



Statutory Rules 1987 No. 283¹

Seamen's War Pensions and Allowances Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Seamen's War Pensions and Allowances Act 1940*.

Dated 11 December 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

BEN HUMPHREYS
Minister of State for Veterans' Affairs

Interpretation

1. In these Regulations, "Principal Regulations" means the Seamen's War Pensions and Allowances Regulations.

Part III of the Principal Regulations

2. The heading "PART III—CLAIMS FOR PENSIONS" in the Principal Regulations is omitted and the heading "PART III—DISTRIBUTION OF PENSION OR ALLOWANCE ON DEATH" substituted.

3. Regulation 18 of the Principal Regulations is repealed and the following regulations are substituted:

Interpretation of Part III

"7. (1) In this Part, unless the contrary intention appears:

'child', in relation to a deceased, means:

- (a) a person who is a child of the deceased within the meaning of section 3A of the Act;

- (b) a person of whom the deceased was the father or mother; or
- (c) a person who was adopted by the deceased or by the deceased and the deceased's spouse;

'de facto spouse', in relation to a person, means a person of the opposite sex living as the spouse of the first person on a bona fide domestic basis although not legally married to the first person;

'distributable amount', means the amount of a pension, allowance or pecuniary benefit payable under the Act or these Regulations;

'parent', in relation to a deceased, means someone whose child the person was;

'spouse', in relation to the approval of payment under regulation 9 or 10 in respect of a deceased, means someone who was a spouse or de facto spouse of the deceased immediately before the deceased's death;

'waiting period', in relation to a person, means the period of 12 months commencing on:

- (a) if subparagraph 8 (2) (c) (i) applies to the person—the death of the person; or
- (b) if subparagraph 8 (2) (c) (ii) applies to the person—the date of the grant of the claim.

“(2) For the purposes of paragraph (a) of the definition of ‘child’ in subregulation (1), a person shall be taken to be a child even though the person is in receipt of a pension, benefit or allowance of a kind referred to in the definition of ‘child’ in subsection 3 (1) of the Act.

“(3) A reference in this Part to an executor of a will includes a reference to:

- (a) an executor of the will by representation; and
- (b) if probate of the will has been granted and a person has subsequently been granted administration of the unadministered assets covered by the will—that person.

“(4) A reference in this Part to the person to whom a grant of letters of administration with a will annexed has been made includes a reference to a person who has subsequently been granted administration of the unadministered assets covered by the will.

“(5) A reference in this Part, in relation to an approval of a payment, to a person who is known is a reference to a person:

- (a) who is alive at the time of the approval; and
- (b) whose existence and whereabouts are known to the Commission at that time.

Payment of pension or allowance on death of person

"8. (1) The objects of this Part are:

- (a) to ensure that moneys payable under the Act or these Regulations to a person who has died are paid out as promptly as possible;
- (b) to pay those moneys, so far as is consistent with paragraph (a), in accordance with the person's will;
- (c) to ensure that of those moneys not more than \$20,000, or the higher amount referred to in subregulation 9 (6), is paid out without probate of the will having been obtained or letters of administration with the will annexed having been granted; and
- (d) to ensure that, in the event of intestacy, the payment of those moneys is made on principles that are uniform throughout Australia.

"(2) Where:

- (a) a person dies;
- (b) a distributable amount is payable to the deceased; and
- (c) the distributable amount:
 - (i) has accrued, and was unpaid, on the deceased's death; or
 - (ii) has become payable after the deceased's death in respect of a period or event before that death by reason of the grant, after that death, of a claim for the pension, allowance or benefit made before that death;

the Commission shall deal with the distributable amount in accordance with this Part and the distributable amount shall not, subject to subregulations 9 (2) and (3), form part of the deceased's estate.

"(3) Where an amount is paid in accordance with an approval given under this Part, the Commonwealth is not liable to any action, claim or demand for payment in respect of that amount.

Distribution where deceased leaves valid will

"9. (1) This regulation applies where the Commission is satisfied that:

- (a) a deceased left a valid will; and
- (b) but for this Part, the will would dispose of the deceased's right to a distributable amount (either expressly or as part of the residue of the deceased's estate).

"(2) Where the Commission is satisfied that the will appointed an executor or executors, the Commission may, subject to subregulation (6), approve payment of the whole or part of the distributable amount to an executor of the will.

"(3) Where the Commission is satisfied that:

- (a) no-one is executor of the will; and
- (b) a person has applied for and obtained a grant of letters of administration with the will annexed;

the Commission may approve payment of the whole or part of the distributable amount to the person to whom the grant was made.

“(4) Where the Commission is satisfied that:

- (a) no-one is executor of the will;
- (b) letters of administration with the will annexed have not been applied for or granted; and
- (c) distribution of the whole or part of the distributable amount in accordance with regulation 11 would not be inconsistent with the terms of the will;

the Commission may, subject to subregulation (6), approve payment of the whole or part of the distributable amount in accordance with regulation 11.

“(5) Where the Commission is satisfied that:

- (a) no-one is executor of the will; and
- (b) the waiting period has elapsed without an application for letters of administration with the will annexed having been made;

the Commission may, subject to subregulation (6), approve payment of the whole or part of that amount in accordance with regulation 11.

“(6) If probate of the will has not been obtained and letters of administration with the will annexed have not been granted, the Commission shall not approve a payment or payments under subregulation (2), (4) or (5) in respect of the deceased if the amount of the payment, or the sum of the amounts of the payments made under those subregulations, would exceed \$20,000 or such higher amount as is prescribed under subsection 123B (6) of the *Veterans' Entitlements Act 1986* for the purposes of that subsection.

Intestacy

“10. Where the Commission is satisfied that:

- (a) a deceased did not leave a valid will; or
- (b) a deceased left a valid will but, even if this Part did not apply to the amount, the will would not dispose of the deceased's right to a distributable amount (either expressly or as part of the residue of the deceased's estate);

the Commission may approve payment of the whole or part of that amount in accordance with regulation 11.

Order of distribution

“11. (1) Payment of a distributable amount in respect of a deceased shall, subject to subregulations (2) and (3), be made to:

- (a) the known spouse of the deceased or the known spouses of the deceased in equal shares;
- (b) if there is no known spouse of the deceased—the known child of the deceased or the known children of the deceased in equal shares;

- (c) if there is no known spouse of the deceased and no known child of the deceased—the known parent of the deceased or the known parents of the deceased in equal shares; or
- (d) if there is no known spouse of the deceased, no known child of the deceased and no known parent of the deceased—the known sibling of the deceased or the known siblings of the deceased in equal shares.

“(2) Where:

- (a) a child (in this subsection called “the beneficiary”) of the deceased predeceases the deceased or dies before the approval of a payment under this Part;
- (b) there is a known child of the beneficiary or there are known children of the beneficiary;

the amount that would have been paid to the beneficiary had the beneficiary been alive at the time of approval shall be distributed to the child or to those children in equal shares.

“(3) Where:

- (a) a sibling of the deceased predeceases the deceased or dies before the approval of a payment under this Part; and
- (b) there is a known child of the sibling or there are known children of the sibling;

the amount that would have been paid to the sibling had the sibling been alive at the time of approval shall be distributed to that child or to those children in equal shares.

Non-distributable amounts

“12. Where the Commission determines in writing that it is not possible to pay the whole or part of a distributable amount in respect of a deceased in accordance with regulations 9 and 10, that amount or that part of that amount ceases to be payable in respect of the deceased.”

Clothing allowance

4. Regulation 38A of the Principal Regulations is amended:

- (a) by omitting from column 3 of the table in subregulation (1) “5.30”, “3.50” (wherever occurring) and “2.50” (wherever occurring) and substituting “5.80”, “3.80” and “2.70” respectively;
- (b) by omitting from subregulation (2) “\$5.30” and substituting “\$5.80”;
- (c) by omitting “\$65” from subregulation (4) and substituting “\$70.20”.

Application

5. (1) The amendments made by regulation 3 apply in relation to any amounts of pension, allowance or pecuniary benefit paid under the Act or the Principal Regulations after 16 December 1987.

(2) The amendments made by paragraphs 4 (a) and (b) apply in relation to instalments of allowance payable after 16 December 1987.

(3) The amendment made by paragraph 4 (c) applies in relation to any amount payable after 16 December 1987.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 16 December 1987.
2. Statutory Rules 1961 No. 105 as amended to date. For previous amendments *see* Note 2 to Statutory Rules 1987 No. 121 and *see also* Statutory Rules 1987 No. 121.