43.

Regulation 7 has also inserted a new sub-regulation 43(3) which now provides that for the purposes of sub-regulations 43(2) the 'Commission' includes a person to whom the Repatriation Commission has delegated its powers and functions under Section 57A of the Act which now provides for the Repatriation Commission to delegate its powers and functions under the Act or regulations.

Authority: Section 59 of the
 Seamen's War Pensions
 and Allowances
 Act 1940

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