

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' ENTITLEMENTS (REWRITE) TRANSITION BILL 1991

EXPLANATORY MEMORANDUM

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



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VETERANS' ENTITLEMENTS (REWRITE) TRANSITION BILL 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill provides the necessary legal machinery for the transition from the former Part III of the Veterans' Entitlements Act 1986 to the new Part III of the Veterans' Entitlements Act 1986.

The Bill achieves the following objectives:

- . the consolidation of savings and transitional provisions;
- . the inclusion of "plain English" indexation provisions;
- . amendments to Part III resulting from the 1990 Budget legislation;
- . the consequential amendments of other Parts of the Veterans' Entitlements Act 1986 and other Veterans' Affairs legislation;
- . the consequential amendments of other Commonwealth Acts; and
- . further amendments to Part III of the Veterans' Entitlements Act 1986.

The overall aim of the transitional arrangements contained in this Bill is to ensure continuity between the provisions contained in the former Part III and those in the new Part III.

The Bill does not involve any policy initiatives and the Bill will not, therefore, have any financial impact on Veterans' pensions or entitlements.

PART 1 - PRELIMINARY

Clause 1: Short title

Clause 1(1) would provide that the short title of the Bill when enacted will be the Veterans' Entitlements (Rewrite) Transition Act 1991.

Clause 1(2) would provide that, in the Bill, the Veterans' Entitlements Act 1986 is the Principal Act.

Clause 2: Commencement

Clause 2(1) would specify that the Bill will commence immediately after the commencement of the Veterans' Entitlements Amendment Act 1991. The 1991 Act will commence on 1 July 1991.

Clause 2(2) would provide that clause 19 will commence immediately after the commencement of clause 22.

PART 2 - SAVINGS AND TRANSITIONAL PROVISIONS**Division 1 - General**Clause 3: Interpretation

This clause would provide that in this Part "**former Part III**" means Part III of the Principal Act as in force immediately before 1 July 1991; and "**new Part III**" means Part III of the Principal Act as in force on 1 July 1991.

Clause 4: Correspondence of pensions

This clause would provide that, for the purposes of this Part, a service pension granted to a person because of section 38, 39, 40 or 41 of the former Part III corresponds to an age service pension, an invalidity service pension, a wife service pension or a carer service pension, respectively, under the new Part III.

Clause 5: Correspondence of provisions

Clause 5(1) would provide that, if one provision of the former Part III and one provision of the new Part III have the same legal effect, the two provisions correspond to each other.

Clause 5(2) would provide that, if one provision of the former Part III has a particular effect in relation to different types of service pension and a provision of the new Part III has the same legal effect in relation to only one of those types of service pension, the provisions correspond to each other for the purposes of applying the savings and transitional provisions of this Part to that payment type.

Clause 5(3) would specify that "legal effect" includes conferring the power to issue an instrument.

Division 2 - Savings

Clause 6: General aim of Division

This clause would state that the principal effect of this Division is to allow the continued payment of pensions granted under the former Part III and the continuation of processes that were begun under the former Part III, without the need for people to make new claims or begin those processes again.

Clause 7: Saving of pensions and qualifying service determinations

Clause 7(1) would specify that, where a determination granting a claim for a service pension or a qualifying service determination is in force immediately before

1 July 1991, the determination has effect from 1 July 1991 as if it were a determination under the new Part III.

(The note would point out the statutory bases for such a determination under the former Part III.)

Clause 7(2) would specify that, where a determination directing the payment of a service pension is in force immediately before 1 July 1991, the determination has effect from that date as if it were a determination under the new Part III.

(The note would point out the statutory bases for such a determination under the former Part III.)

Clause 7(3) would specify that, where a determination relating to the rate of a service pension is in force immediately before 1 July 1991, the determination has effect as if it were a determination under the new Part III.

(A note would point out the statutory bases for such a determination under the former Part III.)

Clause 8: Instruments in force on 30 June 1991

Clause 8(1) would provide that an instrument in force immediately before 1 July 1991 that was made under a provision of the Principal Act that was repealed on 1 July 1991, continues in force as if it were made under a corresponding provision in force immediately after that date.

Clause 8(2) would specify the types of instrument that may be covered by clause 8(1) without limiting the generality of that clause.

Clause 8(3) would ensure that clause 8(1) does not extend any limitation on the period of effect of an instrument made under the Principal Act immediately before 1 July 1991.

Clause 9: Saving of claims for pensions and qualifying
service determinations

Clause 9(1) would ensure that a claim lodged under the former Part III which had not been determined at 1 July 1991 will have effect from that date as if it were a claim for a corresponding pension or a qualifying service determination under the new Part III.

Clause 9(2) would provide that a determination granting a claim covered by clause 9(1) may have a date of effect before the commencement of the new Part III.

Clause 9(3) would provide that, where a claim is determined under the new Part III with a date of effect prior to 1 July 1991, payment of pension instalments for the period before 1 July 1991 would be made under the new Part III. The recipient would have no rights under the former Part III in relation to the claim. This provision prevents a person from being entitled to payments under both Parts for the same period.

Clause 10: Unfinalised internal reviews

Clause 10(1) would ensure that an application under subsection 59(1) of the former Part III for a review of a decision which has not been determined at 1 July 1991 has effect from that date as if it were an application under the corresponding provision of the new Part III.

Clause 10(2) would allow the decision on an application referred to in clause 10(1) to have a date of effect before 1 July 1991.

Clause 10(3) would ensure that the decision on an application referred to in clause 10(1) has effect up to 30 June 1991 as if it had been made under the former Part III.

Clause 11: Application to participate in the pension
loans scheme

Clause 11(1) would ensure that, where a person has made a request before 1 July 1991 to participate in the pension loans scheme and the request has not been determined by that date, the request has effect from 1 July 1991 as if it had been made under the corresponding provision of the new Part III.

Clause 11(2) would provide that, if clause 11(1) applies and the request is granted, the former Part III has effect from the period that starts on the day on which the request was made up to 30 June 1991 as if the former Part III applied to that period.

Clause 12: Application to take advantage of
hardship rules

Clause 12(1) would ensure that, where a person has made a request before 1 July 1991 to take advantage of the financial hardship provisions, and that request has not been determined by that date, the request has effect from 1 July 1991 as if it had been made under the corresponding provision of the new Part III.

Clause 12(2) would provide that a decision made under clause 12(1) has effect before 1 July 1991.

Clause 12(3) would provide that, if clause 12(1) applies and the request is granted, the former Part III has effect from the period that starts on the day on which the request was made up to 30 June 1991 as if the former Part III applied to that period.

Clause 13: Payment of service pension to agent

This clause would provide that, where before 1 July 1991 a pensioner had made a request under the former Part III for payment of a specified type of service pension to an agent, the request has effect from that date as if it had been made under the corresponding provision of the new Part III.

Clause 14: Request to terminate service pension

This clause would provide that, where a pensioner had made a request before 1 July 1991 under the former Part III for payment of a specified type of service pension to be terminated, the request has effect from that date as if it had been made under the corresponding provision of the new Part III.

Clause 15: Cancellation or suspension where person fails
to draw instalments

This clause would provide that, where before 1 July 1991 the Commission had suspended or cancelled a specified type of service pension under the former Part III, the cancellation or suspension has effect from that date as if it had been made under the corresponding provision of the new Part III.

Clause 16: Deduction of tax from service pension

This clause would provide that, where a person had made a request before 1 July 1991 under the former Part III for tax to be deducted from his or her service pension, the request has effect from that date as if it had been made under the corresponding provision of the new Part III.

Division 3 - Transitional (1990 Budget)

Clause 17: Fringe benefits test - interest attributed to
money not invested or invested at a low rate of interest
(changes introduced on 1 March 1991)

This clause would enable a person who would lose entitlement to fringe benefits as a result of the application of the new provisions to retain their entitlement. Any person who was entitled to fringe benefits on 28 February 1991 will retain entitlement to

those benefits as long as he or she would have retained that entitlement if the amendments had not been made.

**PART 3 - INDEXATION AMENDMENTS OF THE VETERANS'
ENTITLEMENTS ACT 1986**

Clause 18: Indexation amendments

This clause would provide for the new Part III to be amended as set out in Schedule 1 to the Bill.

**PART 4 - 1990 BUDGET AMENDMENTS OF THE VETERANS'
ENTITLEMENTS ACT 1986**

Clause 19: 1990 Budget amendments

This clause would provide for the new Part III to be amended as set out in Schedule 2 to the Bill to incorporate amendments to Veterans' Affairs legislation in the 1990 Budget Sitzings.

**PART 5 - CONSEQUENTIAL AMENDMENTS OF THE VETERANS'
ENTITLEMENTS ACT 1986**

Clause 20: Consequential amendments of the Veterans'
Entitlements Act 1986

This clause would provide for the Veterans' Entitlements Act 1986 to be amended as set out in Schedule 3 to the

Bill as a consequence of the replacement of the former Part III of the Principal Act by the new Part III.

PART 6 - CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Clause 21: Consequential amendments of other Acts

This clause would amend other Commonwealth Acts as set out in Schedule 4 to the Bill as a consequence of the replacement of the former Part III of the Principal Act by the new Part III.

PART 7 - MINOR AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Clause 22: Minor amendments of the Veterans' Entitlements Act 1986

This clause would provide for further minor amendments to the Principal Act as set out in Schedule 5 to the Bill. For the most part, those amendments are to update rates and correct minor drafting errors. The Schedule also contains minor amendments agreed to as part of the process of consultation and negotiation with ex-service organisations' representatives.

SCHEDULE 1

INDEXATION AMOUNTS OF THE VETERANS'

ENTITLEMENTS ACT 1986

This Schedule would provide for the insertion in the new Part III of service pension and fringe benefits related indexation provisions.

New section 5NA: Indexation and rate adjustment
definitions

This new section would prescribe the meanings of a number of terms relating to the indexation and adjustment of various amounts.

New subsection 5NA(1) would contain the following definitions:

- . "current figure" would mean the amount that is to be indexed or adjusted at a particular time under Division 21 of Part III of the Principal Act. It could be either an amount which is being indexed for the first time or an amount which has previously been indexed or adjusted and which is now being substituted for a more recent and greater figure (ie, the indexed amount - see new section 59C).

- "index number" would mean the Consumer Price Index number published by the Australian Statistician in respect of a financial quarter.

Publication of substituted index numbers

New subsection 5NA(2) would provide that, where the Australian Statistician publishes a second "index number" in substitution for a previously published number for the same period, the second publication is to have no effect for the purposes of the Principal Act. This would mean that the various amounts to be indexed or adjusted under Division 21 of Part III of the Principal Act would be based on the first published number. For example, publication of a revised CPI rate would have no effect.

Change to CPI reference base

New subsection 5NA(3) would provide that indexation or adjustment must occur in line with "index numbers" published in terms of the current CPI reference base.

DIVISION 21 - INDEXATION

Subdivision A - Preliminary

New section 59: Analysis of Division

This new section would provide that the amounts referred to in column 2 of the Consumer Price Index (CPI) Indexation Table at the end of new section 59B would be

indexed in line with movements in the CPI. Other amounts that are not directly indexed but are adjusted by reference to other indexed amounts would also be covered by this Division.

New section 59A: Indexed and adjusted amounts

This new section would contain a table which sets out all the amounts that would be indexed or adjusted under this Division and the provision in which the amount is to be found. The table also explains the abbreviations used in the tables and the location of the indexed or adjusted amount in this Part.

Subdivision B - CPI indexation

New section 59B: CPI Indexation Table

New subsection 59B(1) would contain the table with all the amounts that are indexed in accordance with CPI movements. The indexation of each amount would depend on the indexation day, reference quarter and base quarter for the amount and would be rounded to the nearest multiple of the rounding amount. Those amounts which contain two indexation days would be indexed every 6 months. Those with one indexation day would be indexed annually.

Highest quarter

New subsection 59B(2) would clarify the terminology used in the table in new subsection 59B(1).

New section 59C: Indexation of amounts

New subsection 59C(1) would provide that, where an amount is to be indexed on an indexation day, the Principal Act is to have effect as if the indexed amount were substituted for that amount on that day.

New subsection 59C(2) would set out, in a 4-step method statement, how to calculate the **indexed amount** for an amount that is to be indexed. The first step would be to work out the indexation factor for the amount on the indexation day. The second step would be to work out the current figure for the amount immediately before the indexation day. The third step would be to multiply the current figure by the indexation factor - this would result in the **provisional indexed amount**. This amount would be rounded off in step 4 to produce the actual **indexed amount**.

(A note would signpost the definition of "current figure".)

New section 59D: Indexation factor

This new section would set out how to calculate the indexation factor. This would be done by dividing the index number for the most recent reference quarter by the index number for the base quarter (new subsection 59D(1)). The result would be worked out to 3 decimal places (new subsection 59D(2)). The indexation factor that would be worked out under this new section could never be less than 1 (new subsection 59D(3)).

New section 59E: Rounding off indexed amounts

This new section would provide the rules for rounding the provisional indexed amount. Generally, the provisional indexed amount would be rounded to the nearest multiple of the rounding base except where the provisional amount is half the rounding base. In this instance, new subsection 59E(3) would allow the provisional amount to be rounded up to the nearest rounding base.

(Notes 1 and 2 after new subsection 59E(1) would signpost provisions dealing with "provisional indexed amount" and "rounding base".)

Subdivision C - Adjustment of other ratesNew section 59F: Adjustment of pension child add-ons

This new section would provide for the automatic adjustment of the "under 13 years" and "13 to 15 years" child add-ons on 1 January each year with reference to the rates calculated under Part 3.16 of the Social Security Act.

New section 59G: Adjustment of pension
guardian allowance

This new section would provide for the automatic adjustment of the pension guardian allowance on 1 January each year with reference to the rate calculated under Part 3.16 of the Social Security Act.

New section 59H: Adjustment of pension "single"
non-property owner AVL

This new section would provide for the automatic adjustment of the assets value limits ("AVL") for service pension for a non-property owner who is not a member of a couple (ie, pension "single" non-property owner AVL) on 13 June of each year. The amount is adjusted by reference to the indexation of the assets value limits for pensioner property owners and non-property owners who

are members of a couple (ie, pension "partnered" property owner AVL and "partnered" non-property owner AVL) is derived by using the formula:

$$\text{pension "single" property owner AVL} + 2 \times \left[\begin{array}{cc} \text{pension "partnered" non-property owner AVL} & - \end{array} \begin{array}{c} \text{pension "partnered" property owner AVL} \end{array} \right]$$

New section 59J: Adjustment of special illness separated resident AVL

This new section would provide for the automatic adjustment on 13 June of each year of the assets value limit ("AVL") for certain illness separated service pensioners who are retirement village or granny flat residents. The amount is adjusted by reference to the indexation of the assets value limits ("AVL") for pensioner property owners and non-property owners who are members of a couple (ie, pension "partnered" property owner AVL and pension "partnered" non-property owner AVL) and is derived by using the formula:

$$\frac{\text{pension "partnered" property owner AVL} + \text{pension "partnered" non-property owner AVL}}{2}$$

New section 59K: Adjustment of fringe benefits AVLs

New subsection 59K(1) would provide for the automatic adjustment of the assets value limit ("AVL") for fringe

benefits for a non-property owner who is not a member of a couple (ie, fringe benefits "single" non-property owner AVL) on 13 June of each year. The amount is adjusted by reference to the indexation of the assets value limits for pensioner property owners and non-property owners who are members of a couple (ie, pension "partnered" property owner AVL and pension "partnered" non-property owner AVL) and is derived by using the formula:

$$\begin{array}{l} \text{fringe benefits} \\ \text{"single"} \\ \text{property} \\ \text{owner AVL} \end{array} + 2 \times \left[\begin{array}{l} \text{pension} \\ \text{"partnered"} \\ \text{non-property} \\ \text{owner AVL} \end{array} - \begin{array}{l} \text{pension} \\ \text{"partnered"} \\ \text{property} \\ \text{owner AVL} \end{array} \right]$$

New subsection 59K(2) would provide for the automatic adjustment of the assets value limit ("AVL") for fringe benefits for a non-property owner who is a member of a couple (ie, fringe benefits "partnered" non-property owner AVL) on 13 June of each year. The amount is adjusted by reference to the indexation of the assets value limits for pensioner property owners and non-property owners who are members of a couple (ie, pension "partnered" property owner AVL and pension "partnered" non-property AVL) and is derived by using the formula:

$$\begin{array}{l} \text{fringe benefits} \\ \text{"partnered"} \\ \text{property} \\ \text{owner AVL} \end{array} + \left[\begin{array}{l} \text{pension} \\ \text{"partnered"} \\ \text{non-property} \\ \text{owner AVL} \end{array} - \begin{array}{l} \text{pension} \\ \text{"partnered"} \\ \text{property} \\ \text{owner AVL} \end{array} \right]$$

SCHEDULE 2**1990 BUDGET AMENDMENTS OF THE VETERANS'
ENTITLEMENTS ACT 1986**

This Schedule would provide for the translation into "plain English" of provisions enacted under the 1990 Budget legislative program and their insertion in the new Part III.

SCHEDULE 3

This Schedule would set out the amendments which need to be made to other Parts of the Veterans' Entitlements Act 1986 as a result of the "plain English" rewrite of Part III of that Act.

SCHEDULE 4

This Schedule would set out the amendments to other Commonwealth legislation which will be required when the Veterans' Entitlements Amendment Bill 1991 comes into effect.

SCHEDULE 5

This Schedule would set out amendments to the Veterans' Entitlements Act 1986 as amended by the Veterans' Entitlements Amendment Act 1991. Some of these are of a

minor technical nature, others represent an updating of all amounts quoted in the rate calculators to the rates which will be current as at 1 July 1991. Others, unintentionally omitted from the 1991 Act, are covered below.

New section 5T: Lodgment of claims and documents

New subsection 5T(1) would provide that, where a claim has been forwarded to or delivered at a place or to a person approved for the purpose by the Commission, that claim will be taken to have been forwarded to, or received at, an office of the Department in Australia on the day on which it was received at that place or delivered to that person.

New subsection 5T(2) would specify that, for the purpose of new subsection 5T(1), the Commission may approve a place within or outside Australia.

New subsection 5T(3) would specify that, for the purposes of the Principal Act, a claim is taken to have been made on the day on which it is received at an office of the Department in Australia.

New section 5U: Notes

This new section would explain the status of the notes used in the Act. This will be dependent on the status of

the provision preceding the note: a note following a subsection is part of the subsection, etc.

New paragraphs 36P(1)(e), 37P(1)(e) and 39R(1)(e)

These new paragraphs would be included in the provisions dealing with eligibility for bereavement payments in respect of the death of a pensioner partner.

They would provide that, where a person's new rate of service pension after the death of a partner would be greater than the combined married rate provided for under the bereavement provisions, the higher rate will be paid from the first pension payday after the death of the partner and the person will not be eligible to receive the bereavement payments provided for by the legislation.

New subsection 48(2)

This new subsection would specify that, where a person has a right or interest in his or her principal home which is in the form of a granny flat, the value of that right or interest is not regarded as valuable consideration for Division 10 - disposal of ordinary income.

New paragraph 52(1)(fa)

This new paragraph would specify that, where a person has a right or interest in his or her principal home and

acquired that right or interest for valuable consideration, the value of that right or interest is to be disregarded when applying the assets test provisions in Division 14.

New section 52E

This new section would specify that, where a person has a right or interest in his or her principal home which is in the form of a granny flat, the value of that right or interest is not regarded as valuable consideration for subdivision B of Division 14 - disposal of assets.

FRINGE BENEFITS INCOME TEST CALCULATOR

The Fringe Benefits Income Test Calculator replaces the Fringe Benefits Ordinary Income Test Calculator.

Point 53B-1 would set out a 4-step method statement for the Fringe Benefits Income Test Calculator. The method statement would establish a person's eligibility for fringe benefits under the fringe benefits income test and include references to the subsequent points that provide the rules for working out the component parts used in that test.

Point 53B-2: Fringe benefits income of person
without dependent children

This point would provide that the fringe benefits income of a person who does not have dependent children is the person's annual rate of ordinary income.

Point 53B-3: Fringe benefits income of person with
dependent child or children

This point would provide that, except where point 53B-4 applies, the fringe benefits income of a person who has dependent children is worked out using Table B-1.

Point 53B-4: Fringe benefits income of widows
and non-illness separated wives

This point would provide that a widow's or non-illness separated wife's fringe benefits income is her annual rate of ordinary income less \$156 under certain specified conditions.

(The note would clarify the situations where a widow or non-illness separated wife could be considered a "member of a couple".)

Point 53B-5: Effect of certain child payments on widows
and non-illness separated wives

Under this point, the \$156 reduction amount provided for under point 53B-4 would be reduced by 50% for any payment received in respect of the child (unless it is a payment specified in point 53B-9).

Point 53B-6: How to calculate fringe benefits
income under point 53B-3

This point would provide that, to calculate a person's fringe benefits income, the person's ordinary income is reduced by the amount provided in Table B-1 for each of the person's dependent children.

(The note would signpost the definition of "dependent child".

Points 53B-7 to 53B-9: Effect of certain child payments
on fringe benefits income reduction amount

Point 53B-7 would provide that the reduction amount used in calculating a person's fringe benefits income is reduced by the amount of any payment received in respect of the child (unless it is a payment specified in point 53B-9).

Point 53B-8 would provide that the reduction amount used to calculate a person's fringe benefits income, where that person has a partner who is also receiving a pension, is reduced by 50% for any payment received in respect of the child (unless it is a payment specified in point 53B-9).

(The note would signpost the definition of "partnered (partner getting pension)").

Point 53B-9 would provide a list of child payments that do not reduce the reduction amount used to calculate a person's fringe benefits income where that person has a dependent child or dependent children.

Point 53B-10: Financial hardship cases

Under this point, a person's fringe benefits income would include any amount per year that is taken into account under subsection 52Z(5).

Point 53B-11: Changes in income rate (13 week buffer)

This point would provide that, where a person's fringe benefits income exceeds the relevant fringe benefits income free area by no more than 25% of that free area, the person will be regarded as satisfying the fringe benefits income test for a period of 13 weeks starting on the first pension payday after the day the person's

fringe benefits income exceeded the relevant limit. . . . Where the person's annual rate of fringe benefits income exceeds 25% of the free area, the buffer provision would not apply.

Point 53B-12: Fringe benefits income free area

This point would direct the reader to Table B-2 to work out a person's fringe benefits income free area. This would be done by working out which family situation is applicable and then checking the corresponding amount in the "basic free area" column of the table. Column 4 would provide the amounts to be added to the person's fringe benefits income free area where the person has a dependent child or dependent children.

(The note would indicate that the amounts listed in column 3 of the table are indexed in line with CPI increases using sections 59B to 59E).

New section 56K: Pension may be cancelled or suspended
if instalments not drawn

This new section replaces section 56K of the Veterans' Entitlements Amendment Act 1991.

This new section would enable the Commission to cancel or suspend an age, invalidity or wife service pension if it has not been possible to pay that pension for more than

6 continuous months.

The redrafting of this provision using the terminology of subsection 124(2) of the Principal Act is intended to clarify the circumstances in which the Commission may suspend or cancel a person's service pension.

(Note 1 would provide an example where a person has closed his or her bank account and cannot be contacted to make new banking arrangements for payment of service pension. Note 2 would advise that the suspension or cancellation of a veteran's age or invalidity service pension would result in the suspension or cancellation of service pension paid to the veteran's wife or carer, if any.)