1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs, the Honourable Ben Humphreys M.P.)

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VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1992

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill is a portfolio Bill which would introduce a number of policy changes and give effect to a number of other technical and minor amendments to Veterans' Affairs legislation. The Bill also contains some minor consequential and technical amendments to other legislation.

The legislation involved is:

- the *Veterans' Entitlements Act 1986*;
- the *Seamens' War Pensions and Allowances Act 1940*;
- the *Defence Service Homes Act 1918*;
- the *Veterans' Entitlements (Rewrite) Transition Act 1991*;
- the *National Health Act 1953*;
- the *Social Security Act 1991*;
- the *Income Tax Assessment Act 1936*; and
- the *Public Service Act 1922*.

Unless otherwise indicated, the measures in this Bill have negligible or no financial impact.

VETERANS' ENTITLEMENTS ACT 1986

Cambodia

The Act will be amended to extend Repatriation benefits to Australian Defence Force personnel serving in Cambodia as a part of the United Nations peacekeeping efforts in the region.

This amendment will commence on 20 October 1991 being the date that Australian Defence Force personnel first served in Cambodia.

Unlisted property trusts

This Bill also gives effect to the Government's decision of 25 November 1991 to provide for more favourable assessment of service pension in respect of certain investment arrangements involving unlisted property trusts. The amendments are similar to recent amendments to the Social Security Act.

The measure will be of significant benefit to veterans and will be taken to have commenced on 24 July 1991.

Telephone allowance

From 1 July 1992, the current telephone voucher system for telephone rental concessions which operates administratively, will be replaced by a telephone allowance, the provisions for which are set out in this Bill. The telephone allowance of $51.80 per annum will be paid in quarterly instalments with pension to service pensioners who qualify for fringe benefits, special rate and equivalent pensioners, including pensioners receiving extreme disablement adjustment, and widows and widowers of deceased veterans. The allowance is to be adjusted annually in accordance with movements in the Consumer Price Index.

A separate telephone allowance is to be introduced from the same date for World War I veterans and Australian mariners who rendered eligible service in World War I. A separate rate of allowance, based on the annual telephone rental charge for a single service, will be set for this allowance. The allowance will not be indexed but will be adjusted in line with changes in the annual telephone rental charge.

This measure will commence from 1 July 1992.

Estimated program costs of telephone allowance are $12.060m in 1992-93, $11.307m in 1993-94 and $11.401m in 1994-95.

Automatic payment of pension and funeral benefit

The legislation will be amended to provide for automatic granting and processing of certain pension and funeral benefits entitlements. This change will significantly streamline administration under the legislation and allow for better and quicker delivery of service to clients.

Veterans' Review Board

The Bill proposes a number of changes to clarify current provisions relating to dismissal of applications for review by the Principal Member of the Board where the matter has not been finalised within two years and the

Principal Member is not satisfied that the applicant is pursuing the application.

Other

The Bill will make the following minor policy changes:

- preclude the payment of attendant allowance where carer pension is paid by the Department of Social Security;

- ensure that a person receiving a lump sum compensation payment under section 30 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, who also receives a disability pension for the same condition, is not disadvantaged because of the application of the current retrospective provisions within this section;

- change the income free area indexation rounding base to retain consistency with the similar provision in the Social Security Act;

- clarify those liabilities which reduce the value of an asset following the Federal Court decision in Clayton;

- allow for the carer to reside in accommodation which is adjacent to that of the veteran service pensioner and retain eligibility for carer service pension;

- exclude pensioners who reside outside Australia from the requirement to provide their tax file number.

extend the fringe benefits savings provisions to pensioners who would otherwise lose fringe benefits following rearrangement of their investments prior to the introduction of the deeming provisions on 1 March 1991;

clarify the authority for the Commission to direct the method of payment of pensions;

- clarify the current cancellation and suspension provisions for service pension;

- allow farmers to pool their assets and liabilities so that the total liability reduces the total value of their assets. This represents a more favourable assessment of farming assets;

insert a savings provision to ensure that those service pensioners whose fringe benefits are saved

as a result of the introduction of the deeming provisions, will also retain certain treatment entitlements;

- insert a savings provision to ensure that those persons whose entitlement to a Pharmaceutical Benefits Concession Card is "saved" under the National Health Act 1953, will also retain certain treatment entitlements under the Veterans' Entitlements Act;

- ensure consistent treatment of sale leaseback arrangements with other special accommodation, i.e., retirement villages and granny flats;

- ensure that the child component of remote area allowance is retained in certain circumstances;

- pay the higher pensioner rate of remote area allowance to members of a respite care couple;

- clarify the circumstances which constitute the realisation of an investment for the purposes of applying the investment income provisions;

- provide specific assessment rules for foreign sourced superannuation;

- exclude from the definition of "income", mortgage repayments paid by an insurance company, where the service pensioner is insured against the inability to meet debt repayments;

- ensure that the value of insurance proceeds and compensation payments is disregarded for the purposes of the assets test;

- clarify that income money exempted from the deeming provisions is not included in the application of the "deeming" rules; and

- remove the statutory age limit for appointment and reappointment of part-time office holders.

The Bill would also effect "clear English" clarifications arising as a result of the rewrite of Part III of the *Veterans' Entitlements Act 1986*.

DEFENCE SERVICE HOMES ACT 1918

A number of changes are proposed to this Act.

Changes to the Trust account provisions are required to enable financial transactions associated with home contents insurance to be conducted under the existing Defence Service Homes Insurance Trust Account. Financial

transactions associated with Home Contents Insurance are currently conducted under a separate temporary trust account.

The other significant change to the Defence Service Homes Act is the proposed amendments to enable certain persons who have been disadvantaged by a decision to relinquish their entitlements under DSH in favour of benefits under the Defence Force (Home Loans Assistance) Act, to withdraw their notice of revocation and regain eligibility for Defence Service Homes benefits.

Some other minor changes will be made to the Defence Service Homes Act. These are the waiver of the first mortgage requirement in some instances, establishing eligibility in respect of some members of the forces who were discharged on medical grounds or who died before completing the minimum required period of service, and clarification of the "portability" provisions.

SEAMENS' WAR PENSIONS AND ALLOWANCES ACT 1940

This Bill will make the following amendments:

- allow payment of telephone allowance;
- preclude the payment of attendant allowance where carer pension is paid by the Department of Social Security;
- exclude pensioners who reside outside Australia from the requirement to provide their tax file number; and
- provide specific authority for the Commission to direct the method of payment of pensions.

VETERANS' ENTITLEMENTS (REWRITE) TRANSITION ACT 1991

This amendment will insert a savings provision to continue fringe benefits entitlement to those people who would have otherwise lost this entitlement as a result of the introduction of the deeming provisions (Part III of the *Veterans' Entitlements Act 1986*).

NATIONAL HEALTH ACT 1953

This amendment will insert a savings provision to continue Pharmaceutical Benefits Concession Card entitlement to those people who would have otherwise lost this entitlement as a result of the introduction of the deeming provisions (Part III of the *Veterans' Entitlements Act 1986*).

OTHER COMMONWEALTH LEGISLATION

Minor and technical consequential amendments will also be made to:

- the *Income Tax Assessment Act 1936*,
- the *Social Security Act 1991*; and
- the *Public Service Act 1922*.

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1992

PART 1 - PRELIMINARY

Part 1 of the Bill sets out how the amending Act is to be cited (clause 1) and when various Parts, Divisions or sections of the Act will commence (clause 2).

PART 2 - AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

Regular serviceman

Summary of proposed changes

This amendment will ensure that eligibility can be established under the Defence Service Homes Act for persons discharged from the Defence Forces on invalidity grounds or whose service in the Defence Force ceased by reason of death before completing the minimum period of six years' service, during the period 15 May 1985 to 19 December 1988. The changes will be limited to those who have been previously advised of their eligibility and to the surviving widow or widower of such a person.

Background

In May 1985, the Government announced that persons who enlisted in the Forces after 14 May 1985 would no longer qualify for housing assistance under the Defence Service Homes Act. Housing assistance for these persons was to be provided under the proposed Australian Defence Force Home Loans Assistance legislation.

The DSH Act was amended in 1988 to take account of this decision. However, the amendments did not take account of the special requirements relating to those members of the forces, or their dependants, who could become eligible for assistance under the DSH Act by reason of their early discharge on medical grounds or termination of service before completing six years' service by reason of the death of the service person.

The eligibility of persons in this category continued to be determined in accordance with the provisions of the Defence Service Homes Act as in force prior to the amendments in 1988.

When the DSH Act was amended in 1988, the definition of "regular serviceman" excluded all persons whose first service in the Defence Force began after 14 May 1985.

The special needs of this group of servicemen were overlooked and, as the Act now stands, they are prevented from receiving entitlement or further entitlement under the Act even though they have been notified of their eligibility and, in some cases, been granted a loan.

Clauses involved in the amendment

Clause 5 will amend section 4AAA by making subsection (1) subject to the new provisions to take account of the category of service and inserting new subsections (5A), (5B) and (5C).

Explanation of changes

The amendment is to apply only to those in respect of whom eligibility for assistance under the DSH Act has previously been established on the basis of early discharge on medical grounds, or termination of service prior to completing the minimum period of six years' service by reason of death and to the widow or widower of such a person.

A further limitation is that the provisions will not apply to any person who is or has been a subsidised borrower under the Defence Force (Home Loans Assistance) Act.

Commencement

This provision will come into effect on the day of Royal Assent (subclause 2(1)).

Election to surrender eligible status

Summary of proposed changes

This amendment will allow certain persons who revoked their entitlement to benefits under the Defence Service Homes Act in favour of receiving benefits under the Defence Force (Home Loans Assistance) Act, to withdraw their revocation and regain eligibility under the Defence Service Homes Act.

Background

The Defence Service Homes Act was amended in January 1991 to allow a member of the Australian Defence Forces whose service began before 15 May 1985 and who had an unused entitlement to a Defence Service Homes loan, to elect to revoke that entitlement and apply for assistance under the Defence Force (Home Loans Assistance) Act The opportunity to revoke was a once only offer and had to be exercised in the period 1 March 1991 to 31 August 1991 Section 4BA of the Act provided that such elections, once exercised, were irrevocable.

Many persons who elected to revoke their entitlement did so in the belief that they could not "pool" their entitlements under the DSH provisions but were able to do so under the ADFHLAS arrangements.

As a result of a decision of the AAT, the Minister for Veterans' Affairs announced on 22 August 1991 that persons eligible for DSH assistance could "pool" their entitlements, an undertaking was given, following agreement between Ministers, that an amendment to the legislation would be sought to enable those persons disadvantaged by the decision to withdraw elections to revoke their entitlement under the Defence Service Homes Act.

Clauses involved in the changes

Clause 4 will amend section 4 the DSH Act by inserting before paragraph (a) of the definition of "**reviewable decision**" a reference to decisions under subsection 4BB(2). The effect of this will be to allow a right of review to the AAT against a decision of the Secretary to refuse a notice, seeking to withdraw a surrender election, which is lodged after 1 July 1992.

Clause 6 specifies that section 4BA, which outlines the revocation requirements, will be subject to new section 4BB which will set out the conditions under which an election of revocation may be withdrawn.

Clause 7 inserts a new section which sets out the conditions applicable to the right to withdraw an election to surrender eligible status under the Defence Service Homes Act.

Clause 8 will allow the eligible spouse of a person who has already taken out a Defence Service Homes loan, to use his or her entitlement to refinance any loan taken out to supplement the original DSH loan.

Explanation of changes

The conditions applying to a person who wishes to withdraw the election to surrender their eligible status are:

- the person is not and has not been a subsidised borrower under the Defence Force (Home Loans Assistance) Act;
- the person notifies the Secretary, in writing that he or she wishes to revoke the surrender election, and
- the notice is given to the Secretary before 1 July 1992.

Allowance is also to be made for those persons whose notice is given to the Secretary after 1 July 1992 but before 1 January 1993. In such cases the same conditions as outlined above will apply but, in addition, the person will have to satisfy the Secretary that:

- the person was not aware on or before 1 July 1992 that the person was able to withdraw the election to surrender entitlement under the Defence Service Homes Act; and

- the person would not have surrendered their entitlement had they been aware of the decision to allow "pooling" of entitlements under the Defence Service Homes provisions.

If a person's surrender election is withdrawn, it takes effect on the day on which the notice is given to the Secretary.

A decision by the Secretary refusing to accept a notice seeking to withdraw a person's surrender election on the ground that it does not meet the conditions specified in new subsection 4BB(2), will be subject to review by the AAT.

Clause 8 amends section 18 of the Defence Service Homes Act by inserting **new subsections 18(5AA) & (5AB).**

New subsection 18(5AA) will provide for the Secretary to issue a certificate of entitlement in certain circumstances to a person who has withdrawn an election to surrender his/her DSH eligibility.

New subsection 18(5AB) will provide for the Secretary to issue a Certificate of Entitlement to discharge any mortgage, charge or encumbrance already existing on the person's holding, or to discharge any debt owed by the person in obtaining a right of residence in a retirement village, if, at the time the mortgage, charge or encumbrance was raised or the debt incurred, a DSH advance had already been made with respect to the property concerned and not fully repaid.

Maximum amounts for which subsidy is payable

Summary of proposed changes

The purpose of this amendment is to take account of the need to clearly specify in the legislation the limit of the amount of the further portable loan and to specify the amount of the loan that can be "ported" in certain situations. The need for this amendment arises from the announcement by the Minister for Veterans' Affairs on 22 August 1991 that two or more persons, each eligible for

DSH assistance, may "pool" their entitlements concurrently on the same property.

Background

Paragraph 25(1)(d) of the DSH Act provides that the maximum amount in respect of which subsidy is payable to be specified in a certificate of entitlement in relation to a subsidised further advance that a person may seek, is an amount equal to:

- the limit of the last corporation advance, subsidised advance or contract of sale in relation to which the person was a borrower or purchaser; or

- $25,000, whichever is less.

The concept of "limit" is currently defined in subclause 1.1 of the agreement between the Commonwealth and Westpac in Schedule 2 to the DSH Act. It provides that in the Agreement, except where the context otherwise requires, "Limit" means the original amount lent to a Borrower as that amount is:

(a) reduced by any scheduled repayment of principal (whether made or not) and any prepayments of principal (excluding any moneys held pursuant to a loan interest offset arrangement); and

(b) increased by the amount of Instalment Relief granted by the Bank pursuant to a Certificate of Entitlement.

This does not cover the situation in which a person's last Corporation advance, subsidised advance or contract of sale includes an amount of any additional advance that has subsequently been made to the person.

An amendment is therefore required to section 25 of the DSH Act to ensure that the amount of any additional advance that has subsequently been made to a person, can be taken into account in determining the limit of the loan which may be "ported".

Clauses involved in the amendment

Clause 9 will give effect to this change by making the necessary amendments to section 25 of the DSH Act.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Defence Service Homes Insurance Trust Account

Summary of proposed changes

This amendment will provide for all financial transactions in relation to Defence Service Homes insurance activities under the Act or with respect to insurance as an agent for an insurer, to be conducted under the Defence Service Homes Insurance Trust Account which is established under section 40 of the Defence Service Homes Act.

Background

The Defence Service Home Contents Insurance arrangements commenced on 1 July 1991 following signing of an agency agreement with Mercantile Mutual (Australia) Ltd. The agreement provides for the Commonwealth to act as an agent for Mercantile Mutual in respect of household contents insurance and to receive a commission for referral of other insurance business.

The financial transactions arising from the Home Contents Insurance arrangements are currently being conducted through a temporary trust account set up specifically for that purpose under section 62A of the Audit Act. One of the conditions of the establishment of the temporary trust account was that an amendment would be sought to the Defence Service Homes Act to enable all transactions to be conducted under the one trust account established under section 40 of the Defence Service Homes Act.

Clauses involved in the change

Clause 10 amends section 40 of the Defence Service Homes Act by omitting existing subsections (2) & (3) and inserting new subsections (2) & (3) to provide that all credits and all debits in respect of payments to and by the Commonwealth in connection with its insurance activities will be to the Defence Service Homes Insurance Trust Account established under subsection 40(1) of the Defence Service Homes Act. The amendments will also provide for the closure of the temporary trust account and for the funds standing to the credit of that account to be payable to the Defence Service Homes Insurance Trust Account.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Certain provisions of agreement not to be revoked or amended

Summary of proposed changes

This amendment will permit the Commonwealth and Westpac to agree to waive the first mortgage requirement on advances in certain circumstances.

Background

Section 45 of the Defence Service Homes Act lists a number of subclauses in the Agreement between the Commonwealth and the Westpac Banking Corporation in Schedule 1 of the Act which can not be revoked or amended by simple agreement between the parties. Subclause 8.3 provides that all advances to a claimant shall be by way of first mortgage. This prevents the Commonwealth and Westpac from agreeing to waive the first mortgage requirement.

The inability to waive the first mortgage requirement disadvantages a small number of persons who are eligible for both a Defence Service Homes loan and some form of housing assistance from a State housing authority. The proposed amendment would remove this restriction.

Clauses involved in the change

Clause 11 amends section 45 of the Defence Service Homes Act by omitting the reference to subclause 8.3 of the agreement.

Explanation of the changes

There are currently a small number of cases in which the Defence Service Homes first mortgage requirement has precluded clients from concurrently using their DSH loan with finance available from State government instrumentalities. For example, an eligible DSH client may be eligible for assistance by way of a Home Opportunity Loan from the Victorian Ministry of Housing (MOH) which also requires a first mortgage. In certain cases there will be or is a willingness on the part of Westpac to lend on the basis of a second mortgage behind the MOH loan, but an inability to do so because of the Agreement. A similar situation arises in respect of the NSW Rural Assistance Board, which also requires its loans to be secured by first mortgage. In all the cases which have come to light so far, the other lender has been a government instrumentality.

The removal of the reference to subclause 8.3 of the Agreement will allow the first mortgage requirement to be varied in certain circumstances as agreed between DSH and Westpac.

The general principle behind the requirement of first mortgage security as set out in paragraph 18(1)(g) of the DSH Act will continue to apply.

It is proposed that waiver of the first mortgage requirement will apply only in those cases in which there is mutual agreement between the parties.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

PART 3 - AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Division 1 - Preliminary

This Division would provide that, in this Part, the "Principal Act" means the *Seamen's War Pensions and Allowances Act 1940*.

Division 2 - Telephone allowance

Summary of proposed changes

This amendment gives effect to the Government's decision of 6 August 1991 to replace the Telephone Rental Concession scheme, with a legislatively based telephone allowance payment.

In respect of Australian mariners, the allowance will be payable to a person who is a telephone subscriber and who is eligible for pension in respect of extreme disablement adjustment, special rate and widows pension.

The rate of the telephone allowance is $51.80 and will be paid with pension four times per year. The allowance will be indexed annually in line with the Consumer Price Index.

A telephone allowance, equivalent to the annual telephone rental charge for a single telephone service, is also to be paid to eligible Australian mariners who rendered eligible war service during World War I. The eligibility for the allowance for this group of pensioners is to be effected by a Ministerial Determination under the provisions of paragraph 5R(1)(a) of the Veterans' Entitlements Act.

Background

A telephone rental concession has been provided to eligible pensioners for many years by way of a voucher

system which enabled pensioners to claim a rebate on payment of their telephone accounts. This scheme is similar to the one operated by the Department of Social Security for social security recipients who qualified for fringe benefits. The scheme proved to be administratively difficult and inefficient, leading to the Government announcement in the 1991 Budget that it would legislate to provide for telephone allowance to replace the concession voucher scheme from 1 July 1992.

Clauses involved in the changes

Clause 13 will provide for insertion of a new Part IIIA - Telephone Allowance, into the Seamen's War Pensions and Allowances Act setting out the eligibility provisions and circumstances under which telephone allowance will be payable. An explanation of the operation of the new sections is set out below.

New subsection 33A(1) sets out the eligibility conditions for telephone allowance for Australian mariners. Mariners who receive pension at the Special Rate or whose pension is increased by one of the additional amounts in items 1 to 8 of the table in subsection 27(1) of the Veterans' Entitlements Act, or who receive extreme disablement adjustment, will qualify for the allowance provided that the person is also a "**telephone subscriber**" as defined in **new subsection (3)**.

New subsection 33(2) states that a widow of a deceased Australian mariner is eligible for the allowance if she is eligible for widow's pension and is a telephone subscriber.

New subsection 33(3) defines the meaning of "Australian resident" and "telephone subscriber".

New section 33B provides that a person who establishes eligibility under the provisions of the Seamen's War Pensions and Allowances Act as well as under either the Social Security Act of the Veterans' Entitlements Act, will be entitled to payment of the allowance under whichever of those Acts is appropriate and not the Seamen's War Pensions and Allowances Act.

New section 33C sets out the annual rate of telephone allowance at $51.80 per year. The rate of the allowance for World War I veterans is set out in the amendments to the Veterans Entitlements Act in Part 4 of the Bill.

New section 33D provides for the allowance to be paid four times per year on the first pension payday that falls on or after 1 January, 20 March, 1 July and 20 September.

Provision for the calculation of the amount of each instalment and for annual indexation of the allowance is set out in **new sections 33E** and **33F** respectively.

Under the current provisions of section 24AD of the *Income Tax Assessment Act 1936*, telephone allowance is exempt from income tax.

Commencement

This amendment will apply from 1 July 1992 (subclause 2(13)(a)).

Division 3 of Part 3 & Division 14 of Part 4 - Attendant Allowance

Summary of proposed changes

This amendment will preclude payment of attendant allowance to a veteran under the Seamen's War Pensions and Allowances Act or the Veterans' Entitlements Act where a carer pension is paid under the Social Security Act in respect of that veteran.

Background

Subsection 21(11) of the Seamen's War Pensions and Allowances Act and subsection 98(4A) of the Veterans' Entitlements Act preclude the payment of an attendant allowance where a carer service pension is paid in respect of a veteran.

In 1990, an amendment to the Social Security Act allowed for the payment of a carer pension (paid by the Department of Social Security) in respect of caring for a service pensioner. This consequently enabled a veteran service pensioner to receive attendant allowance (under the Veterans' Entitlements Act) whilst a carer pension was paid in respect of that veteran (under the Social Security Act).

To address this anomaly, this amendment will insert a reference in the Seamen's War Pensions and Allowances Act and the Veterans' Entitlements Act to preclude the payment of attendant allowance where a carer service pension is paid in respect of that veteran.

Clauses involved in the changes

Clause 14 amends section 21 of the Seamen's War Pensions and Allowances Act by inserting new subsection 21(12) which prohibits the payment of attendant allowance where a carer pension is paid under the Social Security Act.

Clause 81 amends section 98 of the Veterans' Entitlements Act by inserting new subsection 98(4B) which prohibits the payment of attendant allowance where a carer pension is paid under the Social Security Act.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 4 of Part 3 & Division 13 of Part 4 - Nomination of bank etc. account

Summary of proposed changes

This amendment will provide the specific authority for the Commission to direct that pension payments be made directly to a bank, credit union or other financial institution.

Background

Legal opinion received from the Attorney-General's Department, in respect of a similar provision in the Social Security Act, indicates that there is nothing in the current provision to imply that the Commission has the control it wishes to exercise on the manner in which pension payments will be made.

Clauses involved in the changes

Clause 15 amends section 54 of the Seamen's War Pensions and Allowances Act by inserting a note to signpost to the reader where the procedures are found where the Commission determines that the pension payment is to be paid into a bank account.

Clause 16 amends section 54A of the Seamen's War Pensions and Allowances Act by inserting new subsections (1A) & (1B).

Clauses 77 & 79 amend sections 58C & 122 of the Veterans' Entitlements Act, respectively, by inserting a note to signpost to the reader where the procedures are found where the Commission determines that the pension payment is to be paid into a bank account.

Clauses 78 & 80 amend sections 58F & 122A of the Veterans' Entitlements Act, respectively, by inserting new subsections (3A) & (3B) and (1A) & (1B), respectively, in these sections.

Explanation of changes

The amendments to the Seamen's War Pensions and Allowances Act and the Veterans' Entitlements Act would:

- give the Commission the authority to require a person to nominate an account in a financial institution for the direct payment of his/her pension or allowance;

- provide authority for the Commission to withhold payments should the request not be complied with (with the subsequent restoration of payment from the date of suspension if the request is complied with), and

- permit payments by means other than direct credit where, in the Commission's opinion, this is warranted by special circumstances.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 5 - Automatic payment of pension

Summary of proposed changes

Certain pensions payable under both the Seamen's War Pensions and Allowances Act and the Veterans' Entitlements Act give rise to an automatic entitlement to a war widows or widowers pension on the death of the Australian mariner or veteran.

Notwithstanding this, the Act requires claims to be lodged and formal determinations to be made in respect of payment of pension to the widow/er. This process is both time consuming and inefficient.

In order to streamline the process and reduce administrative costs, it has been decided to amend the Act so as not to require formal claims or determinations in these situations.

Clauses involved in the changes

Clause 17 of the Bill would provide for the insertion of **new section 25A** in the Seamen's War Pensions and Allowances Act which will provide for certain persons to be automatically paid pension.

Clause 18 would provide for notes to be inserted at the end of subsection 26(1) of the Seamen's War Pensions and Allowances Act to draw attention to the fact that some dependants do not have to make a claim and to make it

clear that persons to whom the automatic payment provisions do not apply are able to make a claim and preserve all their rights and entitlements in accordance with the conditions in the Act applicable to that process.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

PART 4 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Division 1 - Preliminary

This Division would provide that, in this Part, the "Principal Act" would mean the *Veterans' Entitlements Act 1986*.

Division 2 - Telephone allowance

Summary of proposed changes

This amendment gives effect to the Government's decision of 6 August 1991 to replace the Telephone Rental Concession scheme, with a legislatively based telephone allowance payment.

In respect of veterans and widows, the allowance will be payable to a person who is a telephone subscriber and who is eligible for one of the following pensions:

- an extreme disablement adjustment;
- a special rate pension or equivalent including pension which is increased by an amount specified in respect of any of the items 1 to 8 in the table in section 27 of the Veterans' Entitlements Act;

  a widows or widowers pension; or.
- a service pensioner who is eligible for fringe benefits.

The rate of the telephone allowance is $51.80 per annum and will be paid with pension four times per year. The allowance will be indexed annually in line with the Consumer Price Index.

A telephone allowance, equivalent to the annual telephone rental charge for a single telephone service, is also to be paid to eligible veterans who rendered eligible war service during World War I. This will extend to Commonwealth and Allied veterans who rendered continuous full-time service in World War I. A determination by the Minister for Veterans' Affairs under the provisions of subsection 5R(1) of the Veterans' Entitlements Act in respect of Australian mariners of World War I will deem such mariners to have rendered eligible war service, thereby enabling these persons also to qualify for the allowance if they meet the other conditions.

The World War I rate of telephone allowance is different to the rate to be payable for other veterans. It is fixed at the annual rate of telephone rental charge. The rate is of course limited to the charge for a single telephone rental for one year. The rate is not to be indexed in line with movements in the Consumer Price Index but is to remain fixed with the annual rental rate and adjusted in accordance with any movement in that rate.

Background

A telephone rental concession has been provided to eligible pensioners for many years by way of a voucher system which enabled pensioners to claim a rebate on payment of their telephone accounts. This scheme is similar to the one operated by the Department of Social Security for social security recipients who qualified for fringe benefits. The scheme proved to be administratively difficult and inefficient, leading to the Government announcement in the 1991 Budget that it would legislate to provide for telephone allowance to replace the concession voucher scheme from 1 July 1992.

Clauses involved in the changes

Clause 20 will provide for insertion of a new **Part VIIB - Telephone Allowance**, into the Veterans' Entitlements Act, setting out the eligibility provisions and circumstances under which telephone allowance will be payable. An explanation of the operation of the new sections is set out below.

New section 118Q sets out in subsections (1) (2) and (3) the eligibility requirements for service pensioners, disability pensioners for veterans and serving members and widows and widowers and World War I veterans respectively. One of the requirements in respect of each is that the person is a "**telephone subscriber**" which is defined in **new subsection 118Q(4).**

New section 118R ensures that where a person is eligible for telephone allowance under the provisions of the Veterans' Entitlements Act, the allowance will not be

payable if that person is already receiving telephone allowance under the Seamen's War Pensions and Allowances Act or the Social Security Act, or the person is a service pensioner and the person's partner is receiving the telephone allowance in respect of the provisions applicable to World War I veterans.

New section 118S sets out the annual rate of telephone allowance. **Subsection 118S(2)** provides that where the person is a service pensioner and the person's partner also receives a telephone allowance, and the person is living together in the same house as his or her partner, the rate of telephone allowance will be half the rate specified in **new subsection 118S(1).**

New subsection 118S(3) specifies the rate of telephone allowance for World War I veterans and mariners.

New section 118T provides for telephone allowance to be paid four times per year on the first pension payday that falls on or after 1 January, 20 March, 1 July and 20 September.

Provision for the calculation of the amount of each instalment and for the rounding of the amount that is payable to a person to the nearest ten cents when the amount that is payable is not a multiple of ten cents, is set out in **new section 118U.**

Clause 21 will insert **new section 198F** which will provide for annual indexation of telephone allowance in line with movements in the Consumer Price Index.

A consequential amendment to the *Income Tax Assessment Act 1936*, is contained in Part 9 of the Schedule to the Bill and will insert new section 24ACWA. This amendment will ensure that telephone allowance is not subject to taxation.

Commencement

The telephone allowance amendments will apply from 1 July 1992 (subclause 2(13)(b)).

Division 3 - Veterans' Review Board

Summary of the proposed changes

The changes will clarify the effect of the current provisions relating to the requirement that the Principal Member of the Veterans' Review Board dismiss an application for review where the matter has not been finalised within two years and the Principal Member is satisfied that the applicant is not diligently pursuing the application.

Background

Section 148 of the *Veterans' Entitlements Act 1986* was amended in 1991 by the *Veterans' Affairs Legislation Amendment Act 1990* (No.2 of 1991), to provide that the Principal Member of the Veterans' Review Board may initiate action to dismiss an application for review, if, two years after the date on which an application for review was received, no date, time or place for a hearing has been fixed.

Those amendments did not explicitly address the situation where a hearing date was fixed but subsequently postponed or adjourned. A substantial number of cases have arisen where a hearing has been arranged, but has been adjourned or postponed and, subsequently, no action has been taken by the applicant for a considerable time. It was intended that adjourned or postponed cases should be covered by the dismissal provisions. The amendment is therefore designed to remove any uncertainty about the scope of the dismissal provisions.

The current provisions are located in section 148 of the Principal Act, which deals mainly with procedural matters relating to the review by the Veterans' Review Board of the substantive decision which is the subject of the application for review. The opportunity has been taken with these clarifying amendments to remove the provisions relating to the dismissal of applications by the Principal Member to a separate place in the Principal Act. This will help to ensure that there can be no confusion between provisions relating to procedures for the review of the substantive matter by the Board and procedures relating to the dismissal of an application by the Principal Member.

Clause 22 will insert a note at the end of section 147 to alert the reader to the separate provisions relating to representation for the purposes of notices given under the new provisions.

The dismissal provisions require that the Principal Member must give a written notice to applicants at various stages of the dismissal process as set out in section 148 of the Principal Act. Registrars of the Veterans' Review Board have been issuing written notices for and on behalf of the Principal Member under well established common law principles. It is now considered that a specific delegation power should be provided in the legislation for this practice. This will be provided for in clause 30.

Currently, an applicant to the Veterans' Review Board is able to give general authority to a person to represent the applicant at hearings before the Board and for the purpose of the Board's consideration of the decision under review. However, it is not clear that this

authority extends to matters arising out of the dismissal provisions because those matters do not involve hearings before the Board or review of the decision which is the subject of the application for review by the Board. Further uncertainty arises because, in a large number of cases, the authority given to a representative for the purpose of a Board hearing was given prior to the enactment of the current dismissal provisions.

Given that action taken under the dismissal provisions could result in the finalisation of an application without a review of the decision with which the applicant is dissatisfied, it is important that an applicant should be fully aware of action being taken on his or her behalf and that a representative should be specifically authorised to act on the applicant's behalf in such matters. The amendments will provide that it is only after a notice has been given to an applicant under the dismissal provisions that a specific authority can be given for a person to act on the applicant's behalf in such matters.

Clauses involved in the changes

Clause 22 will insert a note after section 147 of the Principal Act.

Clause 23 will repeal the existing dismissal provisions in section 148 of the Principal Act.

Clause 24 will insert **new sections 155AA and 155AB.**

Clause 25 will be an application provision for **new sections 155AA and 155AB.**

Clause 26 will insert a **new section 155AC.**

Clause 27 will be an application provision for **new section 155AC.**

Clause 28 will amend section 155A of the Principal Act.

Clause 29 will be a savings and transitional provision.

Clause 30 will insert a new subsection in section 166 of the Principal Act.

Explanation of the changes

The current dismissal provisions will be removed from section 148 of the Principal Act and placed in **new sections 155AA, 155AB and 155AC.** The current provisions will be substantially unaltered. The changes will clarify the intention of the current provisions and add new provisions concerning delegation of the Principal Member's powers under the dismissal provisions and

provide for authorisation of representatives to act for and on behalf of applicants in relation to dismissal matters.

The dismissal provisions in **new section 155AA** will apply when the standard review period of two years has expired unless the hearing of the application for review has finished, or a date, time and place is fixed for the commencement or resumption of a hearing of the review. The hearing of a review will be taken to have finished after the Board has received all the material and submissions necessary for it to make its decision and there are no further submissions to be made to the Board by any of the parties to the review.

If, at the end of the standard review period of two years, the hearing has not been finalised and a date, time and place for a hearing is not fixed, and the Principal Member considers that the applicant should be ready to proceed at a hearing, a written notice must be given to the applicant requesting a written statement indicating that the applicant is ready to proceed, or stating reasons as to why the applicant is not ready to proceed at a hearing.

If a written statement has not been provided by the applicant within 28 days of receiving the written notice from the Principal Member, then the Principal Member must dismiss the application.

If the applicant does provide a written statement within 28 days of receipt of the notice from the Principal Member, and the Principal Member considers that a reasonable explanation has been given, then the applicant and the Repatriation Commission are to be notified. In this situation, the application will not be dismissed but a further period of three months will be allowed, from the date of the Principal Member's latest notice (under **new subsection 155AA(6)**), before the applicant is again required to state that he or she is ready for a hearing or else provide reasons for the delay.

If, within 28 days of receipt of the initial written notice from the Principal Member, a statement has been received but the Principal Member considers that the statement, in itself, does not contain a reasonable explanation for the applicant's failure to proceed at a hearing, then the Principal Member must dismiss the application.

As noted above, where the Principal Member has considered that a reasonable explanation has been given by the applicant within the written statement made in response to a written notice from the Principal Member under **new section 155AA**, but at the end of three months from the date that the applicant received the notice (under **new subsection 155AA(6)**) indicating that the explanation was

reasonable, a date, time and place for a hearing has still not been fixed, then the Principal Member must again give the applicant a written notice (under **new subsection 155AB(4)**) requesting another written statement indicating that the applicant is ready to proceed, or giving reasons as to why the applicant is not ready to proceed at a hearing.

If a written statement has not been provided by the applicant within 28 days of receiving the written notice from the Principal Member under **new subsection 155AB(4)**, then the Principal Member must dismiss the application.

If the applicant does provide a written statement within 28 days of receipt of the notice from the Principal Member (under **new subsection 155AB(4)**), and the Principal Member considers that a reasonable explanation has been given, then the applicant and the Repatriation Commission are to be notified (under **new subsection 155AB(6)**). In this situation, the application will not be dismissed at that time, but a further written notice must be provided to the applicant (under new subsection 155AB(4)) after three months if a date, time and place for hearing has still not been fixed.

If, within 28 days of receipt of the written notice from the Principal Member under **new subsection 155AB(4)**, a statement has been received but the Principal Member considers that the statement, in itself, does not contain a reasonable explanation for the applicant's failure to proceed at a hearing, then the Principal Member must dismiss the application.

New section 155AB will continue to apply, and the Principal Member will be required to notify the applicant every three months after the last written notice to the applicant under subsection 155AB(6), until the application is dismissed (because the applicant fails to provide a written statement or the Principal Member does not consider that the applicant's reason for delay as set out in the latest written statement is reasonable), or a date, time and place for the commencement or resumption of a hearing has been fixed.

Where a date, time and place has been fixed at the end of a three month period, but the hearing of the review is later adjourned or postponed, then **new section 155AA** will continue to apply so that a fresh written notice must be given to the applicant by the Principal Member if the Principal Member considers that the applicant should be ready to proceed at a hearing.

Clause 26 will insert **new section 155AC** which will enable an applicant who has been given a written notice from the Principal Member under subsection 155AA(4) or 155AB(4) to authorise, in writing, a person to act on his or her

behalf in relation to the notice. Where an applicant wishes to be represented in relation to a notice, the authorisation can be made only after the notice has been given, and it must be in accordance with a form, if any, approved by the Principal Member.

The requirement that authorisation can only be given after a notice has been received will be inserted to ensure that any person who, purportedly on behalf of an applicant, supplies a written statement in response to a notice has the specific authorisation of the applicant.

The content of the applicant's written statement is very important because it is the explanation contained within that statement that the Principal Member (and the Administrative Appeals Tribunal, upon review of a decision of the Principal Member) must find to be reasonable in order to prevent the dismissal of the application for review (unless, of course, that written statement indicates that the applicant is ready to proceed at a hearing).

Clause 25 will provide that **new sections 155AA** and 155AB will apply to all applications for review, whether they were made prior to, on, or after the commencement of those new sections.

Clause 27 will provide that provisions in **new section 155AC** requiring written authorisation of a representative in accordance with a form (if any) approved by the Principal Member, will apply to cases where notices are received on or after Royal Assent. The provisions permitting the authorisation of a person to represent the applicant in relation to a notice at the applicant's expense will apply to all cases where a notice has been given, either before, on or after Royal Assent.

Section 155A of the Principal Act provides for review by the Administrative Appeals Tribunal of certain decisions relating to the dismissal of an application for review. Clause 28 will change references in section 155A from the current section 148 dismissal provisions to the dismissal provisions in **new sections 155AA and 155AB.**

Clause 29 will provide that any notices or statements given or made in purported reliance on the current dismissal provisions, which are to be repealed by clause 23, have effect as if they were given or made under the **new sections 155AA** or **155AB**, as the case may be. This will ensure that any matters currently before the Principal Member or the Administrative Appeals Tribunal will be dealt with on the basis that any actions have been deemed to have been taken under the new provisions rather than under the current provisions. Thus, the new provisions will apply to all cases.

Clause 30 will provide that the Principal Member may delegate all of his or her powers under **new sections 155AA** and **155AB** to a registrar or deputy registrar of the Veterans' Review Board. Additionally, the current common law power to delegate will continue to be available to the Principal Member.

Commencement

Clauses 23, 24, 25, 28 and 30 will commence on 8 January 1991, immediately after the commencement of section 85 of the *Veterans' Affairs Legislation Amendment Act 1990* (No.2 of 1991) (subclause 2(3) refers).

Section 85 of the *Veterans' Affairs Legislation Amendment Act 1990* inserted the current dismissal provisions into the Principal Act. As noted above, the new dismissal provisions will be inserted to clarify the intention of the current provisions. The amendments made by these clauses do not impose any new liability or test on applicants. In order to ensure that no party is either unintentionally advantaged or disadvantaged by any ambiguity that may arise from the terms of the current provisions, the new provisions are to have a retrospective effect from the date of the commencement of the current provisions. That date is 8 January 1991. This will ensure, as far as possible, equal treatment of applicants, whether or not action was taken in reliance upon the terms of the current provisions or the new provisions. Any cases that have already been finally dealt with under the current provisions will not be re-opened following the enactment of the new provisions.

Clauses 22, 26, 27 and 29 will commence on Royal Assent (subclause 2(1)).

Division 4 - Cambodia service

Summary of changes

This amendment will provide that service in Cambodia prior to the United Nations ceasefire will be considered operational service for the purposes of the Principal Act.

Clauses involved in the changes in the Principal Act

Clauses 31 - 33 amend the following provisions of the Principal Act:

- section 5B - allotted for duty;
- section 7A - Qualifying service;
- schedule 2 - deeming an area to be operational.

Clauses involved in the changes in other Acts

Part 8 of the Schedule contains the consequential amendments to other Acts necessary for this amendment.

An amendment will insert in the definition of "returned soldier" in subsection 7(1) of the *Public Service Act 1922* a reference to the item number from Schedule 2 of the Principal Act relating to Cambodia. This amendment will provide special conditions of employment for Commonwealth employees with service in Cambodia.

An amendment will insert a reference to the item number from Schedule 2 of the Principal Act relating to Cambodia in paragraph 23AB(5)(c) of the *Income Tax Assessment Act 1936*. This amendment will exempt from taxation a compensation payment received in respect of United Nations service in Cambodia.

Commencement

This amendment will be taken to have commenced on 20 October 1991 being the date that the Australian contingent commenced service in Cambodia (subclause 2(12)).

Division 5 - Automatic payment of pension

Summary of proposed changes

Certain pensions payable under the Veterans' Entitlements Act are intended to give rise to an automatic entitlement to war widows or widowers pension on the death of the veteran. A similar situation applies in respect of funeral benefits payable under the Act.

Notwithstanding this, the Act requires claims to be lodged and formal determinations to be made in respect of funeral benefits and payment of pension to the widow/er. This process is both time consuming and inefficient.

In order to streamline the process and reduce administrative costs, it has been decided to amend the Act so as not to require formal claims or determinations in these situations.

Clauses involved in the changes

Clause 34 of the Bill would provide for the insertion of **new section 13A** which will provide for certain dependants to be automatically paid pension.

Clause 35 would provide for notes to be inserted at the end of subsection 14(1) of the Principal Act to draw attention to the fact that some dependants do not have to make a claim and to make it clear that persons to whom

the automatic payment provisions do not apply are able to make a claim and thus preserve all their rights and entitlements in accordance with the conditions in the Act applicable to that process.

Clause 36 would amend section 99 of the Principal Act by omitting paragraphs (1)(b) and (c).

Clause 37 would insert a **new section 99A** in the Principal Act to provide for the automatic payment of funeral benefit to the estate of a deceased person in certain circumstances.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 6 - Assets test (primary production assets)

Summary of proposed changes

This amendment will:

(a) clarify the definition of "excluded security" and close a "loophole" highlighted by the Federal Court case of Clayton whereby mortgages taken out for the benefits of others can be deducted from a pensioner's assets; and

(b) provide special rules for assessing the value of a primary producer's assets.

The measures will be discussed individually.

(a) Excluded security definition

Background

Currently under section 52C of the Principal Act, the value of a charge or encumbrance, other than an "excluded security", is deducted from the value of an asset in assessing its net market value. Subsection 52C(5) provides that an "excluded security" is either a collateral security, or a third party or guarantor arrangement.

The original intention of section 52C was to prevent service pensioners from reducing the value of their assessable assets by using their property as security for another person's loan (ie, another party).

A similar provision exists in the Social Security Act.

The Clayton case highlights a loophole whereby a third person also signs his/her name to a mortgage. In this way the third person technically becomes "party" to the charge. The asset owner can still deduct the value of the charge even though the benefit of the charge is going to another person.

Clauses involved in the changes

Clause 2 would specify the date of commencement as the day of Royal Assent.

Clause 39(b) amends subsection 52C(2) and will close the loophole highlighted by the Clayton case.

Explanation of the changes

The amended subsection 52C(2) states that a charge or encumbrance is not deductible to the extent it is given for the benefit of a third person (clause 39(b)).

Commencement

The amendment will commence on the day of Royal Assent (subclause 2(1)).

(b) Assets test changes for primary producers

Background

There are a number of farmers who are "asset rich and income poor". As a result, they may receive reduced payments or no payment of service pension. This may be the case even though they have considerable liabilities.

Section 52C of the Principal Act provides that the value of any charge or encumbrance on an asset, other than an excluded security, is deducted from the value of that asset in assessing its market value.

This effectively means that the value of any debt is exclusively offset against only the asset which provides the primary security for the debt and then only when the owner of the asset and the primary debtor are the same person.

An example of the problem that this causes is where the value of a person's farm is included in the person's assets and it precludes the payment of service pension. The person also has farm machinery with a depreciated value of $100,000 which is subject to a mortgage of $150,000.

Effectively the machinery has a negative value of $50,000. However, the current legislation does not allow the $50,000 liability to be offset against the value of the farm.

An amendment to the Principal Act will enable primary producers to combine their farming debts and reduce the total value of their farming assets.

Clauses involved in the changes

Clause 38 inserts new definitions into section 5L - Assets test definitions.

Clause 39(a) inserts a note to section 52C - Effect of charge or encumbrance to signpost **new section 52CA.**

Clause 40 inserts **new section 52CA** to allow the deduction of related liabilities from primary production assets.

Explanation of the changes

Definitions of "family member", "fishing operations" and "forest operations" are inserted in section 5L. "Primary producer" and "primary production" are also inserted in section 5L of the Principal Act to define those people who will be able to take advantage of the proposal.

The definition of "primary production" is to be similar to that already used in the *Income Tax Assessment Act 1936*. It will mean the cultivation of land, maintenance of animals, fishing or farming operations. A "primary producer" is someone whose principal occupation is "primary production". "Family member" will be defined to mean a partner, father, mother, sister, brother or child of the person, or anyone the Commission considers should be treated as a family member (clause 38).

Clause 40 sets out when and how deductions on a person's assets can be made.

The provisions apply if a person:

- is a primary producer or family member of a primary producer;
- has assets which are used for the purposes of primary production; and
- has liabilities which, in the Commission's opinion, are related to carrying out primary production.

If these three conditions are met, the assets are taken to be a "single" asset called the "primary production asset" and the general provisions which detail how charges and encumbrances are treated will not apply in calculating the value of this asset.

There will be a calculator to work out the value of the "primary production asset" as follows:

Step 1 add together the value of the assets used for primary production - "unencumbered value";

Step 2 add together the value of the liabilities related to carrying out the primary production - "total liability"; and

Step 3 deduct the "total liability" from the "unencumbered value". The result is the person's "primary production asset".

If the person's primary production asset is less than nil, the asset is given a nil value.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 7 - Certain unlisted property trusts

Summary of proposed changes

This amendment will provide special rules for assessing a service pensioner's ordinary income from investments in certain unlisted property trusts.

Background

Unlisted property trusts have recently been experiencing difficulties as a result of the downturn in sectors of the property market. A number of trusts have responded to this by restructuring. One form of restructuring involves fund managers terminating existing trusts and paying out investors with units in other trusts and then listing these new trusts on the stock exchange.

Currently under the Principal Act, a service pensioner with a pre-9 September 1988 investment in an unlisted property trust would be taken to have realised his/her investment and any capital growth would be assessed as ordinary income for a period of 12 months. The investment in the new trust would also be assessed as ordinary income on an ongoing basis.

An amendment to the Principal Act is necessary to facilitate restructuring in the property trust industry and will be in line with a similar amendment to the Social Security Act and recent changes to corporations law.

Clauses involves in the changes

Clause 41 amends section 46J of the Principal Act by excluding certain property trust investments from the operation of subsection 46J(1).

Explanation of the changes

The Principal Act will be amended to provide that if a person:

- has an investment in an unlisted property trust;
- realises that investment (within the meaning of subsection 46J(5)); and
- is paid out with investments in another property trust under the same fund manager,

any capital growth at the date of realisation will not be considered ordinary income.

The units in the other trust will be taken to be a new investment and subject to the ongoing assessment provisions under sections 46L to 46R (the post-9 September 1988 market-linked investments).

This amendment will affect only those investments in unlisted property trusts made or acquired before 9 September 1988.

It will apply only to investments in unlisted property trusts that are realised and paid out with units in other property trusts before 23 July 1992 (clause 41).

Only trusts that invest in real property will be affected.

Commencement

The amendment will be taken to have commenced on 24 July 1991 being the date, by law, that all withdrawals from unlisted property trusts were deferred for 12 months (subclause 2(11)). This date will ensure that all pensioners, who may be affected by the deferred withdrawal period for their investments in unlisted property trusts, receive the benefit of this amendment.

This amendment will apply to investments in unlisted property trusts that are realised and paid out with units in other property trusts under the same fund manager before 23 July 1992 (clause 41).

Division 8 - Special residences and special residents

Summary of the proposed change

The assets test provisions will be amended to equate the balance payable under a sale leaseback agreement to that of an entry contribution in a retirement village or granny flat interest.

Background

Sale leaseback schemes allow people who are "asset rich but income poor" to use the equity in their principal home in order to provide for themselves.

A person entering such a scheme will sell his/her home and receive a lump sum (or sometimes instalments) which can be used to support the person. The person will then have a right to live in the home until he/she dies or leaves the property (as specified in the agreement).

The person benefits by being able to access the equity in his/her home while retaining security of tenure. The purchaser benefits because the value of the property is frozen at the time of the sale leaseback agreement and the purchaser gets the benefits of any future increase in the value of the property. The person may also agree to pay rent to the purchaser while occupying the "sale leaseback" home.

The Principal Act already has special provisions which deal with retirement villages or granny flat interests. As sale leaseback schemes are similar in nature to these interests, they should be subject to the same assets test assessment.

Clauses involved in the changes

Clause 42 specifies that an amount paid to a pensioner under a sale leaseback arrangement will not be treated as ordinary income of the person.

Clause 43 omits the definition of granny flat interest and makes a technical amendment to the definition of property owner.

Clause 44 amends section 5M by providing a definition of retirement village resident.

Clause 45 inserts **new sections 5MA, 5MB and 5MC** which contain the granny flat, sale leaseback and special residence definitions.

Clause 46 inserts **new subsections 5R(14) & (15)** to provide that the Commission may determine that a particular arrangement is a sale leaseback agreement for

the purposes of the sale leaseback definition in **new section 5MB.**

Clause 47 amends section 52 to exempt the value of a person's interest in his/her principal home under the assets test where the person is a sale leaseback resident.

Clauses 48-50 amend the assets test provisions to update the references to "special residences".

Clause 51 repeals section 52K of the Principal Act which is now located in the definitions contained in the amended section 5M and **new subsections 5MA & 5MB.**

Clauses 52 & 53 amend the entry contribution definition in section 52M to include a reference to sale leaseback agreements.

Clause 54 inserts a **new subsection 52N(2B)** which provides for the calculation of an extra allowable amount for sale leaseback residents.

Clauses 55-62 amend the current provisions by which retirement village and granny flat residents are deemed to be property owners or non-property owners to extend their application to sale leaseback residents.

Clauses 63 & 64 amend the adjusted amount provisions to extend their application to sale leaseback residents.

Explanation of the changes

The current assets test provisions (which already deal with the entry contribution for a retirement village or a granny flat interest) would be amended to include a sale leaseback residence. The definitions relating to special residences (retirement villages, granny flats and sale leaseback residences) and special residents (occupiers of special residences) will be grouped in an amended section 5M and **new sections 5MA, 5MB and 5MC** (clauses 44 & 45).

Part of the clause 45 amendment is the insertion of **new subsections 5MB(4), (5), (7) and (8).**

New subsection 5MB(4) would provide the Commission with the discretion to determine what constitutes an "initial payment amount" for a sale leaseback agreement.

New subsection 5MB(5) would provide the Commission with a list of issues that it must consider when determining the "initial payment amount". An initial payment amount would be the amount agreed to be paid by the purchaser as the total first payment. This would not be limited to a holding deposit with the balance of the deposit paid at a

later date. The total amount of the deposit would be considered the "initial payment amount".

New subsection 5MB(7) would provide the Commission with the discretion to determine, in a particular case, the value of the deferred payment amount.

New subsection 5MB(8) would enable the Commission, when determining a deferred payment amount under new subsection 5MB(7), to consider if:

- the parties of the sale leaseback agreement are at arm's length; or
- the parties had undervalued the sale leaseback home.

A sale leaseback agreement at arm's length is an agreement that is in accordance with a fair or market value of the home and disregards any connection between the parties subject to the agreement.

The current provisions work by isolating the amount paid to enter a retirement village or purchase of a granny flat interest. This amount is called the entry contribution.

If the entry contribution is more than the extra allowable amount (ie, the difference between the property owner and non-property owner asset value limits) then for the purposes of the assets test, the person is treated as a property owner. If the entry contribution is less than or equal to the extra allowable amount, the person is treated as a non-property owner.

If a person is treated as a property owner he/she will be subject to the lower asset value limit and will not be eligible for rent assistance.

If the person is a non-property owner, the higher asset limit is applied to the person's pension assessment and the person could be eligible for rent assistance.

When a person sells his/her home pursuant to a sale leaseback agreement, the price of the home would be fixed and a lump sum paid at the time of entering into the agreement. **New paragraph 5H(8)(zk)** is inserted into the Principal Act to ensure that this lump sum is not treated as ordinary income (clause 42).

The "balance" of the purchase price would be the amount left outstanding. It is this amount, including any instalment payments provided for in the agreement, which could count as the entry contribution.

Commenc ment

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 9 - Remote area allowance

Summary of proposed changes

This amendment will:

(a) entitle each member of a respite care couple to the "single" rate of remote area allowance;

(b) extend the eligibility for remote area allowance beyond the usual 8 week period of absence from the remote area in certain circumstances; and

(c) extend the payment of additional remote area allowance in respect of dependent children to certain non-veteran service pensioners.

Background

(a) the "single" rate of remote area allowance for respite care couples.

Currently, most service pension payments under the Principal Act for illness separated and respite care couples are payments at the "single" rate (eg, the basic rate of service pension and rent assistance).

An illness separated couple eligible for remote area allowance each receive a "single" rate payment of the allowance (currently $14 per fortnight). However, a respite care couple eligible for remote area allowance each receive the "married" rate of the allowance (currently $12 per fortnight).

This amendment would ensure that a respite care couple, if eligible, receives an equivalent amount of remote area allowance as an illness separated couple.

(b) continuation of remote area allowance beyond the 8 week period of absence and *(c) pay, in some circumstances, the additional allowance for the dependent child to a non-veteran service pensioner.*

A veteran service pensioner, in receipt of remote area allowance, is eligible for an additional payment of that allowance in respect of each dependent child for whom the veteran receives dependent child add-on. The child does not have to reside in the remote area but must remain in Australia.

If the veteran service pensioner is:

- no longer eligible for remote area allowance; or
- ceases to receive the dependent child add-on,

the payment of additional remote area allowance in respect of the dependent child also ceases.

There are certain circumstances where the cancellation of the additional remote area allowance in respect of the child may cause financial hardship.

If the veteran service pensioner were to leave the remote area for a period exceeding 8 weeks for medical treatment or to attend a rehabilitation or training course, his/her payment of remote area allowance would be cancelled including any additional allowance in respect of a child.

Another example is where the veteran service pensioner is the infirm member of an illness separated or respite care couple. The dependent child add-on would be paid to the veteran's partner but the partner is not eligible to receive the additional remote area allowance in respect of the child as he/she is not a veteran service pensioner.

Clauses involved in the changes

(a) the "single" rate of remote area allowance for respite care couples

Clauses 67, 68(c) & 69 amend points 41-G3, 42-H3 and 43-E3 of the Principal Act, respectively, to include a reference to respite care couples and thereby providing eligibility for the "single" rate.

(b) continuation of remote area allowance beyond the 8 week period of absence and *(c) pay, in some circumstances, the additional allowance for the dependent child to a non-veteran service pensioner.*

Clause 66 inserts **new subsections 5R(11) & (12)** in the Principal Act to provide the Commission with a discretion to continue to pay remote area allowance, beyond the usual 8 week period of absence, in certain circumstances. This clause would also insert **new subsection 5R(13)** to allow the Commission to retrospectively make a determination under **new subsection 5R(12)** up to 3 months after the end of the 8 week period of absence from the remote area.

The Commission would consider the following:

- the person is an age or invalidity service pensioner;
- the person receives additional remote area allowance in respect of a dependent child
- the person is absent from the remote area, but remains within Australia, for more than eight weeks; and
- the person's absence is for special circumstances (eg, the person is receiving medical treatment or attending a rehabilitation or training course).

This clause would also insert a note after subsection 5Q(2) to signpost to the reader the modifying rules contained in **new subsections 5R(11) & (12).**

Clause 68 inserts **new point 42-H4A** in the Principal Act to allow for the payment of remote area allowance for a dependent child to non-veteran service pensioners, in some circumstances.

For a non-veteran service pensioner to be eligible for the additional allowance the person must be:

- a member of an illness separated or respite care couple;
- receiving a partner or carer service pension; and
- receiving dependent child add-on.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 10 - Investment income

Summary of proposed changes

This amendment will ensure that foreign sourced superannuation is assessed as ordinary income.

Background

Section 5J of the Principal Act contains the definitions of "superannuation benefit", "superannuation fund" and "superannuation pension". These definitions are fundamental to the assessment of Australian-sourced superannuation under Division 8 of Part III: Ordinary income test - Investment income.

Foreign sourced superannuation has always been treated as ordinary income and assessed on an ongoing basis.

"Superannuation benefit" and "superannuation fund" are defined with reference to the *Income Tax Assessment Act 1936* and specifically exclude foreign sourced income from the operation of these provisions. However, due to a technical oversight, "superannuation pension" does not exclude foreign sourced superannuation.

This amendment ensures that foreign sourced superannuation is precluded from the operation of the investment income provisions contained in Division 8 of Part III.

Clauses involved in the changes

Clause 70 substitutes the current definition of "superannuation pension" and inserts new definitions of "foreign superannuation fund" and "foreign superannuation pension" in section 5J.

Clause 71 inserts **new paragraph 52(1)(da)** in the Principal Act to disregard a person's "foreign superannuation pension" when calculating the value of the person's assets.

Commencement

This amendment will commence on the day of Royal Assent (subclause 2(1)).

Division 11- Cancellation or suspension determinations

Summary of proposed changes

This amendment would alter the effective date from which a service pension could be cancelled or suspended, because of the failure of a service pensioner to comply with a notice under section 54A of the Principal Act and clarifies the authority of the Commission to do so. It would restore the situation to that which prevailed prior to the commencement of the rewrite of Part III of the Veterans' Entitlements Act on 1 July 1991.

Background

Prior to the commencement on 1 July 1991 of the rewritten Part III of the Veterans' Entitlements Act, subsection 58(2) allowed the date of effect for suspension or cancellation of a service pension to be earlier than the date of the determination. The provision allowed for certain exceptions. The exceptions applied to cases where the cancellation or suspension of a pension arose from the failure of a pensioner to comply with the

requirement to respond to notices under paragraph 127(1)(f) or subsection 128(4). In these situations the date of effect of suspension or cancellation could not be earlier than the date of determination.

Equivalent provisions were included in the rewritten provisions of the Veterans' Entitlements Act. Subsection 56H(4) allows a delegate of the Repatriation Commission to set a date of effect of an adverse determination resulting from contravention of the Act, from a date earlier than the date of the determination. Again there were exceptions to the provision.

However, in the course of the rewrite of Part III, a reference to subsection 54A(6), dealing with failure to respond to a notice, which should have been included in the list of exceptions, was omitted from subsection 56H(4).

This means, in effect, that the date of cancellation or suspension of a pension can be set earlier than the date of determination, for failure to comply with a notice.

In the actual operation of the rewrite, it became apparent that the scope of the power to cancel or suspend a pension under section 56E, to deal with failure to comply with a notice under section 54A required clarification.

Clauses involved in the changes

Clause 72 amends section 56E of the Principal Act to exclude from its application, persons covered by the proposed section 56EA.

Clause 73 inserts a **new section 56EA** in the Principal Act, which sets out provisions to deal with the cancellation or suspension determination for failure of a service pensioner to comply with a section 54A notice.

Clause 74 inserts a reference in section 56F of the Principal Act to refer to the proposed section 56EA with respect to resumption of payment after a suspension under that section.

Clause 75 inserts a reference to the proposed section 56EA along with the reference to section 56E in subsection 56H(1) and a reference to "subsection 54A(6)" in subsection 56H(4).

Explanation of the changes

The Principal Act would be amended so as to prevent a delegate of the Repatriation Commission from setting an effective date for an adverse determination earlier than the actual date of the determination, in those cases

where a written notice sent under section 54A has not been complied with by a service pensioner.

New section 56EA would provide that where a service pensioner has failed to comply with a notice under section 54A the Commission may suspend or cancel the pension.

The amendments to section 56H ensure that an adverse date of determination for suspension or cancellation of a pension, arising from subsection 54A(6), cannot be set earlier than the date of that determination.

This amendment restores the situation, with respect to the setting of the effective date for the operation of an adverse determination for failure to comply with a notice, to that which applied prior to the rewrite of Part III of the Principal Act.

Commencement

This amendment will be taken to have commenced on 1 July 1991 immediately after commencement of the *Veterans' Entitlements Amendment Act 1991* (subclause 2(7)).

Division 12 - Rounding base for income free area

Summary of proposed changes

This amendment will change the indexation rounding base for the income free area to $52.

Clauses involved in the changes

Clause 76 amends the amount in column 6 of item 4 in the Table at subsection 59B of the Principal Act from $26.00 to $52.00.

Commencement

The amendment will be taken to have commenced on 1 July 1991 immediately after the commencement of section 22 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* being the first date the indexation provisions applied to the income free area (subclause 2(8)(a)).

Division 13 - Nomination of bank etc. account

This amendment is described under Division 4 of Part 3 of this Bill (page 10 refers). This amendment commences on day of Royal Assent (subclause 2(1)).

Division 14 - Attendant allowance

This amendment is described under Division 3 of Part 3 of this Bill (page 11 refers). This amendment commences on day of Royal Assent (subclause 2(1)).

Division 15 - Veterans' Review Board - terms of appointment of full-time members

Summary

This amendment would remove the statutory age limit of 65 years for part-time members of the Veterans' Review Board.

Background

The government has decided, that as the opportunity arises, existing age limits for part-time statutory office holders should be removed.

Section 158 of the Principal Act, provides that members of the Board, other than the Principal Member may be part-time members.

Subsection 159(2) currently forbids the appointment or re-appointment as a member of the Board of anyone who has attained the age of 65 years, as well as the appointment or re-appointment of a person to serve as a member beyond the date on which that person will attain the age of 65 years.

Clauses involved in the changes

Section 159 of the Principal Act sets out the terms of appointment of members of the Board. Clause 82 would amend section 159 so as to restrict the scope of the statutory age limit of 65, to those persons who are appointed as full-time members.

Explanation of the changes

This amendment would enable the appointment or re-appointment as a part-time member of the Board of anyone who has attained the age of 65 years, as well as the appointment or re-appointment of a person to serve as a part-time member beyond the date on which that person will attain the age of 65 years.

Commencement

The amendment would commence on day of Royal Assent and would apply to all persons appointed as members of the Board on or after that date (subclause 2(1))

Division 16 - Savings and Transitionals

Certain veterans who are taken to be receiving fringe b nefits are eligible for treatment under Part V

Summary of proposed changes

This amendment provides a savings provision for treatment at departmental expense for a person whose fringe benefits have been "saved" as a result of the introduction of the deeming provisions.

Background

The deeming provisions were introduced into the Veterans' Entitlements Act on 1 March 1991. These provisions deem a rate of return for a person's cash at hand and any deposit money earning less than the deemed rate.

Section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*, as amended by Part 5 of this Bill, contains the savings provisions for fringe benefits entitlement for service pensioners who would otherwise lose this entitlement as a result of the introduction of the deeming provisions.

Certain treatment entitlement provisions contained in the Principal Act rely on an age or invalidity service pensioner receiving a rate of service pension which would entitle the service pensioner to fringe benefits under Division 15 of Part III of that Act.

This amendment will "save" treatment entitlement for those veterans who would otherwise lose their entitlement following the introduction of the deeming provisions.

Clauses involved in the changes

Clause 83 contains the treatment savings provision.

Clause 84 would insert notes after section 53D to signpost to the reader the fringe benefits savings provisions contained in section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*.

Explanation of the changes

This amendment will ensure that a person's treatment entitlement is "saved" if:

- a person is a veteran eligible for fringe benefits because of the savings provisions contained in section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* (as amended by Part 5 of this Bill);

- the person would be receiving service pension but for the deeming provisions; and

- if receiving service pension, the veteran would be eligible under section 53D for treatment under Part V of the Principal Act.

A note would explain that this savings provision also applies to a veteran:

- who is eligible for fringe benefits because of section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*; and

- who is receiving age or invalidity service pension.

Commencement

This amendment will be taken to have commenced immediately on 1 July 1991, after Part 5 of this Bill, to ensure that all persons who would otherwise have lost their treatment entitlement, as a result of the introduction of the deeming provisions, are covered by this amendment (subclause 2(9)).

Certain concessional beneficiaries eligible for treatment under Part V

Summary of proposed changes

This amendment provides a savings provision for treatment at departmental expense for a person whose status as a "concessional beneficiary" (under the National Health Act) has been "saved" as a result of the introduction of the deeming provisions.

Background

The deeming provisions were introduced into the Veterans' Entitlements Act on 1 March 1991. These provisions deem a rate of return for a person's cash at hand and any deposit money earning less than the deemed rate.

Paragraphs (ba) & (bb) of the "concessional beneficiary" definition in section 84 of the National Health Act contain the savings provisions for a person's Pharmaceutical Benefits Concessions (PBC) Card who would otherwise lose this card as a result of the introduction of the deeming provisions.

Under subsection 85(7) of the Principal Act, a veteran is entitled to treatment at departmental expense if the veteran is receiving:

- any rate of service pension; and

- disability pension at a rate of 50% or higher

The introduction of the deeming provisions resulted in some veterans losing entitlement to service pension and consequentially losing treatment entitlement under subsection 85(7) of the Principal Act.

This amendment would "save" this treatment entitlement to those veterans who would otherwise lose this entitlement following the introduction of the deeming provisions.

Clauses involved in the changes

Clause 85 contains the treatment savings provision.

Explanation of the change

This amendment will ensure that a veteran's treatment entitlement is "saved" if:

- the veteran is a person referred to in paragraph (ba) or (bb) of the definition of "concessional beneficiary" contained in section 84 of the National Health Act;

- the veteran would be receiving service pension under Part III of the Principal Act but for the deeming provisions contained in Division 8A of Part III of that Act; and

- if receiving service pension, the veteran would be eligible under subsection 85(7) of the Principal Act for treatment under Part V of that Act.

Commencement

This amendment will be taken to have commenced on 1 July 1991, immediately after Part 5 of this Bill, to ensure that all persons who would otherwise have lost their treatment entitlement, as a result of the introduction of the deeming provisions, are covered by this amendment (subclause 2(9)).

PART 5 - AMENDMENT OF THE VETERANS' ENTITLEMENTS (REWRITE) TRANSITION ACT 1991

Fringe benefits test - interest attributed to money not invested or invested at a low rate of interest (changes introduced on 1 March 1991)

Summary of proposed changes

This amendment will provide a savings provision to fringe benefits entitlement for certain service pensioners.

Background

The deeming provisions were introduced into the Veterans' Entitlements Act on 1 March 1991. These provisions deem a rate of return for a person's cash at hand and any deposit money earning less than the deemed rate.

Currently section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* contains a savings provision for service pensioners who would otherwise have lost their entitlement to fringe benefits as a result of the introduction of the deeming provisions (introduced on 1 March 1991).

This savings provision did not account for service pensioners who invested, or reinvested their money in anticipation of the introduction of the deeming provisions to maximise their investment income.

This amendment will ensure that fringe benefit entitlement will be "saved" for service pensioners who invested or reinvested their money in anticipation of the deeming provisions.

Clauses involved in the changes

Clause 86 would insert a **new subsection 17(2)** to incorporate the new savings provision.

Explanation of the changes

The savings provision in **new subsection 17(2)** would provide that if a person:

- who was receiving fringe benefits anytime between 21 August 1990 and before 21 March 1991;
- invested or reinvested his/her money in anticipation of the introduction of the deeming provisions; and
- had not made the investments, the person would otherwise have been ineligible to receive fringe benefits on 21 March 1991 (ie, deeming would have caused loss of eligibility),

then the person retains eligibility for fringe benefits as if the legislation did not contain the deeming provisions.

Commencement

This amendment will be taken to have commenced immediately after the section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* on 1 July 1991 to ensure that all persons who would otherwise have lost their entitlement to fringe benefits, as a result of the

introduction of the deeming provisions, are covered by this amendment (subclause 2(8)(b)).

PART 6 - AMENDMENT OF THE NATIONAL HEALTH ACT 1953

Summary of proposed changes

This amendment will provide a savings provisions in the Principal Act for Pharmaceutical Benefits Concession (PBC) Card holders to retain the card if they would otherwise lose entitlement to the card as a result of the introduction of the deeming provisions in section 50C of the Veterans' Entitlements Act.

Background

The deeming provisions were introduced into the Veterans' Entitlements Act on 1 March 1991. These provisions deem a rate of return for a person's cash at hand and any deposit money earning less than the deemed rate.

In some instances, a person's service pension was reduced to nil when the deemed rate was applied to the person's pension assessment. This resulted in cancellation of the person's PBC card. (Service pensioners receiving a rate of service pension to entitle the person to fringe benefits are not entitled to receive a PBC card.)

This amendment will ensure that entitlement to a PBC card will be "saved" if this entitlement would otherwise have been lost as a result of the introduction of the deeming provisions.

Clauses involved in the changes

Clause 87 amends the definition of "concessional beneficiary" in section 84 of the National Health Act by inserting two savings provision in that definition **(new paragraphs (ba) & (bb))**.

Explanation of the changes

A person would remain a "concessional beneficiary" if the person:

- was a person to whom paragraph (b) of the definition of "concessional beneficiary" applied on 28 February 1991 (prior to the introduction of the deeming provisions); and
- would continue to apply but for the existence of the deeming provisions in Part III of the *Veterans' Entitlements Act 1986* **(new paragraph (ba)** refers).

A person would also remain a "concessional beneficiary" if the person:

- was a person to whom paragraph (b) of the definition of "concessional beneficiary" applied anytime between 21 August 1990 and on 21 March 1991;

- the person invested or reinvested his/her money in anticipation of the introduction of the deeming provisions (contained in Part III of the *Veterans' Entitlements Act 1986*); and

- had the person not made the investments, the person would otherwise have not been a "concessional beneficiary" on 21 March 1991 (ie, deeming would have caused loss of eligibility),

then the person is a "concessional beneficiary" as if the Veterans' Entitlements Act did not contain the deeming provisions.

Commencement

This amendment will be taken to have commenced on 1 March 1991 to ensure that all persons who would otherwise have lost their entitlement to a PBC card, as a result of the introduction of the deeming provisions, are provided for (subclause 2(5)).

PART 7 - FURTHER AMENDMENTS

CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS

Clause 88 would provide for a Schedule to the Bill which would make minor and consequential amendments to a number of Acts.

The Schedule is divided into nine Parts. Each Part has a separate commencement date relevant to the date of effect of each of the original provisions amended by this Schedule. Subclauses 2(1)(f) & (g), 2(2), 2(4), 2(6), 2(8)(c), 2(10) and 2(13)(c) refer.