

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS) AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans'  
Affairs, Senator the Hon. A.T. Gietzelt)



VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS) AMENDMENTS BILL

OUTLINE

The Veterans' Entitlements (Transitional Provisions and  
Consequential Amendments ) Bill was passed by the Parliament  
last year but has not received Royal Assent. The main purpose of  
this legislation is to provide arrangements for the transition  
from the existing Repatriation Act 1920 and other supplementary  
legislation to the Veterans' Entitlements Act 1986.

As the Veterans' Entitlements Bill was not passed by the  
Parliament, the Attorney-General recommended to the  
Governor-General that this Bill not be given Royal Assent.

The Governor-General returned the Bill to the Parliament with a  
recommendation that the Parliament consider amending the date of  
effect of the legislation. This matter has been dealt with by  
amendments to the Bill in accordance with the Governor-General's  
message.

Amendments to the Veterans' Entitlements Act 1986 will require consequential amendments to be made to the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

The main amendments are:-

- . to maintain the six month period during which an eligible dependant may make an election to commute an entitlement to pension to a lump sum payment,
- . to extend by three months to 1 October 1986 the date on which it will be mandatory for the Repatriation Commission to use the Guide to Assessment of Rates of Veterans' Pensions,
- . to provide that the Guide to Assessment will be binding on the Veterans' Review Board (VRB) and the Administrative Appeals Tribunal (AAT) only where the Guide was used by the Commission or the VRB respectively in reaching the decision which is the subject of the review,
- . to provide that where, since 6 June 1985, the VRB has reviewed a decision of the Commission and refused to grant a pension, application for a review of that decision by the AAT may be made within 3 months of the

commencement of the Act. This will give effect to the Government guarantee that such decisions will be reviewable in accordance with the new legislation.

Financial Impact

The amendments provided for in the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Bill will involve additional expenditure on dependants pensions of \$1.908 million in 1986/87 as a result of the delay in the commencement of the period during which a dependant will be able to elect to commute his or her pension.

VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS  
AND CONSEQUENTIAL AMENDMENTS) AMENDMENT BILL 1986

Clause 1 - Short title

Sub-clause 1(1) will cite the Act as the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986.

Sub-clause 1(2) will provide that in this Act the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 is referred to as the Principal Act.

Clause 2 - Commencement

This clause will provide that the Act shall come into operation immediately after the Principal Act comes into operation.

Clause 3 - Commutation of certain pensions

Section 6 of the Principal Act relates to a wife or a child of a veteran who was in receipt of a dependant's pension before the commencement date of the Act and whose rate of pension had been frozen at the rate payable at 6 June 1985. Section 6 of the Principal Act provides for such dependants to exercise a

once-only option to receive a lump sum payment equivalent to 78 instalments (three years) of pension in lieu of any further entitlement to pension.

The amendments made by clause 3 to sub-sections 6(2) and (3) and paragraph 6(4)(a) are consequential upon the delay in the passage of the Principal Act and will maintain the six month period during which an eligible dependant may make an election to commute an entitlement to pension to a lump sum. Where a dependant elects to commute a pension, it will be cancelled after the last pension pay-day in September 1986 and the lump sum payment will become payable after that date.

Clause 4 - Reviews of certain decisions made under repealed Acts

Sub-section 20(4) of the Principal Act maintains the effect of sub-section 90(3) of the Social Security and Repatriation Legislation Amendment Act 1985 which set certain time limits for the lodging of applications for a review of Commission decisions by the Veterans' Review Board.

Paragraph 4(a) will omit paragraphs 20(4)(e) and (f) of the Principal Act and substitute a provision which maintains the effect of paragraph 20(4)(e) only. Paragraph 20(4)(e) provides that applications for review to the Veterans' Review Board in respect of decisions made by the Repatriation Commission before 1 January 1986 may be made within 3 months of the date on which that decision was served on the applicant.

Paragraph 4(b) will add new sub-sections 20(10A) and 20(10B) to section 20 of the Principal Act. These new sub-sections will provide that where, on or after 6 June 1985 and before the commencing date, the Veterans' Review Board (VRB) had reviewed a decision of the Repatriation Commission to which sub-section 107VG(7) of the Repatriation Act 1920 applied, an application for review by the AAT may be made within three months after the commencing date. This provision will not apply where an application for review has been made to the AAT.

Clause 5 - Guide to the Assessment of Rates of Veterans' Pensions

Section 27 of the Principal Act specifies the date on which the Guide to the Assessment of the Rates of Veterans' Pensions will become binding on the Repatriation determining authorities.

Paragraph 5(a) will amend sub-section 27(1) of the Principal Act so as not to require the Repatriation Commission to apply the Guide to a determination of the degree of incapacity before 1 October 1986.

Paragraph 5(b) will amend sub-section 27(2) of the Principal Act by deleting the reference to the Veterans' Review Board and the Administrative Appeals Tribunal and providing that where, after the commencement date of the Principal Act and before 1 October 1986, the Repatriation Commission is making a determination of



the degree of incapacity of a veteran, it may make its determination in accordance with the Guide to the Assessment of Rates of Veterans' Pensions where the material before it is sufficient for that purpose.

Paragraph 5(c) will insert new sub-sections 27(2A), (2B) and (2C) of the Principal Act. New sub-section (2A) will provide that where the Commission makes an assessment of the rate of a disability pension before the date on which the Guide becomes binding but uses the Guide in making that assessment, the Commission will be required to state in its decision that the degree of incapacity of a veteran was determined in accordance with the provisions of that Guide.

New sub-sections 29(2B) and (2C) will provide that the Veterans' Review Board (VRB) and the Administrative Appeals Tribunal (AAT) will be bound to use the Guide in assessing the degree of incapacity of a veteran where the decision of the Commission which is under review was made after 1 October 1986 or where the decision of the Commission was made before that date, but after the commencing date, and the Commission used the Guide in making its assessment of the degree of incapacity of a veteran.

#### Clause 6 - Trusts in respect of pensions and allowances

Section 54 of the Principal Act provides that arrangements existing before the commencement date in respect of the payment of a pension or allowance to a trustee on behalf of a pensioner continue as if the trust arrangement had been effected under the Veterans' Entitlements Act.

Clause 6 will amend paragraph 54(1)(c) and sub-section 54(2) of the Principal Act to correct a drafting error in that these provisions duplicate the effect of the savings provision provided for in section 57 of the Principal Act. The clause will amend paragraph 54(1)(c) and delete sub-section 54(2) to r move the reference to matters already provided for in section 57.

Clause 7 - Transitional - Australian Mariners

Clause 7 will amend section 64 of the Principal Act which relates to the application of the Guide to the Assessment of Rates of Veterans' Pensions by determining authorities under the Seamen's War Pensions and Allowances Act 1940. The amendm nts provided for are consequential upon the amendments provided for in clause 5 in relation to the use of the Guide to the Assessment of Veterans' Pensions and will make similar amendments to ensure consistency between the Veterans' Entitlements Act 1986 and the Seamen's War Pensions and Allowances Act 1940.

Clause 8 - Amendment of Acts

Schedule

Defence Service Homes Act 1918

This part of the Schedule will amend sub-section 4(1) - (d finitio 'Australian soldier') - of the Defence Service Homes Act 1918 to ensure that persons who served in the Vietnam conflict and who,

under the Veterans' Entitlements Act 1986, are to be deemed to have been allotted for duty in Vietnam by the Minister for Defence, will also be eligible for defence service home loans under the Defence Service Homes Act 1918.

This part of the Schedule will also amend paragraph 4(2)(b) of the Defence Service Homes Act 1918 to correct a drafting error in the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986. The original amendment to the Defence Service Homes Act 1918 contained in the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 referred to 'after 1 September 1957'. This wording would have excluded the date of 1 September 1957 which was not the intention. 1 September 1957 was the date of commencement of the Repatriation (Far East Strategic Reserve) Act 1956.

#### Public Service Act 1922

This part of the Schedule will amend sub-section 7(1) - (definition of 'returned soldier') - of the Public Service Act 1922 to ensure that persons who served in the Vietnam conflict and who, under the Veterans' Entitlements Act 1986, are to be deemed to have been allotted for duty in Vietnam by the Minister for Defence, will also satisfy the definition of 'returned soldier' in sub-section 7(1) of the Public Service Act 1922.

Seamen's War Pensions and Allowances Act 1940

This part of the Schedule will amend section 30 (Secretary may obtain information) of the Seamen's War Pensions and Allowances Act 1940 which is modelled on the equivalent provision in the Veterans' Entitlements Act 1986 (section 127). The amendment will insert a requirement of "reasonableness" in section 30 as to the period and manner in which information is to be furnished or documents produced and the time and place at which a person may be required to appear before an officer of the Department to give evidence or produce documents.

This part of the Schedule will also amend section 58 (Offences) of the Seamen's War Pensions and Allowances Act 1940 which is modelled on the equivalent provision in the Veterans' Entitlements Act 1986 (section 208). The amendment will provide that it is an offence under section 58 only if a person "knowingly" engages in conduct prescribed by the section.







