

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

REPATRIATION LEGISLATION AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the Minister for Veterans' Affairs, the Hon. D. Thomson, M.C., M.P.).



## OUTLINE

This Bill provides for changes in Repatriation legislation to put into effect decisions of the Government, many of which were announced in the Budget speech, and for certain other machinery amendments to Repatriation legislation.

The Bill amends the following Acts:

- . Repatriation Act 1920;
- . Seamen's War Pensions and Allowances Act 1940;
- . Interim Forces Benefits Act 1947;
- . Repatriation (Far East Strategic Reserve) Act 1956;
- . Repatriation (Special Overseas Service) Act 1962; and
- . Seamen's War Pensions and Allowances Act 1952.

The following are the main matters included:

- . extension of the liability provisions to include "arisen out of or attributable to" for members of the Forces of World War I, Korea/Malaya, Far East Strategic Reserve and Special Overseas Service (clauses 10, 32, 38, 74 and 80).
- . extension of eligibility for orphan's pension to orphans whose deceased veteran parent served in a theatre of war (clause 18);
- . disregarding of disability pension in the income test for the purpose of determining eligibility for service pension and fringe benefits (clause 21);
- . an increase in the amount of supplementary assistance (rent allowance), (clause 23);
- . extension of eligibility for service pension to former Commonwealth and allied mariners (clause 29);

- . extension of benefits to representatives of Australia who served with peacekeeping, monitoring and observing forces before 2 November 1981 (clause 42);
- . increase in the amount of income which may be earned before eligibility to receive fringe benefits is affected (clause 49);
- . increases in the rates of attendant's allowance (clauses 51, 53 and 65);
- . increases in the rates of orphan's pension (clause 52);
- . increases in the additions to pensions payable to amputees and those veterans suffering loss of vision (clause 53);
- . restoration of disability pension at the 100% General Rate for veterans who received or were eligible to receive a disability pension for pulmonary tuberculosis before 2 November 1978 (clause 85);
- . introduction of the requirement that members of determining authorities in the Repatriation determining system disclose interests that may affect their decisions (clauses 6 and 58);
- . extension of eligibility to certain civilians, such as members of philanthropic organisations, as members of the Forces for Repatriation benefits (clauses 31, 35, 37, 40, 67, 73 and 79); and
- . many amendments consequential upon changes in the Social Security Act 1947.

PART I - PRELIMINARY

Clause 1: Short title

This clause cites the Act as the Repatriation Legislation Amendment Act 1982.

Clause 2: Commencement

This clause provides for the Act to come into operation on the day on which it receives the Royal Assent except for clauses which are to commence on the dates specified. The main commencement dates are:

- . increases in pensions, allowances and benefits and extension of eligibility for orphans apply from 11 November 1982;
- . extension of eligibility to Commonwealth and allied mariners on 3 February 1983;
- . the extension of the liability, "arisen out of or attributable to", to members of the Forces of World War I, Korea/Malaya, Far East Strategic Reserve and Special Overseas Service on Royal Assent;
- . restoration on 6 January 1983 of the 100% General Rate pension to veterans who before 2 November 1978 received or were eligible to receive the pension for pulmonary tuberculosis.

PART II - AMENDMENTS OF THE REPATRIATION ACT 1920

Clause 3: Principal Act

Clause 3 is a formal clause specifying the Principal Act as the Repatriation Act 1920.

Clause 4: Interpretation

This clause inserts in the Principal Act, by amending section 6, a definition of 'foreign country' to mean a country other than Australia in order to clarify terminology within the legislation.

Sub-clause (2) includes an application provision to apply the changes in the Social Security legislation to rehabilitation allowance to dependants of members of the Forces eligible for pension and the rehabilitation allowance.

This sub-clause comes into effect on 1 March 1983 when the new rehabilitation allowance comes into operation.

Clause 5: Acting Commissioners

This clause amends sub-section 8C(4) of the Principal Act by deleting the current sub-section and substituting a new sub-section to provide that the Minister may determine the terms and conditions of Acting Commissioners appointed to the Repatriation Commission and to terminate such appointments.

Clause 6: Boards to consult and co-operate with Commission

This clause is consequential upon the amendment to allow oral reasons to be given by the Repatriation Review Tribunal (clause 44). It is necessary to amend section 15 to allow the Repatriation Commission to give statements of principle on oral reasons.

Clause 7: Repeal of sections 16 and 17 and substitution of new sections

This clause repeals sections 16 and 17 of the Principal Act and substitutes the following sections which are in line with modern forms of legislation.

Section 16: (Removal of Commissioner from office)

The new section replaces the existing provisions for removal

from office of a member of the Repatriation Commission to bring the legislation in line with provisions in other legislation relating to the removal of statutory office holders. The section also permits the removal from office consequential upon the new sections 17 or 17AAA of a member who does not disclose interests pecuniary or otherwise.

Section 17: (Disclosure of interests of Commissioners in relation to claims for pensions, etc.)

Provides for disclosure of interests by a Commissioner in his determining role in relation to claims for pension, etc., if he has any interest that could conflict with the proper performance of his functions in relation to the matter.

The Repatriation Commission has a wide role in determinations of claims and applications for pensions and benefits. It also reviews decisions of Repatriation Boards and determines appeals by applicants against unfavourable decisions from Boards. It is also a party to applications before the Repatriation Review Tribunal, the Administrative Appeals Tribunal and the Federal Court on Repatriation matters.

The interest is to be disclosed to the claimant, applicant or the person entitled to the pension and to the Minister. Where the applicant and the Minister consent, the Commissioner may continue to determine the application. However, sub-clause (2) provides that where the Minister becomes aware of these interests he shall cause the Commissioner's interests to be disclosed to the applicant but, if he considers that the Commissioner should not take part or continue to take part, he shall direct that the Commissioner not be involved in the determination of the case.

New section 17AAA: (Disclosure of interest of Commissioners in other matters)

This new section requires a Commissioner to disclose ...6/

any pecuniary interest he has in a matter being considered by the Repatriation Commission other than a consideration of a claim, appeal or review of pension or entitlement which is covered by section 17. The matters to be covered would arise from the general administration of the Act including the contractual undertakings of the Commission.

New Section 17AAB: (Removal of member of Board from Office)

This new section replaces the existing provisions whereby a member of a Repatriation Board may be removed from office to bring the legislation in line with provisions in other legislation relating to the removal of statutory office holders and to permit the removal from office of a member who does not disclose interests pecuniary or otherwise consequential upon the new section 17AAC.

New section 17AAC: (Disclosure of interests of members of Boards)

This new section requires a member of a Repatriation Board, along similar lines to a Commissioner (new section 17), in relation to claims for pension, etc., to disclose if he has any interest that could conflict with the proper performance of his duties in relation to the matter.

The member of the Board is required to disclose the interest to the claimant or applicant and, except with the consent of the claimant, applicant or the Repatriation Commission cannot continue to consider the claim or application.

Clause 8: Repeal of Sections 17AC, 18 AND 19

This clause is consequential upon the amendments made by clause 7.

Clause 9: Interpretation

Sub-clause (1) clarifies the meaning of "Dependant" in section 23 of the Principal Act as a result of the extension of liability so that a dependant of a member whose death or incapacity is



considered to have "arisen out of or been attributable to" service can be paid a pension.

Sub-clause (2) amends the meaning of "Child" in section 23 to reflect changes to the rehabilitation allowance in Social Security legislation and excludes from the definition certain children who are receiving a rehabilitation allowance.

Clause 10: Pensions upon death or incapacity

This clause proposes to amend section 24 of the Principal Act to extend the grounds upon which the Commonwealth is liable to pay a disability pension to a member of the Forces. The new liability provides for death or incapacity that has "arisen out of or is attributable to" war service.

This amendment provides the wider basis upon which all veterans of World War I may claim a disability pension. It means that the Commonwealth is liable to pay benefit in respect of the death or incapacity of a veteran who enlisted for, or was employed on active service outside Australia or employed on a ship of war; or of a member of the Army Medical Corps Nursing Service accepted or appointed for service outside Australia; on the basis that the incapacity or death:

- . results or has resulted from an occurrence that happened during his war service; or
- . has "arisen out of or is attributable to" war service.

For a veteran who enlisted or was appointed for service in connection with naval or military operations, the liability is on the basis of death or incapacity that:

- . results or has resulted from employment in connection with naval or military preparations or operations; or
- . has "arisen out of or is attributable to" war service.

Clause 88 sets out how these amendments to the liability provision

are to be applied. The new provision is to apply in relation to the consideration or reconsideration of a claim or application for pension after the commencement of the provisions (Royal Assent), irrespective of whether the determining authority has commenced to consider or reconsider the claim or application before the commencement date. This means that a determining authority when considering a claim for acceptance of an entitlement for pension will be required to consider it on the basis of the new and old liability regardless of the date on which the claim was lodged.

It will also mean that if the claim is accepted under the new liability provision the effective date of operation for the payment of pension will be determined by the date of the application or claim and will therefore allow retrospective payments.

All determining authorities, that is, the Repatriation Boards, the Repatriation Commission and the Repatriation Review Tribunal, will be able to apply the new liability provisions. Therefore, any veteran or dependant with a claim, application or appeal that has not been finalised will have the benefit of the new liability. Others who may wish to test their eligibility under the new provisions will need to lodge further applications or claims.

Clause 11: Variation of rate of pension

This clause proposes to amend section 35AAA of the Principal Act which provides for the automatic variation of rates of pension by reference to the Consumer Price Index. The computation of the Index has related to prices in the 6 State capital cities, but this is being changed to relate to the 8 capital cities (i.e. the 6 State capital cities, Canberra and Darwin). For a transitional period, the two Indices will be published, but the Index relating to the 6 State capital cities will eventually be discontinued. The new Index will apply for the May 1983 increases.

Clause 12: Change to status of child to be notified

This clause is consequential to amendments to the Social Security Act 1947 introducing the new rehabilitation allowance.

Clause 13: Maximum pension payable to widowed mothers

This clause amends the liability provisions consequential upon the amendment to section 24 of the Principal Act (clause 10) to cover the liability "arisen out of or attributable to" war service provision.

Clause 14: Pensions to certain dependent females

This clause is consequential upon the extension of the liability provisions being made to section 24 of the Principal Act (clause 10) to cover other possible acceptances of incapacity and death.

Clause 15: Pension to divorced wife of member

This clause is consequential upon the extension of the liability provisions being made to section 24 of the Principal Act (clause 10) to cover other possible acceptances of incapacity and death.

Clause 16: Pension payable to dependants on death of a member  
after termination of war service

This clause is consequential upon the extension of the liability provisions being made to section 24 of the Principal Act (clause 10) to cover other possible acceptances of incapacity and death.

Clause 17: Pensions to dependants of certain deceased members

This clause is consequential upon the extension of the liability provisions being made to section 24 of the Principal Act (clause 10) to cover other possible acceptances of incapacity and death.

Clause 18: Pensions payable to orphans of deceased members

Introduces a new section 46A to provide for disability pension to

be paid in respect of a child of a veteran who has served in a theatre of war and who died of causes not due to war service if both parents are deceased or, if the surviving parent, or adoptive parent, or step-parent is not maintaining the child.

This provision is similar to that providing for the payment of pension to the child of a veteran whose death was related to service or who was receiving or eligible to receive, at the time of death, a pension at the Special Rate or as a double amputee.

Sub-clause (2) provides that payments of pension under the new provision can be made from 11 November 1982. However, the provision covers situations where veterans have died before the commencement of the section.

#### Clause 19: Interpretation

This clause provides for several changes consequential upon amendment of the Social Security Act 1947.

Sub-clause(1) proposes changes in respect of rent subsidy. The definition of "income" in section 83 of the Principal Act, which describes amounts to be taken into account for the purposes of the income test, includes the amount paid by way of rent subsidy, whether paid directly to a person receiving a pension who pays rent, or on behalf of such a person to another person. The sub-clause proposes to amend the definition of "income" to exclude the payment of rent subsidy by a Government or a Government authority in respect of private premises. Sub-clause 2(3) proposes that the amendment to section 83 would apply in respect of instalments of pension falling due on or after 17 August 1982, the date when the Mortgage and Rent Relief Scheme came into operation.

Sub-clauses (2) and (3) reflect changes in the Social Security legislation to introduce rehabilitation allowance and mobility allowance.

Sub-clauses (3), (4) and (5) are formal clauses for application of the provisions in the clauses.

Clause 20: Restrictions as to dual pensions

Sub-clause (1) is a formal amendment to take account of the changes made to the Principal Act in relation to Commonwealth and allied mariners (clause 29) and clarifies what is a country other than Australia for the purpose of Repatriation legislation.

Sub-clause (2) is consequential upon amendments to Social Security legislation to prevent dual payments of similar pensions. A person is not permitted to receive two welfare-type pensions at the same time.

Clause 21: Variation of rate of service pension according to income

Sub-clause(1) amends section 87 of the Principal Act to require, when a veteran's eligibility for service pension and fringe benefits is being determined, that any disability pension shall be disregarded as income.

The level at which disability pension has been exempted from the service pension assessment has been increased progressively. Under current provisions, a service pensioner is entitled to have 60% of any disability pension he or she may be receiving disregarded in determining income for service pension assessment purposes and fringe benefits eligibility.

Fringe benefits include the provision of free medical treatment for veterans, subject to certain qualifications, for all conditions whether service-related or not. In addition, veterans and their dependants are eligible under the Pensioner Health Benefits Scheme which covers free treatment as well as eligibility for other benefits. Consequential benefits include transport and telephone rental concessions as well as various concessions available from State Governments, local authorities and private organisations.

The new provisions apply in relation to instalments of pension falling due on 11 November 1982.

Sub-clause (2) reflects the change in Social Security legislation for rehabilitation allowance.

Clause 22: Receipt of income to be notified

This clause is consequential upon amendments to the Social Security Act 1947. Sub-clause (1) reflects the increase in the level of income which a service pensioner may earn without affecting his eligibility to receive the maximum rate of service pension. The levels of income which can be earned before affecting service pension have been increased. In the case of:

- . a single pensioner, the amount is increased by \$10 setting the maximum level at \$30 a week;
- . a married couple, the amount is increased by \$15.50 to \$50 a week.

Section 96 of the Principal Act requires a pensioner to advise the Secretary of the Department of Veterans' Affairs of the receipt of an average weekly rate of income in any period of 8 consecutive weeks which is higher than the weekly rate of income that would affect the maximum rate of pension and is higher than the average rate of income last specified by the pensioner.

Sub-clause (2) reflects the change in Social Security legislation for rehabilitation allowance.

Clause 23: Supplementary Assistance

Where a service pensioner pays rent at a rate exceeding \$520 per annum (\$10 per week), an additional allowance called supplementary assistance may be payable under section 98A of the Principal Act. The maximum rate of supplementary assistance is currently \$416 per annum (\$8 per week).

Sub-clause (1) proposes to amend section 98A to increase the maximum rate of supplementary assistance to \$520 per annum (\$10 per week). The effect of the amendment is indicated in the following table:

RENT PER WEEK												
	\$	10	12	14	16	18	20	22	24	26	28	30
	0	-	1	2	3	4	5	6	7	8	9	10
	2	-	-	1	2	3	4	5	6	7	8	9
	4	-	-	-	1	2	3	4	5	6	7	8
Income	6	-	-	-	-	1	2	3	4	5	6	7
per	8	-	-	-	-	-	1	2	3	4	5	6
week	10	-	-	-	-	-	-	1	2	3	4	5
	12	-	-	-	-	-	-	-	1	2	3	4
	14	-	-	-	-	-	-	-	-	1	2	3
	16	-	-	-	-	-	-	-	-	-	1	2
	18	-	-	-	-	-	-	-	-	-	-	1
	20	-	-	-	-	-	-	-	-	-	-	-

Increased rates of supplementary assistance are payable from 11 November 1982 (Sub-clause (4)).

Sub-clauses (2) and (3) propose several amendments consequential to amendments to the Social Security Act. It is proposed that supplementary assistance not be paid where a person is in receipt of an incentive allowance or is in receipt of a rehabilitation allowance.

The sub-clause extends the requirement that where a service pensioner commences to receive a pension through the Department of Social Security, he or she is to advise the Secretary of the Department of Veterans' Affairs within 14 days.

Clause 24: On death of a married person, widow, widower or children to retain certain benefits for 12 weeks

This clause is a formal amendment following changes to the Social Security Act 1947.

Clause 25: Interpretation

This clause contains several formal drafting amendments and is consequential upon the amendment to be made in clause 4 which defines a "foreign country".

Clause 26: Certain persons not members of the Forces of a Commonwealth Country

This clause is a formal amendment referring to countries other than Australia. It is consequential upon the amendment to be made in clause 4 which defines a "foreign country".

Clause 27: Interpretation

This clause introduces a number of minor drafting changes consequential upon the amendment to be made in clause 4 which defines a "foreign country".

Clause 28: Certain persons not members of the Forces of an allied Country

This clause introduces a minor drafting change consequential upon the amendment to be made in clause 4 which defines a "foreign country".

Clause 29: Extension of Application of Provisions of Division 5 to certain Commonwealth and Allied Mariners

This clause introduces a new Division 5D which extends eligibility for service pension to certain former Commonwealth and allied merchant mariners.

New section 98N: Date of commencement of service pension

This new section provides that the date of commencement of service pension payment for Commonwealth and allied mariners will be 3 February 1983.

New section 98P: Extension of application of Division 5 to Commonwealth mariners

This new section provides that former Commonwealth mariners who served in a theatre of war are to be eligible for service pension. It also provides that a mariner's wife and children are eligible on a similar basis as the dependants of members of the Forces.



New section 98Q: Commonwealth mariners

This clause defines a "Commonwealth mariner".

A Commonwealth mariner (not being an Australian mariner) is:

- . any master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on any ship that was registered in a Commonwealth country and engaged in trading;
- . any master, officer, seaman, or apprentice employed in a lighthouse tender or pilot ship of a Commonwealth country;
- . any pilot employed by a Commonwealth country; and
- . any master, officer, seaman or apprentice employed in sea-going service on a ship that was operated by, or on behalf of, a Commonwealth country, including a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel.

The clause also provides that a Commonwealth mariner must have served in a theatre of war. A mariner will satisfy the requirement of having served in a theatre of war if he was detained by the enemy or meets the criteria necessary for the award of a campaign medal, having incurred danger from hostile forces.

The clause further provides that a Commonwealth mariner must have at any time been continuously resident in Australia for not less than 10 years.

A person will not be regarded as a Commonwealth mariner if he was, at any time, employed on a ship that operated from a port, engaged in trading with, or engaged in providing

assistance or support to the enemy, or to a country that was, at that time, at war with Australia.

The new sub-section 98Q(2) provides that if a Commonwealth mariner has not had ten years continuous residence he must have had at least five years continuous residence in Australia and more than ten years in the aggregate. In such a case, the period of ten years continuous residence required will be reduced by the total of all his periods of residence in excess of ten years. This follows the principle applied to Commonwealth and allied members of the Forces and is similar to the Social Security Act in relation to applicants for age pension.

New section 98R: Extension of application of Division 5 to allied mariners

The new section provides that former allied mariners who served in a theatre of war are to be eligible for service pension. It also provides that a mariner's wife and children are eligible on a similar basis as the dependants of members of the Forces.

New section 98S: Allied mariners

This new section defines an "allied mariner".

An allied mariner (not being an Australian or Commonwealth mariner) is:

- . any master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on any ship engaged in trading;
- . any master, officer, seaman or apprentice employed in a lighthouse tender or pilot ship;
- . any person employed as a pilot; or

- . any master, officer, seaman or apprentice employed in sea-going service on a ship operated by, or on behalf, of a foreign country, including a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel.

The new paragraph 98S(1)(b) provides that an allied mariner during the course of his employment, during the war must have served on a ship that operated from the port of an allied country, traded with, supported, or provided assistance to allied forces or allied countries.

The clause also provides that an allied mariner must have served in a theatre of war. A mariner will satisfy the requirement of having served in a theatre of war if he was detained by the enemy or meets the criteria necessary for the award of a campaign medal, having incurred danger from hostile forces.

The clause also provides that an allied mariner must at any time have been continuously resident in Australia for not less than 10 years.

A person is excluded from being an allied mariner if he was, at any time, employed on a ship that was operated from a port, engaged in trading with, or engaged in providing assistance to the enemy or to a country that was at war with Australia; or was employed by a country that was, at that time, at war with Australia.

Sub-section 98S(2) provides that an allied mariner who has not had ten years continuous residence must have had at least five years continuous residence in Australia and more than ten years in the aggregate. In such a case the period of ten years continuous residence otherwise required will be reduced by the total of all his periods of residence in excess of ten years. This follows the principle applied to Commonwealth and allied members of the Forces and is similar to the Social Security Act in relation to applicants for age pension.

Clause 30: Extension of application of the Act to certain male members of the Forces.

This clause is consequential upon the extension of the liability provisions being made in the Principal Act. It is necessary to apply the new provisions for members of the Forces of World War II. This clause applies to them the full benefits which have been granted by the amendment of section 24. It also grants to their dependants the full benefits available to the dependants of World War I veterans as amended by this Act.

Clause 31: Interpretation

Section 100 of the Repatriation Act, as it is currently drafted, provides definitions in relation to male members of the Forces who served in World War II. The amendments proposed to the section will have the effect of extending eligibility to include persons who were not actually members of the Forces, but were attached to the Forces and served beside members of the Forces. These persons who have previously received Repatriation benefits on an 'Act of Grace' basis are as follows:

- (1) Members of the Citizen Forces with continuous part-time service. This group consists of veterans whose part-time service precludes their recognition as 'Members of the Forces' under section 100 of the Repatriation Act. In particular, it takes in people who:

- . enlisted for a fixed time (e.g., three years) before 3 September 1939 and who, without taking any further oath of enlistment or without being appointed or called-up for continuous service, served after that date on part-time duty only; or
- . after 2 September 1939 did not take an oath of enlistment, were not appointed or were not called-up for continuous service, and served on part-time duty only. (Some part-time members of the Volunteer Defence Corps are in this category).

(2) Representatives of philanthropic organisations who were attached to the Forces and accredited by the relevant Service Department. The organisations were:

- . The Australian Red Cross Society;
- . The Young Men's Christian Association;
- . The Young Women's Christian Association;
- . The Salvation Army; and
- . The Australian Comforts Fund.

(3) Commonwealth employees who were attached to the Forces and accredited by the relevant Service Department. The Commonwealth employers were in the main:-

- . The Australian Broadcasting Commission (in respect of personnel of field broadcasting units);
- . The Department of Home Security (camoufleurs attached to the R.A.A.F.); and
- . The Department of Information (official war correspondents and photographers).

(4) Civil aviation personnel (R.A.A.F. reserve) who were employed in forward areas.

(5) Telegraphist employees of Amalgamated Wireless Australasia Ltd., who were attached to the R.A.N.

(6) Canteen staffs employed by contractors on H.M.A. Ships.

(7) The widows, children and other dependants of New Guinea citizens who died as a result of the Japanese invasion of that Territory, and citizens who are incapacitated as a result of imprisonment by the Japanese.

Clause 32: Liability of Commonwealth to pay pensions to certain male members of the Forces

This clause introduces a minor drafting change consequential upon an amendment to be made in clause 4 which defines a "foreign country".

The new sub-section (IAAA) provides that where the husband of an eligible citizen was killed as a result of action during the invasion of the Territories of Papua and New Guinea by the enemy during World War II that death shall be deemed to be attributable to war service and the Commonwealth will be liable to pay pension to the widow and dependants. These are the widows and children of Australian residents in Papua and New Guinea who were killed as a result of action during the invasion.

Clause 33: Heading to Division 7 of Part III

This clause amends the heading of Division 7 of the Repatriation Act to reflect more accurately the changes being made to widen eligibility in clause 35.

Clause 34: Extension of application of Act to certain female members of the Forces

This clause is consequential upon extension of the liability provisions and the extension of the definition of member of the Forces to cover 'Act of Grace' persons.

Clause 35: Interpretation

This clause is an interpretative provision to extend eligibility to females who served with the Forces. Persons involved are similar to those set out in the notes on clause 31.

Clause 36: Extension of application of Act to certain male members of the Forces

This clause is consequential upon the extension of the liability

provisions being made in the Principal Act (clause 10). It is necessary to apply the new provision to members of the Forces who served in Korea/Malaya. It applies to them the full benefits which have been granted by the amendment of section 24. It also grants to their dependants the full benefits that will be available to dependants of World War I veterans.

Clause 37: Interpretation

This clause is an interpretative provision amending the definitions of "member of the Forces" and "war service" to extend eligibility to certain persons who served with the Forces. Persons involved are similar to those set out in clause 31.

Clause 38: Liability of Commonwealth to pay pensions to certain male members of the Forces.

This clause extends the liability provision of "arisen out of or attributable to" to members of Forces in the Korea/Malaya operations.

Clause 88 sets out how these amendments to the liability provision are to be applied. The new provision is to apply in relation to the consideration or reconsideration of a claim or application for pension after the commencement of the provisions (Royal Assent), irrespective of whether the determining authority has commenced to consider or reconsider the claim or application before the commencement date. This means that a determining authority when considering a claim for acceptance of an entitlement for pension will be required to consider it on the basis of the new and old liability regardless of the date on which the claim was lodged. It will also mean that if the claim is accepted under the new liability provision the effective date of operation for the payment of pension will be determined by the date of the application or claim and will therefore allow retrospective payments.

All determining authorities, that is, the Repatriation Boards, the Repatriation Commission and the Repatriation Review Tribunal, will be able to apply the new liability provisions. Therefore, any

veteran or dependant with a claim, application or appeal that has not been finalised will have the benefit of the new liability provision. Others who may wish to test their eligibility under the new provisions will need to lodge further applications or claims.

This clause also introduces a number of minor drafting changes consequential upon the amendment to be made in clause 4 which defines a foreign country.

Clause 39: Extension of application of Act to certain female members of the Forces

This clause is consequential upon the extension of the liability provisions being made to the Principal Act (clause 10). It is necessary to apply the new provisions to female members of the Forces who served in the Korea/Malaya operations.

Clause 40: Interpretation

Amends the definition of "member of the Forces" to extend eligibility to certain females who served with the Armed Forces during the Korea/Malaya operations.

This clause includes those females who come within the groups outlined in the notes on clause 31.

Clause 41: Extension of application of Act to members to whom this Division applies

This clause is consequential upon the extension of the liability provisions.

It applies to them benefits which have been granted by the amendment of section 24. It also grants to their dependants benefits that will be available to the dependants of World War I veterans.



Clause 42: Interpretation

This clause amends the definition of "peacekeeping service" in section 108J of the Principal Act to permit Repatriation benefits to be made available to members of Peacekeeping Forces who served before 2 November 1981.

Effective from 2 November 1981, Repatriation benefits were extended to all representatives of Australia who, from that date, suffered death or incapacity while serving with the United Nations or other recognised international bodies engaged in such duties as those of peacekeeping, observation and monitoring.

Since 1948, Defence Force personnel have been involved overseas in peacekeeping and monitoring roles and since 1964 a police contingent has carried out a similar role on Cyprus. In almost all instances personnel have been active in unstable areas. Members of the Defence Forces serving overseas as members of United Nations Peacekeeping Forces before 2 November 1981 are covered by United Nations compensation provisions and by the Compensation (Commonwealth Government Employees) Act.

Under the new provision, eligibility for Repatriation benefits will be extended to all representatives of Australia who, prior to 2 November 1981, served with peacekeeping, observation and monitoring forces, as specified by the Minister.

Pension can be paid to such members on and from the date of Royal Assent.

Clause 43: Dual entitlement

This clause clarifies the meaning of what is a country other than Australia for the purposes of the Principal Act and is consequential upon the amendment of section 6 made by clause 4.

Clause 44: Statement of decision of Tribunal etc.

This clause repeals section 107VK of the Principal Act and substitutes a new section which provides that the Repatriation

Review Tribunal may give its reasons for decisions either orally or in writing. Where oral reasons are given, sub-clause (2) enables a party to request that the Tribunal furnish within 28 days a written statement of the reasons for its decision. Sub-clause (3) provides that, where the Tribunal gives written reasons for decision, those reasons are to include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based. This is the same form in which written reasons are now required to be given. This amendment is similar to the amendment of the Administrative Appeals Tribunal Act 1975 as introduced by section 33 of the Statute Law (Miscellaneous Amendments) Act (No. 1) 1982. (No. 26 of 1982).

Clause 45: Limits of Retrospective Operation

This clause enables the Repatriation Review Tribunal to set a retrospective date of operation of a decision on an application by an applicant against a decision of a Repatriation Board on assessment of pension. All such Board decisions were not previously covered.

Clause 46: Terms of appointment

This clause provides that a person shall not be appointed or re-appointed to the Repatriation Review Tribunal on a full-time or part-time basis, for a period that extends beyond the date on which he attains 65 years of age. At present the provision applies only to full-time members of the Tribunal. Part-time appointments have not been made for any period beyond the sixty-fifth birthday of the member.

Clause 47: Appeal to Federal Court of Australia from decisions of the Tribunal

This clause extends the time limits for appeals on oral decisions to 28 days after a copy of the written statement of the reasons for the decision that were given orally is received.

Clause 48: Modification of Repatriation Regulations

Clause 48 relates to the effect of section 123A of the Principal Act . The existing provisions limit the free treatment under regulation to those service pensioners whose income is less than the prescribed limits. The amendment will allow regulations to be made to extend free treatment to a member of the Forces in receipt of a disability pension at not less than 50% of the General Rate and any service pension.

Clause 49: Prescribed persons

Clause 49 increases the amount of income a pensioner is able to receive before being precluded from eligibility for "fringe benefits". The income levels at which eligibility is precluded have been increased from \$2,080 to \$2,808 per annum in the case of an unmarried service pensioner and from \$1,768 to \$2,340 in the case of a married pensioner. If a pensioner has custody, care and control of children, the level of income is to be increased by \$1,040 per annum in respect of each child. In the Principal Act separate rates are presented for children of married and unmarried pensioners. The amendment abolishes this distinction.

This clause also amends the meaning of child to reflect changes to the rehabilitation allowance in Social Security legislation.

Clause 50: Regulations

This clause covers general machinery amendments and amendments to allow regulations to be made in respect of former Commonwealth and allied mariners.

Clause 51: Schedule 2

Clause 51 increases the rates of attendant's allowance payable to a more seriously incapacitated member of the Forces.

This allowance is paid to provide assistance towards the cost of an attendant to help the veteran who, as a result of his service-related incapacity, is not able to carry out the normal

activities of his daily living.

Clause 52: Schedule 3

This clause increases the rates of pension payable to children of a deceased veteran (commonly referred to as the Orphan's Pension).

Clause 53: Schedule 5

This clause increases the rate of "additional pension" payable in respect of certain amputations and loss of vision. As well, it increases the rate of attendant's allowance to the most severely handicapped amputees. The first 6 items of Column 2 are indexed and automatically increased by the operation of sub-section 35AAA(7) of the Principal Act.

The effect of the amendment will mean that from 11 November 1982 the pension and amounts payable to these persons will be:

	\$ per week
One leg amputated above, and one leg amputated below, the knee	86.85
Two legs amputated below the knee	76.80
One arm amputated and one eye destroyed	73.85
One leg amputated and one eye destroyed	73.85
One leg amputated above the knee	50.80
One leg amputated below the knee	46.60
One arm amputated above the elbow	50.80
One arm amputated below the elbow	46.60
Loss of vision in one eye	34.85

Clause 54: Formal amendments

Formal amendments to change other references to 'Social Services Act 1947' to 'Social Security Act 1947' wherever occurring.

PART III - AMENDMENTS OF THE SEAMEN'S WAR PENSIONS  
AND ALLOWANCES ACT 1940

Clause 55: Principal Act

This clause cites the Principal Act as the Seamen's War Pensions and Allowances Act 1940.

Clause 56: Interpretation

This clause defines a "foreign country" as a country other than Australia for the purposes of the Principal Act.

Clause 57: Pensions Committees to consult and co-operate with  
Commission

This clause is consequential upon the amendment in clause 44 which allows the Repatriation Review Tribunal to give oral reasons for decisions.

Clause 58 Removal of Member of Pensions Committee from Office

Disclosure of Interests of Members of Pensions Committees

This clause inserts in the Principal Act new provisions relating to the removal from office of a member of the Seamen's Pensions Committee as a result of the inclusion of the disclosure of interests provision for members of the Pensions Committee. The amendments are similar to those being inserted in the Repatriation Act for members of Repatriation Boards (clause 7 - new sections 17AAB and 17AAC)).

Clause 59: Pensions payable to orphans of certain deceased  
Australian mariners

This clause inserts a new provision, similar to the new section 46A of the Repatriation Act (clause 18), to provide for disability pension to be paid in respect of a child of an Australian mariner who died of causes not due to war service, if both parents are deceased or, if the surviving parent, or adoptive

parent, or step-parent is not maintaining the child.

Clause 60: Rates of pension on death or total incapacity

This clause increases the rates of pension payable to children of certain deceased Australian mariners (commonly referred to as the Orphan's Pension).

Clause 61: Variation of rate of pension

This clause amends the Principal Act to take into account the variations in the basis of determination of the Consumer Price Index. This amendment is the same as the amendment by clause 11 to the Repatriation Act.

Clause 62: Persons entitled to payments under other laws

This clause defines a "foreign country" as a country other than Australia for the purposes of the Principal Act and is consequential upon the amendment of section 3 made by clause 50.

Clause 63: Change of Status of Child to be notified

Formal amendment to take into account changes to the Social Security Act 1947.

Clause 64: Deductions from Pensions and Allowances of certain amounts

Clause 64 is a formal amendment to take into account changes to the Social Security Act 1947.

Clause 65: Schedule 2

This clause increases the rates of attendant's allowance payable to seriously incapacitated former Australian mariners.

PART IV - AMENDMENTS OF THE INTERIM FORCES  
BENEFITS ACT 1947

Clause 66: Principal Act

This clause cites the Principal Act as the Interim Forces Benefits Act 1947.

Clause 67: Interpretation

This clause omits the current definition of "member of the Interim Forces" and inserts new definitions relating to "enlistment", "member of the Interim Forces" and "war service".

Clause 68: Benefits of members of the Interim Forces

Amends section 4 of the Principal Act for machinery amendments to refer to members of the Defence Force rather than members of the Naval, Military and Air Forces of the Commonwealth.

Clause 69: Extension of application of Repatriation Act to male members of the Interim Forces

This clause is a formal provision updating the application provision of the Repatriation Act as amended by this Bill and as applicable to members of the Interim Forces.

Clause 70: Extension of certain provisions of the Repatriation Act to female members of the Interim Forces

This clause is a formal provision updating the application provisions of the Repatriation Act as amended by this Bill and as applicable to members of the Interim Forces.

Clause 71: Application of Parts IIIA, IIIB and IIIC of the Repatriation Act

This clause provides that a reference to "war service" in relation to World War II shall refer to war service in the Interim Forces.

PART V - AMENDMENTS OF THE REPATRIATION (FAR EAST  
STRATEGIC RESERVE) ACT 1956

Clause 72: Principal Act

This clause cites the Principal Act as the Repatriation (Far East Strategic Reserve) Act 1956.

Clause 73: Interpretation

This clause inserts a new definition of "Malayan service" in the Principal Act to use the term the Defence Force rather than the Naval, Military or Air Forces and include persons coming within the "Act of Grace" category of beneficiaries. The clause also inserts a definition of "member of the Defence Force" which covers members of the Citizen Military Force.

Clause 74: Liability of the Commonwealth to pay pensions to  
members of the Forces

This extends the liability provisions of the Principal Act to provide for disability pension to be paid to members of the Forces whose incapacity or death arose out of or is attributable to Malayan service.

The current provision provides for a disability pension to be paid only if the incapacity or death of a member resulted from an "occurrence" that happened during Malayan service.

Clause 88 sets out how these amendments to the liability provision are to be applied. The new provision is to apply in relation to the consideration or reconsideration of a claim or application for pension after the commencement of the provisions (Royal Assent), irrespective of whether the determining authority has commenced to consider or reconsider the claim or application before the commencement date. This means that a determining authority when considering a claim for acceptance of an entitlement for pension will be required to consider it on the basis of the new and old liability regardless of the date on which the claim was lodged. It will also mean that if the claim is accepted under the new



liability provision the effective date of operation for the payment of pension will be determined by the date of the application or claim and will therefore allow retrospective payments.

All determining authorities, that is, the Repatriation Boards, the Repatriation Commission and the Repatriation Review Tribunal, will be able to apply the new liability provisions. Therefore, any veteran or dependant with a claim, application or appeal that has not been finalised will have the benefit of the new liability. Others who may wish to test their eligibility under the new provisions will need to lodge further applications or claims.

Clause 75: Extension of certain provisions of the Repatriation Act

This clause is consequential upon the extension of the liability provisions being made to the Repatriation Act 1920 (clause 10) to cover other possible acceptances of incapacity and death.

It applies the full benefits which have been granted by the amendment of section 24. It also grants to eligible dependants the full benefits that will be available to dependants of World War I veterans.

Clause 76: Pensions payable to certain dependent females

This clause is consequential upon the extension of the liability provisions being made to the Repatriation Act 1920 (clause 10) to cover other possible acceptances of incapacity and death.

Clause 77: Pension to divorced wife of member

This clause is consequential upon the extension of the liability provisions being made to the Repatriation Act 1920 (clause 10) to cover other possible acceptances of incapacity and death.

PART VI - AMENDMENTS OF THE REPATRIATION (SPECIAL  
OVERSEAS SERVICE) ACT 1962

Clause 78: Principal Act

This clause cites the Principal Act as the Repatriation (Special Overseas Service) Act 1962.

Clause 79: Interpretation

Clause 79 is an interpretative provision. It inserts a definition of "member of the Defence Force" to replace previous references to Naval, Military and Air Forces, the Citizen Military Forces and persons coming within the "Act of Grace" category of beneficiary. It also defines "foreign country" to mean a country other than Australia.

Clause 80: Liability of the Commonwealth to pay pensions to  
members of the Force

This clause extends the liability provisions of the Principal Act to provide for disability pension also to be paid to a member of the Forces whose incapacity or death "arose out of or is attributable to special service".

The current provision provides for a disability pension to be paid only if the incapacity or death of a member resulted from an "occurrence" that happened during his service.

Clause 88 sets out how these amendments to the liability provision are to be applied. The new provision is to apply in relation to the consideration or reconsideration of a claim or application for pension after the commencement of the provisions (Royal Assent), irrespective of whether the determining authority has commenced to consider or reconsider the claim or application before the commencement date. This means that a determining authority when considering a claim for acceptance of an entitlement for pension will be required to consider it on the basis of the new and old liability provision regardless of the date on which the claim or application was lodged. It will also mean that if the claim or

application is accepted under the new liability provision the effective date of operation for the payment of pension will be determined by the date of the application or claim and will therefore allow retrospective payments.

All determining authorities, that is, the Repatriation Boards, the Repatriation Commission and the Repatriation Review Tribunal will be able to apply the new liability provisions. Therefore, any veteran or dependant with a claim, application or appeal that has not been finalised will have the benefit of the new liability.

Others who may wish to test their eligibility under the new provisions will need to lodge further applications or claims.

Clause 81: Extension of certain provisions of the Repatriation Act

This clause is consequential upon the extension of the liability provisions being made to the Repatriation Act 1920 (clause 10) to cover other possible acceptances of incapacity and death.

It applies the full benefits which have been granted by the amendment of section 24. It also grants to eligible dependants the full benefits that will be available to dependants of World War I veterans.

Clause 82: Repeal of section 7A and substitution of new section

Pensions in relation to service other than special service.

Section 7A of the Principal Act refers to pension payable in respect of incapacity or death outside Australia as a result of action by hostile forces even though the incapacitated or deceased member was not at the time allotted for service in a special area. The section is remade consequent upon extension under this Act of Commonwealth liability where death or incapacity "arises out of or is attributable to" special service.

Clause 83: Pensions payable to certain dependent females

This clause is consequential upon the extension of the liability provisions being made to the Repatriation Act 1920 (clause 10) to

cover other possible acceptances of incapacity and death.

Clause 84: Pension to divorced wife of member

This clause is consequential upon the extension of the liability provisions being made to section 24 of the Repatriation Act 1920 (clause 10) to cover other possible acceptances of incapacity and death.

It applies the full benefits which have been granted by the amendment of section 24. It also grants to eligible dependants the full benefits that will be available to dependants of World War I veterans as amended by this Act.

PART VII - CERTAIN PENSIONS PAYABLE IN RESPECT  
OF PULMONARY TUBERCULOSIS

Clause 85: Minimum rate of certain pensions payable in respect of  
pulmonary tuberculosis

Prior to 1978, the Repatriation Act provided for the payment of a minimum pension set at 100% of the General Rate in respect of tuberculosis (T.B.) to all veterans who had this condition accepted as service-related or who had served in a theatre of war

From 1 November 1978, pensions for T.B. were frozen at the 100% rate then in payment and were subsequently increased only if the actual assessment for all service-related disabilities warranted an increase.

Clause 85 proposes to restore the payment of disability pension at the 100% General Rate to veterans who received a pension for pulmonary tuberculosis prior to 2 November 1978 or who, prior to that date, had lodged a claim which was subsequently accepted. The proposal will also provide for future increases in disability pension in line with movements in the Consumer Price Index to be granted to these veterans.

The effective date of the new provision will be 6 January 1983.

PART VIII - AMENDMENT OF SEAMEN'S WAR PENSIONS  
AND ALLOWANCES ACT 1952

Clause 86: Principal Act

This clause cites the Principal Act as the Seamen's War Pensions and Allowances Act 1940.

Clause 87: Interpretation

This clause amends section 4 of the Principal Act to ensure that benefits are made available to Australian mariners from the date that World War II commenced, viz: 3 September 1939.

PART IX - APPLICATION OF CERTAIN AMENDMENTS

Clause 88: Application of amendments relating to certain extensions of Commonwealth liability

This is a formal clause relating to the dates of application of certain amendments.

Clause 89: Application of amendments relating to certain "Act of Grace" payments

Clause 89 provides that pensions payable under this legislation to persons presently eligible only on an "Act of Grace" basis (e.g. persons referred to in the notes on clause 31) shall be payable under the Repatriation Act as from 11 November 1982.





