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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

VETERANS' AFFAIRS LEGISLATION
AMENDMENT BILL (NO 3) 1994

EXPLANATORY MEMORANDUM

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

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OUTLINE AND PURPOSE

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

Anzac Hostel

The most significant amendment is to Part VI of the *Social Security and Repatriation Legislation Amendment Act (No. 2) 1984*. This Part sets out the statutory trust for Anzac Hostel which is located in Brighton, Victoria. The Repatriation Commission holds this property on trust for the provision of serviced accommodation for Totally & Permanently Incapacitated veterans.

The present terms of the trust place conditions on the manner in, and the circumstances under which the Repatriation Commission may dispose of the Hostel. These conditions severely restrict the options available for the continued provision of aged care facilities for veterans.

The proposed amendments would remove the trust and vest the legal and beneficial ownership of the property in the Repatriation Commission. The intention is to ensure preservation of the heritage value of this historically important building and to facilitate ex-service men and women's continued use of the hostel in an aged care complex. To do this requires the Commission to be able to retain or dispose of the property. In consultation with ex-service organisations and health groups, the Repatriation Commission will consider several options for the continued use of Anzac Hostel as a care facility.

The Bill also contains five amendments to the *Veterans' Entitlements Act 1986*.

Recipient obligations

The first of these amendments is the insertion of new section 54AA. This section will allow the Secretary to request information from a service pensioner, income support supplement recipient or a claimant of these pensions or request the person to appear before a departmental officer on matters relevant to the payment of the pension. This information can currently be requested with the authority of section 128. However, section 128 only provides for criminal penalties for failure to comply with a notice issued under that section. New section 54AA duplicates section 128. It will allow the Repatriation Commission to cancel or suspend pension under section 56EA for failure to comply with a notice issued under section 54AA. This will also align the treatment of failing to comply with a notice under section 54AA with other obligations notices in sections 54 and 54AA.

Tax file numbers

The second proposal makes 2 changes to the tax file number provisions of the Veterans' Entitlements Act.

The amendments ensure that the principle of "voluntary quotation" which has always formed part of the tax file number scheme is maintained by making it clear that the Secretary may request, but not compel, a person to provide a tax file number.

The amendments will also change the provisions as they relate to a person who does not have a tax file number. The change will mean that if a person who is eligible for a pension or allowance does not have a tax file number then the Secretary will have the power to request that person to apply to the Commissioner of Taxation to obtain a tax file number. A person who fails to apply for a tax file number after such a request has been made will have his or her pension or benefits cancelled.

Documents as evidence

The third proposal relates to the information that the Department provides to the courts concerning the amounts of pension, benefit or allowance paid to a person. The Department's prosecution activity has highlighted a deficiency in the statements made by the Department about the amount of pension, benefit or allowance paid to a person on a certain date.

The Veterans' Entitlements Act does not expressly provide that any information given to the person should be accepted by a court as *prima facie* evidence. Therefore, a statement concerning the amount of pension, benefit or allowance paid to a person must contain an itemised list of the payments made for each fortnight before it can be accepted by a court as *prima facie* evidence. Producing this list can be an extremely time consuming exercise.

New sections 210 and 210A would provide that a signed official departmental document is *prima facie* evidence of the facts or statements contained in the document. This would allow the Repatriation Commission to prepare a statement of the total pension paid to a person for any given period.

These new sections would align with similar provisions contained in the *Social Security Act 1991*.

Cambodia - operational area

The fourth proposal will insert the cessation date for Cambodia as an operational area.

Australian Defence Force (ADF) personnel were deployed to Cambodia from 20 October 1991 as part of an United Nations peacekeeping effort in the region.

Prior to the UN cease-fire and related demobilisation measures, Cambodia would be designated an operational area for the purposes of the Veterans' Entitlements Act. After the UN cease fire ADF personnel serving in Cambodia would receive peacekeeping benefits under the Veterans' Entitlements Act.

A previous amendment to the Veterans' Entitlements Act set out that Cambodia was an operational area on or after 20 October 1991.

The Department of Defence has advised that operational service in Cambodia ceased on 7 October 1993. Service in Cambodia after this date has been declared by the Minister for Defence, Science & Personnel to be hazardous service which will provide equivalent benefits to peacekeeping benefits under the Veterans' Entitlements Act.

This amendment would provide the cessation date for Cambodia as an operational area.

Technical amendments

The final amendment is a series of minor and technical amendments to the Veterans' Entitlements Act.

Financial Impact

The measures contained in this Bill have no financial impact. It should be noted that if and when the Repatriation Commission disposes of Anzac Hostel, there may be significant savings gained from the running costs of this Hostel. However, this Bill does not set out a method of disposal of the Hostel, it merely gives the power to the Repatriation Commission to dispose of it. Savings involved in the disposal of the Anzac Hostel would depend on the manner in which it were disposed.

NOTES ON CLAUSES

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

Clause 2 provides that the commencement date of the Act is the date it receives the Royal Assent.

Subclause 3(1) provides that the Acts specified in the Schedules to this Act are amended as set out in the Schedules.

Subclause 3(2) provides that item 2 in Schedule 1 which deals with the disposal of Anzac Hostel has effect according to its terms. This item does not amend an existing Act.

SCHEDULE 1

AMENDMENT OF THE SOCIAL SECURITY AND REPATRIATION LEGISLATION AMENDMENT ACT (No. 2) 1984

Disposal of Anzac Hostel

Summary of proposed changes

This Schedule amends the terms of the statutory trust which operates in respect of Anzac Hostel. The proposed amendment will give the Repatriation Commission absolute discretion for the disposal of Anzac Hostel.

Background

Anzac Hostel is located in North Road, Brighton, Victoria and provides serviced accommodation for Totally & Permanently Incapacitated veterans.

In 1917 members of the Baillieu family gave £25,000 on trust to the Australian Soldiers' Repatriation Fund. This Fund was established by the *Australian Soldiers' Repatriation Fund Act 1916*. In 1918 money from the fund was used to purchase Anzac Hostel.

In 1937 Anzac Hostel reverted from a charitable trust to a statutory trust. The terms of the trust established for Anzac Hostel were enshrined in the *Repatriation Fund (Baillieu Gift) Act 1937*. The hostel was for the care of Totally & Permanently Incapacitated veterans from World War I. Although this Act was repealed in 1973, the Repatriation Commission's obligations were continued by virtue of section 8 of the *Acts Interpretation Act 1901*.

The terms of the Trust were then re-instated in Part VI of the *Social Security and Repatriation Legislation Amendment Act (No. 2) 1984*. This allowed for the expansion of the group eligible to stay at the hostel to include any veterans eligible for treatment. Preference however, would be given to Totally & Permanently Incapacitated veterans.

Explanation of the changes

The Repatriation Commission is responsible for the provision of services at the hostel. The recent trend of the Repatriation Commission is to arrange for, rather than itself provide, services. The integration of Repatriation General Hospitals into the State system is such an example. This allows the Repatriation Commission to draw on the experience of the Commonwealth and State health care providers to ensure the best service is provided to veterans and their dependants.

The Repatriation Commission is seeking to change the 1984 Act to give the Repatriation Commission the power to hold or dispose of Anzac Hostel as it thinks fit.

The proposed amendments would repeal Part VI of the *Social Security and Repatriation Legislation Amendment Act (No. 2) 1984*. This would remove the current terms of the trust and thereby remove the restrictions placed on the Repatriation Commission's ability to retain or dispose of the property.

The amendments would expressly extinguish the trust and vest the beneficial and legal interest of the property in the Repatriation Commission and would give the Commission the authority to retain or dispose of the property at its discretion. This would allow the Repatriation Commission, in consultation with ex-service organisations and health provider groups, to fully explore options for aged care facilities for veterans.

Explanation of items

Item 1 repeals Part VI of the *Social Security and Repatriation Legislation Amendment Act (No. 2) 1984*.

Item 2 defines "Hostel" and "Commission" for the purposes of the item and sets out that, from the commencement of this Act, the Repatriation Commission ceases to hold Anzac hostel on trust. The Repatriation Commission becomes the sole legal and beneficial owner of the Hostel and may hold or dispose of the property as it thinks fit.

Commencement

Clause 2 sets out the commencement of this proposal as the date of Royal Assent.

SCHEDULE 2

AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

PART 1 — RECIPIENT OBLIGATIONS

Summary of proposed changes

The proposed amendments to the *Veterans' Entitlements Act 1986* would give the Repatriation Commission the power to suspend or cancel service pension or income support supplement where the claimant or pensioner has failed to comply with a notice issued under new section 54AA.

Background

At present the Repatriation Commission has the power to reduce, cancel or suspend pension where a service pensioner, income support supplement recipient or a claimant of these pensions has failed to comply with a notice issued under section 54 or 54A.

Section 54 allows the Repatriation Commission to impose obligations on the claimant or pensioner requiring the person to advise the Department of the happening of an event or occurrence specified in the notice. The event or occurrence must be relevant to the payment of pension. Examples of the type of information requested are a change in marital status or a change in address.

A section 54 notice may also be given to a person receiving fringe benefits in accordance with Division 12 of Part IIIB of the Act.

A section 54A notice can be issued requesting the claimant or pensioner to complete details concerning a matter relevant to the payment of pension on a departmental form. An example of a form issued with a section 54A notice is a review form for income and assets details.

Failure to comply with a notice issued under section 54 or 54A can result in the Repatriation Commission reducing, suspending or cancelling pension in accordance with sections 56A, 56B and 56EA. Criminal penalties also exist under subsections 54(6) and 54A(6).

Other obligations can be imposed on a pensioner by the issue of a section 128 notice. Under section 128, the Secretary can issue a notice requiring a person to provide specific information or documentation, or to appear before an officer to answer questions. The information requested must be relevant to the payment of pension or allowance under the Act.

For service pension and income support supplement purposes, examples of the type of information sought from the claimant or pensioner would be the confirmation of bank details, copies of taxation returns or trust deeds.

The only penalty that can be imposed for failure to comply with a section 128 notice is a criminal one in accordance with subsection 128(4).

Unlike sections 56A, 56B and 56EA, there is not a provision that allows the Repatriation Commission to suspend or cancel the service pension or income support supplement payment where the claimant or pensioner has failed to comply with a section 128 notice.

Explanation of the changes

The purpose of these amendments is to give the Repatriation Commission the authority to cancel or suspend service pension, income support supplement or fringe benefits where a person has failed to provide information, requested in writing by the Secretary, which is material to the payment of that pension or the provision of those benefits.

This amendment will align the action that the Repatriation Commission may take in response to a person's failure to comply with all obligations notices issued to a claimant, service pensioner, income support supplement recipient or fringe benefits recipient.

Explanation of items

Item 1 inserts new section 54AA into the Veterans' Entitlements Act. New section 54AA duplicates section 128 and will allow the Repatriation Commission to request information from the service pensioner, income support supplement recipient, claimant of these pensions or a fringe benefits recipient on matters relevant to the payment of pension or the provision of the benefits. Section 128 was duplicated for the purposes of service pension and income support supplement as part of the clear English rewrite of Part III of the Veterans' Entitlements Act. This locates all recipient obligations for service pension and income support supplement in the one area of the Act (sections 54 to 54AA).

New subsection 54AA(1) allows the Secretary to issue a notice to a person receiving service pension, income support supplement or fringe benefits requesting:

specific information from the person;

the production of documents; or

that the person appear before a departmental officer to answer questions.

The matter requested in this notice must be relevant to the payment of pension or the provision of benefits.

New subsection 54AA(2) extends the operation of subsection (1) to include a third person to whom the whole or part of the pension is being paid for the benefit of the pensioner.

New subsection 54AA(3) applies to service pension and income support supplement claimants. It is equivalent to subsection (1) and allows the Secretary to issue a notice to these claimants. The claim may be under consideration by the Repatriation Commission or the Administrative Appeals Tribunal.

New subsection 54AA(4) sets out the formal requirements for issuing a valid notice under section 54AA.

The notice:

- must be in writing;
- may be given personally or by post; and
- must specify either when or how the person should provide the information or when or where the person should appear before the departmental officer.

New subsection 54AA(5) would extend subsection (4) to ensure that the notice must give the person a period of at least 14 days to comply with the notice from the date it was given.

New subsection 54AA(6) sets out that the Secretary may require the person to give the information or answers in the form of an oath or affirmation. If an oath or affirmation is required, it must be given either orally or in writing and the Secretary or specified officer may administer it to the person.

New subsections 54AA(7) and (8) set out the criminal penalties for failure to comply with the notice or knowingly providing false or misleading information in regard to a matter that is material to the payment of pension. These penalties are equivalent to the penalties available under subsection 128(4) and (5). Although no fine is mentioned in the new subsections, this is consistent with recent amendments to the *Crimes Act 1914*. Subsections 4B(2) and (3) of that Act allow a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

Item 2 amends section 56EA of the Veterans' Entitlements Act to include a reference to new section 54AA. This will allow the Repatriation Commission to suspend or cancel a person's service pension or income support supplement for failure to comply with a section 54AA notice.

Item 3 amends section 56H of the Veterans' Entitlements Act to include a reference to new subsection 54AA(7). Section 56H allows the Repatriation Commission to determine the date of cancellation or suspension of the service pension or income support supplement. Subsection 56H(4) allows the Repatriation Commission to specify a date earlier than the date of determination where there has been a contravention of the Act. The exception to this provision is where the non compliance occurs because the person is incapable of complying with certain provisions of the Act. The exception will also apply to notices issued under new subsection 54AA(7).

Commencement

Clause 3 specifies the commencement of this proposal as the date of Royal Assent.

PART 2 — TAX FILE NUMBERS

Summary of proposed changes

This Part makes 2 changes to the tax file number provisions of the *Veterans' Entitlements Act 1986*.

The amendments ensure that the principle of "voluntary quotation" which has always formed part of the tax file number scheme is maintained by making it clear that the Secretary may request, but not compel, a person to provide a tax file number.

The amendments will also change the provisions as they relate to a person who does not have a tax file number. The change will mean that if a person who is eligible for a pension or allowance does not have a tax file number then the Secretary will have the power to request that person to apply to the Commissioner of Taxation to obtain a tax file number.

Background

Section 128A of the *Veterans' Entitlements Act* sets out the requirements for certain persons to provide, when required by the Secretary, a written statement of the person's tax file number or the tax file number of the person's partner or non-illness separated spouse. The Act specifies that if a person does not comply with such a requirement a pension or allowance that the person is eligible to receive is not payable.

In a recent decision of the Administrative Appeals Tribunal, *Re Malloch and Secretary, Department of Social Security*, the Tribunal held that the *Social Security Act 1991*, did not prevent payment of pension to a person who does not provide a tax file number to the Department because he or she has no tax file number and has no intention of requesting one from the Commissioner for Taxation.

The *Social Security Legislation Amendment Act (No. 2) 1994* amended the *Social Security Act* to overcome the decision of the Administrative Appeals Tribunal in *Malloch*.

As a result of concerns expressed by the Privacy Commissioner that the *Social Security Act* did not take account of the voluntary quotation principle that is an integral part of the tax file number scheme, further amendments were made to put beyond doubt that receipt of a social security payment is conditional on satisfying the tax file number requirements and made it clear that the decision as to whether or not an individual provides a tax file number or applies for a tax file number, in full knowledge of the consequences, rests with the individual. In other words, amendments to the *Social Security Act* were necessary to make it clear that the Secretary may request, but not compel a person to provide his or her tax file number or to apply for a tax file number. In the event of the person electing not to comply with that request, the consequences of non-payment of pension, benefit or allowance rest with the individual.

As the Veterans' Entitlements Act contains similar provisions relating to the provision of tax file numbers as a condition to the payment of pensions and allowances, a similar amendment is required to ensure that the Secretary may request persons eligible for a pension or allowance who do not have a tax file number to apply to the Tax Commissioner and to give the Secretary a written statement of the person's tax file number after the Commissioner has issued it.

The amendments also address the concerns of the Privacy Commissioner relating to the voluntary quotation principle and thus make it clear that the Secretary may request but not compel persons to provide their tax file number.

These changes ensure that the tax file number provisions of the Veterans' Entitlements Act remain consistent with those in the Social Security Act.

Explanation of Items

Item 4 omits existing subsections 128A(2), (2A), (3) and (3A) and replaces them with new subsections 128A(2), (3) and (3A). The new subsections recast the existing subsections as well as adding the new power of the Secretary to request a person who does not have a tax file number to apply to the Commissioner for Taxation for a tax file number. The new subsections also use the term "request" in place of the existing term "require" in relation to the power to collect tax file number information.

New subsection 128A(2) provides that a pension or allowance is not payable to a person if the person fails to comply with a request of the Secretary to provide or obtain a tax file number. Subsections (3) and (3A) provide for such requests to be made.

New subsection 128A(3) relates to a request for a person to provide his or her tax file number. It provides that the Secretary may request a person to provide a written statement of this or her tax file number or request that the person apply to the Commissioner of Taxation for a tax file number. This provision only applies if the person is in Australia.

New subsection 128A(3A) relates to a request for a person to provide the tax file number of his or her partner or non-illness separated spouse. It provides that the Secretary may request a person to provide a written statement of the tax file number of his or her partner or non-illness separated spouse. This provision only applies if the person's partner is in Australia.

Items 5 to 10 make the necessary consequential amendments to the remaining subsections of section 128A.

Commencement

Clause 3 specifies the commencement of this proposal as the date of Royal Assent.

PART 3 — DOCUMENTS AS EVIDENCE

Summary of proposed changes

The proposed amendments will enable written statements, signed by the Secretary or an officer of the Department, that detail the amount of pension paid and the dates on which payments were made are to be accepted as *prima facie* evidence by the courts that such payments were made on the dates given.

Background

Recent prosecution cases have highlighted an administrative deficiency in the Department's preparation of the statements of pensions. The Department must prepare detailed itemised lists of payments made to the person each fortnight as this is the only form of *prima facie* evidence which is accepted by the courts as a statement of moneys paid to the person.

The preparation of these lists can be extremely time consuming.

The proposed amendments would ensure that a written statement of amounts of pension paid and the dates on which the payments were made would be accepted by the courts as *prima facie* evidence. This statement would not list fortnightly payments. Instead it would provide a total for the pension payments made to the person.

Explanation of items

Item 11 inserts new sections 210 and 210A in the *Veterans' Entitlements Act 1986*.

New subsection 210(1) provides for judicial notice to be taken by all courts of a signature by the Secretary or an officer of the Department which is attached to an official document.

New subsection 210(2) provides for judicial notice to be taken by all courts that a person is or was the Secretary, or is or was an officer of the Department.

Section 210 is a prerequisite for the operation of new section 210A.

New subsection 210A(1) provides that when an official document is signed by a person who is or was the Secretary, or is or was an officer of the Department, that document is to be accepted as *prima facie* evidence of the facts contained in it.

New subsection 210A(2) provides that a written statement, signed by a person described in subsection (1), which states that a person is or was receiving a pension, allowance or other benefit under this Act on a certain date at a certain rate is *prima facie* evidence of the details provided.

Commencement

Clause 3 specifies the commencement of this proposal as the date of Royal Assent.

PART 4 — CESSATION DATE FOR CAMBODIA AS AN OPERATIONAL AREA

Summary of proposed changes

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

Background

On 9 October 1991, Cabinet agreed to deploy Australian Defence Force (ADF) personnel to Cambodia as part of an United Nations contingent in the region. The basis for deployment was that:

before the UN cease-fire took effect, and related demobilisation measures were set in place, Cambodia be designated an operational area for the purposes of the Veterans' Entitlements Act; and

after the UN cease-fire took effect, and related demobilisation measures were set in place, ADF personnel to Cambodia receive peacekeeping benefits under the Veterans' Entitlements Act.

The Veterans' Entitlements Act was amended to provide that Cambodia was an operational area on or after 20 October 1991. This was the date ADF personnel were first deployed in the area.

The Department of Defence has advised that operational service in Cambodia ceased on 7 October 1993. Service in Cambodia after this date has been declared by the Minister for Defence, Science and Personnel to be hazardous service which will provide equivalent benefits to peacekeeping benefits under the Veterans' Entitlements Act.

This proposal would insert the end date for Cambodia as an operational area.

Explanation of items

Item 12 amends column 2 of item 12 of Schedule 2 to the Veterans' Entitlements Act to insert the cessation date for service in Cambodia as an operational area. This date is 7 October 1993.

Commencement

Clause 3 specifies the commencement of this proposal as the date of Royal Assent.

PART 5 — MISCELLANEOUS AMENDMENTS

Summary of proposed changes

These changes make two minor technical amendments to the *Veterans' Entitlements Act 1986* (VEA) by:

- amending four section numbers; and
- removing the reference to the "*Seamen's War Pensions and Allowances Act 1940*" (SWPA Act) which appears in section 118A.

Background

Section Renumbering

Both the *Veterans' Affairs Legislation Amendment Act 1994* and *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994* (VABM 94) inserted two sets of new sections each numbered 36JA, 37JA, 38JA and 39JA into the VEA. One set of the sections related to withdrawal of claims and the other set related to comparable foreign pensions.

SWPA Act

One of the initiatives implemented in the VABM 94 was the integration of Australian mariners with veterans into the VEA. As a result of this, the SWPA Act was repealed by Section 47 of the VABM 94. Consequently, most references to the SWPA Act became redundant and were repealed as part of the Budget Measures legislation. One reference, however, was overlooked.

Explanation of the items

Items 13 to 16 renumber one set of sections 36JA, 37JA, 38JA and 39JA as 36JE, 37JE, 38JE and 39JE.

Item 17 omits the reference to the "SWPA Act" in section 118A.

Commencement

Clause 3 specifies the commencement of this proposal as the date of Royal Assent.



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