

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon. Ben
Humphreys, MP, Minister for Veterans' Affairs)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill would give effect to the Government's undertakings with regard to the entitlements of veterans, dependants and members of the Defence Force to pensions and benefits, including amendments to:

- . the Veterans' Entitlements Act 1986 and the Seamen's War Pensions and Allowances Act 1940 to:
 - extend the automatic granting of war widow's pension to the widows of veterans who were in receipt of, or were entitled to receive, the "extreme disablement adjustment" at the time of their death;
 - provide for the payment of pharmaceutical allowance;
 - extend full repatriation benefits to members of the Defence Force allotted for operational service in the Gulf, including home loan assistance under the Defence Service Homes Act 1918;
 - remove the three-year minimum service requirement for "hazardous service";
 - clarify the meaning of the phrase "allotted for duty

in an operational area",

- introduce provisions which deem the income derived from cash and deposits to be 10 per cent;
- increase the rent assistance threshold;
- extend the boundaries for remote area allowance;
- increase and automatically index minor benefits,

. the Defence Service Homes Act 1918:

- to make all Defence Service Homes loans fully portable; and
- to extend the purpose of Defence Service Homes loans to cover entry into a retirement village.

This Bill would also provide for a number of amendments of a minor or technical nature to the Veterans' Affairs legislation, designed to improve and streamline the provision of pensions and benefits.

Financial Impact

Increasing the range of persons eligible under the Veterans' Entitlements Act 1986 would have an impact on program costs. Extending war widow's pension eligibility to the widows of veterans who had received, or were entitled to receive, the "extreme disablement adjustment" would result in a marginal increase in expenditure, estimated at \$0.11m in 1990-91 and \$0.24m in 1991-92.

It is not possible to estimate the potential costs resulting from the extension of eligibility for pension with respect to Defence Force personnel in the Gulf, given the unresolved nature of the crisis.

The proposed changes to the Defence Service Homes loan portability arrangements are estimated to result in costs of \$1.63m in 1990-91 and \$4.232m in 1991-92. However, these arrangements would result in savings of \$1.499m in 1990-91 and \$2.217m in 1991-92.

Provisions to deem income from cash and deposits would also result in additional savings, estimated at \$2.866m in 1990-91 and \$12.431m in 1991-92. The increase in rent assistance threshold would result in savings of \$0.65m in 1990-91 and \$2.9m in 1991-92.

Savings resulting from the introduction of the pharmaceutical allowance would be generated by the operation of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

The financial impact of the other measures in the Bill would be negligible.

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990**PART 1 - PRELIMINARY**Clause 1 : Short Title

This clause would provide that the amending Act is referred to as the Veterans' Affairs Legislation Amendment Act 1990.

Clause 1 would commence on the day of Royal Assent.

Clause 2 : Commencement

This clause would provide for the commencement of the various clauses in the Bill. The date on which each clause would come into operation is shown in italics in the note at the foot of each provision.

Clause 3 - Application

This clause would provide for the manner in which certain amendments contained within the Bill are to be applied. The specifications, in relation to each of the various application provisions, are set out in subclauses (1) to (8) of this clause.

PART 2 - AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

Clause 4 : Principal Act

This clause would provide that in this Part of the amending Act, the Defence Service Homes Act 1918, is the Principal Act.

Clause 4 would commence on the day of Royal Assent.

Clause 5 : Interpretation

This clause would provide that in this Part of the amending Act, "amending agreement" means the agreement, a copy of which is set out at Schedule 1.

Clause 6 : Approval of amending agreement

This clause would ratify the amending agreement between the Commonwealth and the Bank and approve its execution on behalf of the Commonwealth.

Clause 7 : Interpretation

Clause 7 would make a number of amendments to the definition of "Australian Soldier" in section 4 of the Principal Act to retain consistency with amendments to the Veterans' Entitlements Act 1986 giving effect to revised arrangements and procedures for allotment of members of the Defence Force for service in operational areas and to extend the benefits of the Defence Service Homes Act 1918 to certain Australian Defence Force personnel serving on operational service with the Middle East Forces in the Gulf.

Clause 7(a) would amend the definition of "agreement" in subsection 4(1) of the Principal Act to be the agreement, a copy of which is set out at Schedule 1A.

Clause 7(b) would amend subparagraph 4(1)(g)(ii) of the Principal Act to retain consistency with similar amendments to the Veterans Entitlements Act 1986, relating to allotment for service as proposed by clauses 36 and 37 of this Bill

Clause 7(c) would omit existing paragraph (ga) in the definition of "Australian Soldier" in subsection 4(1) of the Principal Act and insert a new definition in respect of operational service in Namibia. This amendment is to reflect the new Defence Department arrangements for allotment of Defence Force personnel and reflects the proposed amendments to Section 5(12) of the Veterans' Entitlements Act 1986.

Clause 7(c) would commence on 18 February 1990.

Clause 7(d) would insert new paragraph (gb) in subsection (1) to include in the definition of "Australian Soldier" a reference to members of the Forces serving in the operational area in the Middle East described in Item 10 of Schedule 2. This would ensure that these veterans are entitled to Defence Service Homes loans and other benefits under the Principal Act. Persons who serve in the Gulf and whose first service in the Defence Force began after 14 May 1985 will not be entitled to benefits under the Principal Act. Home loans assistance for these servicemen will be available under the Defence Force Home Loans Assistance Scheme to be implemented in 1991.

Clause 7(e) would amend the definition of "further advance" in subsection 4(1) of the Principal Act to clarify that a further

advance does not include a widow's advance or an advance for essential repairs

Clauses 7(f) & 7(g) would amend the definitions of "further advance" and "initial advance" in subsection 4(1) of the Principal Act to allow eligible persons who are or have previously been recipients of an initial, or an initial and a further advance, based on the eligibility of their spouse, the capacity to receive such advances based on their own eligibility, as provided by the Principal Act.

Clause 7(h) would insert definitions of "approved", "balance", "limit" and "retirement village" into the Principal Act.

"Retirement village" would be defined to mean either a retirement village registered under a approved law of a State or Territory or, in the case of a State or Territory that has no approved law, a retirement village within the meaning of the Veterans' Entitlements Act 1986. This definition would ensure that eligible persons who live in those States or Territories which do not have such approved laws will not be debarred from applying for an advance for the purpose of taking up residence in a retirement village.

Clause 7(j) would insert in paragraph 4(2)(a) of the Principal Act a reference to "allotted for duty in an operational area" within the meaning of subsection 5(12) of the Veterans' Entitlements Act 1986 to ensure consistency with the amendments proposed by clauses 37 and 38.

Clause 7(k) would insert subsections 4(6), 4(7) and 4(8) into the Principal Act. New subsection 4(6) would provide that a person will have a right of residence in a retirement village if the person has a right of permanent residence in the retirement village, subject to any contractual conditions governing the person's residence. New subsection 4(7) would provide that a person is not to be taken to have a right of residence in a retirement village if that right is derived from the person's interest in a holding of the person. New subsection 4(8) would provide that in the Principal Act a reference to a person's retirement village accommodation, means that part of a retirement village in which the person and the person's spouse (if any) have obtained a right of residence.

Clauses 7(b) and 7(j) would be taken to commence immediately after the commencement of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986. Clause 7(d) would be taken to have commenced on 2 August 1990. Clauses 7(a), 7(e), 7(f), 7(g), 7(h) and 7(k) would commence on the date of Royal Assent.

Clause 8 : Regular Serviceman

Clause 8 would amend the definition of "Regular Serviceman" in section 4AAA of the Principal Act to make it clear that a person is not a regular serviceman if the person's first service in the Defence Force began after 14 May 1985.

Clause 8 would commence on the day of Royal Assent.

Clause 9 : Criteria for issue of certificate of entitlement:
advances other than widows' advances and advances for
essential repairs

Clauses 9(a), 9(b) and 9(c) would together omit paragraphs 18(1)(b) and 18(1)(e) of the Principal Act and substitute new paragraphs to provide that the Secretary shall not issue a certificate of entitlement in relation to a subsidy on an advance unless satisfied that the person or the person's spouse does not have a right of residence in a retirement village other than that in respect of which the advance is payable. This would ensure parity with applicants for advances concerning dwelling-houses and loans concerning rights of residence in retirement villages.

Clause 9(d) would insert a reference to "retirement village accommodation" in paragraph 18(1)(f) to ensure that such accommodation is intended to be used by the eligible person as a home.

Clauses 9(e) and 9(f) would omit paragraphs 18(2)(b) to (e) inclusive and substitute paragraphs which would retain the omitted paragraphs but include an explicit reference to the definition of "holding". This would clarify the existing provisions that all advances in relation to dwelling houses are secured by holdings.

Clause 9(g) would allow eligible persons who wish to reside in a retirement village or who already have such a right, the opportunity to receive subsidies on advances for purposes comparable to those available to eligible persons seeking advances in relation to dwelling-houses. Clause 9(g) would insert new paragraphs 18(2)(g) to (k) into subsection 18(2) of the Principal Act. These new paragraphs would provide that in respect of retirement village advances the Secretary must be satisfied that it is either for the purpose of obtaining a right of residence in a retirement village [18(2)(g)], to complete a person's partially-built accommodation in a retirement village [18(2)(h)], to enlarge such accommodation [18(2)(j)] or to discharge any debt owed by the person in relation to obtaining a right of residence [18(2)(k)].

Clauses 9(h) to 9(k) would omit paragraphs 18(3)(a) and (d) respectively and substitute new paragraphs 18(3)(a) and 18(3)(d). Subsection 18(3) outlines the purposes for which an additional advance may be utilised. An additional advance in relation to a dwelling-house must be secured by a holding. To clarify this requirement, new paragraphs 18(3)(a) and (d) would retain the effect of the omitted paragraphs but would also contain an explicit cross-reference to the definition of "holding". The amended paragraphs would also allow additional advances to be made to eligible persons who have retirement village accommodation for purposes comparable to those already available to persons who own dwelling-houses.

Clause 9(m) would insert new subparagraph 18(3)(f) into the Principal Act to provide a parallel provision to 18(3)(e) in relation to persons with a right of residence in a retirement village.

Clause 9(n) would make a minor amendment to subsection 18(4) consequent upon the insertion of new subsection 18(5A).

Clause 9(p) would insert new subsection 18(4A) into the Principal Act. Subsection 18(4) presently provides that, except in certain circumstances, the Secretary must not issue a certificate of entitlement in relation to a mortgage, charge or encumbrance raised without the approval of the Secretary. New subsection 18(4A) would be a parallel provision concerning debts incurred by the person in relation to the purchase of a right of residence in a retirement village.

Clause 9(q) would insert new subsection 18(5A) into the Principal Act to remedy a problem that has arisen in the past with the implementation of some Administrative Appeal Tribunal decisions. New subsection 18(5A) would enable the Secretary to issue a certificate of entitlement for applications for the purposes referred to in paragraphs 18(2)(f), 18(2)(g), 18(3)(e) or 18(3)(f) where the mortgage, charge or encumbrance was raised without the approval of the Secretary or the Corporation if it is considered necessary to do so to give effect to a direction of the AAT or a decision made by internal review.

Clause 9(q) would also insert new subsections 18(5B), 18(5C) and 18(5D) into the Principal Act. Subsection 18(4) presently restricts the circumstances in which an advance may be made for the discharge of a mortgage, charge or encumbrance raised without the consent or approval of the Corporation or Secretary. These restrictions include the situation where a person is suffering severe financial hardship and the terms of his or her mortgage are onerous. Currently, neither "severe financial hardship" nor "onerous" are defined in the Principal Act. New subsection 18(5B) would make provision for the Secretary to have regard to any guidelines approved by the Minister when deciding whether a person is suffering serious financial hardship for the purposes of paragraphs 18(4)(c), 18(4)(d), 18(4A)(b) or 18(4A)(c). New subsection 18(5C) would provide the authority for the Minister to approve guidelines setting out matters to be taken into account by the Secretary when deciding whether a person is suffering serious financial hardship for the purposes of the Act. New subsection 18(5D) will provide that these guidelines are to be laid before each House of the Parliament within 15 sitting days after their approval by the Minister.

Finally, Clause 9(q) would insert new subsection 18(5E) into the Principal Act to clarify the criteria for deciding whether or not the terms of a mortgage, charge or encumbrance are "onerous". This new subsection would provide that, for the purposes of subsection 18(4) and 18(4A), the terms of a mortgage, charge or encumbrance are onerous if the interest rate applicable is not less than 120% of the Benchmark rate calculated under the agreement. This will ensure that mortgages with terms and conditions consistent with those

generally available in the community will not be considered onerous.

Clause 9 would commence on the day of Royal Assent.

Clause 10 : Criteria for issue of certificate of entitlement:
further advance

Clause 10 would repeal section 19 of the Principal Act and substitute a new section 19. Defence Service Home loans granted since 9 December 1987 have been portable under the present section 19. The new section implements the Government's announcement of 1 May 1990 approving the extension of the Defence Service Homes Scheme to make loans in force at 9 December 1987 portable. The repeal of the present section 19 would replace the provisions relating to approval of further assistance in regard to previously non-portable loans with the provision that all loans current on 9 December 1987 would be portable. It would provide that the Secretary must not issue a certificate of entitlement in relation to a subsidy on a further advance to a person unless the person was a purchaser or borrower who had a Defence Service Homes loan in force as at 9 December 1987.

New subsection 19(2) would be a transitional savings provision concerning the rights of those persons who have lodged an application for a certificate of entitlement in relation to further assistance requiring Ministerial approval before the commencement date of this Act. It would ensure that these

persons retain the right to have these applications determined according to the law in force at the time of lodgement of application. It would provide that the Secretary is to determine such applications under section 19 as in force immediately before the commencement of the section.

New subsection 19(3) would be a further transitional provision which would provide that if the Minister has, before the commencement of the new section 19, approved the issue of a certificate of entitlement under the present section 19, the Secretary must issue the certificate of entitlement to the person only if the person has applied for the certificate before the end of twelve months after the commencement of the new section 19.

New subsection 19(4) would ensure that persons who receive certificates of entitlement issued by the Secretary under subsection 19(3) would retain their appeal rights under the present section 44 of the Principal Act.

Clause 10 would commence on the day of Royal Assent.

Clause 11 : Criteria for issue of certificate of entitlement
widows' advances

Section 20 of the Principal Act provides for a widow's advance to keep the home or accommodation in good order and repair and to pay rates, taxes and other outgoings in relation to the home. Subsection 20(2) provides that a widow's advance is

available to assist a widow who would suffer "financial hardship" if she had to bear the cost of maintenance and repairs. The term "financial hardship" is not presently defined in the Act. Clause 11 would insert new subsections 20(3), 20(4) and 20(5) into the Principal Act to provide that in deciding whether a person is suffering financial hardship for the purposes of paragraphs 20(2)(a) or (b), the Secretary shall have regard to any guidelines approved by the Minister. New subsection 20(4) of the Principal Act will provide that the Minister may approve guidelines setting out the matters to be taken into account in deciding whether a person is suffering financial hardship. Clause 11 would require that the guidelines must be laid before each House of Parliament within fifteen sitting days of that House after the guidelines have been approved by the Minister.

Clause 11 would commence on the day of Royal Assent.

Clause 12 : Criteria for issue of certificate of entitlement:
advances made for essential repairs

Clause 12 would insert new subsections 21(2), (3) and (4) into the Principal Act. These subsections would provide that in deciding whether a person would be caused serious financial hardship by bearing the cost of essential repairs, the Secretary is to have regard to any guidelines approved by the Minister under subsection 21(3) in deciding whether or not to issue a certificate of entitlement for an advance for essential repairs. The term "serious financial hardship" is

not defined in the Act. New subsection 21(4) would provide that any guidelines so approved are to be laid before each House of Parliament within fifteen sitting days of that House after the guidelines have been approved by the Minister.

Clause 12 would commence on the day of Royal Assent.

Clause 13 : Certificate of entitlement: transfer of property
subject to specified portfolio asset or advance

Clause 13 would amend section 22 of the Principal Act to provide that a certificate of entitlement under section 22 can only be issued to a proposed transferee who is an eligible person. This implements the Government's decision that transfers of the estate or interest of a purchaser or borrower in land or land and dwelling-house to ineligible persons are no longer permitted.

Clause 13 also contains a transitional savings provision which provides that the Secretary may still issue a certificate of entitlement if he had, before the commencement of the new section 22, given written notice to a proposed transferee that he would, in the absence of a significant change in the proposed transferee's circumstances, issue such a certificate under the current subsection 22(2) and the proposed transferee applies for the certificate before the end of 12 months after the commencement of the new section 22.

Clause 13 would commence on the day of Royal Assent.

Clause 14 Certificate of entitlement: instalment relief

Clause 14 would insert new subsections 23(5), 23(6) and 23(7) into the Principal Act. Section 23 provides criteria for the issue of a certificate of entitlement by the Secretary in relation to instalment relief. New subsection 23(5) would provide that in determining whether a person is suffering serious financial hardship for the purposes of section 23, the Secretary is to have regard to any guidelines approved by the Minister under subsection 23(6). New subsection 23(6) would provide that the Minister may approve guidelines setting out matters to be taken into account by the Secretary when making a decision. New subsection 23(7) will provide that the guidelines must be laid before each House of the Parliament within 15 sitting days of that House after the guidelines have been approved by the Minister.

Clause 14 would commence on the day of Royal Assent.

Clause 15 : ~~Maximum amounts for which subsidy is payable~~

Clause 15 would amend section 25 of the Principal Act to remove an unintended result in its application. Section 25 currently provides, in relation to a further advance, that the loan amount will generally be limited to the "outstanding balance" of the previous loan. "Balance" is currently defined to mean the outstanding amount of a loan, including the effects of arrears and excess credits. The current use of the

term "balance" means that a person is able to achieve a benefit in terms of the amount of the further advance by failing to honour his or her obligations under the first loan, while a person with excess credits, would be disadvantaged. This clause would omit paragraph 25(1)(d) and substitute a new paragraph 25(1)(d) which would place all applicants for a further advance on an equal footing. It would, in effect, provide that portable loans can only be made for an amount equal to the limit of the persons' previous advance or contract of sale, or \$25,000, whichever is the lesser amount.

Clause 15 would commence on the day of Royal Assent.

Clause 16 : Repeal of section 34 and insertion of new section

34: Rate of interest on further advances

Clause 16 would repeal section 34 of the Principal Act and substitute a new section 34 which would provide that the interest rate of 6.85% is to be applicable to all portable loans.

Clause 16 would commence on the day of Royal Assent.

Clause 17 : Maximum terms of advances

Clause 17 would amend section 36 of the Principal Act by omitting paragraph 36(1)(c) which describes the maximum term of further advances for which Ministerial approval

is required. That paragraph is no longer necessary because of the abolition of further assistance requiring Ministerial approval. Clause 17 would therefore omit references to paragraph 36(1)(c).

Clause 17 would commence on the day of Royal Assent.

Clause 18 : Review of decisions by Administrative Appeals Tribunal

Clause 18 would amend section 44 of the Principal Act. Section 44 presently provides that where a person makes a decision under subsection 43(6) affirming or varying a reviewable decision, or where the Minister makes a decision refusing to give approval under section 19, the person whose interests are affected by the decision shall be given notice in writing by the decision-maker of the terms and reasons for the decision and a statement that an appeal may be made to the Administrative Appeals Tribunal for its review. The present reference in subsection 44(3) to decisions by the Minister will be deleted because such decisions are no longer to be made.

Clause 18 would commence on the day of Royal Assent.

Clause 19 : Insertion of Schedule

This clause would amend the Principal Act by inserting after Schedule 1, the Schedule set out in Schedule 1 to this Act

That Schedule comprises the Agreement between the Commonwealth and the Westpac Banking Corporation made on the 5th day of November 1990.

Clause 20 : Consequential and minor amendments

This clause would provide that the Principal Act be further amended as set out in Schedule 2.

Clause 21 : Savings

Clause 21 would be a savings provision to provide that persons who have been issued a certificate of entitlement by the Secretary under the present section 19 will have the maximum amount of subsidy, the rate of interest and the term of their loan determined as if the amendments made to the sections dealing with those matters had not been made.

Clause 21(2) would ensure that any past decisions made by the Minister refusing to give approval under the present section 19 are reviewable by the Administrative Appeals Tribunal as if the amendments made by subsections 10(2) and 10(3) had not been made.

Clause 21 would commence from the day of Royal Assent.

Schedule 2

Schedule 2 proposes consequential amendments to various sections of the Principal Act to ensure that an eligible person has a right to reside in a retirement village comparable to those rights already existing in relation to land and dwelling-houses. The range of benefits granted for retirement village advances are, in essence, to be no different to those available to entitled applicants.

Minor consequential amendments

The amendments to sections 20, 21, 22(7), 24(2), 26(2)(b), 26(3), 29(5)(a), 29(6), 38, 38E, 45A(1) and 45A(2) made by Schedule 2 are minor and consequential amendments which incorporate the retirement village situation into the present provisions of the Principal Act. The principle of parity of treatment of persons with retirement village interests is the reason behind these amendments.

Amendments to section 22 - transfer of property subject to specified portfolio asset or advance

Subsection 22(1) is omitted and a new subsection inserted which retains the effect of the original subsection but extends the provision to cover rights of residence in retirement villages. Subsection 22(1) generally provides that a transfer of a person's interest in land, land and dwelling-house or right of residence which is subject to a specified portfolio asset, mortgage or security has no

effect unless the Secretary has agreed to the transfer.

New subsection 22(1A) is inserted to cover the situation of the transfer of a person's right of residence in a retirement village where, unlike with dwelling-houses, the Bank has no security for the subsidised advance.

Amendments to section 26 - cancellation of subsidy

New subsection 26(2A) to be inserted into the Principal Act is a further amendment reflecting the incorporation of retirement village residency into the Defence Service Homes Scheme. It will provide that where a person has obtained a right of residency in a retirement village, and is still liable to pay the outstanding balance of an advance concerning which the Bank has no security, the Secretary may cancel the subsidy if he is satisfied that the person has arranged to transfer that right of residence to a person who is not a transferee while still being liable for the balance of the loan.

New subsection 26(7), 26(8) and 26(9) are inserted into the Principal Act by Schedule 2. They provide guidance concerning the date of effect of a cancellation by the Secretary of a subsidy payable in relation to a person's retirement village accommodation, if that person has a right of review of the termination of that accommodation.

The amendment to subsection 29(2) is a further minor amendment consequent upon the insertion of new subsection 26(7).

Amendments to section 38C - insurance

New subsections 38C(2A) and 38C(2B) are also to be inserted into the Principal Act. Subsection 38C(1) provides that the Commonwealth may undertake insurance of, or in relation to, a number of matters concerning dwelling-houses in which either the Corporation or the owner has one of the interests listed in that subsection.

To implement the principle of parity to be accorded persons with rights of residence in retirement villages, new subsection 38C(2A) will allow persons with rights of residence in retirement villages to obtain similar insurance in respect of any insurable equity that they may have. It will describe the purposes for which the Commonwealth will provide insurance in respect of such rights of residence and will also describe the rights of residence concerning which insurance may be undertaken by the Commonwealth.

New subsection 38C(2B) will allow the Commonwealth to undertake insurance against risks related to the land on which the retirement village accommodation is or shall be built.

All the amendments made by Schedule 2 would commence on the day of Royal Assent.

PART 3 - AMENDMENT OF THE PUBLIC SERVICE ACT 1922

Clause 22 : Interpretation

Clause 22 would amend the definition of "Returned Soldier" in section 7 of the Public Service Act 1922, to ensure consistency with the provisions of paragraphs 6(1) (e) (i) and (ii) of the Veterans' Entitlements Act 1986 proposed by clauses 37 and 38, by deleting from the definition the reference to "while" and replacing it with a reference to service "as a member of the Defence Force who". This amendment arises as a result of the need to more accurately reflect in legislation the terms and conditions relating to allotment for service to overcome the problems encountered in the interpretation of the phrase "allotted for duty" by the Federal Court in Doessel and Davis. This clause would also amend the definition of "Returned Soldier" to include members of the Australian Defence Forces allotted for service in the operational areas described in Items 9 and 10 of Schedule 2 of the Veterans' Entitlements Act 1986. This would ensure that the special employment provisions of the Principal Act are extended to Australian Defence Force personnel who serve on operational service in either Namibia or in the Middle East as part of the United Nations Forces serving in the Gulf.

Clause 22 would commence immediately after the commencement of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986 in relation to

the amendment to paragraph 7(1)(f) The extension of the definition to include service in Namibia would commence on 18 February 1989 while the commencement date for service in the Gulf would be 2 August 1990.

**PART 4 - AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND
ALLOWANCES ACT 1940**

Clause 23 : Principal Act

This clause would provide that, in this Part, the Principal Act is the Seamen's War Pensions and Allowances Act 1940.

Clause 23 would commence on the day of Royal Assent.

Clause 24 : Pensions to dependants of certain deceased
Australian mariners

Clause 24 would provide for the insertion of a new paragraph (c) into section 17A of the Principal Act to provide for automatic entitlement to war widows' pension to the widow of an Australian mariner who, immediately prior to his death was in receipt of an extreme disablement adjustment by virtue of

the application to him of the provisions of subsection 18(4AA) of the Principal Act.

Clause 24 would be taken to have commenced on 22 December 1988.

Clause 25 : Insertion of new section:

New section 19: Clothing allowance

Regulation 38A of the Principal Act currently provides for the payment of clothing allowance to an Australian mariner who is in receipt of a pension in respect of certain specified disabilities.

Clause 25(1) would insert new section 19 into the Principal Act to provide for the allowance to be paid under the Act. Regulation 38A will subsequently be repealed. New subsection 19(1) would provide the basic rates of clothing allowance to be paid in respect of specified disabilities. This subsection would incorporate into the Act the existing provisions of subregulation 38A(1) except that the rates would be increased with effect from 20 September 1990.

New subsection 19(2) would provide for an increased rate of allowance to be paid where the use of a crutch or crutches is necessary in relation to disabilities specified in items 2, 3, or 4 of the table in new subsection 19(1). This subsection would incorporate into the Act the existing provisions of

subregulation 38A(2) except that the rate would be increased with effect from 20 September 1990.

New subsection 19(3) would provide that where an Australian mariner is receiving a pension in respect of a disability not specified in new subsection 19(1) that results in exceptional wear and tear or damage to clothing, the Commission may grant a clothing allowance at such rate as it determines. This subsection would incorporate into the Act the existing provisions of subregulation 38A(3).

New subsection 19(4) would provide that an amount payable under new subsection 19(3) in any 12 month period must not exceed the amount that would be payable in the same 12 month period in respect of a disability specified in item 4 of the table in new subsection 19(1). This subsection would incorporate into the Act the existing provisions of subregulation 38A(4).

New subsection 19(5) would ensure that a mariner would be entitled to payment of an allowance under the provisions of new subsection 19(3) in addition to an allowance under the provisions of new subsections 19(1) and 19(2).

New subsection 19(6) would provide that, in specified circumstances, an Australian mariner would be taken to have a disability as described in the table in new subsection 19(1). This subsection would incorporate into the Act the existing provisions of subregulation 38A(6).

New subsection 19(7) would provide that where the Commission makes a decision under new section 19 in respect of clothing allowance the provisions of section 8A of the Principal Act would apply. Section 8A provides for the form of the decision.

New subsection 19(8) would provide for the manner of application for clothing allowance under the new section 19. The subsection would duplicate, for the purposes of the Act, the existing provisions which currently apply to applications for clothing allowance under subregulation 19(2).

New subsection 19(9) would provide that an application for clothing allowance may be made by the person eligible to be granted the allowance or by another person on their behalf. This subsection would duplicate, for the purposes of the Act, the existing provisions of subregulation 19(3).

New subsection 19(10) would provide that where a person eligible to be granted clothing allowance is unable, due to physical or mental ailment, to approve a person to make an application on his or her behalf, the Commission may approve a person to make the application on his or her behalf. This subsection would duplicate, for the purposes of the Act, the existing provisions of subregulation 19(4).

New subsection 19(11) would provide that where an application for clothing allowance is made by a person on behalf of another person, the other person on whose behalf the application is made is to be treated as the applicant This

subsection would duplicate the existing provisions of subregulation 19(5).

New subsection 19(12) would provide that where a person makes an application for clothing allowance, but otherwise than in accordance with an approved form, and the person subsequently makes an application in accordance with an approved form, the Commission may, in specified circumstances, treat the informal application as though the formal application was received on the date the informal application was received. This subsection would duplicate, for the purposes of the Act, the existing provisions of subregulation 19(6).

New subsection 19(13) would provide for the date of effect of the grant of clothing allowance. The allowance is payable from the date of the determination that determined that the injury to which the allowance relates was a war injury if the mariner applies within 3 months after the date of that determination. In other cases the allowance would be payable from the date the application was received at an address of the Department in Australia.

Clauses 25(2), (3) and (4) would provide transitional provisions to operate in respect of new section 19 to provide that applications for clothing allowance made under regulation 38A which had not been finalised before the commencement of new section 19 would be taken to have been made under new section 19.

Clause 25 would be taken to have commenced on 20 September 1990.

Clause 26 : Allowance for attendant

Section 21 of the Principal Act provides for the payment of an allowance to an Australian mariner who is in need of the services of an attendant.

Clause 26 would increase the rate of attendant allowance in section 21 from \$78.20 to \$84.30 per fortnight.

The increase would be effective from 20 September and apply to payments due on and after that date.

Clause 27 would insert a new section into the Principal Act, section 22 - Variation of rates of certain allowances, which would provide that these rates would be automatically indexed in future.

Clause 26 would be taken to have commenced on 20 September 1990.

Clause 27 : Insertion of new section

New section 22 : Variation of rates of certain allowances

New section 19 of the Principal Act would provide for the payment of clothing allowance to mariners in certain circumstances and prescribes the rates of allowance payable.

Section 21 of the Principal Act provides for the payment of attendant allowance to mariners in certain circumstances. The rates of attendant allowance are specified in Schedule 2 of the Principal Act.

Clause 27 would insert new section 22 which would provide that, as from September 1991, the rates of these allowances would be indexed annually based on the Consumer Price Index for the twelve months ending in June each year.

Clause 27 would commence on the day of Royal Assent.

Clause 28 : Provision of tax file numbers

New section 32AA, which would be inserted into the Principal Act by the Social Security and Veterans' Affairs Legislation Amendment Act (No.2) 1990, provides that where the Secretary requests a person to do so, a person would not be eligible for payment under the Principal Act unless the person has given or has taken steps to give the Secretary his or her tax file number and the tax file number of his or her spouse.

Clause 28 would insert new subsection 32AA(3) into the Principal Act which would qualify the operation of section 32AA so that a person would not be required to provide the tax file number of the person's spouse where the Secretary is satisfied that the person does not know the number or the person cannot obtain the number from the person's spouse or a statement or declaration by the spouse of that number.

Clause 28 would also insert new subsection 32AA(4) into the Principal Act which would provide a definition of "tax file number". "Tax file number" would be taken to have the same meaning as for the Income Tax Assessment Act 1936.

Clause 28 would commence immediately after the commencement of section 31 of the Social Security and Veterans' Affairs Legislation Amendment Act (No.2) 1990.

Clause 29 : Tax file numbers

New section 32AB, which would be inserted into the Principal Act by the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990, would be paramount over section 8WA of the Taxation Administration Act 1953. Section 8WA of that Act prohibits a person from requiring or requesting another person to quote his or her tax file number except in stated circumstances.

Amendments to be made to the Taxation Administration Act 1953 by Parts 7 and 8 of the Social Security Legislation Amendment Bill 1990 would render the proposed new section 32AB redundant.

Clause 29 would repeal section 32AB.

Clause 29 would commence immediately after the commencement of Parts 7 and 8 of the Social Security Legislation Amendment Act 1990.

Clause 30 : Review of decisions etc.

Section 37A of the Principal Act provides for decisions of the Commission under the regulations to be reviewable by the Commission. Clause 30 would extend this power to enable the Commission to review decisions made under the Act in relation to applications for clothing allowance. This amendment is consequential to the amendment proposed by clause 25 which inserts a new section 19 into the Principal Act to provide for the payment of clothing allowance.

Clause 30 would be taken to have commenced on 20 September 1990.

Clause 31 : Recovery of overpayments

Clause 31 would remove from the regulations and insert in the Act in subsection 55A(8), a definition of "prescribed educational scheme". Section 55A provides for the recovery of overpayments of amounts not lawfully paid to a person under a "prescribed educational scheme". This clause also provides for the addition to the definition of the English as a Second Language Allowance Scheme. This amendment is based on the

understanding that it is more appropriate to prescribe these Schemes in the Principal Act rather than by regulation.

Clause 31 would commence on the day of Royal Assent.

Clause 32 : Recovery of overpayment by deduction from other pension, benefit or allowance

Clause 32 is a technical drafting amendment to correct a typographical error.

Clause 32 would commence on the day of Royal Assent.

Clause 33 : Regulations

Section 59 of the Principal Act provides the regulation making powers under the Act. Clause 33 would amend section 59 to delete references to clothing allowance as a consequence of the insertion of the provisions relating to clothing allowance into the Act by clause 25.

Clause 33 would be taken to have commenced on 20 September 1990.

Clause 34 : Schedule 2

Schedule 2 of the Principal Act provides for the payment of an allowance to an Australian mariner who is in need of the services of an attendant. Column 2 of Schedule 2 lists the amounts payable against a description of the disability suffered by the mariner. Attendant allowance is payable at one of two rates.

Clause 34(a) would increase the lower rate from \$78.20 to \$84.30 per fortnight.

Clause 34(b) would increase the higher rate from \$156.40 to \$168.60 per fortnight.

Clause 34 would be taken to have commenced on 20 September 1990.

**PART 5 - AMENDMENT OF THE SOCIAL SECURITY AND VETERANS'
AFFAIRS LEGISLATION AMENDMENT ACT (NO.4) 1989**

Clause 35 : Principal Act

This clause is a technical drafting amendment.

Clause 35 would be taken to have commenced immediately after the commencement of section 81 of the Social Security and Veterans' Affairs Legislation Amendment Act (No.4) 1989.

PART 6 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Clause 36 : Principal Act

This clause would provide that in this Part, the Principal Act means the Veterans' Entitlements Act 1986.

Clause 37 : Interpretation

Clause 37(a) would insert in subsection 5(1) a definition of "tax file number". "Tax file number" would be taken to have the same meaning as for the Income Tax Assessment Act 1936.

Clause 37(a) would commence immediately after the commencement of section 24 of the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990.

Clause 37(b)-(e), clause 38 and clause 42, would amend relevant parts of sections 5, 6 and 36 of the Principal Act to overcome the Federal Court decisions in Davis and Doessel where the court construed the phrase "allotted for duty" as being equivalent to "posted for duty". Such a construction, if not reversed, would result in an unintended extension of the benefits under the Act to all service personnel who were in an operational area during a relevant period irrespective

of the duration of that service, of the purpose of their presence in the area, of the actual duties undertaken during that period and of the fact that the Defence Force, apart from posting them to that area, had not formally allotted them for service in that area.

The concept of "allotment for duty" is a special one which was developed to cater for and identify service which attracted Repatriation benefits. It has been developed in respect of service undertaken in response to the war-like situations that have arisen since World War II and in respect of which there has been no formal declarations of war by Australia.

The Federal Court decisions overlook the terms of the existing legislative provisions and the object and purpose of those provisions. The proposed amendments are intended to overcome the Federal Court decisions by clarifying that the "allotment" process (past and present) is, firstly, a distinct administrative arrangement, separate from the normal "posting" process which governs the movement of Defence Force personnel and, secondly, an administrative arrangement for the specific purpose of determining whether a person's service was sufficiently hazardous to entitle the person to benefits under the Principal Act.

The amendments would distinguish between the allotment process of the various arms of the Defence Force which existed prior to the commencement of the Act, which were for the purpose of determining whether a person's service in a conflict prior to that date was such as to entitle that person to claim for

benefits under the repealed Repatriation legislation, and the revised arrangements which have been introduced to cover conflicts after that date. No action will be taken which would disadvantage any persons in respect of whom final determinations have been made to grant eligibility on the basis of the Federal court decisions.

Clause 37(b) would amend subsection 5(12) of the Principal Act by omitting the phrase "to a person or unit of the Defence Force". This change is one of drafting style only to delete an unnecessary second reference in the subsection to this phrase.

Clause 37(c) would delete existing paragraphs and insert new paragraphs (a) and (b) in subsection 5(12). New paragraph 5(12)(a) would restrict its operation to conflicts to which the operational areas described in Items 1 to 8 of Schedule 2 refer. New paragraph 5(12)(b) would reflect a change in drafting style.

Clause 37(d) would seek to confirm the intention that the phrase "allotted for duty" has a special meaning by; (i) making a specific reference to allotment being made by written instrument issued by the Defence Force and to such instruments being for use by the Commission in determining a person's eligibility for entitlements under the Principal Act; and (ii) by providing that such allotments could have been made prospectively or retrospectively.

The reference in clause 37(c) to a "written instrument issued by the Defence Force" is a reference to Military Board Instructions, Australian Army Orders, Commonwealth Navy Orders, Australian Navy Orders and written Instruments of the Royal Australian Air Force.

A separate amendment is being made to insert in the items to Schedule 2, closing dates for operational service to reflect the periods that the areas designated are to be regarded as being operational.

Clause 37(d) would allow for the application of revised arrangements introduced by the Department of Defence (whereby person's or units of the Defence Force are to be allotted for duty in an operational area by written instrument signed by the Vice Chief of the Defence Force) to Members of the Australian Defence Forces who served on operational service in Namibia, being the area described in Item 9 of Schedule 2.

Clause 37(d) would be taken to have commenced on 18 February 1989

Clause 37(e) would insert a new paragraph (d) into subsection 5(12) of the Principal Act to provide for the extension of Repatriation benefits to Australian Defence Force personnel who serve on operational service in the Middle East. Allotment to the area of operational service in the Gulf, described in Item 10 of Schedule 2 is to be in accordance with the revised arrangements introduced by the Department of

Defence for the allotment of persons or units of the Defence Force for the purposes of the Veterans' Entitlements Act 1986. Again, to overcome the difficulties associated with the interpretation of "allotted for duty" by the Federal Court in Doessel and Davis, allotment is to be given a special meaning by reference to it being either retrospective or otherwise and by referring to the written instrument as being for use by the Commission for the purpose of determining a person's eligibility under the Principal Act.

Clause 37(e) would be taken to have commenced on 2 August 1990.

Subsection 5(14) of the Principal Act provides that where a determination has been made that a pension or allowance is payable from a particular day (not being a pension payday), the pension or allowance is payable from the next pension payday. However, as temporary incapacity allowance and loss of earnings allowances are one-time payments, an unintentional effect of this provision is that these allowances are only payable as a fortnightly amount if the veteran is eligible on a payday. Clause 37(f) would clarify this situation by specifically excluding the operation of subsection 5(14) to payments of temporary incapacity allowance under section 107 or loss of earnings allowance under section 108. This amendment is consequential to a similar amendment proposed to section 121 of the Principal Act by clause 80 of this Bill

Clause 37(f) would commence immediately after the commencement of paragraph 90(c) of the Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989

Clause 38 : Operational service

The amendments proposed by this clause are consequential to, and for the same purpose as, those outlined in respect of the amendments to section 5 proposed by clause 37.

Clause 38 (a) would amend section 6 of the Principal Act by inserting a reference to the operational area described in Item 2 in Schedule 2 in paragraph 6(1)(e). Item 2 of Schedule 2 refers to the operational area of Malaya and the waters contiguous to the coast of Malaya for a distance of 18.5 kilometres seaward from the coast for the period 29 June 1950 to 31 August 1957. This amendment would correct an oversight in the Veterans' Entitlements Act 1986 which allowed for members of the Naval Forces who served in the complement of a sea-going vessel in the area and during the period described in Item 2 of Schedule 2 to be regarded as having served on "operational service". This result was not intended and under the repealed Repatriation Regulations (regulation 199) such service was specifically excluded. This amendment would clarify the intention that such service is not operational service for the purposes of the Principal Act.

Clause 38(a) would commence immediately after the commencement of section 5 of the Veterans' Affairs Legislation Amendment Act 1987.

Clause 38(b) would amend subparagraph 6(1)(e)(ii) of the Principal Act by deleting the words "while the person" and substituting "as a member of the Defence Force who". This amendment is to ensure consistency in the language used and to remove any doubt about the intention to ascribe a special meaning to "allotted" for duty.

Clause 38(b) would commence immediately after the commencement of the Veterans' Entitlements Act 1986.

Clause 38(c) would amend paragraph 6(1)(e), again for the purpose of removing any doubt about the meaning and intention of the allotment provisions, by removing the reference to the period "while the person was so rendering continuous full-time service" and replacing it with a reference to "during the period in which the person was so allotted for duty".

Combined with the amendments to subsection 5(12) and Schedule 2 of the Principal Act, this would ensure that "allotted for duty" has the special meaning intended by the Principal Act.

Clause 38(c) would commence immediately after the commencement of the Veterans' Entitlements Act 1986.

Clause 39 · Eligibility for pension

Clause 39 To date, widows of veterans who were entitled to receive disability pensions increased by the "extreme disablement adjustment" have not been entitled to the automatic grant of war widow's pension on the death of the veteran. This clause would extend automatic eligibility for widow's pension and related benefits including treatment and pensions for dependants to the widows and dependants of deceased veterans who were receiving or entitled to receive "extreme disablement adjustment" prior to their death. This amendment is the same as that proposed by clause 24 in respect of Australian mariners.

Clause 39 would be taken to have commenced on 22 December 1988.

Clause 40 : Increased rates of pension in certain cases

The table in subsection 27(1) of the Principal Act specifies additional amounts of pension payable in respect of a veteran in receipt of pension under Part II of the Principal Act where the veteran is incapacitated by a war-caused injury or disease of a kind described in column 1 of the table. Items 1 to 6 are increased automatically in accordance with movements in the Consumer Price Index by the operation of section 198 of the Principal Act.

Clause 40 would provide for increases in the amounts payable in respect of items 7 to 15 inclusive in the table in subsection 27(1) with effect from 20 September 1990. The increases provided for are as follows-

Item 7 the amount would be increased from \$104.40
 to \$112.50 per fortnight;

Item 8 the amount would be increased from \$70.40
 to \$75.90 per fortnight;

Items 9 & 10 the amount would be increased from \$60.50
 to \$65.20 per fortnight;

Items 11 & 13 the amount would be increased from \$30.20
 to \$32.60 per fortnight;

Items 12 & 14 the amount would be increased from \$15.90
 to \$17.10 per fortnight; and

Item 15 the amount would be increased from \$23.40
 to \$25.20.

These rate increases would apply to payments falling due on and after 20 September 1990.

Clause 90 would insert a new section into the Principal Act, new section 198D - Variation of rates of certain allowances etc, which would provide that these amounts will be automatically indexed in future

Clause 40 would be taken to have commenced on 20 September 1990.

Clause 41 : Interpretation

Clause 41(a) would amend section 35 of the Principal Act by including in the definition of "income" references to new subsections 50B and 52A, proposed to be inserted in the Principal Act by clauses 21 and 23 of the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990 and which deal with, respectively, the deeming of income from loans and income from deprived property. The inclusion in section 35 of the Principal Act of a reference to these provisions would enable the deemed amounts of income from money on loan or income from deprived property to be held as income in the assessment of service pension.

Clause 41(a) would be taken to have commenced on 22 August 1990 and would apply only to loans entered into or acquired or property deprived after 21 August 1990.

Clause 41(b) would insert in the definition of "income", a reference to new subsection 50C, proposed to be inserted in the Principal Act by clause 54 of this Bill, so as to provide that deemed income from certain money may be held as income in the assessment of service pension.

Clause 41(b) would commence on 1 March 1991.

Clause 41(c) would provide for the inclusion in paragraph (aa) of the definition of income in subsection 35(1), a reference to new subsections 50B and 52A of the Principal Act, proposed to be inserted by clauses 21 and 23 of the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990 to enable income actually received from loans or deprived property to be excluded from income in the assessment of service pension if it has already been held as deemed income. The amendment proposed by clause 41(d) would have the same purpose in respect of income actually received in respect of investments. This amendment is consequential on the amendment proposed by clause 54 of this Bill under which it is proposed to deem income from certain money.

Clause 41(c) would be taken to have commenced on 22 August 1990. Clause 41 (d) would commence on 1 March 1991.

Clause 41(e) Subparagraph 35(1)(f) excludes from the definition of "income", certain payments made under Commonwealth mortgage or home owner schemes. Clause 41(e) would insert new subparagraph (fa) in the definition of income in subsection 35(1) which would extend the exemptions to payments made by a State or Territory to a person for the purpose of assisting the person to purchase, or build, his or her own home.

Clause 41(e) would commence on the day of Royal Assent.

Clause 41(f) A new paragraph, (ma) was inserted into the definition of "income" in subsection 35(1) of the Principal Act by the Veterans' Affairs Legislation Amendment Act (No 4) 1989. That paragraph provided for the exemption of a payment received by a trainee in part-time training under a Labour Force Program as income where the trainee is also in receipt of certain specified pensions, benefits or allowances. Allowances under Part VI of the Social Security Act 1947 were inadvertently omitted from this amendment. Clause 41(f) remedies this omission by the proposed amendment to subparagraph (ma)(iii) which would include a reference to an allowance under Part VI of that Act.

Clause 41(f) would commence on the day of Royal Assent.

Clause 41(g) would amend the definition of "income" in subsection 35(1) to exclude payments made to pensioners under privately run, personal support schemes. These schemes are similar in character to the domiciliary nursing care benefit scheme administered under the National Health Act 1953. For these payments to be exempt, the schemes must be approved under section 12AAA of the Social Security Act 1947.

Clause 41(g) would commence on the day of Royal Assent.

Clause 42 : Meaning of qualifying service

This clause would make amendments to section 36 of the Principal Act for the same purpose as outlined in respect of

the proposed amendments to sections 5 and 6 by clauses 37 & 38. Clause 42(a) would reinforce the proposed amendments to subsection 5(12) and paragraph 6(1)(e) of the Principal Act by being consistent in the language used to describe those eligibility provisions which rely on the interpretation and application of the meaning of "allotment". This arises from the need to ensure that "allotted" is not construed as being equivalent to "posted for duty", so as to overcome the difficulties associated with the interpretation of that word by the Federal Court in the cases of Doessel and Davis.

Clause 42(a) would be taken to have commenced immediately after the commencement of the Veterans' Entitlements Act 1986

Clause 42(b) would insert in the meaning of qualifying service in section 36 of the Principal Act, a reference to the service in the operational area of Namibia as defined in Item 9 of Schedule 2 of the Principal Act.

Clause 42(b) would be taken to have commenced on 18 February 1989.

Clause 42(c) would provide for the extension of eligibility for service pension to members of the Forces allotted for duty for operational service in the Gulf by the inclusion of a reference to Item 10 in Schedule 2 to the Principal Act. Item 10 would define the area and the commencing date of operational service in the Middle East.

Clause 42(c) would be taken to have commenced on 2 August 1990.

Clause 42(d) would omit subparagraph (1)(a) (v) of section 36 as this is now longer necessary by virtue of the reference to Namibian service in subparagraph (1) (a) (iii) as proposed by Clause 42(b) above.

Clause 42(d) would be taken to have commenced on 18 February 1989.

Clause 42(e) Paragraph 36(1)(b) of the Principal Act provides eligibility for service pension for members of the forces of a Commonwealth country. It excludes Commonwealth ex-servicemen who were engaged in war or war-like operations as part of or in association with, the British Commonwealth Far East Strategic Reserve. As this exclusion is broader in its scope and operation than the provisions under the repealed Repatriation legislation a more accurate description is required of the type of service which does not give rise to service pension eligibility for these persons. Clause 42(d) would insert in paragraph 36(1)(b) of the Principal Act, a reference to the area described in item 3 of Schedule 2 to provide a specific description of the service that does not entitle a person to receive service pension in these circumstances.

Clause 42(e) would commence from the day of Royal Assent.

Clause 43 : Method of calculation of income

Clause 43 would provide for exemption of a payment under the "aboriginal study assistance scheme" in calculating the amount

of a person's income for the purposes of assessing the rate of service pension payable. Clause 43(b) would insert a new subsection 37(5) of the Principal Act to define the meaning of "aboriginal study assistance scheme".

Clause 43 would commence on the day of Royal Assent

Clause 44 : Accruing return investments

Clause 44 would amend section 37C of the Principal Act, which refers to the effects of income from accruing return investment on service pensions. It is intended that these amendments would clarify the original intention of the legislation with respect to the assessability of profits or amounts withdrawn from these investments as income and resolve any existing ambiguities in the wording of the legislation highlighted by the AAT in the case of Cowling in which the words "entitled to receive an amount by way of a return on investment" were taken to mean that they applied as soon as the bonuses had been credited to the person's account and not when the person actually withdrew them. This interpretation was never intended. The amendments proposed by clause 44 would ensure that income from investments made prior to 1 January 1988 would be held in the assessment of service pension only on withdrawal or maturity.

Clause 44(a) would amend subsection 37C(1) by including a reference to a pensioner "acquiring" as well as "making" an accruing return investment, to resolve any ambiguities in the

operation of the subsection raised by the use of the word "make" alone

Similarly intentioned amendments would be made by clauses 44(b), (c), (d), (e), (f) and (g) to subsections 37C(2), (2)(b), (2), (3) and (3)(b).

Clauses 44 (a) to (g) would commence on the day of Royal Assent.

To ensure that income from an accruing return investment was assessable only once a person realised the investment, clause 44(h) would amend subsection 37C(3) accordingly. Clause 44(j) defines the term "realises" for the purposes of subsection 37C(3).

Clauses 44(h) and (j) would commence on the day of Royal Assent.

Clause 44(k) would amend subsection 37C(4) by omitting the definition of "accruing return investment" included in section 37B of the Principal Act and substituting that which is included in subsection 35(1). A similar substitution would be made in subsection 37C(5) by clause 44(l).

Clause 44(k) would be taken to have commenced on 19 December 1989 and clause 44(l) would commence on the day of Royal Assent.

Clause 45 . Market-linked investments

Clause 46 : Special provisions about certain investments made
or acquired before 9 September 1988

Clause 47 : Determinations of entitlement of persons holding
market-linked investments

Clause 48 : Treatment of costs of investment

The amendments made by clauses 45 to 48 are consequential to the amendments proposed by clause 44.

Clauses 45 to 48 would commence on the day of Royal Assent.

Clause 49 : Certain capital amounts taken to be received over
12 months

Amendments made by clause 49 to section 37J would clarify the original intention of the Principal Act, consider forms of income to be taken into account for the purposes of this section and resolve any ambiguities in the terms used.

To this end, clause 49(a) would omit a reference to "an amount of a capital nature" in subsection 37J(1), clause 49(b) would include an additional type of income to be considered in subsection 37J(1)(a), clause 49(c) would make a grammatical amendment to subsection 37J(1)(a), clause 49(d) would resolve any ambiguities conveyed by the use of the word "made" in

subsection 37J(1)(c) by inserting a reference to a market-linked investment being "acquired" and clause 49(e) would clarify the application subsection 37J(2), including substituting the current definition of "accruing return investment" for that to be contained in subsection 35(1) of the Principal Act.

Clauses 49(a) to (e) would commence on the day of Royal Assent.

Clause 50 : Rate of veteran's service pension

Clause 50 would insert new subsection 47(3A) into the Principal Act to require service pensioners to pursue their entitlements to child maintenance as a prerequisite to the payment of either additional pension for children or a guardian's allowance. This amendment would provide for consistency with Social Security legislation.

Clause 50 would commence on the day of Royal Assent.

Clause 51 : Earnings credit

Under section 49B of the Principal Act certain service pensioners are entitled to an "earnings credit" to allow them to undertake paid employment on a short-term or intermittent basis without affecting pension or entitlement to fringe benefits.

Clause 51 would amend section 49B to allow more effective utilisation and application of the earnings credit provisions by enabling married service pensioners to effectively combine their earnings credit of \$1,000 each. This would enable one of the married couple who is working to utilise the unused portion of the spouse's earnings credit. Clause 51(d) would exclude the application of the earnings credit provisions to a person whose service pension is assessed under the assets test provisions and who receives an additional pension for a child.

Clause 51 would commence on immediately after the commencement of section 12 of the Social Security Legislation Amendment Act 1990.

Clause 52 : Calculation of value of property

Clause 52 would amend subsection 50(8) of the Principal Act to provide that where one of a married couple remains in the family home, the other being resident in a nursing home, hostel or home specified in subsection 50(8), the value of the family home would continue to be exempted for the purposes of the assets test for a period of two years after the person commences to reside in the nursing home, hostel or other specified home. This amendment would ensure consistency with the Social Security Act 1947 to which a similar amendment is being made.

Clause 52 would commence on the day of Royal Assent.

Clause 53 Income from loans

New section 50B, to be inserted into the Principal Act by the Social Security and Veterans' Affairs Legislation Amendment Bill (No. 2) 1990, would provide that, for income test purposes, income from loans made by a person would be assessed at a statutory minimum rate, or the actual rate, whichever is the greater.

Clauses 53(a) and (b) would omit from subsection 50B(3) the reference to "bank, building society or credit union" and substitute "financial institution". Definitions of "account", "entry contribution" and "financial institution" would also be inserted in section 50B.

"Account" in relation to a financial institution would mean an account maintained by a person with a financial institution to which is credited money received on deposit by the institution from that person.

"Entry contribution" would be taken to have the same meaning as for section 50A of the Principal Act.

"Financial institution" would mean a bank, building society, credit union or other institution that receives money on deposit.

Clause 53(c) would insert a new subsection 50B(3A) into new section 50B to exempt a person's entry contribution in

relation to a retirement village from the operation of new section 50B

Clause 53(d) would insert a new subsection 50B(4A) into new section 50B to provide that in special circumstances the Minister may exempt certain loans or classes of loans from the operation of proposed new section 50B.

Clause 53 would be taken to have commenced on 22 August 1990.

Clause 54 : Insertion of new section

New section 50C : Income from certain money

Clause 54(1) would insert new section 50C into the Principal Act.

New section 50C would generally enable amounts of money held by a person and money deposited in certain financial institutions which return less than 10% per annum to be deemed to return 10% per annum. That deemed return could then be assessed as income of the person.

New subsection 50C(1) would provide definitions of terms which would be used in new section 50C.

"Account" in relation to a financial institution would mean an account maintained by a person with a financial institution to which is credited money received on deposit by the institution from that person.

"Assumed rate" would mean 10%, or where a determination has been made by the Minister for Social Security under the provisions of subsection 4D(7) of the Social Security Act 1947 determining a lower rate, that rate.

"Available money" would be defined as money held by, or on behalf of a person. "Available money" would not be a person's "deposit money" (as defined) or money to which section 50B of the Principal Act is applicable. Section 50B relates to money on loan

"Deposit money" would be defined to mean a person's money that is deposited in an account with a financial institution.

"Financial institution" would mean a bank, building society, credit union or other institution that receives money on deposit.

"Income money" would be defined to mean so much of a person's deposit money and available money as exceeds \$2,000.

New subsection 50C(2) would provide that \$2,000 of a person's deposit money on which a lower or no interest is paid and the person's available money are not subject to the deeming rules set out in new section 50C. This \$2,000 would be assessed according to the actual rate of return on that money.

In practice, this subsection would operate as follows -

"A" has 3 accounts - \$4,000 earning 11% per annum in
interest

\$1,500 earning 9% in interest

\$1,000 earning 6% per annum in
interest

and available money \$500 earning no interest.

The \$2,000 free area would be taken from A's available money and/or deposit money which earns nil or the lower interest.

In the given example, therefore, A's \$2,000 would comprise \$500 available money + \$1,000 which is deposited at 6% return + \$500 of the deposit money which earns 9% per annum in interest. Those amounts which form the \$2,000 free area would be assessed at the actual rate of return.

New subsection 50C(3) would provide that where interest is not paid on a person's income money, the person would be taken to receive interest on that money at the rate per year of the assumed rate.

The effect of this provision would enable the "assumed rate" to be deemed on "income money" which would otherwise earn no interest.

New subsection 50C(4) would provide that where the annual rate of interest paid on a person's income money is less than the assumed rate, then the person would be taken to receive the rate per year of the assumed rate on that money.

It should be noted that new subsection 50C(4) refers to "income money of a person" as opposed to "the income of the person" This is an important drafting distinction because the reference to "income money of a person" enables the Department to look at each of the accounts of a person or part of accounts which vary in interest return (tiered accounts) individually for the purposes of new subsection 50C(4). This would ensure that accounts or parts of accounts returning over 10% (or such other rate determined by the Minister for Social Security under subsection 4D(7) of the Social Security Act 1947) would not be caught under new section 50C. If the words "the income of the person" were used, the Department would have been required to aggregate all of the person's accounts and calculate whether or not the accounts averaged out to return less than the assumed rate, before new section 50C could apply.

In the above-mentioned example, therefore, A's \$4,000 account which returns 11% would not be caught under new section 50C. Instead, the money would be assessed under normal rules and the actual rate of return on the person's deposited money would reassessed as part of the person's income. However, the \$1,000 which returns 9% which was not part of the \$2,000 excluded under new subsection 50C(2) would be assessed at the assumed rate.

New subsection 50C(5) would provide that the Minister for Veterans' Affairs may, by notice in writing, determine that

new section 50C does not apply to specified income money of a person or class of persons

Where such a determination is made, the income money or part of the income money of the person would remain subject to the normal rules relating to income assessment and would be assessed on the basis of actual rate of return on the excluded money.

New subsection 50C(6) deals with the situation where return on investment money is deferred for more than a year. The new subsection would provide that interest on investment money is to be taken to have been received by the person annually

New subsection 50C(7) would provide that where, but for this subsection, the provisions of this section and Division 1A of Part III (Investment income) would apply, this section would be taken to apply.

Clause 54(2) would enable persons who would lose entitlement to a health benefit card as a result of the application of new section 50C to retain their health benefit cards. Therefore, those persons who are eligible for health benefit cards on 28 February 1991 are saved from the effects of the changes to income assessment effected by new section 50C on 1 March 1991.

Clause 54 would commence on 1 March 1991.

Clause 55 : Rent assistance

Rent assistance is an amount calculated under section 55 of the Principal Act which is added to the maximum rate of service pension of a pensioner who makes eligible rent payments.

In broad terms the annual amount of rent assistance payable is an amount equal to whichever is the lesser of:

- . one-half of the amount by which the amount of the annual rent paid by the person to a private landlord exceeds the prescribed threshold, ie the prescribed minimum amount of rent: or

the prescribed maximum amount of rent assistance.

Clause 55 would amend section 55 of the Principal Act to provide for an increase in the prescribed threshold from \$1,040 to \$1,300 per year (in broad terms, from \$40 to \$50 per week).

Clause 55 would commence on 20 March 1991 and would apply to payments that fall due on or after that date.

Clause 56 : Remote area allowance

Section 57 of the Principal Act provides for the payment of an allowance, known as remote area allowance, to a service pensioner who lives in a remote area as defined in the Income Tax Assessment Act 1936.

Clause 56 would amend section 57 to extend the area within which a remote area allowance is payable in line with changes being made to the Income Tax Assessment Act to extend the boundaries of the areas in which people are eligible for a zone rebate on their taxable income.

Those people within the designated "special zone B" would now be eligible for a remote area allowance under the same terms and conditions as those resident in "zone A". In addition, people resident just outside those areas can be designated by the Commissioner for Taxation to be within those areas for the purposes of allowing the taxation rebate. Where the Commissioner has exercised that discretion, the area shall be deemed for the purposes of remote area allowance also to lie inside the zone.

Clause 56 would commence on 1 January 1991.

Clause 57 : Repeal of section 64

Clause 57 would repeal section 64 of the Principal Act, which allows the Repatriation Commission to cancel service pensions paid to certain non-indigenous inhabitants of Papua New Guinea, on the grounds that this section is outdated, unused and inconsistent with the portability provisions for service pensioners and their spouses.

Clause 57 would commence on the day of Royal Assent.

Clause 58 : Interpretation

Clause 58 is one of a series of three to give effect to the intention to remove the three-year minimum service requirement for "hazardous service" eligibility. This clause would insert in subsection 68(1) of the Principal Act, a definition of "hazardous service" which is consistent with the definition of that term in subsection 120(7) of the Principal Act.

Clause 58 would commence on the day of Royal Assent.

Clause 59 : Application of Part to members of the Forces

Clause 59 would provide for the insertion of new paragraph 1(ea) in subsection 69(1) of the Principal Act which would extend the application of Part IV to a person who has rendered hazardous service as member of the Defence Force.

Clause 59 would commence on the day of Royal Assent

Clause 60 : Eligibility for pension under this Part

Clause 60(a) would provide for the automatic grant of war widows' pension in respect of Members of the Defence Force or Peacekeeping Forces who, immediately before the member's death, were entitled to receive an extreme disablement adjustment.

Clause 60(a) would be taken to have commenced on 22 December 1988.

Clauses 60(b) to (f) would ensure that the liability provisions to pay pensions under Part IV of the Principal Act apply to members of the Forces who have rendered hazardous service.

Clauses 60(b) to (f) would commence on the day of Royal Assent.

Clause 61 : Veterans eligible to be provided with treatment

Clause 61 is a drafting amendment consequential to clause 38

Clause 61 would commence immediately after the commencement of the Veterans' Entitlements Act 1986.

Clause 62 : Dependants eligible to be provided with treatment

Clause 62 is consequential to clauses 59 and 60 and would provide for the provision of free treatment to a dependant of a deceased veteran who was receiving extreme disablement adjustment at the time of his death.

Clause 62 would commence immediately after the commencement of the Veterans' Entitlements Act 1986.

Clause 63 : Clothing allowance

Section 97 of the Principal Act provides for the payment of a clothing allowance to severely handicapped veterans suffering incapacity from certain specified war-caused injuries or diseases who are in receipt of a pension under Part II of the Act

Clause 63 would amend section 97 to provide for the rates of clothing allowance to be increased with effect from 20 September 1990.

Clause 63(a) would amend the table in subsection 97(1) as follows:

Item 1 - the allowance to be increased from \$6 70
to \$7.20 per fortnight;

Item 2 - the allowance to be increased from \$3 10
to \$3.30 per fortnight; and

Item 3 - the allowance to be increased from \$4.30
to \$4.60 per fortnight.

Clause 63(b) would amend subsection 97(2) to provide for an increase in the rate of clothing allowance payable where the use of a crutch or crutches is necessary in relation to disabilities specified in items 2, 3 and 4 in the table in subsection 97(1). The allowance would be increased from \$6.70 per fortnight to an amount per fortnight equal to the rate specified in item 1 in subsection 97(1) (\$7.20).

Clause 63(c) would amend subsection 97(3) to provide for an increase from \$3.10 to \$3.30 per fortnight in the rate of clothing allowance payable where exceptional wear and tear, or exceptional damage, occurs to the clothing of a veteran as a result of a war-caused injury or disease not specified in the table in subsection 97(1).

These increased rates would apply to payments due on and after 20 September 1990.

Clause 90 would insert a new section into the Principal Act, new section 198D - Variation of rates of certain allowances etc, which would provide that these amounts will be automatically indexed in future.

Clause 63 would be taken to have commenced on 20 September 1990.

Clause 64 : Attendant allowance

Section 98 of the Principal Act provides for the payment of attendant allowance to eligible veterans who need assistance with the normal requirements of daily living. Attendant allowance is payable at one of two rates depending upon the degree of incapacity.

Clause 64 would provide for an increase in the rates of attendant allowance payable to eligible veterans with effect from 20 September 1990.

Clause 64(a) would amend subsection 98(1) to increase the lower rate of attendant allowance from \$78.20 to \$84.30 per fortnight and to increase the higher rate from \$156.40 to \$168.60 per fortnight.

Clause 64(b) would amend subsection 98(2) to increase the rate of attendant allowance payable to a veteran suffering from a war-caused injury or disease affecting the cerebro-spinal

system, or a war-caused injury or disease of similar effect or severity, from \$78.20 to \$84.30 per fortnight.

The increased rates would apply to payments due on and after 20 September 1990

Clause 90 would insert a new section into the Principal Act, new section 198D - Variation of rates of certain allowances etc, which would provide that these amounts will be automatically indexed in future.

Clause 64 would be taken to have commenced on 20 September 1990.

Clause 65 : Funeral benefits - veterans

This clause would clarify the meaning of section 99 of the Principal Act by omitting the reference to "person" and substituting "veteran".

Clause 65 would commence on the day of Royal Assent.

Clause 66 : Recreation transport allowance

Section 104 of the Principal Act provides for the payment of an allowance to veterans to assist them in travelling for recreation where war-caused disabilities adversely affect

their power of locomotion The allowance is payable at one of two rates

Clause 66(a) would amend the table in subsection 104(1) to provide for an increase in the higher rate of recreation transport allowance from \$41.60 to \$ \$44.80 per fortnight.

Clause 66(b) would amend the table in subsection 104(1) to provide for an increase in the lower rate from \$20.80 to \$22.40 per fortnight.

The increases would be effective from 20 September 1990 and would apply to payments on and after that date.

Clause 90 would insert a new section into the Principal Act, new section 198D - Variation of rates of certain allowances etc, which would provide that these amounts will be automatically indexed in future.

Clause 66 would be taken to have commenced on 20 September 1990.

Clause 67 : Interpretation

Clause 67 would provide for the extension of benefits under the Veterans' Children Education Scheme to children of widows who are automatically entitled to grant of pension on the ground that their husbands were receiving pension for extreme disablement adjustment at the time of death

Clause 67 would be taken to have commenced on 22 December 1988

Clause 68 : Part heading

Part VIIA of the Principal Act provides for the payment of a pharmaceutical supplement for the period 1 November 1990 to 19 March 1991 and for the payment of advance pharmaceutical supplements.

Clause 68 would provide for the heading to be amended by adding at the end "pharmaceutical allowance". This amendment would be consequential on the amendments to be made by clause 75 which would insert new sections into the Act to provide for the payment of a pharmaceutical allowance from 20 March 1991.

Clause 68 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 69 : Interpretation

Part VIIA of the Principal Act provides for the payment of a pharmaceutical supplement for the period 1 November 1990 to 19 March 1991 and for the payment of advance pharmaceutical supplements.

Section 118A of the Principal Act provides for the definitions relevant to Part VIIA.

Clause 69(a) would omit the definition of "disqualified advance pensioner" in section 118A as the definition is not required to provide for the intended operation of Part VIIA.

Clause 69(b) would amend the definition of "eligible pensioner" to omit reference to "this Act" to be replaced with "section 47 or 48". This amendment would ensure that a person is taken to receive the maximum rate of service pension where the rate has not been reduced by the income test, the assets test or the maintenance income test.

Clause 69(c) would insert new definitions into section 118A of the Principal Act.

"Pharmaceutical allowance" would be defined to mean the allowance payable under new section 118JA which would be inserted by clause 75.

"Special wife service pensioner" would be defined as a consequence of amendments to Part VIIA to clarify the rate at which pharmaceutical supplements, advance pharmaceutical supplements and pharmaceutical allowances are payable.

Clause 69 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Clause 70 : Rate of pharmaceutical supplements

Section 118D of the Principal Act provides for the rate of pharmaceutical supplement payable under Part VIIA. The supplement is paid at one of two rates dependent on the circumstances of the person.

Clause 70 would amend section 118D by introducing the concept of a "special wife service pensioner" to clarify who is to receive the higher or lower rate of supplement.

Clause 70 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 71 : Advance pharmaceutical supplements for advance pensioners A

Section 118F of the Principal Act provides that a person who is an eligible pensioner on 1 November 1990 will be entitled to receive an advance pharmaceutical supplement on 1 November 1990. The advance would be payable at one of two rates dependent on the circumstances of the person.

Clause 71 would amend section 118F by introducing the concept of a "special wife service pensioner" to clarify who is to receive the higher or lower rate of advance supplement.

Clause 71 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 72 : Further advance pharmaceutical supplements for continuing advance pensioners A

Section 118G of the Principal Act provides for the payment of further advance pharmaceutical supplements to continuing advance pensioner A's. The further advance supplement would be payable at one of two rates dependent on the circumstances of the person

Clause 72 would amend section 118G by introducing the concept of a "special wife service pensioner" to clarify who is to receive the higher or lower rate of the advance supplement.

Clause 72 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 73 : Advance pharmaceutical supplements for advance pensioners B

Section 118H of the Principal Act provides for the payment of advance pharmaceutical supplements to an advance pensioner B. The advance supplements are payable at one of two rates dependent on the circumstances of the person.

Clause 73 would amend section 118H by introducing the concept of a "special wife service pensioner" to clarify who is to receive the higher or lower rate of the advance supplement.

Clause 73 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 74 : Pharmaceutical supplements not additional
to advance pharmaceutical supplements

Section 118J of the Principal Act ensures that pharmaceutical supplements are not paid in addition to advance pharmaceutical supplements in respect of the same period.

Clause 74(a) would amend subparagraph 118J(3)(b)(i) by omitting "2.5" and substituting "5". This amendment is required to correct a drafting error.

Clause 74(b) would amend section 118J by introducing the concept of a "special wife service pensioner" to be used to clarify the appropriate method of calculation of the "advance payment period" is in respect of a person.

Clause 74 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 75 : Insertion of new sections

New section 118JA . Qualification for pharmaceutical allowance

New section 118JB . Rate of pharmaceutical allowance

New section 118JC : Payment of pharmaceutical allowance

Clause 75 would insert new sections into the Principal Act to provide for the payment of a pharmaceutical allowance. This amendment is consequential on the amendment proposed by clause 88 which would omit subsections 198(5G) to (5P).

New section 118JA would provide the eligibility criteria for the pharmaceutical allowance. Subject to sections 118K and 118L a person would be eligible to receive a pharmaceutical allowance if he or she is in receipt of a service pension, a wife's service pension a carer's service pension or a pension whose rate is specified under subsection 30(1) or (2).

New section 118JB would provide for the rate of pharmaceutical allowance payable. The basic rate would be \$5.00 per fortnight except for a person (other than a special wife service pensioner) in receipt of a pension at the rate specified in paragraph 47(1)(b). This would mean in effect that, where a pensioner was part of a couple and the partner was also eligible for the pharmaceutical allowance, each person would receive \$2.50 per fortnight.

New section 118JC would provide that, subject to sections 118K and 118L, a person would be paid the allowance on each pension payday on which the person is eligible for the allowance.

Clause 75 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 76 : Pharmaceutical allowances not payable to advance pensioners A during advance payment period

Clause 76(a) would amend subsection 118K(1) to provide that an advance pensioner A who has received at least one advance pharmaceutical supplement under section 118G, would not be eligible to receive the pharmaceutical allowance during his or her advance payment period. This amendment would be consequential on the amendment made by clause 75. The clause would also make a minor technical amendment by omitting the reference to a "disqualified advance pensioner".

Clause 76(b) would also correct a drafting error by omitting the reference to the date "1 November 1990" in subsection 118K(2) and inserting "20 March 1991".

Clause 76(c) would amend section 118K by introducing the concept of a "special wife service pensioner" to be used to clarify the appropriate method of calculation of the "advance payment period" in respect of a person.

Clause 76 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 77 : Pharmaceutical allowances not payable to advance pensioners B during advance payment period

Clause 77 would amend subsection 118L(1) to provide that an advance pensioner B who has received at least one advance pharmaceutical supplement under section 118H, would not be eligible to receive the pharmaceutical allowance during his or her advance payment period. This amendment would be consequential on the amendment made by clause 75. The clause would also make a minor technical amendment by omitting the reference to a "disqualified advance pensioner".

Clause 77 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 78 : Advances and eligibility for entitlement card

Section 118M of the Principal Act provides that if a person is qualified to receive an advance pharmaceutical supplement and the amount of the supplement exceeds the amount remaining to be charged for supplies of pharmaceutical benefits before the person will become eligible to be issued with an entitlement card under subsection 84C(1A) of the National Health Act 1953, then the amount of the advance pharmaceutical supplement is to be reduced by the excess and no further advance pharmaceutical supplements are payable to the person.

Clause 78 would amend section 118M to ensure that the amount by which the advance pharmaceutical supplement would be reduced would be related to the maximum amount of benefit payable.

Clause 78 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 79 : Maximum benefit

Clauses 79(a) and (c) would amend paragraphs 118N(1)(b) and (2)(c) by omitting the reference to amounts payable under specified paragraphs which by the operation of clause 88 have been omitted. The references would be replaced by reference to pharmaceutical allowances. This is consequential on the amendments made by clause 75.

Clause 79(b) would amend section 118N by introducing the concept of a "special wife service pensioner" to be used to clarify the maximum benefit which may be payable dependant on the circumstances of the person.

Clause 79 would commence immediately after the commencement of section 18 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 80 : Instalments of pension

Clause 80 would insert in the definition of "pension" in subsection 121(5) of the Principal Act, a reference to temporary incapacity allowance under section 107 or loss of earnings allowance under section 108. This would overcome an unintended consequence of an amendment to section 120 by the Social Security and Veterans' Affairs Legislation Amendment Act (No.4) 1989 to simplify the administration of fortnightly pensions and allowances and to provide for a person to have a full instalment of pension or allowance on each pension pay day when the person is alive and eligible. As these allowances are one-time payments the effect of this amendment is that these allowances are payable only as a fortnightly amount if the veteran is eligible on a payday. This amendment would clarify the situation by excluding temporary incapacity allowance and loss of earnings allowance from the operation of section 121.

Clause 80 would commence immediately after the commencement of section 120 of the Social Security and Veterans' Affairs Legislation Amendment Act (No.4) 1989.

Clause 81 : Power to obtain information

Clause 81 would amend section 127 of the Principal Act by inserting a reference to the requirement that notices required to be provided by pensioners shall be in the manner specified. This amendment would clarify the operation of this provision

and overcome difficulties associated with misunderstandings about the response required in relation to a notice by the Secretary requiring information.

Clause 81 would commence on the day of Royal Assent.

Clause 82 : Provision of tax file numbers

New section 128A, which would be inserted into the Principal Act by the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990, would provide that where the Secretary requests a person to do so, a person would not be eligible for payment under the Principal Act unless the person has given or has taken steps to give the Secretary his or her tax file number and the tax file number of his or her spouse

Clause 82(a) would insert a definition of "employment declaration" into proposed new section 128A. An "employment declaration" would be taken to have the same meaning as for the Income Tax Assessment Act 1936.

Clause 82(b) would insert new subsection 128A(5) into the Principal Act which would qualify the operation of section 128A so that a person would not be required to provide the tax file number of the person's spouse where the Secretary is satisfied that the person does not know the number or the person cannot obtain the number from the person's spouse or a statement or declaration by the spouse of that number.

Clause 82 would commence immediately after the commencement of section 24 of the Social Security and Veterans' Affairs Legislation Amendment Act (No.2) 1990.

Clause 83 : Tax file numbers

New section 128B, which would be inserted into the Principal Act by the Social Security and Veterans' Affairs Legislation Amendment Bill (No.2) 1990, would be paramount over section 8WA of the Taxation Administration Act 1953. Section 8WA of that Act prohibits a person from requiring or requesting another person to quote his or her tax file number except in stated circumstances.

Amendments to be made to the Taxation Administration Act 1953 by Parts 7 and 8 of the Social Security Legislation Amendment Bill 1990 would render as redundant the proposed new section 128B.

Clause 83 would repeal section 128B.

Clause 83 would commence immediately after the commencement of Parts 7 and 8 of the Social Security Legislation Amendment Act 1990.

Clause 84 : Statements of decisions of the Board etc.

This clause is a technical drafting amendment.

Clause 84 would commence on the day of Royal Assent.

Clause 85 : Procedure of Board

Section 148 of the Principal Act deals with the procedural arrangements for the Veterans' Review Board to review a decision of the Commission. Specifically, subsection 148(3) provides that the Principal Member may defer fixing a hearing date until the parties have advised that they are ready to proceed. There is no time limit imposed for the matter to be settled.

Clause 85(a) would insert new subsections 148(3A) to(3E) into section 148 to provide that where an application to the Veterans' Review Board for review of a decision of the Commission is not finalised within 2 years of the date the application for review was received at an office of the Department in Australia, and the Principal Member is not satisfied that the applicant is diligently pursuing the application, the application will be dismissed.

New subsection 148(3A) would provide that if, after 2 years from the date on which an application to the Veterans' Review Board for review of a decision of the Commission, no hearing has been arranged, and the Principal Member is not aware of any reason why the hearing cannot proceed, the applicant will be asked to provide within 28 days a written statement that

the applicant is ready to proceed or a written explanation of why the applicant is not ready to proceed.

New subsection 148(3B) would provide that where no response is received from the applicant within 28 days of receipt of the request the application will be dismissed by the Principal Member. Both parties will be notified accordingly.

New subsection 148(3C) would provide that where the applicant provides a written statement explaining why he or she is not ready to proceed and the Principal Member considers the explanation to be reasonable both parties will be notified accordingly.

New subsection 148(3D) would provide that where the applicant provides a written statement explaining why he or she is not ready to proceed and the Principal Member considers that the explanation is not reasonable the application will be dismissed by the Principal Member. Both parties will be notified accordingly.

New subsection 148(3E) would provide for a 3 monthly review of all applications which are not finalised as a result of these provisions. That is, where an explanation has been provided to which new subsection 148(3C) applies.

Clause 86 would provide for review by the AAT of decisions taken under these new subsections.

Clause 85(b) would insert new subsection 148(6A) which would provide for streamlining of the review process by enabling obtain further information or arrange for further investigations to be carried out and a report to be provided to the Principal Member.

Clause 85(c) would amend subsection 148(7) to include a reference to requests made by the Principal Member to be consistent with the language used in new subsection 6A of the Principal Act which would be inserted by Clause 6(b)

Clause 85 would commence on the day of Royal Assent.

Clause 86 : Insertion of new section

New section 155A : Review by Administrative Appeals Tribunal

Clause 86 would insert new section 155A into the Principal Act. This amendment is consequential on the amendments made by clause 85.

New subsection 155A(1) would provide that a decision of the Principal Member to dismiss an application under the provisions of new subsection 148(3B) or a decision under new paragraph 148(3C)(b) that an applicant has provided a reasonable explanation for the applicant's failure to be ready to proceed at a hearing or a decision under new paragraph 148(3D)(b) that an applicant has provided no reasonable explanation for the applicant's failure to be ready to proceed

at a hearing are all decisions reviewable by the Administrative Appeals Tribunal

New subsection 155A(2) would provide that notification of a decision which is reviewable because of the operation of new subsection 155A(1) must include a statement to the effect that the decision is reviewable by the Administrative Appeals Tribunal.

New subsection 155A(3) would provide that a decision is valid even if the requirements of new subsection 155A(2) have not been complied with.

Clause 86 would commence on the day of Royal Assent.

Clause 87 : Applications for review

Clause 87 would omit the current subsection (2) of section 175 of the Principal Act and insert a new subsection (2) to provide for a right of review to the Administrative Appeals Tribunal against all decisions of the Commission under section 59 of the Principal Act. This amendment would apply to the extension of an appeal right to decisions of the Commission made pursuant to section 124 relating to the termination of pension.

Clause 87 would commence on the day of Royal Assent.

Clause 88 : Variation of rates of certain pensions

Subsections 198(5G) to (5P) were inserted into the Principal Act by the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990 to provide for an increase in the basic rates for service pensions and war widows and orphans pensions as compensatory payment to offset the costs of pharmaceutical benefits available under the Pharmaceutical Benefits Scheme.

Clause 88 would omit these subsections as a consequence of the insertion of new sections 118JA, 118JB and 118JC to be inserted by clause 75. That clause would provide for the payment of a pharmaceutical allowance in lieu of the rate increases proposed by subsections 198(5G) to (5P). This amendment would ensure that the payment would be "quarantined" from the basic rate of pension and would ensure that it would be possible to increase the allowance in line with increases in the costs of pharmaceutical items available under the Pharmaceutical Benefits Scheme.

Clause 88 would commence immediately after the commencement of section 17 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990.

Clause 89 : Indexation of income test "free area"

Section 198B of the Principal Act applies to the automatic indexation of the income test "free area". Among other things, this section provides that the annual amount of income that can be received before service pension is reduced is

rounded to the nearest \$1.00. Clause 89 would provide for this amount to now be rounded to the nearest \$26.00 for ease of administration and to enable clearer advice to clients. A similar amendment is being made to the Social Security Act 1947.

Clause 89 would commence on the day of Royal Assent.

Clause 90 : Insertion of new section

New section 198D : Variation of rates of certain allowances etc.

Section 27 of the Principal Act specifies additional amounts of pension payable to a veteran in receipt of a pension under Part II of that Act where the veteran is incapacitated by a war-caused injury or a war-caused disease of a kind described in column 1 of the table in subsection 27(1). The rates payable under items 7 to 15 are not currently subject to automatic indexation.

Section 97 of the Principal Act provides for the payment of a clothing allowance to severely handicapped veterans in receipt of a pension under Part II of that Act. The rates of clothing allowance are not currently subject to automatic indexation.

Section 98 of the Principal Act provides for the payment of attendant allowance to eligible veterans who need assistance with the normal requirements of daily living. The rates of

attendant allowance are not currently subject to automatic indexation

Section 104 of the Principal Act provides for the payment of a recreation transport allowance to veterans to assist in travel for recreational purposes where they are suffering from a war-caused incapacity or disease of the kind described in column 1 of the table in section 104 or where war-caused disabilities adversely affect their power of locomotion. The rates of recreation transport allowance are not currently subject to automatic indexation.

Clause 90 would insert new section 198D which would provide that, as from September 1991, the rates of these allowances would be indexed annually based on the Consumer Price Index for the twelve months ending in June each year.

Clause 90 would commence on the day of Royal Assent.

Clause 91 : Recovery of overpayments

Clause 91 would remove from the Regulations and insert in subsection 205(8) of the Principal Act, a definition of "prescribed educational scheme". Section 205 provides for the recovery of overpayments of amounts not lawfully paid to a person under a prescribed educational scheme. This clause would also provide for the addition to the definition of the "English as a Second Language Allowance Scheme".

Clause 91 would commence on the day of Royal Assent

Clause 92 : Schedule 2

Clause 92 would amend Schedule 2 by inserting commencing and closing dates against each of the respective operational areas described, commencing and closing dates which more accurately reflect the periods during which the areas described were operational areas. That is, to indicate the periods during which the danger involved in serving in these areas, and the nature of the service carried out, involved risks and hazards over and above those associated with normal peacetime operational Defence Service. This amendment would remedy problems encountered since the commencement of the Veterans' Entitlements Act 1986, when the dates in several of the items other than those relating to Vietnam (Southern Zone) in Schedule 2 were extended to 11 January 1973 and which has only now created difficulties in the light of the Federal Court decisions in Doessel and Davis.

Clause 92(a) would amend the period for the operational area of Borneo to 8 December 1962 to 30 September 1967.

Clause 92(b) would provide for the period of operational service in South Malaya to be from 7 July 1965 to and including 30 September 1967.

Clauses 92(a) and(b) would commence immediately after the commencement of the Veterans' Entitlements Act 1986.

Clause 92(c) would insert a closing date of 10 April for operational service in respect of item 9 of Schedule 2 which relates to operational service in Namibia with the United Nations Transition Assistance Group.

Clause 92(d) would provide for the extension of Repatriation benefits to members of the Australian Defence Force serving with the United Nations in the Middle East. Item 10 describes the geographical boundaries of the operational area and ascribes to it a commencing date of 2 August 1990.

Clause 92(f) would commence on the day of Royal Assent

PART 7 - TRANSITIONAL

Clause 93 : Certain claims and applications made on or before
8 November 1990

Clause 93 would provide that the amendments proposed by clauses 37 and 38 of this Bill would not apply to a claim or application that was granted on or before 8 November 1990 on the basis that the person was allotted for duty in an operational area or was a member of a unit that was allotted for duty in an operational area. The savings provision would also apply to claims and applications lodged on or before 8 November but which have not been determined before 9 November

1990. Claims and applications lodged after 8 November will be
d terminated on the basis of the proposed amendments to the
allotment provisions contained in this Bill

