

1985

PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

VETERANS' ENTITLEMENTS
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
ACT 1985

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Veterans' Affairs,
Senator The Hon. A.T. Gietzelt)

EXPLANATORY MEMORANDUM

Outline

The Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Bill 1985 will provide arrangements for the transition from the existing Repatriation Act 1920 and other supplementary legislation to the Veterans' Entitlements Act 1985, the Bill for which is being introduced with this Bill.

The Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Bill 1985 will also provide for consequential amendments to the Seamen's War Pensions and Allowances Act 1940 and to other Commonwealth Acts which refer to the Acts which are to be repealed by the Veterans' Entitlements Act 1985.

The matters provided for by way of transitional provisions in this Bill will ensure that:

Veterans and their dependants currently receiving pensions, benefits, allowances or treatment under the Repatriation Act 1920 or other supplementary legislation, will retain their existing eligibility - clauses 4, 8, 9, 14 and 15.

Veterans and their dependants who have an outstanding claim, application or application for review as at the commencement date of the Veterans' Entitlements Act 1985 will have that claim or application determined in accordance with the provisions of the Veterans' Entitlements Act 1985 - clauses 17, 18 and 19

Veterans and their dependants who, as at the commencement date of the Veterans' Entitlements Act 1985, have a right to seek a review of a decision in respect to a claim or application will have that right of review preserved - clause 20

effect is given to the Government's undertaking that a war widow who remarries after 28 May 1985 will not lose her entitlement to a war widow's pension - clause 5.

effect is given to the Government's intention of providing dependants of incapacitated Veterans the option of taking a lump sum payment in lieu of continuing payment of a dependant's pension - clause 6

PART 1 - PRELIMINARY

Clause 1 - Short Title

This clause will cite the Act as the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1985.

Clause 2 - Commencement

This clause will provide that with the exception of clause 61, the Act shall come into operation on the date fixed under section 2 of the Veterans' Entitlements Act 1985, that is, 5 December 1985. Clause 61 will come into effect on the date on which this Act receives Royal Assent.

Clause 3 - Interpretation

Sub-clause 3(1) contains definitions of specific terms to be used in the Act.

Sub-clause 3(2) will ensure that a reference to provisions of the Repatriation Act 1920 dealing with disability pensions, war widows' pensions or service pensions will also include a reference to the application of these provisions, by reference, in other parts of the Repatriation Act 1920 and supplementary legislation such as the Interim Forces Benefits Act 1947, the Repatriation (Far East Strategic Reserve) Act 1956 or the Repatriation (Special Overseas Service) Act 1962.

Sub-clause 3(3) will provide that a reference in the Act to a specific regulation in the Repatriation Regulations will include a reference to that regulation as it is applied by other Repatriation Regulations or the Interim Forces Benefits Regulations, the Repatriation (Far East Strategic Reserve) Regulations or the Repatriation (Special Overseas Service) Regulations.

Sub-clause 3(4) will provide that, unless the contrary intention appears, terms defined in the Veterans' Entitlements Act 1985 when used in this Act, will have the same meaning as they have in the Veterans' Entitlements Act 1985.

PART II - EXISTING PENSIONS AND ALLOWANCES AND PROVISION FOR
TREATMENT

Clause 4 - Existing pensions, other than service pensions

This clause will provide for the continuation of payments of disability pensions and pensions granted to orphans and war widows of deceased Veterans that were granted under the Repatriation legislation that is to be repealed by the Veterans' Entitlements Act 1985. The clause will ensure that these pensions continue to be payable as if they had been granted under the Veterans' Entitlements Act 1985.

Sub-clause 4(1) will provide that a reference in clause 4 to a pension will be a reference to a disability pension, a war widow's pension, or an orphan's pension; that a reference to a member of the Forces in this clause will include a reference to a member of the Forces under the other supplementary Acts that are to be repealed by the Veterans' Entitlements Act 1985; that a reference to a dependant of a member of the Forces will include a reference to a dependant of a member of the Forces under one of the Acts to be repealed; and that a reference to a widow shall be read as a reference to a widow as that term is used in Part III of the Veterans' Entitlements Act 1985.

Sub-clause 4(2) will provide that where a person who was a member of the Forces in receipt of a pension under a repealed Act immediately before the commencing date in respect of incapacity, the Veterans' Entitlements Act 1985 will apply to that person as if that pension had been granted under that Act; as if that person had been determined to be a Veteran under that Act; and as if the incapacity of that person had been determined to have resulted from a war-caused injury or a war-caused disease under that Act.

Sub-clause 4(3) will provide that where a person was a dependant of a deceased member of the Forces, and was in receipt of a pension under a repealed Act as a war widow or an orphan of such a deceased member, the Veterans' Entitlements Act 1985 will apply to that dependant as if the pension had been granted under that Act, as if the person had been determined to be a dependant of a deceased Veteran under that Act; and, as if the Veteran's death had been determined to be war-caused under that Act.

Sub-clauses 4(4) and (5) will make similar provisions to sub-clauses 4(2) and (3) in respect of a person in receipt of pension as a member of the peacetime Defence Force, as a member of a Peacekeeping Force, or as a dependant of such a member.

Sub-clause 4(6) will provide that, subject to clause 6 of this Bill, a pension payable to a dependant of an incapacitated Veteran before the commencement date will continue to be payable. Such pensions were affected by the Repatriation Legislation Amendment Act 1985 which came into effect on 6 June 1985. That Act provided that there would be no further grant of pensions to a dependant of a living Veteran and that a pension then in payment would, in most cases, be frozen at the rate payable at 6 June 1985. This sub-clause also provides that the eligibility provisions of the repealed Acts will continue to apply to the payment of such pensions.

Sub-clause 4(7) will provide that a dependant's pension which was frozen at 6 June 1985 will continue to be payable at that frozen rate.

Sub-clause 4(8) will provide that a dependant's pension affected by the Repatriation Legislation Amendment Act 1985 which had been payable at a rate determined by reference to the Social Security Act 1947 (and subject to automatic indexation according to movements in the consumer price index) will continue to be so payable. Such a pension was payable where a dependant was "without adequate means of support".

Sub-clause 4(9) will provide that a pension granted before the commencing date, to a member in respect of incapacity caused by tuberculosis, will continue to be payable, on and after the commencing date, as if it had been granted under the Veterans' Entitlements Act 1985. This sub-clause also provides that the rate of pension payable shall not be less than the maximum rate specified in sub-section 22(7) of the Veterans' Entitlements Act 1985.

Sub-clause 4(10) will continue the obligation of a widow, who is continuing to receive a dependants pension perforce of sub-clause 4(6), to notify the Secretary of the Department of Veterans' Affairs if she marries or re-marries.

Sub-clause 4(11) will provide that, where a determination was made under a repealed Act accepting a veteran's incapacity as being due to eligible service but no pension is payable on the ground that the extent of the incapacity is insufficient to justify the grant of a pension, the Veterans' Entitlements Act 1985 will apply to that veteran as if the incapacity had been accepted under that Act as war-caused. This provision will ensure that entitlements, other than pension, flowing from acceptance of an incapacity as war-caused are preserved.

Sub-clause 4(12) will provide that sub-clause 4(11) will also apply to members of the peacetime Defence Force and members of a Peacekeeping Force.

Clause 5 - Re-marriage or marriage of widow

This clause will make provision for a war widow who, prior to the commencement date had her war widow's pension cancelled following marriage or re-marriage. The Veterans' Entitlements Act 1985 will NOT provide for the cancellation of a widow's pension upon marriage or re-marriage. The Government has announced that this arrangement will take effect from 29 May 1984, being the date the Minister for Veterans' Affairs first announced the proposal.

Sub-clause 5(1) will provide that where a war widow remarried after 29 May 1984 and before the commencement date and had her pension cancelled under a repealed Act, her eligibility for a war widow's pension and any domestic allowance payable will be deemed not to have ceased.

Sub-clause 5(2) will provide that where a war widow's pension is restored because of the application of sub-clause 5(1), any re-marriage gratuity paid under a repealed Act will be deducted from instalments of war widow's pension that become due; that where a war widow was eligible for the payment of a re-marriage gratuity before the commencement date but that gratuity had not been paid, the gratuity will not be paid; and that any overpayment of Social Security pension that occurred because of the restoration of a war widow's pension may be recovered, as provided for by sub-section 203(4) of the Veterans' Entitlements Act 1985.

Sub-clause 5(3) will preserve the right of certain widows to claim a war widows' pension under section 40A of the Repatriation Act 1920 in respect of a period before the commencement date of the Veterans' Entitlements Act 1985.

Clause 6 - Commutation of certain pensions

This clause will relate to a wife or a child of a Veteran who had been granted a dependant's pension before the commencement date of the Repatriation Legislation Amendment Act 1985 and whose rate of pension had been frozen at the rate payable at 6 June 1985. This clause will provide for such dependants to exercise a once - only option to receive a lump sum payment equivalent to 78 instalments (three years) of pension in lieu of further entitlement to pension.

Sub-clause 6(2) will provide that such a dependant will have a period of 6 months following the commencement date to elect to exercise the option to commute his or her existing dependant's pension. Payment of the lump sum amount will be made after the last pension pay-day in June 1986.

Sub-clause 6(3) will provide that where a person in receipt of a pension as a dependant of a Veteran ceases to be eligible to receive that pension before the last pension pay-day in June 1986, that person will not be eligible to receive a lump sum payment as provided for in this clause.

Sub-clause 6(4) will provide that, where a person elects to commute his or her pension entitlement to a lump sum, the person's entitlement to that pension will be cancelled after the last pension pay-day in June 1986. The amount of the lump sum payment in lieu will be calculated as an amount equal to the aggregate of 78 fortnightly instalments of the rate of pension payable immediately before the pension is cancelled.

Sub-clause 6(5) will provide that an election under this clause must be in writing; be made by forwarding the election to the Department of Veterans' Affairs; and may be made by the pensioner or another person who would be entitled to make a claim for pension under the Veterans' Entitlements Act 1985 on behalf of the pensioner.

Clause 7 - Assessment of rate of pension

Sub-clause 7(1) will provide that where, after the commencement date, payment of a pension (including a service pension) is granted or assessed at a higher or lower rate, in respect of a period before the commencement date, the rate of pension payable will be the rate that was payable under a repealed Act in respect of that period. Pensions payable after the commencement date will be payable in accordance with the Veterans' Entitlements Act 1985.

Sub-clause 7(3) will provide that where the rate of a disability pension is being re-assessed after the commencement date, and the application of the Veterans' Entitlements Act 1985 would result in the assessment of a lower rate of pension than the Veteran was receiving before the commencement date, the rate of pension will not be reduced unless the Veteran's incapacity has decreased (because of recovery from the injury or disease) or the previous assessment would not have been made but for a false statement or misrepresentation of the Veteran. This will ensure that a Veteran is not disadvantaged by the application of the provisions of the Veterans' Entitlements Act 1985 in respect of a pension that was granted before the commencement date.

Clause 8 - Existing service pensions

Sub-clauses 8(1), (2) and (3) will preserve the payment of a service pension to a Veteran, the wife of a Veteran (including a deceased Veteran) and to the carer of a severely handicapped Veteran that was being paid immediately before the commencement date. These pensions will be treated as if granted under the Veterans' Entitlements Act 1985. This provision is similar in operation to clause 4 which relates to the continuation of payment of a disability pension, a war widow's pension or an orphan's pension.

Sub-clause 8(4) will provide that this clause relates to a service pension granted before the commencement date under the provisions of any of those repealed Acts which provided for the grant of service pension.

Clause 9 - Special temporary allowance

Section 65 of the Veterans' Entitlements Act 1985 continues the effect of section 98B of the Repatriation Act 1920 and provides that upon the death of a Veteran or the spouse of a Veteran, where both the Veteran and spouse were in receipt of service pension, the surviving service pensioner will be paid a special temporary allowance for a period of 12 weeks after the death. That special temporary allowance (sometimes referred to as readjustment allowance) will be equivalent to the rate of pension that had been payable to the pensioner who has died. Sub-clause 9(1) will provide that section 65 of the Veterans' Entitlements Act 1985 will apply where the death of the spouse of a service pensioner occurs before the commencing date.

Sub-clause 9(2) will provide that section 65 of the Veterans' Entitlements Act 1985 will not apply where the surviving service pensioner has already received all instalments of the special temporary allowance.

Sub-clause 9(3) will provide that where payments of special temporary allowance had commenced before the commencement date but not all instalments of the allowance had been paid before that date, those instalments that had been paid will be treated as if paid under section 65 of the Veterans' Entitlements Act 1985.

Clause 10 - Restrictions on dual pensions

This clause will provide for the continuation of the effect of restrictions on the payment of dual pensions contained in the Repatriation Act 1973 as amended by the Social Security and Repatriation Legislation Amendment Act 1985. The 1973 Act contained savings provisions in relation to those pensioners who had dual entitlement to a repatriation service pension and a social security pension in 1973 when dual entitlement was abolished. In most cases such pensioners elected to take the social security pension as the primary pension.

Clause 11 - Patients in mental hospitals

Prior to 1980, service pensioners while in mental hospitals had part of their pension instalments suspended. When such a patient was discharged from a mental hospital, the whole or part of the accrued entitlements to pension were to be paid to the pensioner. The Repatriation Legislation Amendment Act 1980 repealed the provision for the suspension of instalment of

service pension and provided that patients who, at that time, were still in mental hospitals, and who were subsequently discharged, were eligible to receive that part of their service pension that had previously been suspended.

Clause 11 will maintain the effect of the savings provisions contained in section 6 of the Repatriation Legislation Amendment Act 1980.

Clause 12 - Boer War Veterans

This clause will preserve the entitlements of Boer War Veterans to be provided with medical treatment at Commonwealth expense and in respect of whose death funeral benefits are payable.

Clause 13 - Persons deemed to be in receipt of pensions

This clause will provide that where, before the commencement date, a person had been granted a disability pension, a war widow's pension, an orphan's pension, a service pension, or an allowance under a repealed Act but instalments of that pension or allowance had not commenced to be paid, the person will be deemed to have been in receipt of such instalments for the purpose of the application of certain provisions of this Act. The clause will also provide that where a pension had been suspended under a repealed Act, the decision to suspend will

continue to have effect as if it had been made under the Veterans' Entitlements Act 1985.

Clause 14 - Eligibility for treatment under repealed Acts may continue

Sub-clause 14(1) will provide that where the Repatriation Commission had given approval under a repealed Act for the provision of treatment and that approval had not been revoked, that approval will continue to have effect as if given under the Veterans' Entitlements Act 1985.

Sub-clause 14(2) will provide that the date from which a person may be provided with treatment under Part V of the Veterans' Entitlements Act 1985 may be a date before the commencement date. A person will not be eligible to be provided with treatment under both that Act and a repealed Act.

Sub-clause 14(3) will provide that the power of the Repatriation Commission to approve the provision of treatment after the treatment has been received will extend to treatment provided before the commencing date.

Sub-clause 14(4) will provide that an application to be provided with treatment made under a repealed Act and not determined before the commencement date will be determined under the Veterans' Entitlements Act 1985 and, that any determination, act

or thing done by the Repatriation Commission with regard to the consideration of such an application will have effect as if made or done under the Veterans' Entitlements Act 1985 for the purpose of determining eligibility to be provided with treatment under Part V of that Act.

Sub-clause 14(5) will provide that where a widowed mother or widowed step-mother of a deceased unmarried Veteran, or a handicapped child over the age of 16 years who was without adequate means of support, was eligible to be provided with treatment by virtue of a determination made before the commencement date, such a person will continue to be eligible to be provided with treatment under the Veterans' Entitlements Act 1985 as if the determination had been made under that Act.

Sub-clause 14(6) will maintain the existing arrangement that a widowed mother or a widowed step-mother is not eligible to be provided with treatment after she re-marries.

Sub-clause 14(8) will provide definitions of the terms child, widowed mother and widowed step-mother and will maintain the definitions provided for under the repealed Acts.

Sub-clause 14(9) will maintain the existing eligibility for Veterans to receive treatment for venereal disease contracted during war service as if eligibility to receive treatment for

that disease had been determined under the Veterans' Entitlements Act 1985.

Sub-clause 14(11) will preserve the entitlement to medical treatment for those service pensioners who would, but for previous savings provisions, have lost that entitlement in 1976 following the introduction of the income test to replace the means test.

Clause 15 - Existing allowances

Sub-clause 15(1) will provide that where a person was, immediately before the commencing date, in receipt of an allowance of the kind specified in the table in sub-clause 15(1), that allowance will continue to be payable under the corresponding provision of the Veterans' Entitlements Act 1985 specified in the table.

Sub-clause 15(2) will provide that the rate of an allowance that continues to be payable by virtue of sub-clause 15(1) will be that payable immediately before the commencing date until that rate is varied under the Veterans' Entitlements Act 1985.

Sub-clause 15(3) will provide that the rate at which an allowance is paid may be varied as from any date after the commencement date even where the decision to vary the rate is made at a later date .

Sub-clause 15(4) will provide that in respect of clothing allowance or recreational transport allowance a decision by a Deputy Commissioner will have effect after the commencement date as if it were a decision of the Commission. The Repatriation regulations provide for a Deputy Commissioner to approve such payments whereas under the Veterans' Entitlements Act 1985 approvals will be given by the Repatriation Commission.

Clause 16 - Allowances and other benefits

Sub-clause 16(1) will provide that an allowance or other benefit payable under the Veterans' Entitlements Act 1985 may be paid from a date before the commencement date in respect of an event that occurred before that date.

Sub-clause 16(2) will provide that an allowance or other benefit cannot be granted in respect of a period or in respect of an event occurring before the commencing date where a corresponding allowance or benefit had been granted in respect of the same period or in respect of the same event under a repealed Act.

Sub-clauses 16(3) and (4) will preserve the entitlement under the Repatriation Regulations to payment of funeral benefits in respect of widowed mothers and step-mothers of deceased unmarried veterans.

Sub-clause 16(5) will preserve the entitlement to payment of funeral benefits in respect of the death of a person who

immediately before the commencing date, was in receipt of a service pension, an age or invalid pension, a wife's pension or a widow's pension.

Sub-clause 16(6) will provide that the time limit for applying for the payment of travelling expenses specified in sub-section 131(11) of the Veterans' Entitlements Act 1985 will not apply in respect of travel that was completed before the commencing date.

Sub-clause 16(7) will provide that the time limits for applying for payment of temporary incapacity allowance, loss or earnings allowance or travelling expenses specified in section 112 of the Veterans' Entitlements Act 1985 will not apply in respect of any entitlements established before the commencing date.

Sub-clause 16(8) will provide that the time limit for applying for the payment of funeral benefits specified in section 113 of the Veterans' Entitlements Act 1985 will not apply in respect of a funeral of a person that occurred before the commencing date.

Sub-clause 16(9) will provide that a motor vehicle made available under the gift car scheme to a Veteran before approval is given to the Vehicle Assistance Scheme will be deemed to have been made available under the Vehicle Assistance Scheme.

Sub-clause 16(10) will provide that on or after the commencing date the Commission may conduct a review of a decision in respect of an allowance or other benefit paid before the commencing date having regard to any information that becomes available to the Commission.

Sub-clause 16(11) will provide that where, after the commencing date, an allowance or other benefit is granted in respect of a period before the commencing date, the rate of that allowance or benefit will be determined by reference to the rate payable in respect of that period as provided for under the relevant provisions of a repealed Act.

PART III - CLAIMS, APPLICATIONS AND REVIEWS

Clause 17 - Pending claims

Clause 17 will provide the mechanism for dealing with claims and applications for a pension, allowance or other benefit submitted to the Department of Veterans' Affairs before the commencement date but not determined before that date.

Sub-clause 17(1) will provide that a claim for disability pension, an application for such a pension or an application for an increase in such a pension, a claim for a service pension or an application for an allowance or other benefit received at the Department of Veterans' Affairs but not determined before the commencing date will be dealt with under the Veterans' Entitlements Act 1985 as if the claim or application had been made under that Act.

Sub-clause 17(2) will provide that a claim or application made on a form approved for the purposes of a repealed Act will be deemed to have been made on a form approved for the purposes of the Veterans' Entitlements Act 1985, and that anything done with respect to a claim or application lodged before the commencing date will be deemed to have been done for the purposes of the Veterans' Entitlements Act 1985.

Sub-clause 17(3) will provide that sub-clause 17(1) will not apply in respect of a claim or application, received before the commencing date, but, which was deemed to have been refused under the provisions of the Repatriation Act 1920.

Sub-clause 17(4) will provide that, in respect of claims or applications lodged before the commencement date and not determined before that date, determinations under the Veterans' Entitlements Act 1985 in respect of such claims or applications may have effect from a date before the commencement date.

Clause 18 - Pending reviews by Commission

Sub-clause 18(1) will provide that where, before the commencing date, the Repatriation Commission had commenced a review of a decision in respect to a disability pension, a war widow's pension, an orphan's pension or a service pension, or, a request had been made to the Repatriation Commission to conduct a review of a decision with respect to a service pension, and, the Repatriation Commission had not made its decision on such a review, the Repatriation Commission may complete the review and make its decision in respect of the review as if the review had been instituted under the Veterans' Entitlements Act 1985.

Sub-clause 18(2) will provide that for the purpose of completing such a review, any investigation carried out, decision made or act or thing done before the commencing date will have force and effect as if carried out, made or done under the Veterans' Entitlements Act 1985.

Sub-clause 18(3) will provide that the decision of the Repatriation Commission as provided for under this clause will be made in accordance with the provisions of this Act and the Veterans' Entitlements Act 1985.

Clause 19 - Pending applications to the Board or the Tribunal

Clause 19 will provide that outstanding applications for review of decisions to the Veterans' Review Board or the Administrative Appeals Tribunal that are not finalised before the commencement date may be finalised after the commencement date.

Sub-clause 19(1) will provide that where an application for review by the Veterans' Review Board had not been determined before the commencement date, that application will be treated as if it had been made under the Veterans' Entitlements Act 1985 and will be determined by the Veterans' Review Board accordingly.

Sub-clause 19(2) will provide that where an application for a review by the Administrative Appeals Tribunal had not been determined before the commencement date, that application will be treated as if it had been made under the Veterans' Entitlements Act 1985 and will be determined by the Administrative Appeals Tribunal accordingly.

Sub-clause 19(3) will provide that for the purposes of a review by the Veterans' Review Board or the Administrative Appeals Tribunal, any approval given, investigation carried out, report prepared, decision made or act or thing done before the commencement date will have force and effect as if given, carried out, prepared, made or done under the Veterans' Entitlements Act 1985.

Sub-clause 19(4) will provide that the decision of the Veterans' Review Board or the Administrative Appeals Tribunal as provided for under this clause will be made in accordance with the provisions of the Veterans' Entitlements Act 1985.

Clause 20 - Reviews of certain decisions made under repealed Acts

Clause 20 will preserve the right of a person dissatisfied with a decision of the Repatriation Commission or of the Veterans' Review Board, made before the commencement date, to seek a review of that decision as provided for in the Repatriation determining system.

Sub-clause 20(1) will provide that where a person would have had a right to seek a review by the Veterans' Review Board of a decision of the Repatriation Commission made before the commencement date, an application for such a review may be made in accordance with the provisions of the Veterans' Entitlements Act 1985.

Sub-clause 20(2) will provide that where a person would have had a right to seek a review by the Repatriation Commission of a decision relating to the payment of service pension made before the commencement date, an application for such a review may be made in accordance with the provisions of the Veterans' Entitlements Act 1985.

Sub-clauses 20(3), (4), (5) and (6) will maintain the existing arrangements with regard to time limits for seeking reviews.

Sub-clause 20(7) will provide that sub-clause 20(1) will not apply where an application for review to the Veterans' Review Board had already been made before the commencement date and that application had not been withdrawn or otherwise disposed of. Such applications are provided for in clause 19.

Sub-clause 20(8) will provide that the time limits specified in sub-sections 134(4) and (5) of the Veterans' Entitlements Act 1985 will not apply in relation to an application for review of a decision by the Repatriation Commission made before 1 January 1985.

Sub-clause 20(9) will provide that where a person would have had a right to seek a review by the Administrative Appeals Tribunal of a decision of the Repatriation Commission or the Veterans' Review Board before the commencement date, an application for such a review may be made in accordance with the provisions of the Veterans' Entitlements Act 1985.

Sub-clause 20(10) will provide that sub-clause 20(9) will not apply where an application for review to the Administrative Appeals Tribunal had been made before the commencement date and that application had not been withdrawn or otherwise disposed of. Such applications are provided for in clause 19.

Sub-clause 20(11) will provide that a decision of the Repatriation Commission to review a decision, to cancel or suspend a pension or to increase or decrease the rate of a pension, may have effect from before the commencement date as if the Veterans' Entitlements Act 1985 had been in force before that date.

Sub-clause 20(12) will provide that the Repatriation Commission, in exercising its powers referred to in sub-clause 20(11), may have regard to information received by the Repatriation Commission, the Veterans' Review Board or the Administrative Appeals Tribunal before the commencement date and to information received by the Repatriation Commission after the commencement date. This sub-clause will also provide that the Repatriation Commission in exercising such power shall make its decision in accordance with the provisions of the Veterans' Entitlements Act 1985.

Clause 21 - Retrospective operation of decisions

Sub-clause 21(1) will provide that a decision by the Repatriation Commission, by the Veterans' Review Board or by the Administrative Appeals Tribunal, made after the commencement date, may have effect from a date before the commencement date. The effective date of such a decision will be fixed in accordance with the provisions of the Veterans' Entitlements Act 1985.

Sub-clause 21(2) will provide that where a decision of the Veterans' Review Board or of the Administrative Appeals Tribunal made before the commencing date is subject to a binding period that decision shall continue to be binding on the parties to the review for the balance of that binding period.

Clause 22 - Reasons for decisions

Sub-clauses 22(1), (2) and (3) will provide that those provisions of the Veterans' Entitlements Act 1985 which require the Repatriation Commission and the Veterans' Review Board to make decisions in writing and to provide a copy of decisions and statement of reasons to persons affected by such decisions will extend to similar decisions given before the commencement date under a repealed Act.

Sub-clause 22(4) will provide that any decision and reasons for that decision given and served on a person under a repealed Act will have effect on and after the commencement date as if given and served under the Veterans' Entitlements Act 1985.

PART IV - MISCELLANEOUS TRANSITIONAL PROVISIONS

Clause 23 - child of a person

Amendments contained in the Repatriation Legislation Amendment Act 1982 altered the definition of "child" to reflect changes in the Social Security Act 1947. Provisions contained in the Repatriation Legislation Amendment Act 1982 provided that a person who had been accepted as a child for service pension purposes before the amendment would continue to be regarded as a child for the purposes of determining the rate of a service pension payable and the prescribed rate of income for fringe benefits eligibility.

Amendments contained in the Social Security and Repatriation Legislation Amendment Act 1985 provided that where a person was a child of a service pensioner and was living outside Australia then no future grant of additional pension to that child of a service pensioner was to be made after 5 September 1985.

Sub-clause 23(4) will provide that a grant of additional pension to a child of a service pensioner, made before the commencing date, will continue in force.

Clause 23 will continue the effect of the savings provisions contained in the Repatriation Legislation Amendment Act 1982 and the Social Security and Repatriation Legislation Amendment Act 1985.

Clause 24 - Certain persons deemed to be domiciled in Australia

Amendments contained in the Repatriation Act 1952 provided that members of the Forces of the Queen's Dominions must have been domiciled in Australia immediately before enlistment in such Forces in order to qualify for the payment of a pension. Previously, such members had been required to have been resident in Australia for 12 months immediately before enlistment. The Repatriation Act 1952 contained a savings provision to the effect that a member of the Forces of the Queen's Dominions who had satisfied the Repatriation Commission, before the commencement date of the 1952 Act, that he or she had been resident in Australia for 12 months immediately before enlistment in such Forces, would be deemed to have been domiciled in Australia immediately before that enlistment.

Clause 24 will continue the effect of the savings provision contained in the Repatriation Act 1952.

Clause 25 - Reduction in rate of pension

Certain provisions of the repealed Acts provide that where a disability pension, war widow's pension or orphan's pension is payable and the veteran, widow or orphan also receives compensation under the law of a foreign country or of a State in respect of the same injury, disease or death, then the amount of that compensation is taken into account in determining the rate of pension payable.

Clause 25 will provide that the rate of compensation taken into account in calculating the rate of pension payable before the commencing date will not be increased by virtue of the operation of the Veterans' Entitlements Act 1985 unless the amount of that compensation has been increased. This clause will ensure that pensioners are not disadvantaged by the operation of the Veterans' Entitlements Act 1985.

Clause 26 - Summons

Clause 26 will provide that a summons that had been issued under a provision of a repealed Act before the commencement date, requiring a person to appear and give evidence or produce documents on or after the commencement date will continue in effect as if it had been issued under the corresponding provision of the Veterans' Entitlements Act 1985.

Clause 27 - Guide to Assessment of the Rates of Veterans' Pensions

Sub-clause 27(1) will provide that the Guide to the Assessment of Rates of Veterans' Pensions will not become binding on the Repatriation determining authorities until 1 July 1986.

Sub-clause 27(2) will provide that where after the commencement date and before 1 July 1986 a determining authority is making a determination as to the degree of incapacity of a veteran it may make its determination having regard to the material before it. The determining authority may, if that material is sufficient, make its determination in accordance with the Guide to the Assessment of the Rates of Veterans' Pensions but, prior to 1 July 1986, the application of the Guide will not be mandatory.

Clause 28 - Savings - child living outside Australia

Clause 28 continues the effect of savings provisions contained in the Social Security and Repatriation Legislation Amendment Act 1985 and will provide that where before the commencement of that Act a person had been accepted as a child for service pension purposes even though the child was living outside Australia, then that person will continue to be so regarded.

Clause 29 - Calculation of value of property

This clause will maintain the effect of a transitional provision contained in the Social Security and Repatriation (Budget Measures and Assets Test) Act 1984 and provides that, for the purpose of determining the principal place of residence of a service pensioner, where a pensioner was absent from the principal residence on 14 March 1985, any absence before that date shall be disregarded.

Clause 30 - Pension loan scheme

The Social Security and Repatriation (Budget Measures and Assets Test) Act 1984 provided for a pension loan scheme. That Act also provided that any application relating to the pension loan scheme lodged after 14 March 1985 and before 14 June 1985 would be deemed to have been lodged on 14 March 1985. Sub-clause 30(1) will continue the effect of that provision.

Sub-clauses 30(2) and (3) will provide that an application to participate in the pension loan scheme under the Social Security Act 1947, as it is applied under the Repatriation Act 1920, made after 14 March 1985 and before the commencement date will be treated as if made under the Veterans' Entitlements Act 1985 and the provisions of that Act will apply as if it came into operation on 14 March 1985.

Clause 31 - Deprivation of income or property

Sub-clauses 31(1) and (2) will provide that where, before the commencement date, an amount has been deemed to be income for the purposes of the deprivation provisions of the Social Security Act 1947, as applied by the Repatriation Act 1920, that amount will continue to be treated as income for the purposes of the Veterans' Entitlements Act 1985. Sub-clause 31(3) will make similar provision in relation to an amount of property that has been required to be included in the value of the property of a person.

Clause 32 - Rent assistance

The Repatriation Acts Amendment Act 1974, the Repatriation Acts Amendment Act (No 2) 1976 and the Repatriation Acts Amendment Act 1981 each altered the basis on which supplementary assistance (rent assistance) was to be payable to service pensioners. These Acts contained savings provisions that provided that persons in receipt of supplementary assistance before those Acts came into effect would continue to receive the rate of supplementary assistance then payable unless there was a change in tenancy or income circumstances.

Clause 32 will provide that those service pensioners who have been continuously in receipt of supplementary assistance since the date of effect of the Acts referred to above will continue to have the effect of those savings provisions applied.

Clause 33 - Requests to institute proceedings

Section 107S of the Repatriation Act 1920 provides that where there appears to be a liability in a person other than the Commonwealth, to pay damages in respect of an injury or death of a member of a Peacekeeping Force or a member of the Defence Forces and, a pension may also be payable in respect of that injury or death, the Repatriation Commission may request the member or dependant to institute legal proceedings to recover those damages.

Sub-clause 33(1) will provide that where the Repatriation Commission had requested a member or dependant to institute proceedings or fresh proceedings or to properly prosecute proceedings under section 107S of the Repatriation Act 1920 and those proceedings had not been completed before the commencement date, the Veterans' Entitlements Act 1985 will apply in relation to such a request as if the request had been made under the Veterans' Entitlements Act 1985.

Sub-clause 33(2) will provide that any act or thing done under section 107S of the Repatriation Act 1920 before the commencement date, will have effect on and after the commencement date as if it had been done under the Veterans' Entitlements Act 1985.

Clause 34 - Payment of damages to Commonwealth

Section 107T of the Repatriation Act 1920 provides that where a person other than the Commonwealth, appears liable to, or has agreed to, pay damages, in respect of the injury or death of a member of a Peacekeeping Force or a member of the Defence Forces, and, a pension is also payable in respect of that injury or death, the Repatriation Commission may request, by notice, that an amount of damages specified in the notice, being the amount of pension that has been paid, be paid to the Commonwealth.

Clause 34 will provide that where such a request under section 107T of the Repatriation Act 1920 has been made but not complied with before the commencement date, the notice will have effect as if issued under the Veterans' Entitlements Act 1985.

Clause 35 - Deductions of overpayments of pension

Section 107U of the Repatriation Act 1920 provides for the recovery of amounts of disability pension paid that would not have been paid because of the payment of compensation from another source.

Clause 35 will provide that an amount that was recoverable under section 107U of the Repatriation Act 1920 before the commencement date may be recovered after that date under the Veterans' Entitlements Act 1985. This clause will also provide that an amount shall not be recovered under both the Repatriation Act 1920 and the Veterans' Entitlements Act 1985.

Clause 36 - Establishment of hospitals

Clause 36 will provide that any hospital or other institution, established and maintained or deemed to have been established and maintained by the Repatriation Commission under the

Repatriation Act 1920, before the commencing date, will be deemed, on and after the commencing date, to have been established under the Veterans' Entitlements Act 1985 and that Act will apply to such hospital or other institution on and after that date.

Clause 37 - Recovery of cost of medical treatment

This clause will provide that where medical treatment was provided under a repealed Act the cost of medical treatment may be recovered as if the treatment had been provided under Part V of the Veterans' Entitlements Act 1985.

Sub-clause 37 (2) will provide that a notice served under section 120E (3) or (4) of the Repatriation Act 1920 will continue to have effect as if it were a notice served under sub-section 93(4) or (5) of the Veterans' Entitlements Act 1985.

Sub-clause 37 (3) will prevent recovery of the cost of medical treatment under both a repealed Act and the Veterans' Entitlements Act 1985.

Sub-clause 37(4) will provide that the repeals effected by the Veterans' Entitlements Act 1985 will not affect the liability, on or after the commencement date, of a person to pay reasonable charges in respect of treatment provided before the commencement date and in respect of which the person had been notified that charges would be raised.

Clause 38 - Notification of event or change of circumstances

Both the Repatriation Act 1920 and the Veterans' Entitlements Act 1985 contain provisions requiring the notification within specified periods of certain events or changes in circumstances which may affect the rate of a pension, allowance, or benefit. Clause 38 will provide that where such an event or change in circumstances occurred before the commencement date, and the last day on which notification could have been given is a day after the commencement date then the provisions of the Veterans' Entitlements Act 1985 will apply. In any other case, the provisions of the Repatriation Act 1920 will apply.

Clause 39 - Deduction of tax from service pensions

This clause will provide that where a person had made a request under a repealed Act that income tax be deducted from instalments of service pension and that request had not been revoked, that request will continue to have effect as if made under the Veterans' Entitlements Act 1985.

Clause 40 - Payment of service pension

This clause will provide that where the Repatriation Commission had determined under a repealed Act to pay a service pension, wife's service pension or carer's service pension to a person

other than the pensioner but for the benefit of the pensioner, that approval will continue to have effect as if the decision were an approval under section 121 of the Veterans' Entitlements Act 1985.

Clause 41 - Advances on account of loss of earnings allowance

This clause will provide that where the Repatriation Commission had authorised the payment of an advance to a person of loss of earnings allowance under a repealed Act and, the period for which the payment was authorised extends beyond the commencing date, then the amount that is attributable to the period on or after the commencing date, will be treated as an advance authorised under section 109 of the Veterans' Entitlements Act 1985.

Clause 42 - Application of section 119 of Veterans' Entitlements Act to decisions of Commission

Clause 42 will provide that, subject to the provisions mentioned below, section 119 of the Veterans' Entitlements Act 1985, relating to the standard of proof to be applied by the Repatriation Commission, will be applied to determinations of claims by the Repatriation Commission made on or after the commencement date.

This clause will also make special provision for claims for pension received by the Department before 15 May 1985. Under the amendments contained in the Repatriation Legislation Amendment Act 1985 claims for pensions lodged before 15 May 1985 were to continue to have the "beyond reasonable doubt" standard of proof applied subject to the requirement that there be a reasonable hypothesis of a link between eligible service and the claimed incapacity and death. The effect of the saving provisions contained in the Repatriation Legislation Amendment Act 1985 will be maintained.

Clause 43 - Application of sections 119 and 138 of Veterans' Entitlements Act to reviews by the Board

Clause 43 will provide that where the Board reviews a decision or determination of the Repatriation Commission on or after the commencing date, then, subject to the provisions mentioned below, section 138 of the Veterans' Entitlements Act 1985 will apply in respect of that review and the Repatriation Commission will be deemed to have all the powers and discretions conferred upon it by the Veterans' Entitlements Act 1985.

This clause will also make special provision for applications for review received by the Department before 15 May 1985. The clause will maintain the effects of the savings provisions contained in the Repatriation Legislation Amendment Act 1985.

Clause 44 - Application of section 119 of Veterans' Entitlements Act to reviews by Administrative Appeals Tribunal

Sub-clause 44(1) will provide that where the Administrative Appeals Tribunal, on or after the commencing date, reviews a decision made before that date it may exercise all the powers and discretions of the person who made the decision which it is reviewing conferred on that person by the Veterans' Entitlements Act 1985.

This clause will also maintain the effect of the savings provisions contained in the Repatriation Legislation Amendment Act 1985.

Clause 45 - Notice to be given of certain events effecting pensions

Sub-clause 45(1) will continue the obligation imposed on a person under a repealed Act to give notice of any change in the status of a child, which may effect a dependant's pension entitlements, until a notice is served on that person under section 126 of the Veterans' Entitlements Act 1985.

Sub-clause 45(2) will continue the obligation imposed on a person under a repealed Act to give notice of any change in that person's status, which may effect a service pension entitlement, until a notice is served on that person under section 126 of the Veterans' Entitlements Act 1985.

Clause 46 - Savings - Children under Soldiers' Children

Education Scheme

Eligibility to participate under the Soldiers' Children Education Scheme is, in certain circumstances, available to persons over 25 years of age. Eligibility under the Veterans' Children Education Scheme is to be restricted to persons aged less than 25 years.

Clause 46 will ensure that those persons eligible to participate in the Soldiers' Children Education Scheme will not be disadvantaged by changed eligibility criterion in respect of a student child.

Clause 47 - Furnishing of information

This clause will provide that a notice issued under section 121 and 121A of the Repatriation Act 1920, requiring a person to supply information which may affect the grant or payment of a pension to the Repatriation Commission, will continue to apply after the commencement date as if such a notice had been issued under the Veterans' Entitlements Act 1985.

Sub-clause 47(2) will provide that section 126 of the Veterans' Entitlements Act 1985 will apply to notices issued under section 121 of the Repatriation Act 1920 in respect of events or changes in circumstances that occur, or are likely to occur, after the commencement date.

Sub-clause 47(3) will provide that section 127 of the Veterans' Entitlements Act 1985 will extend to obtaining information, documents or evidence that may relate to the grant of pension, benefit, allowance or the provision of treatment under a repealed Act.

Sub-clause 47(6) will ensure that the penalties for non-compliance are those provided for by the repealed Acts.

Clause 48 - Membership of Board

This clause will provide that the appointments of members to the Veterans' Review Board made before the commencement date will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985.

Clause 49 - Leave of absence

This clause will provide that grants of leave of absence to a full-time member of the Veterans' Review Board made before the commencing date will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985.

Clause 50 - Membership of Commission

This clause will provide that the appointments of members of the Repatriation Commission made before the commencement date will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985.

Sub-clauses 50(2) and (3) will provide that the members of the Repatriation Commission who held the offices of Chairman or, Deputy Chairman, of the Repatriation Commission will, on and after the commencing date, hold the office of President or Deputy President of the Repatriation Commission, respectively.

Clause 51 - Leave of absence

This clause will provide that grants of leave of absence to a Commissioner or an Acting Commissioner of the Repatriation Commission made before the commencement date will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985.

Clause 52 - Acting members of the Commission

Sub-clause 52(1) will provide that the appointment of a person to act in the office of a Commissioner made before the commencement date will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985.

Sub-clause 52(2) will provide that any standing arrangement for a person to act in the office of Chairman of the Repatriation Commission and also in the office of Secretary to the Department, made before the commencement date, will continue in force, on and after that date, as if made under the Veterans' Entitlements Act 1985. After the commencement date the person will act in the office of the President of the Repatriation Commission.

Clause 53 - Trusts

Clause 53 will provide that the Repatriation Commission may continue as trustee of a trust accepted by the Repatriation Commission under the Repatriation Act 1920 after the commencing date and that the provisions of the Veterans' Entitlements Act 1985 will apply in relation to such trusts.

Clause 54 - Trusts in respect of pensions and allowances

Clause 54 will provide that arrangements existing before the commencement date in respect of the payment of a pension or allowance to a trustee on behalf of a pensioner, will continue as if the trust arrangement had been effected under the Veterans' Entitlements Act 1985.

Clause 55 - Recovery of overpayments

Sub-clause 55(1) will provide that where an overpayment occurred before the commencing date as a result of a false statement or representation being made or an omission that occurred and that overpayment had not been recovered before the commencing date, the provisions of the Veterans' Entitlements Act 1985 will apply in respect of the recovery of the overpayment.

Sub-clause 55(2) will provide that an overpayment cannot be recovered under both the Veterans' Entitlements Act 1985 and a repealed Act.

Clause 56 - Arrangements with other countries

Clause 56 will provide that arrangements entered into before the commencement date with the Government of another country, by which the same assistance and benefits, other than pensions, may, in certain circumstances, be paid in Australia to persons from that other country, may continue in force as if they were arrangements entered into under the provisions of the Veterans' Entitlements Act 1985.

Clause 57 - Pension payable to person suffering from mental incapacity

Prior to 1982 the Repatriation Act 1920 provided that the Repatriation Commission could hold in trust certain amounts of disability pensions in respect of pensioners who were patients in mental hospitals. The Repatriation Amendment Act 1982 abolished those arrangements but provided that, for pensioners who were still patients in mental hospitals, the moneys then held in trust could continue to be so held in trust by the Repatriation Commission as if they were held in trust under Repatriation Regulation 9.

Clause 57 will maintain the effect of the transitional provisions contained in the Repatriation Amendment Act 1982.

Clause 58 - Local Committees

Sub-clause 58(1) will provide that those provisions of the Repatriation Act 1920 and the Repatriation Regulations relating to Local Committees are to continue in force after the commencement date. There are a small number of Local Committees in the process of being wound up by the Repatriation Commission and this provision will allow this process to be completed.

Sub-clause 58(2) will provide that a Local Committee in existence after the commencing date will not have the power to raise funds.

Sub-clause 58(3) and (5) will provide that the power to make regulations under the Veterans' Entitlements Act 1985 will extend to making or amending the Repatriation Regulations continued in force by sub-clause 58(1).

Sub-clause 58(4) will provide that those provisions continued in force by sub-clause 58(1) will cease to have effect in relation to a Local Committee when that Committee ceases to have any funds under its control and the books and accounts of that Committee have been audited as provided for under the Repatriation Act 1920.

PART V - CONSEQUENTIAL AMENDMENTS OF ACTS
AND REGULATIONS

Clause 59 - Amendments of Acts

As section 3 of the Veterans' Entitlements Act 1985 will repeal a number of Repatriation Acts, it is necessary to make consequential amendments to a number of Acts which make reference to the repealed Acts or which apply provisions similar to those contained in the repealed Acts. This clause will provide that the Acts specified in the Schedule are to be amended as set out in that Schedule.

Clause 60 - Income Tax Regulations

This clause will provide for consequential amendments to the Income Tax Regulations which refer to the Acts which are to be repealed by the Veterans' Entitlements Act 1985. Sub-clause 60(3) will provide that the amendments to the Income Tax Regulations will apply from 1 July 1986. Sub-clause 60(4) will continue the existing operation of the Income Tax Regulations for the year of income that commenced on 1 July 1985.

PART VI - TRANSITIONAL PROVISIONS RELATING TO
CONSEQUENTIAL AMENDMENTS

Clause 61 - Appropriation - transitional

This clause will provide that for the purpose of the operation of section 198 of the Veterans' Entitlements Act 1985, which provides for the appropriation of funds necessary for the payment of pensions, allowances and other benefits under that Act, instruments may be made, certificates may be given and warrants may be issued under section 32 of the Audit Act 1901, as from the day the Veterans' Entitlements Act 1985 and this Act received Royal Assent.

Clause 62 - Income Tax (Rates) Act 1982

This clause will provide that consequential amendments to the Income Tax (Rates) Act 1982, which will be provided for by this Act, will apply from 1 July 1986. Sub-clause 51C(2) will continue the existing operation of the Income Tax (Rates) Act 1982 for the year of income that commenced on 1 July 1985.

Clause 63 - Savings - Compensation (Commonwealth Government Employees) Act 1971

Sub-section 119A(1) of the Compensation (Commonwealth Government Employees) Act 1971 provides for the recovery of an amount of pension which has been paid but which was not payable under Repatriation legislation because of the operation of section 107R of the Repatriation Act 1920. In relation to an amount that was recoverable before the commencing date, this clause will maintain existing arrangements for the deduction of overpayments of Repatriation pension from amounts payable to a person by way of compensation under the Compensation (Commonwealth Government Employees) Act 1971 .

Clause 64 - Savings - Australian mariners

This clause will provide that where, before the commencing date, a person was for the purposes of the Seamen's War Pensions and Allowances Act 1940 an Australian mariner then, on and after the commencing date, that person will continue to be an Australian mariner for the purposes of that Act.

This clause will also provide that the Guide to the Assessment of the Rates of Veterans' Pensions will not become binding on the Repatriation determining authorities until 1 July

1986. It will provide that where after the commencement date and before 1 July 1986 a determining authority is making a determination as to the degree of incapacity of a mariner it may make its determination having regard to the material before it. The determining authority may, if that material is sufficient, make its determination in accordance with the Guide to the Assessment of Rates of Veterans' Pensions but, prior to 1 July 1986, the application of the Guide will not be mandatory.

Clause 65 - Re-marriage or marriage of widow

This clause will make provision for a widow of a deceased Australian mariner who, prior to the commencing date had her war widow's pension cancelled following marriage or re-marriage. The Veterans' Entitlements Act 1985 will not provide for the cancellation of a war widow's pension upon marriage or re-marriage. The Government has announced that this arrangement will take effect from 29 May 1984, being the date the Minister for Veterans' Affairs first announced the proposal.

Sub-clause 65(1) will provide that where a widow of an Australian mariner re-married after 29 May 1984 and before the commencement date and had her pension cancelled under the Seamen's War Pensions and Allowances Act 1940, her eligibility for that pension will be restored.

Sub-clause 65(2) will provide that where a pension is restored because of the application of sub-clause 65(1), any re-marriage gratuity paid under the Seamen's War Pensions and Allowances Act 1940 will be deducted from instalments of pension that become due; that where a widow of an Australian mariner was eligible for the payment of a re-marriage gratuity before the commencing date but that gratuity had not been paid, the gratuity will not be paid; and that any overpayment of Social Security pension that occurred because of the restoration of a pension to a widow of an Australian mariner may be recovered, as provided for in sub-section 55A(2) of the Seamen's War Pensions and Allowances Act 1940.

Sub-clause 65(3) will preserve the right of certain widows of Australian mariners to claim a pension under section 28A of the Seaman's War Pensions and Allowances Act 1940 in respect of a period before the commencement date.

SCHEDULE

AIR ACCIDENTS (COMMONWEALTH GOVERNMENT LIABILITY) ACT 1963

This part of the Schedule will provide for the Air Accidents (Commonwealth Government Liability) Act 1963 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

ALBURY - WODONGA DEVELOPMENT ACT 1973

This part of the Schedule will provide for the Albury - Wodonga Development Act 1973 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 which will be repealed by the Veterans' Entitlements Act 1985

COMPENSATION (COMMONWEALTH GOVERNMENT EMPLOYEES) ACT 1971

This part of the Schedule will provide for the Compensation (Commonwealth Government Employees) Act 1971 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

DEFENCE FORCE DISCIPLINE ACT 1982

This part of the Schedule will provide for the Defence Force Discipline Act 1982 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 which will be repealed by the Veterans' Entitlements Act 1985

DEFENCE SERVICE HOMES ACT 1918

This part of the Schedule will provide for the Defence Service Homes Act 1918 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

HEALTH INSURANCE ACT 1973

This part of the Schedule will provide for the Health Insurance Act 1973 to include appropriate references to the Veterans' Entitlements Act 1985 (including references to pensions payable under that Act) in lieu of references to the Repatriation Act 1920 and other supplementary legislation (including references to pensions payable under the latter Acts) which will be repealed by the Veterans' Entitlements Act 1985.

INCOME TAX (RATES) ACT 1982

This part of the Schedule will provide for the Income Tax (Rates) Act 1982 to include appropriate references to the Veterans' Entitlements Act 1985 and this Act in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

NATIONAL HEALTH ACT 1953

This part of the Schedule will provide for the National Health Act 1953 to include appropriate expressions as defined in the Veterans' Entitlements Act 1985 in lieu of expressions as defined in the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985. This part of the Schedule will also provide for the National Health Act 1953 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

PUBLIC SERVICE ACT 1922

This part of the Schedule will provide for amendments to sub-section 7(1) of the Public Service Act 1922 to ensure that the Act will include appropriate expressions as defined in the Veterans' Entitlements Act 1985 in lieu of expressions as defined in the Repatriation (Special Overseas Service) Act 1962 which will be repealed by the Veterans' Entitlements Act 1985.

RE-ESTABLISHMENT AND EMPLOYMENT ACT 1945

This part of the Schedule will provide for the Re-establishment and Employment Act 1945 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935

This part of the Schedule will provide for amendments to item 135 of the First Schedule of the Sales Tax (Exemptions and Classifications) Act 1935 to ensure that provisions relating to a veteran's eligibility for exemption from sales tax will be maintained by reference to appropriate provisions of the Veterans' Entitlements Act 1985.

SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940.

It is necessary to amend the Seamen's War Pensions and Allowances Act 1940 (the Act) to ensure that Australian mariners who served during World War 2 will receive consideration similar to Veterans under the Veterans' Entitlements Act 1985. This part of the Schedule will also provide for the Seamen's War Pensions and Allowances Act 1940 to include appropriate references to the Veterans' Entitlements Act 1985 in lieu of

references to the Repatriation Act 1920 which will be repealed by the Veterans' Entitlements Act 1985.

Sub-section 3(1) - Definition of "Australian mariner"

The definition of "Australian mariner" contained in sub-section 3(1) of the Act depends, in part on a dependant of a mariner being a resident of Australia. The meaning of "dependant" under the Act was amended by the Repatriation Legislation Amendment Act 1985 which came into effect on 6 June 1985. This provision will amend the definition of "Australian mariner" in sub-section 3(1) of the Act to refer to the wife or child of the mariner being resident in Australia.

Sub-section 3(1) - Definition of "Board"

This provision will amend the definition of "Board" in sub-section 3(1) of the Act to refer to the appropriate provision in the Veterans' Entitlements Act 1985.

Sub-section 3(1) - Definition of "de facto wife", "child" and "Commission"

This provision will repeal the definition of "de facto wife" in sub-section 3(1) of the Act. The wife of a person will be deemed to include the de facto wife of that person. The provision will also insert definitions of "child" and

"Commission" into sub-section 3(1) of the Act that will be consistent with the respective definitions in sub-section 5(1) of the Veterans' Entitlements Act 1985.

Sub-section 3(1) - Definitions of "separated wife" and "separated widow"

This provision will repeal the definitions of "separated wife" and "separated widow" in sub-section 3(1) of the Act as these terms now have no application in the Act.

Sub-section 3(1) - Definition of "the Commission"

This provision will repeal the existing definition of "the Commission" in sub-section 3(1) of the Act.

Sub-section 3(1) - Definition of "the present war"

This provision will amend the definition of "the present war" in sub-section 3(1) of the Act so that it will be consistent with the definition of "World War 2" in sub-sections 5(1) and 5(3) of the Veterans' Entitlements Act 1985.

Sub-section 3(1C)

Sub-section 3(1C) of the Act contains reference to a number of definitions in the Repatriation Act 1920. This

provision will repeal sub-section 3(1C) of the Act and replace that sub-section with appropriate definitions from section 11 of the Veterans' Entitlements Act 1985.

Child of Australian mariner

This provision will insert a new section 3A into the Act that will be consistent with the provisions of section 10 of the Veterans' Entitlements Act 1985.

Section 14

Section 14 of the Act is concerned with the form that a medical report on any claim in relation to an Australian mariner is to be set out. The section is equivalent to section 48 of the Repatriation Act 1920 which will have no equivalent in the Veterans' Entitlements Act 1985. This provision will repeal section 14 of the Act.

Section 15 - Assessment of degree of incapacity

Section 15 of the Act is concerned with the assessment of the degree of incapacity of an Australian mariner. This provision will repeal section 15 of the Act and will replace it with a provision that will be consistent with section 22 of the Veterans' Entitlements Act 1985 and provide that regard is to be

had to the "Guide to the Assessment of Rates of Veterans' Pensions" in determining the degree of incapacity of a mariner.

Paragraphs 17A(1)(a) and (b)

Section 17A of the Act provides that upon the death of an Australian mariner, who was receiving a disability pension at the special rate, the dependants of that mariner are automatically entitled to pensions in respect of the death of that mariner. These provisions will make consequential amendments to the Act to refer to the appropriate provisions of the Veterans' Entitlements Act 1985.

Sub-sections 18(2) and (4)

These provisions will make consequential amendments to the Act to ensure that terms used in the Act are consistent with terms which will be used in the Veterans' Entitlements Act 1985.

Paragraph 18(4A)(b)

Paragraph 18(4A)(b) of the Act is concerned with the Intermediate Rate of disability pension. This provision will substitute a paragraph that will refer to the appropriate section of the Veterans' Entitlements Act 1985.

Sub-section 18(7)

This provision will make consequential amendments to the Act to ensure that terms used in the Act are consistent with terms which will be used in the Veterans' Entitlements Act 1985.

Sections 19 and 20

Sections 19 and 20 impose limitations on the rates of War Widow's pension that may be paid to a "de facto widow" or to a "separated widow". Similar limitations will not apply to war widow's pensions paid pursuant to the Veterans' Entitlements Act 1985. This provision will repeal these sections of the Act.

Sub-sections 21(1) and (2)

Section 21 of the Act is concerned with an allowance for an attendant for certain incapacitated mariners. These provisions will amend section 21 to ensure that it will be consistent with the provisions of section 98 of the Veterans' Entitlements Act 1985.

Section 22

Section 22 of the Act is concerned with the assessment of the degree of incapacity of a mariner. The matters provided for in this section will be covered by the "Guide to the Assessment of Rates of Veterans' Pensions". This provision will repeal this section.

Section 22A - Special Rate of pension

Section 22A of the Act is concerned with assessments of disability pension at the Special Rate (either temporarily or permanently). This provision will repeal section 22A of the Act and insert a provision that will refer to the appropriate provisions of the Veterans' Entitlements Act 1985.

Sub-section 23(1)

Sub-section 23(1) of the Act ensures that an accepted degree of incapacity gives rise to the correlative rate of General Rate disability pension. This provision will repeal sub-section 23(1) of the Act and insert a sub-section that will follow the approach to assessing rates of pension that will be used in the Veterans' Entitlements Act 1985.

Sub-section 23(2)

Sub-section 23(2) of the Act provides that where the degree of incapacity of a mariner is relatively minor, being assessed at less than 20 percent incapacity, and the mariner suffers a scheduled injury, the mariner will receive a scheduled gratuity in lieu of a pension. Under the Veterans' Entitlements Act 1985 a pension will be payable where the degree of incapacity suffered by a veteran is not less than 10 percent.

This provision will amend sub-section 23(2) of the Act to provide that a pension will be payable where the degree of incapacity of a mariner is not less than 10 percent.

Sub-section 23(3)

Sub-section 23(3) of the Act provides that where the degree of incapacity of a mariner is relatively minor, being assessed at less than 20 percent incapacity, and the mariner has not suffered one of the scheduled injuries referred to in sub-section 23(2) of the Act, the mariner may be paid a lump sum in lieu of a pension. Under the Veterans' Entitlements Act 1985, a pension will be payable where the degree of incapacity suffered by a veteran is not less than 10 percent.

This provision will amend sub-section 23(3) of the Act to provide that a pension will be payable where the degree of incapacity of a mariner is not less than 10 percent.

After sub-section 23(3)

This provision will insert a new sub-section (3A) into section 23 of the Act that will provide, in accordance with the practice that will apply under the Veterans' Entitlements Act 1985, that no pension will be payable where the degree of incapacity of a mariner is less than 10 percent.

Sub-section 26(2)

This provision will correct a previous drafting error.

Sub-section 26AA(1) to (5) (inclusive)

These provisions will ensure that terminology used in the Act will be the same as terminology which will be used in the Veterans' Entitlements Act 1985.

After section 26AA - Who may make claim or application

The Act presently does not provide for a person to make a claim or application on behalf of a mariner or dependant where the mariner or dependant is incapable, for legal or other reasons, of making a claim or application. This provision will rectify this deficiency by inserting a new section into the Act modelled on section 16 of the Veterans' Entitlements Act 1985.

Sub-sections 26AB(1) and (2)

Section 26AB of the Act provides that a claimant may withdraw a claim without prejudice. Section 33 of the Veterans' Entitlements Act 1985 will provide that a claim or application may be withdrawn without prejudice. These provisions will amend section 26AB of the Act to provide that a claim or an application may be withdrawn without prejudice.

Sub-section 26A(1)

Sub-section 26A(1) of the Act imposes a duty on the Secretary to the Department of Veterans' Affairs to cause an investigation to be made when a claim is lodged with the Department. Section 17 of the Veterans' Entitlements Act 1985 will impose this duty on the Secretary upon the lodgement of either a claim or an application. This provision will repeal sub-section 26A(1) and insert a new sub-section that will impose the duty upon the lodgement of a claim or an application.

Sub-section 26A(2) and (3)

These provisions will make consequential amendments to section 26A of the Act that will be necessary due to the introduction of the new sub-section 26A(1).

Section 28

Section 28 of the Act provides that a pension paid to a female dependant is to cease upon marriage or remarriage. This provision will repeal section 28 of the Act to honour the commitment made by the Government that a war widow will not lose entitlement to her pension upon her marriage or re-marriage.

Sections 28A, 29, 30 and 31

Section 28A of the Act provides for a gratuity to be paid to a war widow who remarries. Section 29 of the Act provides that a female dependant of a mariner is to notify the Secretary if she divorces or marries. Section 30 of the Act provides that the Commission may refuse to grant or may terminate a pension on the ground of the "undesirability" of the claimant or pensioner. Section 31 of the Act provides that the Commission or a Pension Committee may suspend a pension during any term of imprisonment of a mariner.

This provision will repeal:

- . sections 28A and 29 of the Act as a female dependant will no longer lose her entitlement to pension upon marriage or remarriage;
- . section 30 of the Act because that section implies a moral judgement. A similar provision was removed from the Repatriation Act 1920 in 1953; and
- . section 31 of the Act as there will be no equivalent provision in the Veterans' Entitlements Act 1985.

This provision will also insert new sections 29, 30, 31, 32, and 32A into the Act. These new sections are modelled upon the notification provisions and information provisions contained in the Veterans' Entitlements Act 1985.

Section 34 - Definition of "reviewable decision"

Section 34 of the Act provides a definition of "reviewable decision" for the purposes of the Repatriation Act 1920. This provision will make consequential amendments to that definition as a result of the amendments that will be made to the Act pursuant to this Schedule.

Sub-section 35(3)

Sub-section 35(3) of the Act provides a three month time limit in which a person may apply to the Veterans' Review Board for review a decision assessing a rate of pension. Sub-section 134(5) of the Veterans' Entitlements Act 1985 will provide a three month time limit for applications to the Board in respect of decisions that assess a rate of pension or cancel or suspend a pension. This provision will amend sub-section 35(3) of the Act so that the 3 month time limit will also apply to applications for review of decisions cancelling or suspending pensions.

Section 37 - Application of certain provisions of Part IX of the Veterans' Entitlements Act

Section 37 of the Act applies certain provisions of the Repatriation Act 1920 concerning the Veterans' Review Board to the Act. This provision will insert a new section 37 that will apply the appropriate provisions of the Veterans' Entitlements Act 1985 to the Act so that the Veterans' Review Board will continue to have jurisdiction to review certain decisions made by the Repatriation Commission or a Pensions Committee pursuant to the Act..

Section 40 - Application of certain provisions of Part X of the Veterans' Entitlements Act

Section 40 of the Act applies certain provisions of the Repatriation Act 1920 concerning the Administrative Appeals Tribunal to the Act. This provision will insert a new section 40 that will apply the appropriate provisions of the Veterans' Entitlements Act 1985 to the Act so that the Administrative Appeals Tribunal will continue to have jurisdiction to review certain decisions made pursuant to the Act.

Section 41

Section 41 of the Act applies certain provisions of the Administrative Appeals Tribunal Act 1975 to the Act. This provision will add a new sub-section 41(7) to the Act to align section 41 of the Act with the corresponding provision in the Veterans' Entitlements Act 1985.

Sub-sections 49(2) and (3)

Section 49 of the Act ensures the inalienability of pensions paid pursuant to the Act. This provision will amend section 49 to align this section with the corresponding provisions of the Veterans' Entitlements Act 1985.

Sections 51, 52 and 53

This provision will repeal sections 51, 52 and 53 of the Act as there will be no equivalent provisions in the Veterans' Entitlements Act 1985.

Sections 54 and 54A

Section 54 of the Act is concerned with the payment of pensions into trusts and other methods of administering pensions. Section 54A of the Act imposes an obligation on a person to notify the change of status of a child. This provision will replace section 54 with a new provision based on section 121 of the Veterans' Entitlements Act 1985. This provision will also repeal section 54A of the Act as the notification and information provisions of the Veterans' Entitlements Act 1985 will be applied by sections 29, 30, 31, 32 and 32A of the Act.

Sub-sections 55(1) to (10)

Section 55 of the Act is concerned with reviews by the Commission. This provision will amend section 55 of the Act will ensure that it is consistent with section 31 of the Veterans' Entitlements Act 1985.

Section 57A

This provision will amend section 57A of the Act so that it will refer to the provisions of the Veterans' Entitlements Act 1985.

Section 58 - Offences

Section 58 of the Act deals with a number of offences under the Act. This provision will repeal section 58 and insert new sections 58, 58AA, 58AB and 58AC which are based upon the corresponding provisions of the Veterans' Entitlements Act 1985.

Paragraph 59(1)(e)

Section 59 of the Act empowers the making of regulations. This provision will amend section 59 to ensure that references to the Repatriation Act 1920 will be replaced by references to the corresponding provisions of the Veterans' Entitlements Act 1985.

Schedule 1

This provision will make consequential amendments to Schedule 1 of the Act to ensure that terminology used in the Act will be consistent with the terminology which will be used in the Veterans' Entitlements Act 1985.

Schedule 2

This provision will make consequential amendments to Schedule 2 to align it with the corresponding provision of the Veterans' Entitlements Act 1985, namely section 98.

Schedules 3 and 4

This provision will repeal Schedules 3 and 4 which, as a result of other amendments, will no longer have any application.

SOCIAL SECURITY ACT 1947

It is necessary to amend the Social Security Act 1947 to ensure that provisions of that Act will align with those of the Veterans' Entitlements Act 1985. This part of the Schedule will provide for the Social Security Act 1947 to include appropriate expressions as defined in the Veterans' Entitlements

Act 1985 in lieu of expressions as defined in the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985. This part of the Schedule will also provide for the Social Security Act 1947 to include appropriate references to provisions of the Veterans' Entitlements Act 1985 in lieu of references to the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985.

WAR GRATUITY ACT 1945

It is necessary to update the War Gratuity Act 1945 to ensure that provisions of that Act will refer to the appropriate provisions of the Veterans' Entitlements Act 1985 and the Social Security Act 1947. This part of the Schedule will provide for the War Gratuity Act 1945 to include appropriate expressions as defined in the Veterans' Entitlements Act 1985 in lieu of expressions as defined in the Repatriation Act 1920 and other supplementary legislation which will be repealed by the Veterans' Entitlements Act 1985. This part of the Schedule will also provide for the War Gratuity Act 1945 to include appropriate references to the Social Security Act 1947 and the Veterans' Entitlements Act 1985.

