

1985

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

REPATRIATION LEGISLATION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Minister for
Veterans' Affairs, The Honourable G.G.D. Scholes)

EXPLANATORY MEMORANDUM

Outline

The Repatriation Legislation Amendment Bill 1985 provides for changes to the Repatriation legislation to give effect to decisions announced by the Government on 14 May 1985 following the review of forward estimates of expenditure.

The amendments contained in the Bill relate to:

- . the standard of proof to be applied by Repatriation determining authorities in deciding whether a claimed incapacity or death of a member of the Forces is related to war service and the standard of proof to be applied in deciding other matters arising under the Repatriation legislation.

- . the criteria to be applied by Repatriation determining authorities in determining whether a member of the Forces is eligible to receive the Special (T&PI) Rate of pension or the Intermediate Rate of pension.

- . the abolition of future grants of pension paid to the dependants of members of the Forces, or deceased members of the Forces, apart from those pensions payable to the widow and orphans of a deceased member whose cause of death was service related.

The Bill amends the following Acts:

- . Repatriation Act 1920;
- . Seamen's War Pensions and Allowances Act 1940;
- . Interim Forces Benefits Act 1947;
- . Repatriation (Far East Strategic Reserve) Act 1956;
and
- . Repatriation (Special Overseas Service) Act 1962.

Financial Impact Statement

In this Bill savings are expected to be \$36.8m in 1985/86

PART I - PRELIMINARY

Clause 1: Short title

This clause cites the Act as the Repatriation Legislation Amendment Act 1985.

Clause 2: Commencement

This clause provides that the Act shall come into operation on the day on which it receives the Royal Assent.

PART II - AMENDMENTS OF THE REPATRIATION ACT 1920

Clause 3: Principal Act

This is a formal clause which specifies the Repatriation Act 1920 as the Principal Act in Part II.

Clause 4: Interpretation

Section 23 of the Principal Act contains definitions of terms used in Part III of the Principal Act. This clause amends the definition of "Dependant" to include only the widow or child of a member of the Forces. The clause will also amend the definition of "Dependent female" to refer to dependency at the time of the member's death. The clause will also repeal the definitions of "Member of a family", "Unmarried member of the Forces", "Wife", "Other dependants" and "Parents" as these definitions will no longer be relevant to disability pensions granted under the Part.

Clause 5: Pensions upon death or incapacity

Section 24 of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of war-related death or incapacity of a member of the Forces who served in World War I. This clause will amend section 24 to impose

liability on the Commonwealth, in respect of the death of a member of the Forces, to pay pensions to the widow and orphan children of the member and, in the case of the incapacity of a member, to pay a pension to the member. There will be no liability in respect of other categories of dependants.

Clause 6: Who may make claim or application

Section 27 of the Principal Act specifies who may make a claim for a disability pension or application for an increase of a disability pension. This clause will amend section 27 to delete reference to a dependant of a living member of the Forces as such a person is no longer to be eligible.

Clause 7: Failure of pensioner to attend at review

Section 32 of the Principal Act provides for the cancellation of pensions if a member refuses to attend at a pension review. This clause will delete reference to the non-continuation of a pension to a dependant of a member because, in future, there is to be no disability pension to a dependant of living member.

Clause 8: Repeal of sections 35A and 35B

Section 35A of the Principal Act provides that a disability pension to a dependant of a member of the Forces, other

than a widow, wife or child of a member, is not to be granted or continued unless the dependant is without adequate means of support. Section 35B of the Principal Act provides that some pensions may be paid overseas. This clause will repeal sections 35A and 35B as they relate to pensions that are no longer to be granted under the Principal Act.

Clause 9: Pension payable for limited period in certain cases

Section 39 of the Principal Act provides for the cessation of a disability pension to a dependant of a member when, for example, the pensioner ceases to be a dependant of the member. This clause will repeal all but sub-section 39(1A) as that is the only sub-section which will continue to be relevant to a pension that may be granted under the Principal Act.

Clause 10: Pensions to spouses to cease upon dissolution of marriage

Section 39A of the Principal Act provides for the cessation of a disability pension to the spouse of a living member of the Forces upon dissolution of marriage, otherwise than by death. This clause will repeal section 39A as there are to be no further grants of disability pension to a dependant of a living member of the Forces.

Clause 11: Gratuity to certain persons on re-marriage or marriage

Section 40A of the Principal Act provides for the payment of a gratuity of 26 instalments of pension to a widow upon remarriage. This clause will amend section 40A to delete the reference to pensions payable under section 45, as clause 15 proposes the deletion of section 45.

Clause 12: Maximum pension payable to widowed mother

Section 41 of the Principal Act limits the rate of disability pension a widowed mother may receive where she is a widowed mother in respect of more than one member of the Forces. This clause will repeal section 41 as there are to be no more grants of disability pension to this class of dependants.

Clause 13: Pensions to certain dependent females

Section 42 of the Principal Act provides a disability pension in respect of incapacity or death of a member of the Forces to a person who was recognised as the wife of the member at any time during the war service of the member. This clause will amend section 42 to provide that a pension under section 42 is to be granted only in respect of the death of a member.

Clause 14: Pension to divorcee of member

Section 44 of the Principal Act provides for a pension, in respect of the death or incapacity of a member of the Forces, to an ex-wife of the member who is dependent on alimony from her ex-husband. This clause will amend section 44 to provide that an ex-wife of a member is entitled to receive a pension only in respect of the death of the member.

Clause 15: Pension to dependants on death of member after termination of war service

Section 45 of the Principal Act provides that pensions payable to some dependants of incapacitated members may be continued after the member's death. This clause will repeal section 45 as there are to be no more grants of disability pension to a dependant in respect of a member's incapacity.

Clause 16: Hearing and determination of claims, &c.

Section 47 of the Principal Act specifies the standard of proof required to be applied by the Repatriation Commission when considering a pension matter. Sub-section 47(2) of the Principal Act requires that the Repatriation Commission shall grant a claim or application for pension unless it is satisfied beyond reasonable doubt that there are insufficient grounds for granting

the claim or application. This degree of satisfaction must be reached having regard to the provisions of sub-section 47(1) which require the Commission to recognise the difficulties that might be encountered in obtaining evidence relating to a claim.

This clause will substitute new provisions for sub-section 47(2), which will have the following effect:

. the proposed sub-section 47(2) will specify that the Repatriation Commission shall not grant a claim unless it is reasonably satisfied that the material before it raises a reasonable hypothesis that the claimed incapacity or death was war caused or, that if such a reasonable hypothesis arises on some of the material, the hypothesis is dispelled on a consideration of the whole of the material before the Commission. Through this sub-section it is intended to set aside the interpretation given by the majority of the High Court in Repatriation Commission v O'Brien to the present section 47, particularly in relation to a claim for pension involving a disease of unknown aetiology. As a result of this proposed amendment, the Repatriation Commission will not proceed to consider a claim further if it is reasonably satisfied that there is no material before it raising a reasonable hypothesis that an incapacity or death was related to war service.

where a reasonable hypothesis of a connection between the claimed death or incapacity and war service is raised on the material before the Repatriation Commission, proposed sub-section 47(3)(a) will require the Commission to grant a claim unless it is satisfied beyond reasonable doubt that there are insufficient grounds for doing so. This standard of proof will be limited in its application to a claim for incapacity by a member of the Forces who has had qualifying war service, and to a claim by a widow or by an orphan of a member who had such service where the member dies within forty years of the end of the war.

in all cases not covered by proposed sub-section 47(3)(a), proposed sub-section 47(3)(b) will empower the Repatriation Commission to grant a claim for pension only where it is satisfied, on the civil standard of proof, that sufficient grounds exist for granting the claim.

the proposed sub-section 47(4) will specify that all other matters for determination under the Principal Act and the regulations made pursuant to that Act, are to be decided on the civil standard of proof.

Clause 17: Extension of application to certain male members of
the Forces

Section 99 of the Principal Act extends provisions of Division 1 of Part III of the Principal Act, concerning disability pensions, to Division 6 of Part III of the Principal Act which deals with male members of the Forces who served in World War II. Paragraph 99(2)(b) of the Principal Act provides a definition of dependant for the purposes of Division 6 of Part III. This clause amends section 99 to define dependant to include only a widow or child of a member of the Forces and a person determined to be a dependant of a Torres Strait Islander.

The clause will also amend section 99 to ensure that the provisions of section 47 of the Principal Act, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under this Division.

In its application to claims under this Division, sub-section 47(3)(a) of the Principal Act is to be applied only to claims for pension in respect of the war service of a member who, during that war service, served outside Australia or who, served within Australia in circumstances that in the opinion of the Repatriation Commission involved direct combat with the enemy. This latter concept is intended to cover those members who were engaged in actual fighting with the enemy or who were subject to

direct attack by the enemy. It is not equivalent to theatre of war service, but requires actual personal involvement in fighting the enemy.

Sub-section 47(3)(a) will be further limited in its application under this Division in respect of claims for pension upon a member's death. Sub-section 47(3)(a) will be applicable only where a member dies before 30 October 1985, that is, the 40th anniversary of the day following the end of hostilities in World War II.

All other matters arising for determination from claims or applications for pension dealt with under this Division are to be determined on the civil standard of proof.

Clause 18: Liability of Commonwealth to pay pensions to certain male members of the Forces

Section 101 of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of war-related incapacity or death of a member of the Forces who served in World War II. This clause will amend section 101 to impose liability on the Commonwealth, in respect of the incapacity of a member of the Forces, to pay a pension to the member and, in the case of the death of a member, to pay pensions to the widow and orphan children of the member.

Clause 19: Extension of application of Act to certain female members of the Forces

Section 104 of the Principal Act extends provisions of Divisions 1 and 6 of Part III of the Principal Act, concerning disability pensions, to Division 7 of Part III of the Principal Act which deals with female members of the Forces who served in World War II. Paragraph 104(2)(b) of the Principal Act provides a definition of dependant for the purposes of Division 7 of Part III. This clause will amend section 104 to define dependant to include only a child of a member of the Forces.

The clause will also amend section 104 of the Principal Act to ensure that the provisions of section 47 of the Principal Act apply in the same manner to female members of the Forces in World War II as they will to male members of the Forces in World War II.

Clause 20: Pensions to dependants of certain female members of the Forces

Section 106 of the Principal Act contains tests which must be satisfied before a dependant of a female member of the Forces may be granted a disability pension. This clause will repeal section 106 and re-enact so much of section 106 as is applicable to a child of a deceased female member of the Forces.

Clause 21: Extension of application of Act to certain male
members of the Forces

Section 107A of the Principal Act extends provisions of Division 1 of Part III of the Principal Act, concerning disability pensions, to Division 8 of Part III of the Principal Act which deals with male members of the Forces who served in Korean and Malayan Operations. Paragraph 107A(2)(b) of the Principal Act provides a definition of dependant for the purposes of Division 8 of Part III. This clause will amend section 107A to define dependant to include only a widow or child of a member of the Forces.

The clause will also amend section 107A to ensure that the provisions of section 47 of the Principal Act, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under this Division.

Sub-section 47(3)(a) will be limited in its application under this Division to claims in respect of a member's death to cases where the member dies before the 40th anniversary of the day following the conclusion of the period of the member's eligible war service.

Clause 22: Liability of Commonwealth to pay pensions to certain male members of the Forces

Section 107C of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of the incapacity or death of a member of the Forces who served in Korean or Malayan Operations. This clause will amend section 107C to impose liability on the Commonwealth, in respect of the incapacity of a member of the Forces, to pay a pension to the member and, in the case of the death of a member, to pay pensions to the widow and orphan children of the member.

Clause 23: Extension of application of Act to certain female members of the Forces

Section 107E of the Principal Act extends provisions of Divisions 1 and 8 of Part III of the Principal Act, concerning disability pensions, to Division 9 of Part III of the Principal Act which deals with female members of the Forces who served in Korean and Malayan Operations. Paragraph 107E(2)(b) of the Principal Act provides a definition of dependant for the purposes of Division 9 of Part III. This clause will amend section 107E to define dependant to be a child of a member of the Forces.

The clause will also amend section 107E to ensure that the provisions of section 47 of the Principal Act, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under this Division.

Sub-section 47(3)(a) will be limited in its application under this Division to claims in respect of a member's death to cases where the member dies before the 40th anniversary of the day following the conclusion of the period of the member's eligible war service.

Clause 24: Extension of application of Act to members to whom
this Division applies

Section 107H of the Principal Act extends provisions of Division 1 of Part III of the Principal Act, concerning disability pensions, to Division 10 of Part III of the Principal Act which deals with members of the Defence Forces and Peacekeeping Forces. Paragraph 107H(2)(b) of the Principal Act provides a definition of dependant for the purposes of Division 10 of Part III. This clause will amend section 107H to define dependant to include only a widow or child of a member of the Defence Forces or Peacekeeping Forces.

This clause will also amend section 107H to ensure that the provisions of section 47 of the Principal Act, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under this Division.

Sub-section 47(3)(a) will be limited in its application under this Division to claims in respect of service by a member with a peacekeeping force or defence service which constitutes hazardous service as designated by the Minister for Defence.

Sub-section 47(3)(a) will also be limited in its application under this Division, to claims in respect of a member with peacekeeping service or hazardous service where the member dies before the 40th anniversary of the day following the conclusion of the member's eligible service.

All other matters arising for determination from claims and applications for pension dealt with under this Division are to be determined on the civil standard of proof.

Clause 25: Interpretation

This clause adds a definition of "hazardous service" which will attract the application of sub-section 47(3)(a) to this form of service. Determination of what defence service will constitute hazardous service will be a matter for the Minister for Defence.

Clause 26: Liability of Commonwealth to pay pensions to certain members of the Forces, &c.

Section 107M of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of the incapacity or death of a member of the Defence Forces or Peacekeeping Forces. This clause will amend section 107M to impose liability on the Commonwealth, in respect of the incapacity

of a member of the Forces, to pay a pension to the member and, in the case of the death of a member, to pay pensions to the widow and orphan children of the member.

Clause 27: Conditions of payment of pension to certain dependants of female members to whom this Division applies

Section 107N of the Principal Act contains tests which must be satisfied before a dependant of a female member of the Defence Forces or Peacekeeping Forces may be paid a disability pension. This clause will repeal section 107N and re-enact so much of section 107N as is applicable to a child of a deceased female member of the Forces.

Clause 28: Pensions payable to certain dependent females of members of the Forces

Section 107P of the Principal Act provides a disability pension in respect of incapacity or death of a member of the Defence Forces to a person who was recognised as the wife of the member at any time during the Defence service of the member. This clause will amend section 107P to provide that a pension under section 107P is to be granted only in respect of the death of a member.

Clause 29: Pensions payable to certain dependent females of members of a Peacekeeping Force

Section 107PA of the Principal Act provides a disability pension in respect of incapacity or death of a member of a Peacekeeping Force to a person who was recognised as the wife of the member at any time during the Peacekeeping service of the member. This clause will amend section 107PA to provide that a pension under section 107PA is to be granted only in respect of the death of a member.

Clause 30: Dual Entitlement

This clause will make consequential amendments to section 107Q of the Principal Act to recognise that a person other than a member will not be eligible to receive a pension otherwise than in the case of a member's death.

Clause 31: Application for review

Section 107VD of the Principal Act provides for applications for review to the Veterans' Review Board. This clause will make a consequential amendment to section 107VD to recognise that a person other than a member will not be eligible to receive a pension otherwise than in the case of a member's death.

Clause 32: Decision of Board

Section 107VG of the Principal Act is concerned with the duties and powers of the Veterans' Review Board when it reviews a decision of the Repatriation Commission. This clause will amend section 107VG to ensure that the Veterans' Review Board will be required to apply the same standard of proof to a decision it takes when reviewing a decision on a pension matter of the Repatriation Commission, as the Repatriation Commission was bound to apply. The standard of proof required to be applied by the Repatriation Commission is set out in section 47 of the Principal Act.

Clause 33: Schedule 1

Schedule 1 to the Principal Act specifies the general rates of pension for certain pensioners. Schedule 1 also deals with the pensions payable when a member is temporarily totally incapacitated or is prevented from working more than on a part-time basis.

This clause will amend the title of Schedule 1 to delete reference to a widowed mother as there are to be no further grants of disability pension to this class of pensioner. For the same reason, the clause will repeal Column 1 of the Schedule.

The clause will also amend Schedule 1 to ensure that the eligibility criteria to be assessed at the temporarily totally incapacitated rate of pension are consistent with the criteria which are to apply to the grant of pension at the totally and permanently incapacitated rate in Schedule 2.

The clause will also amend Schedule 1 to specify the criteria which are to apply to the grant of a higher rate of pension because the member is, owing to service-related incapacity, unable to engage in remunerative occupation except on a part-time basis or intermittently. An applicant for this rate of pension will have to be:

- (i) in receipt of, or eligible to receive, a pension at the maximum General Rate;
- (ii) the service-related incapacity must be the reason the member cannot engage in remunerative work for more than half of the normal working week; and
- (iii) the member has accordingly lost wages or salary.

A special provision is made to cover members who are under 65 years of age, are unemployed, and are genuinely seeking to engage in remunerative work.

Clause 34: Schedule 2

Schedule 2 to the Principal Act is concerned with pensions paid at the Special Rate. This clause will repeal the second paragraph of the Schedule because the husband or wife of a Totally and Permanently Incapacitated member is no longer to be granted a disability pension during the life of the member.

The clause will also amend Schedule 2 to the Principal Act to specify the criteria to be applied to the assessment of disability pension at the Special or T&PI Rate.

An applicant for Special or T&PI Rate pension will be required to be:

- (a) a member of the Forces who has been blinded as a result of war service, or
- (b) a member of the Forces who is
 - (i) in receipt of, or eligible to receive, a pension at the maximum (100%) General Rate;
 - (ii) totally and permanently incapacitated from service-related incapacity which of itself alone renders the member incapable of undertaking more than 8 hours work per week;
 - and

(iii) suffering a loss of salary or wages by reason of being prevented from continuing in remunerative activity by reason of that service-related incapacity.

A special provision is made to cover members who are under 65 years of age, are unemployed, and are genuinely seeking to engage in remunerative work.

Clause 35: Repeal and Substitution of Schedule 3 to the Principal Act

Schedule 3 to the Principal Act specifies the pensions payable in the case of the death of a member of the Forces. This clause will repeal the Schedule and re-enact only so much of the Schedule as concerns the widow and orphan children of a member of the Forces. These are the only dependants who are to be eligible for pensions in respect of the death of a member of the Forces.

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

Clause 36: Principal Act

This is a formal clause which specifies the Seamen's War Pensions and Allowances Act 1940 as the Principal Act in Part III.

Clause 37: Interpretation

Section 3 of the Principal Act contains definitions of terms used in the Principal Act. This clause will amend the definition of "dependant" to include the widow or child of an Australian mariner. The clause will also repeal the definition of "member of the family" as this definition will no longer be relevant to disability pensions paid under the Principal Act.

Clause 38: Grant of pensions

Section 12 of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of the war-related death or incapacity of an Australian mariner. This clause will amend section 12 to impose liability on the Commonwealth, in respect of the death of an Australian mariner, to pay pensions to the widow and orphan children of the mariner and, in the case of the incapacity of an Australian mariner, to pay a pension to the mariner.

Clause 39: Repeal of sections 16 and 17

Section 16 of the Principal Act provides that a disability pension to a dependant of an Australian mariner, other than a widow, wife or child of an Australian mariner, is not to be granted or continued unless the dependant is without adequate means of support. Section 17 of the Principal Act provides that where an Australian mariner had a war-related incapacity, but died otherwise than from a war-related cause, any dependant of the Australian mariner is entitled to continue to receive a disability pension as though the Australian mariner had not died. This clause will repeal sections 16 and 17 as they relate to pensions that are no longer to be granted under the Principal Act.

Clause 40: Rates of Pension on death or total incapacity

Section 18 of the Principal Act specifies the rates of pension payable on death or total incapacity of an Australian mariner. This clause will repeal sub-section 18(3) because only the widow and children of an Australian mariner are to be eligible to receive pensions upon the death of the mariner. The clause will also repeal sub-sections 18(5) and 18(6) and amend sub-section 18(7) as there are to be no further grants of pension to the dependants of an Australian mariner otherwise than upon the death of an Australian mariner.

Clause 41: Pension to de facto wife

Section 19 of the Principal Act empowers the Repatriation Commission to grant a disability pension to the de facto wife of an Australian mariner upon the death or total incapacity of the mariner. This clause will amend section 19 to provide that a pension to the de facto wife of an Australian mariner may be granted only in the case of the death of the mariner.

Clause 42: Pension of separated widow

Section 20 of the Principal Act empowers the Repatriation Commission to grant a disability pension to the separated wife of an Australian mariner upon the death or total incapacity of the mariner. This clause will amend section 20 to provide that a pension to the separated wife of an Australian mariner may be granted only in the case of the death of the mariner.

Clause 43: Limit of payments in certain cases

Paragraph 24(b) of the Principal Act imposes limits on the rate of disability pension payable to a child, other than a child of an Australian mariner. This clause will repeal paragraph 24(b) as the child of an Australian mariner only is to be granted a pension under the Principal Act in the future.

Clause 44: Pensions for limited periods in certain cases

Sub-section 27(1) of the Principal Act provides that a grant of pension to a dependant of an Australian mariner, other than the wife, widow or child of an Australian mariner, is to cease when the dependant attains the age of 16 years.

Sub-section 27(2) of the Principal Act provides for the granting of a pension to a child who is over 16 but less than 21 and impecunious or infirm. This clause will repeal sub-sections 27(1) and 27(2) because there are to be no further grants of pension otherwise than to the widow or children of a deceased Australian mariner.

Clause 45: Pensions to spouses to cease on dissolution of marriage

Section 27A of the Principal Act provides that the pension of a spouse of an Australian mariner is to cease upon dissolution of marriage, otherwise than by death. This clause will repeal section 27A because there are to be no further grants of pension to dependants of an Australian mariner otherwise than in the case of the death of the mariner.

Clause 46: Pensions to female dependants to cease on marriage or re-marriage

Section 28 of the Principal Act provides that a disability pension to a female dependant or de facto wife of an

Australian mariner is not to continue after the marriage or re-marriage of the female dependant or de facto wife. This clause will delete the proviso to section 28 as the de facto wife of an Australian mariner is to be granted a pension only upon the death of the mariner.

Clause 47: Schedule 1

Schedule 1 to the Principal Act specifies general disability pension rates in the case of death or total incapacity of an Australian mariner. This clause will repeal Column 2 of the Schedule which concerns rates of pension for dependants other than the widow or children of a deceased Australian mariner as no other dependant is to be entitled to receive pension under the Principal Act.

PART IV - AMENDMENTS OF THE INTERIM FORCES

BENEFITS ACT 1947

Clause 48: Principal Act

This is a formal clause which specifies the Interim Forces Benefits Act 1947 as the Principal Act in Part IV.

Clause 49: War Pensions for male members of the Interim Forces

Section 6 of the Principal Act extends provisions of Divisions 1 and 6 of Part III of the Repatriation Act 1920, concerning disability pensions, to the Principal Act in respect of male members of the Interim Forces.

This clause will amend section 6 to ensure that the provisions of section 47 of the Repatriation Act 1920, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under the Principal Act in respect of male members of the Interim Forces.

In its application to claims under the Principal Act, sub-section 47(3)(a) of the Repatriation Act 1920 is to be applied only to claims in respect of a male member's death to cases where the male member dies before the 40th anniversary of the day following the conclusion of his service in the Interim Forces.

Clause 50: War Pensions for female members of the Interim Forces

Section 7 of the Principal Act extends provisions of Divisions 1 and 6 of Part III of the Repatriation Act 1920, concerning disability pensions, to the Principal Act in respect of female members of the Interim Forces.

This clause will amend section 7 to ensure that the provisions of section 47 of the Repatriation Act 1920, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under the Principal Act in respect of female members of the Interim Forces.

In its application to claims under the Principal Act, sub-section 47(3)(a) of the Repatriation Act 1920 in its proposed form, is to be applied only to claims in respect of a female member's death to cases where the female member dies before the 40th anniversary of the conclusion of her service in the Interim Forces.

PART V - AMENDMENTS OF THE REPATRIATION

(FAR EAST STRATEGIC RESERVE) ACT 1956

Clause 51: Principal Act

This is a formal clause which specifies the Repatriation (Far East Strategic Reserve) Act 1956 as the Principal Act in Part V.

Clause 52: Interpretation

Section 3 of the Principal Act contains definitions of terms used in the Principal Act. Sub-section 3(4) of the Principal Act applies, to the Principal Act, definitions of terms defined in the Repatriation Act 1920. This clause will delete reference to "member of the family" and "parents" from sub-section 3(4) as these definitions are to be repealed in the Repatriation Act 1920. The clause will also delete reference to the definition of "wife" in sub-section 3(4) as that term will no longer be relevant to the Principal Act.

Clause 53: Liability of the Commonwealth to pay pensions to members of the Forces

Section 6 of the Principal Act imposes liability on the Commonwealth to pay disability pension in respect of the incapacity or death of a member of the Forces who served in

Malaya. This clause will amend section 6 to impose liability on the Commonwealth, in respect of the incapacity of a member of the Forces, to pay a pension to the member and, in the case of the death of a member, to pay pensions to the widow and orphan children of the member.

Clause 54: Extension of certain provisions of the
Repatriation Act 1920

Section 7 of the Principal Act extends provisions of the Repatriation Act 1920, concerning disability pensions, to the Principal Act. Sub-section 7(2) of the Principal Act provides a definition of dependant for the purposes of the Principal Act. This clause will amend section 7 to define dependant to include, in the case of a male member of the Forces, his widow and children and, in the case of a female member, her children only.

The clause will also amend section 7 to ensure that the provisions of section 47 of the Repatriation Act 1920, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under the Principal Act.

In its application to claims under the Principal Act, sub-section 47(3) (a) of the Repatriation Act 1920 in its proposed form, is to be applied only to claims in respect of a member's

death to cases where the member died before the 40th anniversary of the day following the conclusion of the member's Malayan service.

Clause 55: Pensions payable to certain dependent females

Section 8 of the Principal Act provides for a disability pension, in respect of incapacity or death of a member of the Forces, to a person who was recognised as the wife of the member at any time during the Malayan service of the member. This clause will amend section 8 to provide that a pension under section 8 is to be granted only in respect of the death of a member.

Clause 56: Pension to divorced wife of a member

Section 9 of the Principal Act provides a disability pension, in respect of the incapacity or death of a member of the Forces, to the ex-wife of the member who is dependent upon alimony from her ex-husband. This clause will amend section 9 to provide that an ex-wife of a member is entitled to receive a pension only in respect of the death of the member.

Clause 57: Limitations on pensions to dependants of female members

Section 10 of the Principal Act contains tests which must be satisfied before a dependant of a female member of the Forces may be granted a disability pension. This clause will repeal section 10 and re-enact so much of section 10 as is applicable to a child of a deceased female member of the Forces.

PART VI - AMENDMENTS OF THE REPATRIATION

(SPECIAL OVERSEAS SERVICE) ACT 1962

Clause 58: Principal Act

This is a formal clause which specifies the Repatriation (Special Overseas Service) Act 1962 as the Principal Act in Part VI.

Clause 59: Interpretation

Section 3 of the Principal Act contains definitions of terms used in the Principal Act. Sub-section 3(2) of the Principal Act applies, to the Principal Act, definitions of terms defined in the Repatriation Act 1920. This clause will delete reference to "member of the family" and "parents" from sub-section 3(4) as these definitions are to be repealed in the Repatriation Act 1920.

Clause 60: Liability of Commonwealth to pay pensions to members of the Forces

Sub-section 6(1) of the Principal Act imposes liability on the Commonwealth to pay disability pensions in respect of the incapacity or death of a member of the Forces who had special service. Sub-section 6(2) of the Principal Act also provides a

definition of dependant for the purposes of the Principal Act. This clause will amend sub-section 6(1) to impose liability on the Commonwealth, in respect of the incapacity of a member of the Forces, to pay a pension to the member and, in the case of the death of a member, to pay pensions to the widow and orphan children of the member. The clause will also amend sub-section 6(2) to define dependant to include, in the case of a male member of the Forces, his widow and children and, in the case of a female member, her children only.

Clause 61: Extension of certain provisions of the
Repatriation Act 1920

Section 7 of the Principal Act extends provisions of the Repatriation Act 1920, concerning disability pensions, to the Principal Act. This clause will make consequential amendments to the Principal Act.

The clause will also amend section 7 to ensure that the provisions of section 47 of the Repatriation Act 1920, as proposed to be amended by clause 16 of this Bill, will be applicable to the determination of claims for pension arising under the Principal Act.

In its application to claims under the Principal Act, sub-section 47(3)(a) of the Repatriation Act 1920 in its proposed form, is to be applied only to claims in respect of a member's

death to cases where the member dies before the 40th anniversary of the day following the conclusion of the member's special service.

Clause 62: Pensions payable to certain dependent females

Section 8 of the Principal Act provides a disability pension, in respect of incapacity or death of a member of the Forces, to a person who was recognised as the wife of the member at any time during the special service of the member. This clause will amend section 8 to provide that a pension under section 8 is to be granted only in respect of the death of a member.

Clause 63: Pensions to divorced wife of member

Section 9 of the Principal Act provides a disability pension in respect of the incapacity or death of a member of the Forces to the ex-wife of the member who is dependent upon alimony from her ex-husband. This clause will amend section 9 to provide that an ex-wife of a member is entitled to receive a pension only in respect of the death of the member.

Clause 64: Limitations on pensions to dependants of female members

Section 10 of the Principal Act contains tests which must be satisfied before a dependant of a female member of the Forces may be granted a disability pension. This clause will repeal section 10 and re-enact so much of section 10 as is applicable to a child of a deceased female member of the Forces.

PART VII - TRANSITIONAL PROVISIONS

Clause 65: Interpretation

This is a formal clause which defines for the purposes of Part VII that the "Commission" means the Repatriation Commission and that "relevant Act" means the Repatriation Act 1920, the Seamen's War Pensions and Allowances Act 1940, the Interim Forces Benefits Act 1947, the Repatriation (Far East Strategic Reserve) Act 1956 or the Repatriation (Special Overseas Service) Act 1962.

Clause 66: Application of amendments relating to dependants' pensions

This clause provides that the amendments effected by this Bill in respect of dependants' pension are to apply in relation to grants of pension made after the commencement of this Bill. The clause also provides that a pension granted before the commencement of this Bill will continue to be paid as though there were no amendments effected by this Bill in respect of pensions paid to dependants.

Clause 67: Rates of certain pensions

This clause provides for the freezing of the rate of pension payable to a dependant who would not be eligible to be

granted a pension after the commencement of the amendments to be effected by this Bill. However, the clause also provides that a pension indexed by reference to the Social Security Act 1947 will continue to be indexed by reference to that Act.

Clause 68: Application of amendments affecting Intermediate Rate pensions and Special Rate pensions

This clause provides that the amendments to be effected by this Bill, with regard to the intermediate and special rates of pension, are to apply to all assessments applied at all levels of the Repatriation determining system after the commencement of this Bill.

Clause 69: Application of amendments of section 47 of the Repatriation Act 1920

This clause provides for the method of application of section 47 of the Repatriation Act 1920 as amended by clause 16 of this Bill, to the various categories of claims before the Repatriation Commission.

Sub-clauses 69(1) and (2) provide that claims lodged before 15 May 1985 are to be determined, after the commencement date of these amendments, on the present standard of proof, subject to the "O'Brien" modification contained in the proposed sub-section 47(2).

Sub-clause 69(3) provides that section 47 of the Repatriation Act 1920, as proposed for amendment by clause 16 of this Bill, will be applied with full effect to any claim lodged after 15 May 1985. Sub-clause 69(4) provides for the application of the civil standard of proof to all matters, other than the determination of a claim for pension in respect of a member with qualifying service, after the commencement date of these amendments.

Clause 70: Application of amendments of section 107VG of the
Repatriation Act 1920

This clause provides the method of application of sections 47 and 107VG of the Repatriation Act 1920 as proposed to be amended by clauses 16 and 32 of this Bill, to the various categories of claims which come before the Veterans' Review Board.

Sub-clauses 70(1) and (2) provide that applications for review lodged before 15 May 1985 will be determined, after the commencement of these amendments, on the present standard of proof, subject to the "O'Brien" modifications contained in the proposed sub-sections 47(2) and 107VG(7). Sub-clause 70(3) provides that sections 47 and 107VG, as proposed for amendment by clauses 16 and 32 of this Bill, will be applied with full effect to any application for review lodged after the commencement date of these amendments.

Clause 71: Application of amendments to reviews by the
Administrative Appeals Tribunal

This clause provides the standard of proof to be applied by the Administrative Appeals Tribunal in determining an application made to it for a review of a pension claim or application.

Sub-clause 71(1) provides that, in exercising its powers of review, the Tribunal will apply the provisions of the Repatriation Act 1920 as proposed to be amended by this Bill, in the same manner as set out in clauses 69 and 70, depending on whether the subject matter of the Tribunal's review is a decision of the Repatriation Commission or a decision of the Veterans' Review Board, made in substitution for a Commission decision. An exception to this general principle will be provided for by sub-clause 71(2). This sub-clause will ensure that where the Repatriation Commission initiates a review before the Administrative Appeals Tribunal, the matter will be determined on the same standard of proof as applied when the matter was determined by the Veterans' Review Board.

Sub-clause 71(3) provides that the "O'Brien" modifications to the standard of proof will be applied by the Administrative Appeals Tribunal in the same manner as it is to be applied by the Repatriation Commission and the Veterans' Review Board.









