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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VETERANS' AFFAIRS LEGISLATION
AMENDMENT AND REPEAL BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,
The Honourable Con Sciacca MP)



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OUTLINE AND PURPOSE

General

This Bill contains a large number of minor policy and technical changes to Veterans' Affairs legislation.

Repeal obsolete legislation

This proposal repeals the following Acts:

- * *War Service Homes Agreement Act 1932*
- * *War Service Homes (South Australia) Agreement Act 1934*

The two Acts serve no useful purpose. These Acts approved agreements, between the Commonwealth of Australia and the Commissioners of the State Savings Bank of Victoria and between the Commonwealth of Australia and the State of South Australia, to arrange the transfer back to the 'War Service Homes Commissioner' of the Bank's or the State's interest in certain war service homes.

Any Commonwealth interest in any of the properties covered by the agreements would have now been transferred to Westpac under the agreement with that bank.

Assessment of child-related payments for blind service pensioners

This proposal amends the *Veterans' Entitlements Act* to provide that for blind veterans with dependent children:

- * the income and assets tests would not apply to child related payments (dependent child add-on [DCAO], guardian allowance, and rent assistance); and
- * any failure to pursue a maintenance claim would not result in the loss of DCAO.

This proposal treats blind veteran service pensioners with children on a similar basis to social security blind pensioners.

Calculation of rate of rent assistance for blind veterans with no dependent children

This change is to correct an anomaly in the calculation of the rate of rent assistance for blinded veterans with no dependent children.

The proposed amendment ensures that a blind pensioner receives a minimum amount equal to the elements of the service pension that are free of income and assets testing, but any rent assistance will be subjected to income and assets testing.

Local exchange trading systems - non-cash credits not to be treated as income

The *VEA* includes a 'valuable consideration' within the definition of income for the purpose of the service pension income test. A valuable consideration is not defined in the *VEA* but is taken to include goods or services received by the pensioner in exchange for goods or services provided by the pensioner.

This proposal amends the *VEA* to provide that non-cash credits received by a participant in a local exchange trading system will be exempt from the definition of income.

Definition of "special maintenance income"

This proposal amends the definition of 'special maintenance income' to exclude any payment of expenses in respect of a dependent child's disability or learning difficulty.

Special maintenance income ceiling

This proposal aligns the calculation of a 'single' pensioner's special maintenance ceiling rate with that of a member of a couple.

Consequential amendments flowing from Budget proposals

Legislative amendments required for the implementation of the Veterans' Affairs Budget package were included in two Budget bills. The first, the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994* was passed during the 1994 Winter Sittings. The *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill (No 2) 1994* has been passed and was given Royal Assent on 16 December 1994. It is possible that not all the consequential amendments have been identified. Any outstanding minor amendments would be included in this Bill.

Definition of "dependent child" with income

This proposal amends the *VEA* to ensure that income from all sources is considered when determining whether a child younger than 16 who is not a full time student is dependent on a service pensioner veteran.

Definition of "dependent child"

This proposal amends the *Veterans' Entitlements Act* to provide that the definition of "dependent child" for service pension purposes, requires that a child be wholly or substantially dependent on the veteran.

This definition was applied before a rewrite of the Act in 1991. The current definition of dependent child does not carry through all of the features that were present in the Act prior to the rewrite.

The amendment will ensure that the expression "dependent child" as used in Part III of the Act will carry the additional meaning that the child is wholly or substantially dependent on a service pensioner.

Remote Area Allowance (RAA)

RAA is paid to service pensioners to compensate residents for the higher than normal cost of living associated with living in a remote area. Under the current definition of "remote area" as found at sub-section 5Q(1) of the *Veterans' Entitlements Act*, there is currently no mechanism providing eligibility for RAA for service pensioner residents of Norfolk Island or Lord Howe Island.

The proposed amendment ensures those service pensioner residents of Norfolk Island and Lord Howe Island are eligible to receive RAA.

Amend the definition of "income" to allow for the averaging of income over a period

Prior to the Rewrite of Part III of the *VEA* in 1991, service pension was assessed using a person's "annual rate of income". The Service Pension and Income Support Supplement Rate Calculators in Part III and IIIA now determine income by reference to the amount of a person's income on a yearly basis.

The High Court of Australia in *Harris v Director-General Social Security* (1985) 57 ALR 729, distinguished an annual rate of income from an annual amount of income.

These amendments return the *VEA* to the pre-Rewrite wording of an annual rate of income.

Certain life interest created by a person's deceased partner to be treated as an asset

This amendment ensures that a life interest of a person created under the will of a deceased person's partner is treated as a life interest created by the person's partner, and is included in the value of a person's assets, unless it is otherwise exempted.

Rent assistance to war widow/ers who receive a frozen rate of service pension

The proposed amendments will treat "frozen rate" service pensioners on a similar basis to social security "frozen rate" pensioners.

"Frozen rate" service pensioner war widow/ers with dependent children currently are paid less than their social security counterparts. The latter do not receive any child related payment (including rent assistance) as part of their pension, but instead are now eligible for additional family payment (AFP) in the family payment system. In that system they receive full AFP which is not affected by their receipt of any disability pension.

Portability of carer service pension

The amendment provides that a person in receipt of a carer service pension would not lose eligibility for that pension while temporarily out of Australia to accompany the person cared for, up to a maximum period of three months.

Cessation date for Somalia as an operational area

This proposal amends Schedule 2 to the *Veterans' Entitlements Act 1986* to include a cessation date for Somalia as an operational area.

From 20 October 1992, service in Somalia for ADF members deployed to the area was declared as operational service for the purposes of benefits under the VEA. The Department of Defence has advised that as from 30 November 1994, all Australian personnel serving in Somalia have been withdrawn.

Minor Technical Amendments

A large number of minor technical amendments to the *Veterans' Entitlements Act* are necessary. The amendments reflect changes to the *Social Security Act 1991*, improve readability, correct imperfections in the *Veterans' Entitlements Act* rewrite, and correct typographical errors.

Financial Impact

The measures contained in this Bill have no financial impact.

CLAUSES

Short Title

Clause 1 sets out how the Act is to be cited.

Commencement

Clause 2 sets out the various commencement dates of the provisions in the Act. These will be explained in more detail as each topic is explained.

Amendments

Subclause 3(1) provides that the *Veterans' Entitlements Act 1986* is amended in accordance with Schedule 1. That Schedule is explained in detail below.

Subclause 3(2) provides that the *Veterans' Affairs Legislation Amendment Act 1990* is amended in accordance with Schedule 2. That Schedule is explained in detail below.

Subclause 3(3) provides that the *Veterans' Entitlements (Rewrite) Transition Act 1991* is amended in accordance with Schedule 3. That Schedule is explained in detail below.

Subclause 3(4) provides that the *Veterans' Affairs Legislation Amendment (No. 2) Act 1992* is amended in accordance with Schedule 4. That Schedule is explained in detail below.

Subclause 3(5) provides that the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994* is amended in accordance with Schedule 5. That Schedule is explained in detail below.

Subclause 3(6) provides that the *Military Compensation Act 1994* is amended in accordance with Schedule 6. That Schedule is explained in detail below.

Repeals

Clause 4 provides that two Acts, facilitating the transfer of interest in war homes back to the federal scheme, are repealed. These Acts have long since served their purpose.

SCHEDULE 1

PART 1

Rates of service pension for blind people

Overview

These amendments to the *Veterans' Entitlements Act 1986* (the VE Act) provisions relating to the calculation of pension rates for blind service pensioners have several purposes. They:

- implement a new rate calculation methodology for blind service pensioners with children more closely emulating social security family payment for blind social security pensioners with children;
- ensure that the beneficial tax treatment intended by the 1987 poverty traps legislation is achieved without changing the total amount of pension payable; and
- make a number of other minor and technical amendments.

Background

The VE Act includes a separate rate calculation methodology for blind service pensioners. In recognition of their special needs, this rate calculation methodology is more beneficial than the rate calculation methodology applying to all other service pensioners.

Explanation of the items

Items 1 and 2 insert a new subsection into section 43. If a blind person has transferred to a service pension from a social security pension, new subsection 43(4) provides for

a reduced rate of service pension for the first instalment following the transfer. The new subsection is similar to existing subsections 41(6) and 42(5) which apply to most other service pensioners.

The reduced rate makes allowance for the one week offset between the different fortnightly pension pay-days of the two Departments.

A different formula for service pensioners with children applies because family payment pay-days are on the same days as service pension pay-days.

The changes in items 1 and 2 are taken to have commenced on 20 March 1995.

Items 3, 4, 5 and 6 amend the new subsection 43(4) inserted by item 2 to reflect the amendments in item 7. The definitions of *reduced annual rate*, *PA*, *DCA* and *RA* in the new subsection all refer to the method statement in point 43-A1 and that method statement is being amended as described below.

Item 7 renames the existing method statement in point 43-A1 so that it will apply only to blind people *with children* and inserts an additional method statement that applies only to blind people *without children*.

The new method statement provides a rate that is the greater of two provisional rates. One is a fully income or assets tested rate which may include rent assistance and the other is a maximum payment rate which excludes rent assistance. In combination with section 40C dealing with the order of reductions for income tax purposes, a poverty trap is avoided.

Item 8 makes a consequential amendment to point 43-A2 following the method statement changes in item 7. It provides for the income testing described above for that item.

Item 11 adds a note to point 43-D3 to alert the reader to the repeal of provisions in the Social Security Act dealing with incentive allowance.

Items 3 to 8 and item 11 commence on Royal Assent.

The amendments in items 9, 10 and 12 ensure that under the VE Act child related payments for blind people will be on a similar basis to family payment payable to blind people under the Social Security Act.

Item 9 amends the method statement in point 43-C1 dealing with additional amounts for children. Instead of merely guaranteeing the addition of the highest amount for a dependent child of the blind person, the method statement now ensures that the amounts for all dependent child will be added.

Item 10 omits point 43-C3A. Blind people will thus no longer lose child related payments if they fail to pursue a maintenance claim.

Item 12 substitutes a new note for Note 3 to point 43-D4. The new note specifies that the rate of rent assistance calculated for a blind person under sub-point 43-D4(b) is not subject to certain income or assets testing.

Items 9, 10 and 12 are taken to have commenced on 1 January 1994.

Commencement

Subclause 2(9) provides that items 1 and 2 are taken to have commenced on 20 March 1995.

Subclause 2(1) provides that items 3 to 8 and item 11 commence on Royal Assent.

Subclause 2(2) provides that items 9, 10 and 12 are taken to have commenced on 1 January 1994.

SCHEDULE 1

PART 2

Exchange trading systems

Overview

These amendments exempt credit entries in certain exchange trading systems from the income test provisions in the *Veterans Entitlements Act 1986* (the VE Act).

Background

A local exchange trading system is similar to a barter system, in that goods and services are exchanged without recourse to money. Each member of the exchange trading system has an account. The value of goods or services the member provides to another member is a credit to the member's account. The value of the goods or services received from other members is a debit to the member's account.

The exchange trading system is seen as a useful community initiative, as it assists members to keep in contact with labour market skills and habits. Treating the credit entries in such accounts as income for the purposes of pension rate assessment would be a discouragement to participation in these schemes. Exempting the credits from income will overcome this disincentive.

Similar changes were made to the *Social Security Act 1991* by Division 17 of Part 2 of the *Social Security (Non-Budget Measures) Legislation Amendment Act 1995*.

Explanation of items

Item 13 inserts two new entries about exchange trading systems into section 5 dealing with the index of definitions.

Item 14 inserts the two definitions into subsection 5H(1). The definitions in subsection 5H(1) refer to the detailed definitions in subsections 5H(10) and (11) which are being inserted by item 16.

Item 15 amends subsection 5H(8) dealing with amounts that are not income for the purposes of the VE Act. It adds a new paragraph (zl) which excludes amounts credited to the person's account where they are the member of an approved exchange trading system. A note points to the existence of a definition of *approved exchange trading system*.

Item 16 amends section 5H by adding two new subsections:

New subsection (10) defines an *exchange trading system* which is an arrangement between members involving the bartering of goods or services. In such a system, members accounts are respectively credited or debited with amounts representing the value of goods or services provided to or received by the member.

New subsection (11) provides that an *approved exchange trading system* is one where the Repatriation Commission is satisfied that it is local and community with the primary purpose of helping people maintain their labour skills and keep them in touch with the labour market. It cannot be run by a person or organisation for profit.

Commencement

Subclause 2(1) sets out the commencement of this Part as the date of Royal Assent.

SCHEDULE 1

PART 3

Maintenance income

Overview

These amendments to the definitions relating to maintenance income exclude maintenance income provided in relation to expenses arising from a disability or learning difficulty that is likely to be permanent.

Background

Maintenance income received by a service pensioner is taken into account in assessing the rate of service pension. At present any maintenance income provided in relation to expenses arising from a disability or learning difficulty that is likely to be permanent is included in the definition of *special maintenance income*.

If the amount of special maintenance income is above a specified ceiling it is disregarded in the maintenance income test. These amendments will result in disability maintenance income being disregarded entirely.

Similar changes were made to the *Social Security Act 1991* from 1 January 1993 by the *Social Security Legislation Amendment Act (No 3) 1994*.

Explanation of items

Item 17 inserts a new entry about *disability expenses maintenance* into section 5 dealing with the index of definitions.

Item 18 inserts the definition into subsection 5K(1). The definition in subsection 5K(1) refers to the detailed definition in subsection 5K(5) which is being inserted by item 21.

Item 19 amends the definition of maintenance income by excluding *disability expenses maintenance*.

Item 20 removes paragraph (c), dealing with maintenance income provided in relation to expenses arising from a disability or learning difficulty that is likely to be permanent, from the definition of *special maintenance income* in subsection 5K(1)

Item 21 inserts a new subsection 5K(5) defining *disability expenses maintenance*. It covers payment or benefit provided for expenses arising directly from a disability or learning difficulty of a dependent child. The definition states that the disability or difficulty needs to be likely to be permanent or last for an extended period and specifies who the payment or benefit is to be received by and from.

Commencement

Subclause 2(2) provides that this Part is taken to have commenced on 1 January 1994.

SCHEDULE 1

PART 4

Income support supplement

Overview

This Part provides further consequential amendments to the *Veterans' Entitlements Act 1986* (the VE Act) as a result of the introduction of the income support supplement.

Background

The creation of the income support supplement was announced in the 1994-95 Budget. The substantive legislative provisions for income support supplement were included in the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*. Further amendments were included in the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*.

Income support supplement is an income and assets tested amount available to war widows and widowers who do not receive age or invalidity service pension and was payable from 20 March 1995. It is paid in lieu of a social security payment.

War widows and widowers were already receiving compensation payments under the VE Act. The initiative has allowed war widows and widowers to receive their compensation and income support payment from one department, the Department of Veterans' Affairs.

Explanation of the changes

These changes address a number of issues. They:

- allow transfer claims from outside Australia;
- provide for oral withdrawal of claims;
- require recipients to test their eligibility for an overseas pension;
- ensure that references to pension age in Part IIIB will be taken to be references to qualifying age; and
- make a number of minor technical amendments.

It was originally intended that subsection 45M(2) of the VE Act would operate to allow a social security pensioner living overseas to successfully submit a transfer claim. However, prior to these changes the eligibility provisions in section 45A, which required the claimant to be an Australian resident and in Australia, prevented any transfer by an overseas resident. This requirement in section 45A to be an Australian resident and in Australia was unnecessary given that subsection 45M(1) requires a claimant to be an Australian resident and in Australia. These changes remove the duplication and thereby allow transfer claims to be successful.

Oral withdrawal of claims is allowed for claims for social security pensions and service pension. Similar provisions for income support supplement were overlooked. These changes are identical to those applying to claims for service pension.

Under provisions recently implemented, social security pensioners and service pensioners may be required to test their eligibility for a foreign pension. Similar provisions for income support supplement were overlooked. These changes are identical to those applying to service pensioners.

An integral part of the creation income support supplement was the setting up of Part IIIB. This Part is comprised of provisions which previously had applied only to service pension, but now also apply to income support supplement. However, several of the provisions in Part IIIB referred only to pension age which is applicable to service pension but should have also referred to qualifying age which is applicable to income support supplement.

Explanation of items

Transfer claims from outside Australia.

Item 26, by omitting and substituting 45A(1)(a), reduces this element of the eligibility provisions for income support supplement to a requirement that the person to be a war widow or widower. It thus removes the requirement that the person be an Australian

resident and in Australia from this eligibility provision. However, note that subsection 45M(1) still requires a claimant to be an Australian resident and in Australia.

Item 27 removes a note at the end of subsection 45A(1). That note pointed to the definition of Australian resident in section 5G, and is not needed now that item 26 has removed the reference to Australian resident from the subsection.

Item 28 omits and substitutes subsection 45A(4), and like item 26, removes references to being an Australian resident and in Australia.

Oral withdrawal

Item 32 repeals section 45O and substitutes six new subsections. The first five of these new sections deal with withdrawal of claims for income support supplement.

New section 45NA allows a claimant to withdraw a claim that has not been determined. It may be withdrawn either orally or in writing, and if withdrawn is taken not to have been made.

New section 45NB requires a written withdrawal to be lodged at an office of the Department in Australia.

New section 45NC requires an oral withdrawal to be made to a person in an office of the Department in Australia.

New section 45ND requires the Secretary to give the claimant a written acknowledgement that the claim has been withdrawn and allows the claimant to reactivate the claim within 28 days of the acknowledgement.

New section 45NE provides that if the claim is reactivated, then the oral withdrawal is taken not to have been made. This provision ensures that the reactivated claim retains all of its original attributes.

Comparable foreign pension

The sixth new subsection substituted by item 32, is 45NF. It allows the Secretary to give a claimant a notice requiring reasonable action to be taken to obtain a comparable foreign pension.

Subsections (2) and (3) require that the notice be in writing, be given to the claimant personally or by post, and state a period greater than 14 days within which the reasonable action must be taken.

Subsections (4) and (5) allow the Commission to reject a claim if, after being given a notice, the person has not taken reasonable action to obtain a comparable foreign pension at their highest rate within the period stated.

Item 37 amends section 54BA dealing with the power of the Secretary to require a person to take action to obtain a comparable foreign pension. The amendment expands references to service pension so that they are also references to income support supplement.

Item 38 amends the first occurring section 56EB, dealing with cancellation or suspension for failure to take action to obtain a comparable foreign pension. The amendment expands references to service pension so that they are also references to income support supplement.

Qualifying age

Items 22 and 23 amend section 5H so that the reference to pension age in subparagraph 5H(8)(i)(iv) will be taken to be a reference to the qualifying age referred to in subsection 45A(2).

Items 24 and 25 amend section 5J so that the references to pension age in paragraphs 5J(1C)(a), (b) and (c) will be taken to be references to the qualifying age referred to in subsection 45A(2).

Item 34 amends section 46S so that the reference to pension age in paragraph 46S(1)(b) will be taken to be a reference to the qualifying age referred to in subsection 45A(2).

Item 35 amends section 46SA so that the reference to pension age in paragraph 46S(1)(a) will be taken to be a reference to the qualifying age referred to in subsection 45A(2).

Item 36 amends section 52 so that the reference to pension age in subparagraph 52(1)(f)(iv) will be taken to be a reference to the qualifying age referred to in subsection 45A(2).

Minor

Item 29 amends the definition of *severely handicapped person* in subsection 45AB(5). It incorporates the requirement that the severely handicapped person be a service pensioner, a social security pensioner or an income support supplement recipient. This requirement was inadvertently omitted when the section was inserted.

Item 30 repeals and substitutes section 45I with wording that makes clear that a person is not entitled to be granted an income support supplement unless a proper claim has been made.

Item 31 amends subsection 45M(2) to cover the case where the claim has been made on behalf of another person.

Item 33 amends note 2 to point 45X-F1 to correct a typographical error.

Commencement

Subclause 2(4) provides that this Part is taken to have commenced on 20 March 1995 immediately after the commencement of section 44 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*.

SCHEDULE 1

PART 5

Refugees' eligibility for service pension

Overview

This Part provides further consequential amendments to the *Veterans' Entitlements Act 1986* (the VE Act) as a result of the removal, for refugees, of the waiting period for service pension.

Background

The removal, for refugees, of the waiting period for service pension was announced in the 1994-95 Budget. The necessary amendments were included in the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*.

As the result of this initiative since 1 January 1995 persons who are both refugees and either Commonwealth veterans, allied veterans or allied mariners have not needed to meet waiting period provisions which generally required that they have been Australian residents for a continuous period of 10 years.

Explanation of items

Item 39 omits subsections 5C(4) and (5) and substitutes two similar subsections. The new subsections involve no change in policy from those omitted. They now do not refer to the holder of a class 827 entry permit because there are no longer any holders of this class of entry permit. In several places they also now refer to "visa or entry permit" instead of just to "entry permit" to cover the times when both visas and entry permits were issued.

Items 40 and 41 amend schedule 2A dealing with classes of permanent visas, the holders of which are taken to be refugees under sub-paragraph 5C(4)(c)(ii). These amendments correct the description of one class of visa and add two more classes.

Commencement

Subclause 2(5) provides that items 39 and 40 are taken to have commenced on 1 January 1995 immediately after the commencement of Division 9 of Part 2 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*.

Subclause 2(6) provides that item 41 is taken to have commenced on 9 January 1995.

SCHEDULE 1

PART 6

Superannuation investment products

Overview

This Part includes consequential amendments to the *Veterans' Entitlements Act 1986* (the VE Act) as a result of amendments to the *Income Tax Assessment Act 1936*.

Background

Section 28 of the *Taxation Laws Amendment (Superannuation) Act 1992* amended the *Income Tax Assessment Act 1936* definition of **undeducted purchase price**. The amendment commenced on 1 July 1994. Because definitions in the VE Act refer to the definition of **undeducted purchase price** in the *Income Tax Assessment Act 1936*, the change would tighten the income test treatment of pensions and annuities taken out on or after 1 July 1994. No tightening is intended.

The *Social Security Act 1991* was similarly affected by the amendment of the *Income Tax Assessment Act 1936*. Schedule 8 of the *Social Security (1994 Budget and White Paper) Amendment Act 1994* retains the income test treatment that existed before the amendment of the *Income Tax Assessment Act 1936*.

These amendments to the VE Act are similar to the amendments to the *Social Security Act 1991*.

Explanation of items

Items 42, 43, and 44 add notes after three of the definitions in subsection 5J(1). All of the notes direct a reader's attention to the new subsection 5J(9) being added by item 45.

Item 45 adds a new subsection 5J(9). It provides that references to the *Income Tax Assessment Act 1936* in the definitions of ***deductible amount***, ***non-assessable purchase price*** and ***roll-over purchase price*** in 5J(1) should be taken to be references to the *Income Tax Assessment Act 1936* as in force immediately before 1 July 1994.

Commencement

Subclause 2(7) provides that this Part is taken to have commenced on 1 July 1994.

SCHEDULE 1

PART 7

Other Amendments

Overview

This Part includes many minor or technical amendments. They include amendments that can be categorised as follows:

- amendments to correct minor drafting errors;
drafting enhancements consistent with the “plain English” style; and
- minor policy amendments.

The explanations of similar items will be grouped to avoid repetition.

Explanation of items

Items 46 and 47 make a series of amendments to the index of definitions in section 5. Existing entries are corrected or omitted as necessary and where required new entries are inserted.

Items 48 to 90 amend various definitions. Many of these are self-explanatory and need not be further described. Those needing description are dealt with hereunder.

Items 51 and 59 remove references to the sheltered employment allowance which has been abolished.

Item 52 amends subsection 5F(2) and restores the definition of *dependent child* to that which applied before the “plain English” rewrite of Part III of the Principal Act in

1991. To be a **dependent child**, a child must be child as defined in section 10 and be wholly or substantially dependent on the person.

Item 53 amends paragraph 5F(3)(b). It ensures that the Principal Act makes no distinction about the source of income received by a child. This restores parity of treatment with social security where that distinction has not been made since 1992.

Item 54 amends paragraph 5F(6)(b). Now, instead of referring to receipt of dependent child add-on from social security, which has been discontinued, it refers to the receipt of the payment now paid, additional family payment. Similar amendments are made by items 96 and 102

Item 55 substitutes a new 5G(1). The new subsection uses the terms now used in the Migration Act.

Item 56 adds two new paragraphs to subsection 5G(1A) dealing with decisions on whether a person resides in Australia. It ensures parity of treatment with the Social Security Act.

Items 63 and 71 omit two definitions from subsection 5J(1) and insert them in 5L(1). Those definitions, dealing with foreign superannuation, are needed in relation to the assets test (definitions for which are in section 5L) and are not needed in relation to investment income (definitions for which are in section 5J).

Item 64 amends the definition of **superannuation fund** in subsection 5J(1). The change was made necessary by changes to the similar definition in the Income Tax Assessment Act, and maintains the previously existing meaning.

Item 85 amends the definition of **incentive allowance** in subsection 5Q(1) because that allowance was abolished on 12 November 1991. Items 11, 95, and 101 add explanatory notes below provisions which mention the allowance.

Item 86 extends the definition of **remote area** in subsection 5Q(1) so that it will now cover the whole of Zone A as detailed in Part I of Schedule 2 of the Income Tax Assessment Act. The practical effect of this change will be to make remote area allowance payable to service pensioner and income support supplement recipient residents of Norfolk Island and Lord Howe Island.

Item 88 amends the definition of **relevant documentary medical evidence** in subsection 19(9). That definition referred too narrowly to medical treatment relating to a claimant or applicant, and thus did not provide for the case where a claim was being made by a widow or by someone on behalf of the veteran. The amended definition refers to medical treatment of the veteran. The similar definition in section 133 is similarly amended by item 153.

Item 91 amends subsection 38(1) by preserving eligibility for a partner service pensioner whose partner has lost payability of service pension as the result of the compensation recovery provisions in Part IIIC of the Principal Act.

Sub-item 96(a), items 97, 98, sub-item 104(a), items 106, 107, 112, 113, 114, 115, 116, and 117 delete references to "amount.....on a yearly basis" and replace them with references to "annual rate". These amendments follow a High Court decision relating to the Social Security Act which used similar references. An annual rate of income is used in the assessment of service pensions. These changes restore the wording used before the "plain English" rewrite of Part III of the Principal Act in 1991.

Sub-points 96(b) and (c) and 104(b) and (c) amend the method statement in points 41-C10 and 42-D10 so that steps 4 and 5 flow on naturally from step 3.

Item 105 substitutes a new maintenance income test module into the service pension rate calculator where there are dependent children. The new module brings the treatment of maintenance income into line with its treatment in the family payment rate calculator in the Social Security Act.

Item 111 amends the method statement in point 45-A1. By excluding the points dealing with the disability pension income test, the treatment of "frozen rate" service pensioners with children will be brought into line with the treatment of similar social security pensioners with children.

Item 120 amends section 52 dealing with assets to be disregarded for the purposes of the assets test. The amendments to paragraphs (a) and (b) improve readability. The amendment to paragraph (c) ensures that a life interest created by a will is treated in the same way as a life interest created by the person, their partner or both of them. Item 121 adds a note to paragraph 52(1)(c) to clarify the relationship between that paragraph and the previous two paragraphs.

Items 127 to 133 and 135 remove redundant words.

Item 136 renumbers the second occurring section 56EB

Items 137 and 138 restructure the provisions relating to the portability of service pension and income support supplement. In addition the portability of carer service pension is extended to include a period up to a maximum of three months when the person being cared for is absent from Australia.

Items 139 to 146 amend the indexation provisions in sections 59A and 59B. most of these amendments are minor technical amendments but items 142 and 146 ensure the indexation of Table DAA-1 being inserted by item 105.

Item 152 amends subsection 128A(5) to change references to a spouse to match the remainder of the section.

Item 153 is dealt with at item 86 above.

Item 157 amends Schedule 2 to the Principal Act to provide the cessation date for Somalia as an operational area. From 20 October 1992, service in Somalia for

Australian Defence Force members deployed to the area was declared as operational service for the purpose of benefits under the Principal Act. The Department of Defence has advised that as from 30 November 1994, all Australian personnel serving in Somalia have been withdrawn. The amendment to Column 2 of item 14 of Schedule 2 inserts the cessation date of 30 November 1994 for service in Somalia as an operational area.

Commencement

Subclause 2(3) provides that items 153 and 154 are taken to have commenced on 1 March 1995 immediately after the commencement of Division 5 of Part 2 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*.

Subclause 2(8) provides that item 91 is taken to have commenced on 1 January 1995 immediately after the commencement of section 8 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*.

Subclause 2(9) provides that item 140 is taken to have commenced on 20 March 1995.

Subclause 2(10) provides that items 63, 64, 65, and 71 are taken to have commenced on 19 December 1994.

Subclause 2(11) provides that items 111 and 141 are taken to have commenced on 1 January 1994.

Subclause 2(12) provides that items 139 and 145 are taken to have commenced on 1 July 1991 immediately after the commencement of Part 2 of Schedule 3 to the *Veterans' Affairs Legislation Amendment Act 1991*.

Subclause 2(13) provides that item 157 is taken to have commenced on 30 November 1994.

Subclause 2(1) provides that the remaining items in Part 7 of Schedule 1 commence on Royal Assent.

SCHEDULE 2

Amendment of the *Veterans' Affairs Legislation Amendment Act 1990*

Overview

This amendment corrects a misdescribed amendment.

Explanation of items

Item 1 amends section 62 of the *Veterans' Affairs Legislation Amendment Act 1990*. Its affect is to restrict that section so that it applies only to the first occurrence of the word "subsection" in paragraphs 86(2)(a) and (b) of the *Veterans' Entitlements Act 1986*.

Commencement

Subclause 2(14) provides that this amendment is taken to have commenced on 22 May 1986 immediately after the commencement of the *Veterans' Entitlements Act 1986*.

SCHEDULE 3

Amendment of the *Veterans' Entitlements* (*Re-write*) *Transition Act 1991*

Overview

This amendment corrects a misdescribed amendment.

Explanation of items

Item 1 amends the amendment of paragraph 46K(2)(b) of the *Veterans' Entitlements Act 1986* in schedule 2 of the *Veterans' Entitlements (Re-write) Transition Act 1991*. Its affect is to expand that amendment to ensure that it applies after all occurrences of the word "made" in the paragraph.

Commencement

Subclause 2(15) provides that this amendment is taken to have commenced on 1 July 1991 immediately after the commencement of section 19 of the *Veterans' Entitlements (Re-write) Transition Act 1991*.

SCHEDULE 4

Amendment of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992*

Overview

This amendment corrects a misdescribed amendment.

Explanation of items

Item 1 amends paragraph 78(d) of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992*. That paragraph requires certain words to be deleted from paragraph 49A(2)(a) of the *Veterans' Entitlements Act 1986*. However, the words to be deleted include a word that is not present in that paragraph. Deleting the word "service" will allow the amendment to take effect.

Commencement

Subclause 2(16) provides that this amendment is taken to have commenced on 1 July 1993 immediately after the commencement of Division 8 of Part 4 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992*.

SCHEDULE 5

Amendment of the Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994

Overview

This amendment corrects a misdescribed amendment.

Explanation of the changes

Schedule 2 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994* attempted to remove all references in section 59A of the *Veterans' Entitlements Act 1986* to the rate calculator in section 44 of that Act. However, one of the three omissions required from column 4 of item 6A of the Table in section 59A is not in item 6A but is in item 6.

Explanation of items

Item 1 omits item 2 of Schedule 2 and substitutes two new items. New item 1A makes the required omission from item 6 of the Table in section 59A. New item 2 makes only the two omissions necessary from item 6A of the Table in section 59A.

Commencement

Subclause 2(17) provides that this amendment is taken to have commenced on 20 March 1995 immediately after the commencement of Division 6 of Part 2 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*.

SCHEDULE 6

Amendment of the *Military Compensation Act 1994*

Overview

Background

The *Military Compensation Act 1994* contains three references to an Act which never passed Parliament. The Act referred to is the *Veterans' Affairs Legislation Amendment Act (No. 3) 1993*. The bill was disagreed by the Senate and lapsed. It was largely replaced by the *Veterans' Affairs Legislation Amendment Act 1994*. That Act included the provisions intended to be referred to by the *Military Compensation Act 1994*.

Explanation of items

Item 1 omits subsection 11(2) of the *Military Compensation Act 1994* and substitutes a new subsection which carries forward the meaning of the original subsection. Because the date of Royal Assent of the replacement Act is now known, the new subsection refers directly to that date.

Item 2 omits subsection 17(1) of the *Military Compensation Act 1994* and substitutes a new subsection which carries forward the meaning of the original subsection. Because the date of Royal Assent of the replacement Act is now known, the new subsection refers directly to that date.

Commencement

Subclause 2(18) provides that these amendments are taken to have commenced on 7 April 1994 immediately after the commencement of the *Military Compensation Act 1994*.

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