

1993

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (No. 3) 1993**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Veterans' Affairs,  
Senator the Hon John Faulkner)



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## **Veterans' Affairs Legislation Amendment Bill (No. 3) 1993**

### **Outline and Financial Impact Statement**

#### **Outline**

This portfolio Bill introduces a number of changes to Veterans' Affairs legislation reflecting the Government's on-going social justice goals and implementing some of its election promises.

The amendments contained in this Bill are primarily to the *Veterans' Entitlements Act 1986*. Minor consequential changes, arising from the introduction of a seniors health card, are also proposed to the *Hearing Services Act 1991*, the *National Health Act 1953*, the *Social Security Act 1991* and the *Defence Service Homes Act 1918*.

The major areas of legislative change cover:

issue of a seniors health card as of 1 July 1994 to persons of service pension age but ineligible to receive a pension, for access to concessional benefits in pharmaceuticals, optometry and hearing services;

restructuring of the child-related payments to service pensioners to allow for more flexibility in the allocation of the payments;

limitation of Commonwealth liability through adjustment of disability pension payable under Part II of the Act to take account of lump sum compensation paid for the same service-related injury or death;

applicability of deprivation provisions to any disposal of assets in the five years preceding the lodgement of a claim for service pension;

offsetting of losses against profits on capital invested and a more equitable calculation of the rate of return on certain investments;

alignment of carer service pension with other types of service pension payable under the VEA;

correction of weaknesses in the legislation highlighted by recent Courts and Tribunals decisions.

#### **Financial Impact**

The measures in this Bill have negligible or no financial impact.



***Part I - Preliminary***

Part 1 of the Bill sets out how the amending Act is to be cited (clause 1), when the various Parts, Divisions and Sections of the amending Act are to commence (clause 2) and the application date of certain amendments (clause 3).

## **Part 2 - Seniors Health Card**

### **Summary of proposed changes**

This Part provides the legislative basis within the Principal Act for the Seniors Health Card. This card will give low income non-pensioner retirees or persons who do not meet the residency requirements for the age service pension, access to certain health-related Commonwealth concessions. It also proposes consequential amendments to the *National Health Act 1953* and the *Hearing Services Act 1991* to enable seniors health card holders access to concessional pharmaceutical benefits and hearing aid concessions. Consequential amendments are also required to the *Social Security Act 1991*.

### **Background**

All recipients of service pension are entitled to pharmaceutical and hearing aid concessions under the *National Health Act 1953*, the *Health Insurance Act 1973* and the *Hearing Services Act 1991*. The administrative mechanisms enabling this access is via the Pensioner Concession card (previously known as the Pensioner Health Benefits card). This card may also be recognised by other agencies who provide non-health related concessions.

Persons of age service pension age whose income levels are the same as those of age service pensioners may not be eligible for health related concessions because they are not entitled to receive a payment of service pension or social security pension as a result of :

    failing certain eligibility or payability conditions such as the assets test or pension residential requirements (ie, 10 years residency required for Commonwealth and Allied veterans); or

    their reluctance to claim a pension, the value of which would be relatively insignificant (eg, \$67.60 per year or \$2.60 per fortnight).

### **Clauses involved in the changes**

Clause 2 specifies the commencement date as 1 July 1994.

Clause 4 amends the definition of "veteran" in section 5C of the Principal Act to ensure that it also applies to new Part VIIC.

Clause 5 amends subsection 5G(2) of the Principal Act to ensure that residency in Papua New Guinea prior to its independence does not count as Australian residency for the purposes of meeting the residency eligibility criteria for the seniors health card.

Clause 6 inserts a new section 5PB into the Principal Act to contain the seniors health card definitions.

Clause 7 inserts new Part VIIC into the Principal Act that deals with the seniors health card.

Clause 8 details consequential amendments to other Acts set out in Schedule 1 of the Bill.

### **Explanation of the changes**

Clause 4 amends the definition of "veteran" in subsection 5C(1) of the Principal Act. Currently, the definition has a specific meaning throughout the Principal Act which limits it to persons who have served with the Australian Defence Force. This definition is extended for the purposes of Part III of the Principal Act (service pension) to include Commonwealth and Allied service personnel. The wider definition will also apply to eligibility for the seniors health card and has been amended to include a reference to new Part VIIC.

Clause 5 amends subsection 5G(2) of the Principal Act. This subsection provides that a non-indigenous person who was resident in the Territories of Papua or New Guinea, prior to it becoming an independent sovereign state, will be considered an Australian resident while remaining there. It is proposed that this deeming provision will not operate for the purposes of the seniors health card. Therefore, subsection 5G(2) has been amended to specifically exclude its operation.

Clause 6 inserts a new section 5PB into the Principal Act to define the term "holder of a seniors health card". A person will be a holder of a seniors health card if a determination is in force that the person is entitled to a card. Such a determination would be made under new section 118ZG or 118ZP (see clause 7). Basically, a person will need to be eligible for a seniors health card to become entitled to be a holder of the card.

Clause 7 inserts new Part VIIC into the Principal Act which provides the legislative basis for the seniors health card. The more significant aspects are:

- eligibility for the card (Subdivision 1A);
- entitlement to be a holder of a card (Subdivision 1B);
- claiming the card (Division 2);
- determining entitlement to the card (Division 4); and
- notification obligations of a cardholder (Division 5).

### *Division 1 - Eligibility for and entitlement to seniors health card*

The conditions to be satisfied in order for a person to be eligible for a seniors health card are set out in new section 118V. New subsection 118V(1) deals with a person who might otherwise be eligible for an age service pension. The person must:

- be a veteran
- have qualifying service
- be a woman who has reached the age of 55 years or a man who has reached the age of 60 years;
- be an Australian resident;
- be in Australia;

not be receiving service pension, social security pension or benefit; and satisfy the seniors health card ordinary income test.

New subsection 118V(2) describes the eligibility criteria for a person who is the partner of a person described in new subsection 118V(1) and who might otherwise be eligible for an age pension. The person must:

- be the partner of a person described in subsection 118V(1);
- be a woman aged 60 years or a man aged 65 years;
- be an Australian resident;
- be in Australia;
- not be receiving service pension, social security pension or benefit;
- satisfy the seniors health card ordinary income test; and
- not be eligible for the card under subsection (1).

The differing age requirements in these two subsections reflect the age requirement for age service pension (subsection 118V(1)) and social security age pension (subsection 118V(2)).

Note 1 to subsection 118V(1) signposts the definition of "qualifying service". Note 1 to subsection 118V(2) signposts the terms "member of a couple" and "partner". Notes 2 & 3 to subsections 118V(1) & (2) signpost the definitions of the terms "Australian resident" and "seniors health card income test".

New section 118W requires a person to be a "holder of a seniors health card" in addition to being eligible for the card in order to attract the various benefits and concessions relating to the health of the cardholder. Note 1 to the section explains how a person becomes a "holder of a seniors health card" and signposts the definition of that term. Note 2 indicates that concessional pharmaceutical benefits are available to the cardholder under the *National Health Act 1953* and hearing aid concessions under the *Hearing Services Act 1991*.

New section 118X prevents a person who is a holder of a seniors health card under the Social Security Act to be entitled to a card under this Part.

#### *Division 2 - Claim for seniors health card*

To be granted a seniors health card, a person must make a proper claim for the card (new section 118Y). New section 118Z describes who may claim for the card. It may be a person who wishes to be granted a card or another person whom the claimant for the card approves. Subsection 118Z(2) allows the Repatriation Commission to approve another person to claim the card where the claimant is unable to lodge the card due to physical or mental incapacity.

The following criteria will make a claim for a seniors health card a proper claim:

- it must be in writing, on a form approved by the Repatriation Commission and include any evidence the claimant considers relevant (new section 118ZA);
- it must be lodged at a place or with a person in Australia approved by the Repatriation Commission (new section 118ZB); and



the person making the claim, or on whose behalf the claim is made, must be an Australian resident and in Australia when lodging the claim (new section 118ZC).

The note to new section 118ZC signposts the definition of "Australian resident". If the claimant or a person representing the claimant for a seniors health card seeks to withdraw a claim for the card before it is determined, then the claim will be taken not to have been made (new subsections 118ZD(1) & (2)). The withdrawal of the claim can be made orally or in writing (new subsection 118ZD(3)). A written withdrawal must be lodged at an office of the Department in Australia (new subsection 118ZD(4)). An oral withdrawal must be made to a person in an office of the Department in Australia (new subsection 118ZD(5)). New subsections 118ZD(6) & (7) set out the additional safeguards for oral withdrawals. The Secretary is required to provide a written acknowledgment of the oral withdrawal and give the person 28 days to reconsider his/her decision to withdraw the claim. If the person advises the Secretary within 28 days of receiving the acknowledgment notice that he/she wishes to continue with the claim, the oral withdrawal is taken not to have been made.

The note after new subsection 118ZD(7) advises the reader that the person's decision to revoke the oral withdrawal will reactivate the claim without affecting the commencement date of the claim.

#### *Division 3 - Investigation of claim*

New section 118ZE provides that where a person has made a proper claim for the seniors health card, the Secretary must investigate matters raised in the claim. The Secretary will then submit the claim to the Repatriation Commission for determination. When the claim is submitted to the Repatriation Commission, it will be accompanied by all evidence the claimant has provided, all documents obtained by the Department in its investigations and any other documents under the control of the Department relevant to the claim.

#### *Division 4 - Consideration and determination of claim*

New section 118ZF describes the duties of the Repatriation Commission when a claim for seniors health card has been submitted to it. The note to this section alerts the reader that the claimant has a right of review to the Repatriation Commission decision under new section 118ZS.

If the Repatriation Commission is satisfied that the claimant is eligible, then the Repatriation Commission must determine that the claimant is entitled to the card (new section 118ZG). The exception to this rule is where the person is already receiving a seniors health card from the Department of Social Security.

The date of effect of a determination about entitlement will be the day of the determination or such other day as is specified in the determination (new section 118ZH).

*Division 5 - Cardholder's obligations*

New section 118ZI and 118ZJ provides for notification obligations of a seniors health cardholder.

New section 118ZI enables the Secretary to give the cardholder a notice that will require him/her to notify the Department of Veterans' Affairs or a specified officer of the occurrence of an event or of a change in circumstances which might affect his/her eligibility for the card. This section also sets out the various specifications of the notice as well as details of the possible penalties for refusal or failure to comply.

The note to subsections 118ZI(1) and 118ZJ(1) signposts the definition of "holder of a seniors health card". The note to subsections 118ZI(5) & (6) and 118ZJ(5) & (6) alert the reader that the penalties set out in these subsections are subject to the possibility of imprisonment in addition to or instead of the monetary fine. Subsections 4B(2) & (3) of the *Crimes Act 1914* allow a court to exercise this discretion.

New section 118ZJ enables the Secretary to give the cardholder a notice requiring him/her to provide the Department or a specified officer with specific information that might affect his/her eligibility for the card. This section also sets out the notice specifications and penalties for non-compliance.

New subsections 118ZI(8) & 118ZJ(8) provide that the term "officer" means a person who is performing duties or exercising powers or functions under or in relation to the Act.

*Division 6 - Continuation, variation and termination*

New section 118ZK provides that a determination that a person is entitled to a seniors health card continues in effect until the person stops being entitled under an automatic disentitlement provision (see new sections 118ZL and 118ZM) or another determination takes effect under new section 118ZN or 118ZO.

New section 118ZL deals with automatic disentitlement for the seniors health card if the cardholder complies with a section 118ZI notice. New section 118ZM provides for automatic disentitlement where the person does not comply with such a notice. According to new section 118ZL, a person's entitlement to be a holder of a seniors health card will cease automatically at the end of the notification period relevant to the section 118ZI notice under the following conditions:

- the person was given a recipient notification notice under section 118ZI;
- the person informs the Department of the occurrence of an event or of a change in circumstances as required by the notice and within the notification period specified in the notice;
- because of the occurrence of the event or of the change in circumstances, the person's eligibility for the card ceases; and
- a determination is not made that the person's entitlement to the card ceases before the end of the notification period (eg, under new section 118ZN or 118ZO).

New section 118ZM provides that a person's entitlement to a seniors health card will cease automatically on the day after the occurrence of an event or of a change in circumstances under the following conditions:

the person was given a recipient notification notice under section 118ZI;  
the person does not inform the Department of the occurrence of an event or of a change in circumstances as required by the notice within the period specified in the notice; and  
because of the occurrence of the event or of the change in circumstances, the person's eligibility for the card ceases.

Notes after new sections 118ZL and 118ZM signpost the definition of "holder of a seniors health card".

If the Commission reaches the requisite state of satisfaction that a holder of a seniors health card is no longer eligible for the card under the Principal Act, then new section 118ZN provides that the Commission is to make a determination that the cardholder ceases to be entitled to the card. This determination must be in writing. Note 1 to this provision signposts the definition of "holder of a seniors health card". Note 2 indicates that if an automatic loss of eligibility occurs under new section 118ZL or 118ZM, then new section 118ZN does not apply. Note 3 signposts new section 118ZR which sets out the date of effect of a determination under new section 118ZN.

New section 118ZO provides that a person's entitlement to be a holder of a seniors health card ceases if the person fails to comply with the requirements of a recipient obligation notice issued under new section 118ZJ. If the Repatriation Commission makes a determination under this section, it must be in writing. Note 1 to this provision signposts the definition of "holder of a seniors health card". Note 2 explains that this section does not apply if new section 118ZN applies. Note 3 signposts new section 118ZR which sets out the date of effect of a determination under new section 118ZO.

Should a decision be made to cease a person's entitlement to a seniors health card in error under new section 118ZN or 118ZO, then new section 118ZP allows the Repatriation Commission to reverse the incorrect decision. Where the Repatriation Commission makes such a determination, it must be in writing. The note to new section 118ZP signposts new section 118ZQ as the provision which sets out the date of effect for a determination under this provision.

The date of effect of a favourable determination is set out in new section 118ZQ and is the day on which the determination is made or such later or earlier date as specified in the determination.

New section 118ZR provides for the date of effect of an adverse determination relating to a seniors health card. Generally, an adverse decision will take effect on the day of the determination or on such later day as specified in the determination. However, if the adverse determination arises because of a person's contravention of the Principal Act or because the person has made a false statement or misrepresentation, then the date of effect of the adverse determination may be earlier

than the day on which the determination is made (new subsection 118ZR(4) & (5) refer).

#### *Division 7 - Review of decisions*

A person who is dissatisfied with a decision in relation to a claim for a seniors health card or a decision to cease a person's entitlement to the card, can request the Repatriation Commission to review the decision (new section 118ZS refers).

New subsection 118ZT(1) provides that a request made under new section 118ZS for a review of a decision can only be made within three months after the person was notified of the Repatriation Commission's decision. This new section would also require that a request for review must be in writing and state the reasons for the appeal. New subsection 118ZT(2) requires the Commission to review the disputed decision if a proper request is made under new subsection (1). New subsection 118ZT(3) prevents the same person who made the original decision from determining the matter on review.

New section 118ZU sets out the powers of the Repatriation Commission when reviewing a decision. It must affirm or set aside the original decision. If it sets aside its previous decision, it must make a new decision unless the decision it sets aside deals with the cessation of a person's entitlement to the seniors health card.

The note to the section alerts the reader to the location of the Repatriation Commission's information gathering powers as these powers are relevant to its proper performance of its review function.

A substituted decision granting a person's entitlement to the seniors health card takes effect from the date specified in the determination. This date cannot be earlier than the date the Repatriation Commission could have determined the person to be entitled had its original decision been favourable (new section 118ZV refers).

New section 118ZW requires the Repatriation Commission to provide a written statement of any decision it makes following a review. The decision must include a statement of the Repatriation Commission's findings on material questions of fact, evidence or material that these findings were based on and include reasons for the decision.

New section 118ZX requires the Repatriation Commission to provide a written copy of its decision to the person who requested the review and include details of any right of appeal the person has to the Administrative Appeals Tribunal. New subsection 118ZX(2) restricts the information provided to the person, if in the opinion of the Repatriation Commission, the information contained in the statement is confidential or would be prejudicial to the person's well-being.

New subsection 118ZY(1) enables the Repatriation Commission or its delegate, in reviewing a decision, to take evidence on oath or affirmation for the purposes of the review and adjourn a hearing from time to time. New subsection 118ZY(2) enables the presiding member of the Repatriation Commission or a person who has the

delegated authority of the Repatriation Commission for the purposes of the review, to summon a person to appear at a hearing to give evidence and to produce such documents as are referred to in the summons and require the person appearing at the hearing to take an oath or make an affirmation. The presiding member or Repatriation Commission delegate may also administer an oath or affirmation to the person so appearing.

New subsections 118ZY(3) & (4) provide that the applicant for review is a competent and compellable witness and that an oath or affirmation taken or made by a person is an oath or affirmation that the evidence given by the person will be true.

New subsection 118ZY(5) deals with the exercise of the power to take evidence on oath or affirmation within or outside Australia, subject to the limitations specified by the Repatriation Commission.

New subsection 118ZY(6) confers on a person approved under new subparagraph 118ZY(5)(a)(ii) to take evidence for the purpose of the review, all the powers provided under new subsections 118ZY(1) & (2).

New subsection 118ZY(7) defines a "Commission's delegate".

New section 118ZZ deals with the withdrawal of a request for a review. Under this section a person who requests a review under new section 118ZS may withdraw the request at any time before it is determined by the Repatriation Commission. This is provided that the request is made to the Secretary in writing and the notice is lodged at an office of the Department in Australia.

The withdrawal of a request for review should not affect the person's right to make another request for review of the same decision at some other date. This is subject to the person meeting the time limits set out in new section 118ZT. A note after this section alerts the reader to the specific time limit.

#### *Division 8 - Seniors health card ordinary income test calculator*

New section 118ZAA sets out the details of how a person can satisfy one of the primary eligibility conditions for the card, ie, the seniors health card ordinary income test. In fact new section 118ZAA explains this in terms of a person satisfying the Seniors Health Card Ordinary Income Test Calculator at the end of this section.

New point 118ZAA-1 sets out the method statement showing how to work out whether a person satisfies the seniors health card ordinary income test in a step-by-step manner. A note after step one of the method statement signposts the treatment of ordinary income of members of a couple. Note 1 after the method statement signposts the definition of ordinary income in subsection 5H(1) and the comprehensive list of exclusions to this definition at subsection 5H(8). Note 2 explains that the application of the test is affected by provisions concerning investment income, attributed income and disposal of income (Divisions 8, 8A, 8B, 8C & 10 of Part III refer).

If a person who is seeking to satisfy the ordinary income test is a member of a couple, then new point 118ZAA-2 provides that the ordinary income to be used when making this assessment is half of the total ordinary income of the person and the person's partner.

New point 118ZAA-3 establishes the seniors health card ordinary income limits that are determined on the family circumstances of the person. The limits are as follows:

Not a member of a couple	\$19,000.80
Member of a couple	\$15,823.60
Member of an illness-separated couple	\$18,688.80
Member of a respite care couple	\$18,688.80

A person's limit will be increased by \$624 for each dependent child of the person. Notes 1, 2 & 3 signpost the definitions of various terms used in the Seniors Health Card Ordinary Income Limit Table. Note 4 informs the reader that the ordinary income limits used in the Table are adjusted four times per year in line with changes in the Consumer Price Index. The adjustments are made on 1 January, 20 March, 1 July and 20 September.

Because the limits included in the table are likely to change between the time of introduction of this Bill into Parliament and the intended date of effect of the initiative (1 July 1994), new point 118ZAA-4 allows for the adjustments of the limits as if the legislation governing the limits had been operative on those occasions.

#### *Division 9 - Adjustment*

Division 9 of new Part VIIC provides for the adjustment of Seniors Health Card Ordinary Income Limits.

New section 118ZAB introduces the Division and describes the provisions for the adjustment of the seniors health card ordinary income limit amounts.

New section 118ZAC contains a table which sets out the amounts subject to adjustment in the Seniors Health Card Ordinary Income Calculator and includes an abbreviated form for these amounts. It also informs the reader about the location of the provision prescribing the limits in the Principal Act.

New section 118ZAD sets out the rules for adjusting each of the seniors health card ordinary income limits in the table at new point 118ZAA-3 other than the additional limits for dependent children. This new section provides a formula for adjusting each of the four items in the table. Essentially, the limits are calculated by adding the following components:

twice the maximum basic rate of the item in Table B of point 41-B1 (column 3) that corresponds with the particular family description of the person;

fifty-two times the rate of pharmaceutical allowance located at section 118C of the Principal Act; and

- the income free area from column 3 of Table D-1 of point 41-D1 that corresponds with the particular family description of the person.

The one variation on this basic formula is the amount of pharmaceutical allowance attributed to the seniors health card ordinary income limit for a member of a couple. It is twenty-six times the rate of pharmaceutical allowance located at section 118C of the Principal Act.

Clause 8 amends the Principal Act and other Acts as specified in Schedule 1 to the Bill.

### **Schedule 1 - Explanation of the changes**

Schedule 1 is divided into two parts. Part 1 deals with consequential amendments to the *Veterans' Entitlements Act 1986* and Part 2 deals with consequential amendment to other Acts.

#### *Veterans' Entitlements Act 1986*

Part X of the *Veterans' Entitlements Act 1986* sets out the right of review to the Administrative Appeals Tribunal for certain decisions of the Repatriation Commission and the Veterans' Review Board. Among the decisions subject to review are ones dealing with the payment and rate of service pension payable to a person.

Clauses 1 to 6 of Schedule 1 of the Bill provide that a Repatriation Commission decision concerning the assessment of a person's entitlement to a seniors health card would be subject to review by the Administrative Appeals Tribunal.

#### *Hearing Services Act 1991*

Clause 7 of Schedule 1 to the Bill inserts a new paragraph 5(1)(ad) into the Act. Section 5 defines "eligible person" for the purposes of the *Hearing Services Act 1991*. It is a term used to describe, amongst other things, a person who belongs to one of several groups of people who have access to hearing aid concessions. The new paragraph (ad) indicates that a person who is a holder of a seniors health card under the *Veterans' Entitlements Act 1986* is an "eligible person" and consequently, has access to hearing aid concessions. A note after new paragraph (ad) signposts the definition of "holder of a seniors health card" in the Principal Act. This will mean that a cardholder can receive free hearing aid and concessional services that cover hearing aid maintenance and batteries available through the Australian Hearing Services.

#### *National Health Act 1991*

Clauses 8 & 9 of Schedule 1 to the Bill amend the definitions of "concessional beneficiary" and "dependant" in subsection 84(1) of the *National Health Act 1953*. "Concessional beneficiary" is the basic term used to describe a person who belongs to

one of several groups of people who have access to concessional pharmaceutical benefits. The definition is to be amended by adding a new paragraph (ad) to indicate that a person who is the holder of a seniors health card under the *Veterans' Entitlements Act 1986* is a "concessional beneficiary" and consequently has access to concessional pharmaceutical benefits. A note after new paragraph (ad) signposts the definition of "holder of a seniors health card" in the Principal Act.

The definition of "dependant" is also being amended by including new subsection (7) to the definition to prevent a dependant of a seniors health card holder from accessing concessional pharmaceutical benefits except in certain circumstances which are:

- the dependant could do so in his/her own right; or  
the dependant is also a dependant of another "concessional beneficiary" which permits access the dependant access to the concessions.

A note after new subsection (7) to the definition of "dependant" advise the reader that a seniors health card holder under the Principal Act is one to whom paragraph (ad) of the definition of "concessional beneficiary" applies.

#### *Social Security Act 1991*

The *Social Security Legislation Amendment Act (No.2) 1993* made provision for a Seniors Health Card for a person of age pension age under the *Social Security Act 1991*. At the time the Social Security Act amendments were drafted, a decision had not been made about the separate card entitlement under the *Veterans' Entitlements Act 1986*. Therefore, the Social Security Act contained an additional eligibility provision to account for people who met the eligibility requirements for age service pension but were not entitled to age service pension based on the person's asset holdings or did not meet the 10 year residency requirement.

In order to commence the Seniors Health Card legislation under the *Veterans' Entitlements Act*, it will be necessary to delete the additional eligibility criteria that covered people of age service pension age in the Social Security Act. The proposed amendments remove this provision and insert a new section to prevent dual entitlement to the seniors health card under both Acts.

Clause 10 of Schedule 1 to the Bill repeals subsection 1061ZA(2) from the *Social Security Act 1991*. This subsection provided the additional coverage for people of age service pension age that will now be covered by Part 2 of this Bill.

Clause 11 of Schedule 1 to the Bill inserts new section 1061ZBA into the *Social Security Act 1991* to prevent a person who is a holder of a seniors health card under the *Veterans' Entitlements Act 1986* from being entitled to the card under the Social Security Act 1991.

Clause 12 of Schedule 1 to the Bill makes a minor amendment to section 1061ZI of the Social Security Act to take account of new section 1061ZBA.



## **Commencement**

Subclause 2(4) provides that this amendment commences from 1 July 1994 immediately after Part 3 of the Social Security Legislation Amendment Act (No.2) 1993.

### **Part 3 - Child related payments**

#### **Summary of proposed changes**

The proposed changes extend to service pensioners a number of pension payment improvements that have been available to Department of Social Security pensioners since their child related payments were integrated into the family payment system. In that system these payments are known as additional family payment. In particular the following changes are proposed:

- provision of a mechanism to allow child related payments to be redirected to the partner;

- allowing the adjustment of the child related payments in shared care cases so that, in effect, those payments are also 'shared';

- providing that child related payments be paid in addition to the 'frozen rate' of service pension paid to war widow/ers;

- allowing the backdating of child related payments to the date of birth;

- removing the maintenance income test from pensioners not receiving any child related payments;

- modifying the maintenance income test for those pensioners receiving child related payments so that it applies only to the child related payments, including rent assistance; and

- adding a scheme and deleting a scheme from the list of schemes that determines whether a child is a "prescribed student child".

#### **Background**

The Social Security Act was amended from 1 January 1993 by the *Social Security (Family Payment) Amendment Act 1992* to introduce the integration of family payments.

Out of that integration a payment known as additional family payment was created to incorporate payments formerly known as family allowance supplement, dependent child add-on, guardian allowance and rent assistance (involving children). The integration process simplified and consolidated child related payments by the Department of Social Security.

The Principal Act currently has rates for child related payments which match those paid under the Social Security Act.

While there is no Veterans' Affairs equivalent to family payment, and therefore no potential to duplicate the Social Security initiative, on equity grounds service pensioners should be given access to the improvements now available to their counterparts in the Social Security system.

### **Explanation of clauses**

#### ***Redirection***

Clause 10 provides, in new section 40D, a mechanism by which child related payments could be redirected to the other member of a service pensioner couple. Currently, the child related payments are rather rigidly directed under the Principal Act to one member of a service pensioner couple, usually the veteran. This new section would provide the flexibility to pay the partner instead.

New subsection 40D (1) allows the Repatriation Commission to make a determination for a service pensioner couple with a dependent child to redirect the child related payments, either at the couple's request or where the Commission is satisfied that such action is in the best interests of the child.

New subsections 40D (2) and 40D (3) provide that the Commission's determination will have the child taken into account in a Rate Calculator as the dependent child of the other member of the couple.

Paragraphs (e), (f) and (n) to (s) of Clause 12 facilitate, in the Rate Calculator in section 42 of the Principal Act, the redirection of child related payments under the proposed new section 40D, and ensure that a couple would not be disadvantaged by a redirection determination.

Paragraphs (c), (d) and (i) to (l) of Clause 13 facilitate, in the Rate Calculator in section 43 of the Principal Act, the redirection of child related payments under the proposed new section 40D, and ensure that a couple would not be disadvantaged by a redirection determination.

#### ***Shared Care***

Paragraphs (g) and (h) of Clause 12 insert provisions into section 42 of the Principal Act that provide that payment of dependent child add-on may be reduced in cases where the care of the child is shared with a recipient of additional family payment from the Department of Social Security.

Paragraph (e) of Clause 13 inserts provisions into section 43 of the Principal Act that allow for payment of dependent child add-on to be reduced in those cases where the care of the child is being shared with another person who is receiving additional family payment under the Social Security Act.

This means that if, for example, a service pensioner cares for a dependent child 40% of the time, the rate of dependent child add-on to be incorporated into his pension assessment will be reduced to 40%. The ex-partner who cares for the child the remaining 60% of the time receives 60% of the additional family payment from the Department of Social Security.

***"Frozen Rate"***

Clause 15 amends the ceiling rate provisions in the Service Pension Rate Calculator For "Frozen Rate" Widows and Widowers in section 45 of the Principal Act. New points 45-B1 and 45-B2 retain the existing ceiling rates for widows or widowers without children.

New points 45-B3 and 45-B4 allow the addition of the child related payments, including rent assistance, to the former ceilings.

***Backdating***

Clause 17 inserts new section 56GA which allows a rate increase determination under section 56C of the Principal Act to be backdated to the first pension payday after the date of birth of a child if the birth has been notified within 13 weeks of the birth.

Clause 16 expands the reference in the note to section 56C to include a reference to the new section 56GA inserted by Clause 17.

***Maintenance Income Test - No Children***

Clause 11 deletes the maintenance income test, and any reference to it, from the Service Pension Rate Calculator Where There Are No Dependent Children in section 41 of the Principal Act.

Clause 14 deletes the maintenance income test, and any reference to it, from the Service Pension Rate Calculator For Widows, Widowers And Non-Illness Separated Spouses in section 44 of the Principal Act.

***Maintenance Income Test - Children***

Paragraphs (a) to (d), (j), (l) and (m) of Clause 12 amend the Service Pension Rate Calculator Where There Are Dependent Children in section 42 of the Principal Act. They delete the maintenance income test Module F, reinsert it as Module DAA and adjust references to points in the new Module. Paragraph (i) of Clause 12 corrects a reference, in point 42-D15, to an item in Table D-2.

New point 42-DAA14 places a ceiling on the effect of the maintenance income test by limiting the reduction to the person's child related payments including any rent assistance.

Paragraphs (a), (b) and (f) to (h) of Clause 13 amend the Service Pension Rate Calculator For Blinded Veterans in section 43 of the Principal Act by adjusting references to the maintenance income tests in other Rate Calculators.

### ***Prescribed Student Child***

Clause 9 deletes the Assistance for Isolated Children Scheme from, and inserts the Post Graduate Awards Scheme into, the list of "prescribed student child" schemes in subsection 5R (9) of the Principal Act. This ensures that the Repatriation Commission does not have to declare a child over 16 who is receiving payments under the Assistance for Isolated Children Scheme to be a prescribed student child. Conversely, it requires the Commission to declare as a prescribed student child, any child over 16 who is receiving payments under the Post Graduate Awards Scheme.

Because the Principal Act prevents payment of a dependent child add-on in respect of a "prescribed student child" the effect of these changes is that a service pensioner with a dependent child receiving payments under the Assistance for Isolated Children Scheme will become eligible for child related payments as the child is no longer a "prescribed student child".

On the other hand, a service pensioner with a dependent child receiving payments under the Post Graduate Awards Scheme now does not receive any child related payment for that child. This change provides consistency of treatment compared with a similar pensioner under the Social Security Act.

### **Commencement**

Subclause 2(3) specifies that Part 3 commences, or is taken to have commenced, on 1 January 1994.

## ***Part 4 - Compensation***

### **Summary of proposed changes**

The proposed amendments will insert a new Division 5A into Part II of the Principal Act. The object of these provisions will be to extend to disability pensions payable under Part II, similar provisions to those in Division 4 of Part IV which limit the Commonwealth's liability to pay dual benefits. This will only apply to compensation payments for the same injury, disease or death in respect of which liability to pay pension arises under the Veterans' Entitlements Act.

Such provisions have applied to the payment of pensions under Part IV in respect of Defence and Peacekeeping service since those provisions were first introduced in 1973. Until now, the Act has not contained any similar provisions which would allow those provisions to extend to dual payments of compensation and pension payable under Part II.

The provisions are intended to apply in the same way as they do in Division 4 of Part IV. However, in keeping with principles of plain English legislative drafting, they have been recast in an effort to make them easier to understand and apply.

An application provision ensures that these changes will not operate retrospectively. The new provisions will not apply to compensation payments or awards made before the date of Royal Assent. The application provisions will also operate to ensure that, in respect of any award of compensation or damages made after the date of Royal Assent, any consequential adjustment to the amount of damages or pension will apply only to pension paid or payable on and from the date of Royal Assent.

### **Background**

Division 4 of Part IV of the Veterans' Entitlements Act provides that compensation payments and damages recoverable at law, whether from the Commonwealth or otherwise, should be offset against any pension payable for the same injury, disease or death for which compensation or damages is paid.

The Act sets out the basis for converting lump sum payments of compensation or damages to a fortnightly amount for the purpose of calculating the amount of compensation or damages to be recovered by the Commonwealth. It also provides for the adjustment of ongoing payments of pension.

The Act makes provision for the Repatriation Commission to require persons receiving pension to take legal proceedings to recover damages from a third party in circumstances in which it appears the injury, disease or death gives rise to the possibility of such liability and for payment to the Commonwealth from awards of compensation or damages, an amount equal to the amount of pension paid at the time the compensation or damages payment is made. The Commonwealth's own liability for compensation or damages is reduced by the total amount of pension paid in respect of the same injury, disease or death for which such compensation or damages is payable.

The provisions allow also for recovery by the Commonwealth of any pension that is not payable by reason of the payment of compensation or damages to a person.

The increasing number of veterans who receive pension under Part II of the Veterans' Entitlements Act and who serve in circumstances which are now more likely to give rise to the payment of compensation or damages for the same injury, disease or death for which payment of pension is made under Part II, makes it necessary to insert similar provisions in this Part to ensure consistency and fairness.

### **Explanation of clauses**

Clause 18 provides for the insertion of a new Division 5A into Part II of the Principal Act which contains all the provisions on the effect of certain compensation payments on rates of pension. The provisions of this Division are applicable to disability pension and war widows or war widowers pension payable under Part II.

A brief description of each of the sections of this new Division 5A follows.

Section 30A specifies that Division 5A does not apply to periodical or lump sum payments under the law of a foreign country or under the law of a State for incapacity for war-caused injury or war-caused disease or both or death as a result of the person's employment in connection with war-like operations in which the Crown was engaged. The nature of these payments of Compensation from a foreign country or under the laws of a State, are sufficiently different to distinguish them from awards of compensation or damages, which do not necessarily arise in connection with war-like operations. Sections 26 and 30 of the Act will, therefore, continue to operate independently of the new provisions in Division 5A although the underlying principle is the same.

Section 30B contains a number of interpretations. These relate to "compensation", "damages" and "international organisation". The interpretations are consistent with the meaning of the same terms used in Division 4 of Part IV. This section also specifies that the payment of arrears of periodic compensation payments is not to be regarded as a lump sum compensation payment.

Section 30C sets out how certain lump sum compensation payments will be converted to a fortnightly rate and how the rate of pension payable, if any, is to be calculated taking into account the amount of the fortnightly rate of compensation payable.

Subsections 30C (1), (2) and (3) specify that the rate and the period for which a person is to be taken to be receiving payments of compensation, is to be determined in accordance with the instructions of the Commonwealth Actuary. The conditions are the same as those which apply in Division 4 of Part IV. Although expressed differently, they are intended to mirror the same provisions set out in subsections 74 (2), (3), (3A) and (3B).

Subsections 30C (4) and (5) specify how the rate of pension, if any, is to be determined taking into account the fortnightly rate of compensation payments. These subsections apply to the calculation where pension is payable to only one person.

Subsections 30(C) (6) and (7) specify how the calculation is to be made if pension is payable to two or more persons. These provisions are set out and expressed differently to the corresponding provisions in subsections 74(8) and (9) in Division 4 of Part IV. They are, nevertheless, intended to operate in exactly the same way as those provisions.

Subsection 30(C) (8) shows how the reduction of pension is to be calculated if pensions are payable to two or more persons and one pension is to be preferred to another. The order in which pensions are to be preferred is set out in subsection 30(C) (12). The formula for calculating the reduction in pension in those cases in which there are two or more "non-preferred" pensions after the rate of pension, or the rate of two or more pensions are reduced to nil in accordance with subsection 30 (8), is set out in subsections 30(C) (9) and (10). These provisions correspond to similar provisions in subsections 74(6), (10), (11) and (12).

Subsection 30C(11) is the equivalent of subsection 74(5). It provides that in those cases in which the Commonwealth recovers an amount of pension from damages payable to a person, or where the liability of the Commonwealth is reduced by an amount equal to the total amount of pension paid in accordance with the provisions of new section 30G or 30H, the reduction will be taken into account in determining the rate per fortnight of the compensation amount. For example, if a veteran receives a lump sum compensation amount of \$100,000 and, at the time the compensation is paid, the veteran has received total pension for the same injury or disease for which that compensation is made of \$25,000, that amount is recoverable from the lump sum compensation amount. The balance of the compensation amount of \$75,000 is the amount which will then be taken into consideration for the purposes of determining the fortnightly rate of compensation that the veteran is to be taken to be receiving in accordance with subsections 30(C) (1), (2) or (3).

Section 30D applies the same conditions as are set out in section 30C. The difference is that it applies to compensation payments made otherwise than by a lump sum. Subsection 30D(1) enables the reduction in the rate of pension to be reduced by the rate per fortnight of the periodic compensation, irrespective of whether or not that periodic payment is made fortnightly or some other interval. Thus, if periodic payments are made at either monthly or three monthly intervals, for example, or any other interval, it must be converted to a fortnightly rate of compensation for the purposes of calculating the rate of reduction in the person's fortnightly pension rate. In all other respects, section 30D operates in the same way as section 30C.

Section 30E is the equivalent to subsection 75 (1). It enables the Repatriation Commission to require a person to take proceedings, or properly prosecute proceedings against a person other than the Commonwealth, where it appears legal liability to pay damages arises in respect of the same injury, disease or death for which pension is payable.

Section 30F is the equivalent of subsections 75 (2), (3), (4) and (5). It enables the Commission to institute proceedings for recovery of damages in respect of the incapacity or death of a veteran should a person fail or refuse to do so.



Section 30G allows the Commission to request a person, other than the Commonwealth, who appears to be legally liable to pay damages, to pay to the Commonwealth an amount equal to the total amount of pension paid under Part II up to the time payment of damages is made. This is the equivalent of subsection 76(1).

Section 30H is a similar provision which applies to those cases in which an agreement or award of damages has been made. It sets out the same conditions as those which are set out in subsections 76(2) and (3).

Sections 30I and 30J are the equivalent to subsections 76(4A) and (5). The first relates to the ability of the Commonwealth to recover an amount due to the Commonwealth, while the other provides that an amount paid by a person in compliance with the requirements of either section 30G or 30H, is a discharge of the liability of that person to the extent of the amount paid to the veteran or the dependant.

Section 30K provides that the liability of the Commonwealth to pay damages in respect of the same injury, disease or death of a veteran for which pension is paid, is reduced by the total amount of pension that has been paid. This section is the equivalent of section 77 and, like it, excludes any part of the damages award that includes an amount for expenses incurred in medical or hospital treatment.

Section 30L provides for action to be taken by the Commonwealth to recover from a person an amount equal to the amount of compensation that does not exceed the total amount of pension paid under Part II. This section applies to payments of compensation under the law of a country other than Australia or under a scheme arranged by an international organisation, for incapacity from injury or disease or death. It is the equivalent to section 78. "International organisation" is defined in section 30B.

Section 30M sets out a similar requirement to that in subsection 78 (2). It enables the Commission to request a person, who is receiving pension, to provide it with a statutory declaration stating whether any compensation has been claimed or paid under the law of a country other than Australia or under a scheme arranged by an international organisation for the same incapacity or death for which the person receives or has claimed pension under Part II.

Section 30N is the equivalent to subsections 78 (3) and (4) which relate to the Commission's powers to suspend a person's right to pension, or to continue proceedings relating to the claim for a pension, if the person fails or refuses to comply with a request under section 30M.

Section 30P sets out the Commonwealth's powers relating to the recovery of overpayments of pension which are not payable as a result of the operation of section 30C or 30D. It mirrors the same provisions in section 79.

**Clause 19** Provides for consequential amendments to the Veterans' Entitlements Act as set out in Schedule 2 to the bill. These consequential amendments ensure that in assessing a person's entitlement to other benefits, such as medical treatment, decoration allowance, temporary incapacity allowance or loss of earnings allowance, the effects of the payment or award of compensation on the person's pension entitlements are taken into consideration. The consequential amendments ensure, for example, that if a person's rate of pension is reduced to nil as a result of the award of compensation, the person would not lose entitlement to treatment if the rate of pension the person was entitled to receive entitled the person to treatment. Similarly, account will be had of the amount of pension the person would have been receiving but for the operation of section 30C or 30D in working out that person's entitlement, if any, to payment of a loss of earnings, or temporary incapacity allowance.

### **Commencement**

These provisions come into effect on the date on which the Act receives Royal Assent. An application provision in **Clause 3** will ensure that these changes do not apply to lump sum payments of compensation that are made before the date of Royal Assent. Nor will any adjustments be made to the amount of compensation payable in respect of any pension payments that were made before the date of Royal Assent.

For example, if a person to whom new section 30G applies receives a lump sum compensation of say \$50,000 after the date of Royal Assent, the amount that the Commission may require the person to pay to the Commonwealth, may not include any amount of pension payable in respect of the same injury disease or death in respect of which that compensation is made, which accrued before the date of Royal Assent. If such pension had been paid for three years before the date of Royal Assent and amounted to \$15,624, that amount could not be recovered from the amount of damages or compensation payable to the person. The total amount of pension paid to the person from the date of Royal Assent up until the time the compensation or damages award is paid may, however, be recovered.

### **Part 5 - Retirement village definitions**

#### **Summary of proposed changes**

The amendment clarifies the definition of "retirement village" in response to a Federal Court decision (*Repatriation Commission v Clarke* (unreported, VG73 of 1991) which determined that a hostel in which a couple in receipt of a service pension resided was not a retirement village within the definition provided at section 5M of the *Veterans Entitlements Act 1986*.

#### **Background**

Under existing legislation, persons in receipt of service pension who reside in a retirement village as defined by the Act are home owners and, therefore, not eligible for rent assistance.

For the purposes of the Act, one of the criteria in the definition of retirement village is that "accommodation ...is primarily intended for persons who are at least 55 years old".

The AAT and the Federal Court decided that residence in the hostel in question did not constitute residence in a retirement village as the hostel was for over 60s and, therefore, was not intended for persons "who are at least 55 years old". Residents in this hostel could not be qualified as "ineligible property owners", although they pay an entry fee for the right to reside in the hostel and maintenance fees for services provided, including food. They therefore became eligible for rent assistance. This eligibility was not intended in the legislation.

#### **Explanation of the changes**

A new subsection will strengthen the definition of retirement village contained at paragraph 5M(3)(b) of the Act that accommodation in premises intended primarily for persons who are a certain age that is over 55 years, will be taken to be intended for persons who are at least 55 years old.

#### **Clause involved**

Clause 20 of the Bill inserts a new subsection 5M(3A).

New section 5M(3A) ensures that accommodation in premises primarily intended for persons who are a certain age over the age of 55 will be taken to be accommodation intended for persons who are at least 55 years old.

#### **Commencement**

Subclause 2(1) specifies that this amendment commences from the date of Royal Assent.

***Part 6 - Disposal of assets***

**Summary of proposed changes**

The amendments provide that disposition of assets for five years prior to lodging a claim for service pension is taken into account when calculating the value of a person's assets for service pension purposes.

**Background**

Under current legislation, when a person in receipt of a service pension disposes of assets during a "pension year", the amount disposed of is included in the value of the person's assets. The legislation also provides for dispositions more than five years old to be disregarded when calculating the value of a person's assets for service pension purposes.

Two situations may arise in the case of a person who disposes of assets prior to lodging a claim. The claim may be granted and the disposition can then be taken into consideration under the deprivation provisions applicable to a "pension year". On the other hand, the amount disposed of may be such that the claim is rejected and no pension is payable. A recent case heard by the Social Security Appeals Tribunal decided that the Department of Social Security had no authority to deal with a disposition for a period preceding a pension year if no pension was payable.

The proposed amendments redress this situation and apply the deprivation rules to persons lodging a claim for service pension if that disposition took place within the five years preceding the lodgement of the claim.

**Explanation of the changes**

The amendments introduce new terms - "pre-pension year" and "provisional commencement day" to enable the making of legislative provisions which will cover the disposition of assets for a period of five years prior to lodging a claim for service pension for each category of service pension.

They also broaden the disposal of assets provisions to cater for dispositions which are made during a pre-pension year by either members of couples or persons who are not members of a couple.

## **Clauses involved**

Clause 21 inserts a new subsection 5L(10A) in the Principal Act.

New subsection 5L(10A) defines "pre-pension year" as the period of twelve months ending on the day that is a person's provisional commencement day and each preceding period of twelve months (within five years of the provisional commencement day.)

Clauses 22, 23, 24, and 25 repeal subsections 36B(1), 37B(1), 38B(1) and 39B(1) and paragraph 36B(2)(f), 37B(2)(f), 38B(2)(f) and 39B(2)(f) of the Principal Act respectively and replace each subsection with two new subsections (1) and (1A) and each paragraph with a new paragraph (2)(f).

New subsections 36B(1), 37B(1), 38B(1) and 39B(1) ensure that for each category of service pensioner, pension is not payable prior to the provisional commencement day

New subsections 36B(1A), 37B(1A), 38B(1A) and 39B(1A) insert a new subsection to define a person's provisional commencement day as the day on which a person lodges a claim for service pension.

New paragraphs 36B(2)(f), 37B(2)(f), 38B(2)(f) and 39B(2)(f) specify that the day on which the initial claim is lodged is the person's provisional commencement day.

Clause 26 inserts new subsections 48D(1A) and 48D(2A) in the Principal Act.

New subsections 48D(1A) and 48D(2A) extend to pre-pension years the current deprivation rules applicable when a transaction constitutes both a disposal of income and a disposal of assets.

Clause 27 inserts a new section 52FA in the Principal Act.

New section 52FA extends to pre-pension years the current rules applicable when a person who is not a member of a couple disposes of assets during a pension year.

Clause 28 inserts a new section 52GA in the Principal Act.

New section 52GA extends to pre-pension years the current rules applicable when a person who is a member of a couple disposes of assets during a pension year.

## **Commencement**

Subclause 2(1) specifies that this amendment commences from the date of Royal Assent.

## ***Part 7 - Managed Investments***

### **Summary of the proposed changes**

The amendments provide:

for the offsetting of losses on realisation of an investment against profits realised on other managed investment during the same period;

for the offsetting of losses on an investment that is subject to an on-going assessment against income distributions from other managed investments assessed on realisation only;

a formula for calculating the rate of return on an investment when there are multiple declarations of a rate of return during any one year or when only an interim rate of return has been declared;

that investments in a friendly society which converts to a life company will not be affected by this change of status if certain criteria are met; and

clarification of a number of provisions relating to the treatment of an annuity for the purposes of the ordinary income test.

### **Background**

Division 8 of Part III of the Principal Act contains the rules applying to the assessment of investment income for service pension purposes. These rules, covering accruing return investments, market-linked investments and superannuation investments, were simplified in 1992, in line with the recommendations of the Investment Review Simplification package agreed to by Cabinet on 3 August 1992. Accruing return investments and market-linked investments are now referred to as "managed investments" and profits and losses are taken into account when calculating the investment income of a person. The present amendments aim at further simplification of the legislative provisions relating to the assessment of investment income.

### **Explanation of the changes**

The amendments regroup under the heading of "managed investments" existing provisions relating to investment income and incorporate new provisions applying to the calculation of income when a relevant managed investment is realised at a loss.

## **Clauses involved**

Clause 29 amends subparagraph 5H(8)(i)(v) of the Principal Act to specify that the annuity referred to is an immediate annuity.

Clause 30 updates section 46 of the Principal Act in the light of the renumbering of existing provisions and the addition of new provisions arising from the amendments contained in this Part.

Clause 31 amends section 46AC of the Principal Act to specify that, for the purposes of the ordinary income test, investment-related income on an investment covered by Subdivision B is taken into account but that profits or losses on the capital component of the whole investment are excluded from such calculation until realisation of the investment.

Clause 32 amends section 46AE of the Principal Act to allow for the calculation of a rate of return on an investment where multiple rates of return have been declared during a one year period.

Clause 33 amends the heading to Subdivision B of Division 8 to cover all investments taken into account on realisation.

Clause 34 amends section 46B of the Principal Act so that assessment rules for investments with a friendly society acquired before 1 January 1988 continue to apply after the conversion of the friendly society to another type of investment company, if the conditions of the investment remain substantially the same.

Clause 35 inserts new sections 46C, 46D, 46E, 46F, 46G, 46H and 46I.

New section 46C provides that when a person realises an investment at a loss, the ordinary income of the person is reduced according to a set formula for the period of twelve months commencing on realisation day.

New section 46D contains the rules applying to the assessment of income derived from market-linked investments made or acquired before 9 September 1988. These rules were formerly contained at section 46J.

New section 46E contains the specific rules applying to certain investments made or acquired before 9 September 1988 when the dividends from these investments are not paid directly but invested in another market-linked investment after 9 September 1988.

New section 46F contains rules applying for the assessment of losses on investments made or acquired before 9 September 1988 when working out a person's pension rate.

New section 46G contains the rules applying to the calculation of income upon the realisation of a superannuation investment prior to pension age. These rules were previously contained at section 46SA.

New section 46H contains the rules applying to the calculation of income upon realisation of a superannuation investment when the investment is realised at a loss.

New section 46I contains the general rule governing the maximum reduction of income which can be taken into account to work out a person's pension rate.

Clause 36 repeals Subdivision C of Division 8 of Part III of the Principal Act.

Clause 37 amends section 46S of the Principal Act to update a cross reference and to specify the use of the term "annuity".

Clause 38 repeals section 46SA of the Principal Act which is now relocated at 46G.

Clause 39 amends section 52 of the Principal Act to specify that the annuity referred to is an immediate annuity.

### **Commencement**

Subclause 2(2) specifies that this amendment is taken to have commenced from 1 April 1993.



## ***Part 8 - Provision of Tax File Numbers***

### **Summary of proposed changes**

To amend section 128A of the Principal Act to clarify the operation of subsections 128A(2) & (3) where an "income payment" ceases to be paid for failure to comply with a request from the Department to provide a tax file number.

### **Background**

Subsections 128A(2) & (3) were initially designed to act as self-executing provisions. They prevent payment of an "income payment" where the person has failed to comply with a request for a tax file number. "Income payment" is defined in subsection (1) and broadly covers all pensions and allowances payable under the Principal Act. When the person subsequently complied with the request, the income payment commenced to be paid from the payday after compliance. The Department has enforced the provisions in this manner.

The proposed amendments put beyond doubt that these provisions operate to prevent payment of an income payment only until a person has complied with the request for the tax file number and full arrears of the income payment are then to be paid. This was never the intention of these provisions and it would circumvent the whole purpose of tax file number collection by not enforcing the penalty for failure to comply with a request for one.

The proposed amendments set out the effect of failing to comply with a request for a tax file number. In order that the person can consider the consequences of failing to provide the tax file number, it is proposed to give the person three months from the date the pension or allowance is not paid to comply with the request and receive full restitution of the cancelled payment. If a person complies with the request for a tax file number after the expiration of the three month period commencing from the date the income payment was not paid, the pension or allowance will be restored only from the payday after compliance with the request.

This three month period is in addition to the minimum period of 28 days that the Secretary allows the person to comply with the request before action is taken to cancel the income payment.

### **Explanation of clauses**

Clause 40 inserts new subsections 128A(3B) & (3C) into the Principal Act to provide that where a person complies with the request for the tax file number within three months of the date the income payment was not paid, the income payment is paid to the person during that period as if he/she had originally complied with the request. If compliance occurs after the expiration of the three-month period commencing from the date the income payment had ceased to be paid, the income payment will recommence from the first payday after compliance. If the person should comply on an actual payday, the income payment will commence from that day.

**Commencement**

Subclause 2(1) provides that this amendment commences on the day of Royal Assent.

## **Part 9 - Withdrawal of claims**

### **Summary of proposed changes**

The proposed amendment allows oral withdrawal of all types of claims under Part III of the Principal Act. Specific provisions ensure that there would be no disadvantage if the claimant decided that the claim should be reactivated within a "cooling off" period.

### **Background**

A recent case in the Administrative Appeals Tribunal about withdrawal of a claim for sickness benefit under the Social Security Act highlighted the need for examination of the provisions in the Principal Act. That examination revealed that only written withdrawals were permitted.

In the modern era, with telephone connections much more commonplace, with many of the Department's clients assisted by a telephone allowance, it was considered out of date to insist on written withdrawals. Indeed the Department actively encourages oral communication with its ageing clientele by offering unlimited access to it by free 008 services.

Many of the Department's clients are assisted by others in processing their claims. It therefore seemed vital that there be provisions which allowed the reactivation of a withdrawn claim. There is potential for confusion and misunderstanding between the client and a person acting on behalf of the client and a need to guard against any possibility of malicious action by a third party. Accordingly the proposal provides for written acknowledgment of any oral withdrawal, so the client is made aware that the claim has been withdrawn, and for a "cooling off" period during which the client can reactivate the claim with all of its original attributes.

### **Explanation of clauses**

Clause 41 repeals section 35F of the Principal Act dealing with the withdrawal of a claim for qualifying service and inserts new sections 35F to 35FD.

New section 35F allows an undetermined claim to be withdrawn either orally or in writing.

New sections 35FA and 35FB specifies where claim withdrawals are required to be made or lodged.

New section 35FC requires the Secretary to give written acknowledgment confirming the oral withdrawal and advising the claimant of the 28 day "cooling off" provision.

New section 35FD ensures that an orally withdrawn claim which was reactivated would have all of the original attributes of the claim. In particular this would ensure that if the eventual determination of the claim would have required any back payment of pension, the determination of the reactivated claim would be similarly backdated.

Clause 42 refers to Schedule 3 which sets out similar amendments to sections 36J, 37J, 38J, and 39J of the Principal Act relating, respectively, to claims for age service pension, invalidity service pension, partner service pension and carer service pension.

#### **Commencement**

Subclause 2(1) specifies that these amendments commence from the date of Royal Assent.

***Part 10 - Cancellation or suspension of carer service pension***

**Summary of proposed changes**

The proposed change expands the operation of sections 56J and 56K of the Principal Act to cover carer service pension.

**Background**

At present sections 56J and 56K of the Principal Act cover only age service pension, invalidity service pension and partner service pension. These sections provide that the Commission may cancel the three types of pension if requested to do so, and to cancel or suspend the three types of service pension of a pensioner who has not drawn instalments for six months. It is anomalous that carer service pensioners are not covered by these provisions.

**Explanation of clauses**

Clause 43 inserts a reference to carer service pension into section 56J of the Principal Act.

Clause 44 inserts a reference to carer service pension into section 56K of the Principal Act.

**Commencement**

Subclause 2(1) specifies that these amendments commence from the date of Royal Assent.

***Part II - Pension rate reduction***

**Summary of proposed changes**

This proposed amendment makes any reduced rate of pension, as a result of remunerative work, payable only after an earnings credit account balance is reduced to nil.

**Background**

The Principal Act currently provides in section 54 that the Secretary may require notification of an event or change of circumstances. Such notices are routinely issued to a service pensioner so that a reassessment of the amount of the pension or the provision of benefits may take place if the person's circumstances change.

Section 56B of the Principal Act provides for automatic rate reduction for a person who fails to comply with a notice under section 54. From a service pension point of view, it provides the basis for the assessment of any overpayment which occurs as the result of the failure to comply with the section 54 notice.

Presently the Principal Act is silent on the treatment of any earnings credit balance that the person may have as provided for in Division 11 - ordinary income test - earnings credit in Part III of the Act. The proposed change clarifies the action necessary to allow for any earnings credit balance.

**Explanation of clauses**

Clause 45 inserts new section 56BA into the Principal Act. The new section provides that a service pensioner subject to automatic rate reduction for a failure to provide information about remunerative employment would not have their rate of payment reduced until after their earnings credit balance had been reduced to nil.

**Commencement**

Subclause 2(1) specifies that this amendment commences from the date of Royal Assent.

## ***Part 12 - Income Test Definitions***

### **Summary of proposed changes**

To amend the Principal Act to exempt from the income test any payments made by the NSW Medically-Acquired HIV Trust.

### **Background**

The New South Wales Medically-Acquired HIV Trust was established by the NSW Government to provide a package of financial assistance for persons who are infected with medically-acquired HIV in the State of New South Wales.

As the legislation is currently framed, payments from the Trust would constitute income for the purposes of the ordinary income test. The financial assistance provided by the Trust is similar to that provided under the Mark Fitzpatrick Trust to people with medically-acquired HIV infection. An amendment to exempt payments from the Mark Fitzpatrick Trust was included in the *Veterans' Affairs Legislation Amendment Act (No.2) 1992*.

### **Explanation of clauses**

Clause 46 amends paragraph 5H(8)(xa) of the Principal Act by inserting a reference to the "New South Wales Medically-Acquired HIV Trust".

### **Commencement**

Subclause 2(1) provides that this amendment commences on the day of Royal Assent.

### **Part 13 - Recovery of Overpayments**

#### **Summary of proposed changes**

To align the amount of an overpayment where an administrative charge will apply with the amount of an overpayment which may be subject to waiver.

#### **Background**

Section 206 of the Principal Act provides, among other things, that the Repatriation Commission may, on behalf of the Commonwealth, waive recovery of debts that are included in a class of debts specified by the Minister by notice in writing published in the *Commonwealth Gazette*.

The most recent determination by the Minister for Veterans' Affairs in relation to section 206 was on 22 September 1992, when the amount of debt specified in the class of debts for the purposes of subparagraph 206(1)(b)(ii) was increased from \$50 to \$200.

Section 205 of the Principal Act deals with recovery of overpayments. Subsection 205(5) provides that, in certain circumstances, where:

- a person is indebted to the Commonwealth;  
the debt exceeds \$50; and  
the debt is not discharged within three months of notice being given of the amount of the debt due to the Commonwealth;
- an administrative charge is payable to the Commonwealth.

The amount referred to in paragraph 205(5)(b), should be consistent with the threshold for the automatic waiver of debts, that is, the figure which is set by reference to the provisions of subparagraph 206(1)(b)(ii).

#### **Explanation of clause**

Clause 47 amends section 205 of the Principal Act by removing the reference to "\$50" and replacing it with a reference to a class of debts specified in a notice under subparagraph 206(1)(b)(ii).

#### **Commencement**

Subclause 2(1) provides that this amendment commences on the day of Royal Assent.



***Part 14 - Minor Technical Amendments***

**Explanation of clause**

Clause 48 refers to Schedule 4 which contains minor technical amendments. These amendments can be categorised as follows:

- amendments to correct minor drafting errors;
- amendments to correct unintentional consequences arising from the *Veterans' Entitlements Amendment Act 1991* which provided for the "plain English" rewrite of Part III of the *Veterans' Entitlements Act 1986*; and
- drafting enhancements consistent with the "plain English" style.

**Commencement**

Subclause 2(1) provides that this amendment commences on the day of Royal Assent.

## **Schedules**

### **Summary of proposed changes**

This Part of the Bill provides for consequential and minor amendments.

Schedule 1 provides for consequential amendments relating to the introduction of the Seniors Health Card.

Schedule 2 provides for consequential amendments to the assessment of compensation payments on the rate of disability pension payable under Part II of the Principal Act.

Schedule 3 provides for amendments to the method of withdrawing an application for service pension.

Schedule 4 provides for other consequential, minor and technical amendments.

### **Explanation of clauses**

#### **SCHEDULE 1 - AMENDMENTS RELATING TO SENIORS HEALTH CARD**

The amendments in Schedule 1 provide for consequential amendments to:

the *Veterans' Entitlements Act 1986*;  
the *Social Security Act 1991*,  
the *National Health Act 1991*; and  
the *Hearing Services Act 1991*

resulting from the Seniors Health Card initiative set out in Part 2 of the Bill.

For a detailed explanation of the changes in this schedule see the explanation of Part 2 commencing on page 2 of this explanatory memorandum. Schedule 1 is dealt with on page 11

#### **SCHEDULE 2 - AMENDMENTS RELATING TO COMPENSATION**

Schedule 2 makes minor amendments to the *Veterans' Entitlements Act 1986* that are consequential upon the amendments contained in Part 4 of the Bill to deal with the affect of compensation payments on the rate of disability pension payable to a person under Part II of the Principal Act.

For a detailed explanation of the changes in this schedule please see the explanation of Part 4 commencing on page 18 of this explanatory memorandum. Schedule 2 is dealt with on page 22

#### **SCHEDULE 3 - AMENDMENTS RELATING TO WITHDRAWAL OF CLAIMS**

Schedule 3 makes further amendments to the *Veterans' Entitlements Act 1986* that are a continuation of the proposed amendments contained in Part 9 of the Bill to deal with the oral withdrawal of a claim.

For a detailed explanation of the changes in this schedule please see the explanation of Part 9 commencing on page 31 of this explanatory memorandum.

#### **SCHEDULE 4 - MINOR TECHNICAL AMENDMENTS**

The amendments in Schedule 4 provide for minor technical amendments to:  
the *Veterans' Entitlements Act 1986*; and  
the *Defence Service Homes Act 1920*;

For a detailed explanation of the changes in this schedule please see the explanation of Part 14 commencing on page 37 of this explanatory memorandum.









