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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (NO.2) 1992

EXPLANATORY MEMORANDUM

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

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Veterans' Affairs Legislation Amendment Bill (No.2) 1992

Outline and Financial Impact Statement

This portfolio Bill introduces a number of changes to Veterans' Affairs legislation arising out of the 1992 Budget announcements in relation to veterans. It also contains a number of minor non-Budget policy changes and minor and technical amendments to Veterans' Affairs legislation.

The Acts amended by this Bill include:

- the *Veterans' Entitlements Act 1986*;
- the *Seamen's War Pensions and Allowances Act 1940*;
- the *Defence Service Homes Act 1918*; and
- the *Social Security Act 1991*.

These important measures relating to veterans and their dependants which were announced in the Budget include:

provision of an increase in the rates of disability and service pensions in anticipation of the March 1993 indexation of these amounts and bringing forward that increase to February 1993;

- extension of the purpose for which Defence Service Homes loans may be made to include modifications or repairs of existing homes or to discharge existing mortgages;

from 1 January 1993, to provide for the special grant of war widow/ers pension and orphans pension for dependants of certain ex-prisoners of war;

the extension of fringe benefits to all service pensioners from 1 April 1993;

- a 25% increase in the rates of remote area allowance from 7 January 1993 to \$15.00 per fortnight for each member of a pensioner couple and \$17.50 per fortnight for a single pensioner;

simplification of the managed investment rules from 1 April 1993;

reform of the rent assistance provisions from 1 April 1993 to:

- increase and individualise rent thresholds to -
 - * \$60.00 per fortnight for a single pensioner without children;
 - * \$80.00 per fortnight for single pensioners with children;
 - * \$100.00 per fortnight combined for a pensioner couple without children;
 - * \$120.00 per fortnight combined for a pensioner couple with children;
- indexation of the rent thresholds in line with the CPI commencing from September 1993;

- increasing the rate of rent assistance to single pensioners without children by \$4.00 per fortnight;
- calculating rent assistance on the basis of 75 cents rent assistance for every dollar of rent paid above the rent threshold up to the maximum rate of rent assistance payable;
- providing a savings provision to protect the current amount of rent assistance for those recipients adversely affected by the above changes.
- from 1 April 1993, the extension of the current assessment rules for compulsorily preserved superannuation benefits to all superannuation benefits held by pensioners.
- from 1 July 1993 amend provisions related to carer service pensions to:
 - increase the period of temporary cessation of care for carers from 28 days to 42 days;
 - allow carer service pensioners to travel overseas during a period of temporary cessation of care;
 - allow carer service pensioners to undertake training, education and employment for up to ten hours a week;
 - extend the earnings credit provisions to carer service pensioners; and
 - extend the lump sum bereavement provisions to non-partner carer service pensioners.
- assess capital gains and losses from shares and other listed securities as ongoing income, and allow for offsetting of losses against income from other shares or managed investments in the assessment of income for service pension assessment purposes.

The Bill also contains a number of minor non-Budget policy initiatives which impact on a range of veterans benefits and includes a number of minor technical and drafting amendments to Veterans' Affairs legislation.

Financial Impact

The financial implications of the non-Budget measures in the Bill are negligible. The cost of the Budget measures amount to \$24.024 million in 1992/93, \$10.842 million in 1993/94 and \$12.015 million in 1994/95 after allowing for savings offsets of \$19.160 million in 1993/94 and \$22.060 million in 1994/95 from the changes to the assessment of shares.

PART 1 - PRELIMINARY

Part 1 of the Bill sets out how the amending Act is to be cited (clause 1), when the various Parts, Divisions and Sections of the amending Act are to commence (clause 2) and the application date of certain amendments (clause 3).

PART 2 - AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

Summary of proposed changes

This amendment will give effect to the Government's decision, announced in the Budget, to allow the use of Defence Service Homes loans for repairs or modifications to properties already owned by eligible persons or for the discharge of existing mortgages. The changes are aimed at assisting a number of persons eligible for assistance under the Defence Service Homes Scheme, many of whom are elderly or widowed, or who live in housing which is no longer suitable to their needs.

Making low-interest Defence Service Homes loans available for major repairs such as re-roofing their home or repairs and modifications such as downstairs bathrooms or kitchen refurbishment, will enable them to continue living in their own homes.

The changes will also allow for Defence Service Homes loans to be used for the purpose of discharging an existing mortgage. This change will address the needs of those who are experiencing difficulty with repayments on their current mortgage at the housing rate, or in some cases, at high interest rates fixed under contracts entered into when market rates were rising. This group is generally on fixed or reduced incomes but unable to access their Defence Service Homes entitlement to a fixed rate housing loan at 6.85% due to the existing bar in the Principal Act on the use of loans for refinancing existing mortgages, except in cases of extreme financial hardship.

Background

The proposal is consistent with the Government's policy of helping older people to stay in independent living arrangements as long as possible. As these changes will provide additional business under the Agreement between the Commonwealth and Westpac Banking Corporation for the provision of Defence Service Homes loans, an agreement has been negotiated with the Bank for a commission to be paid to the Commonwealth for the new business. In addition, the agreement provides for all Defence Service Homes clients to receive a 50% discount on establishment fees.

Clauses involved in the amendment

Clause 4 would provide that, in this Part, the "Principal Act" means the *Defence Service Homes Act 1918*.

Clause 5 will amend section 18 of the Act by inserting a reference to "modification and repairs" among those matters for which an advance may be made available to eligible persons. It also repeals all of those subsections within section 18 which currently restrict loans for the purpose of discharging an existing mortgage.

Commencement

These changes will commence from 1 January 1993 (subclause 2(4)).

PART 3 - AMENDMENTS OF THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Division 1 - Preliminary

This Division would provide that, in this Part, the "Principal Act" means the *Seamen's War Pensions and Allowances Act 1940* (clause 6).

Division 2 - Dependants of former POWs

Summary of proposed changes

This amendment will provide eligibility for war widows pension and pension for dependent children, in respect of the death of certain Australian mariners who were former Prisoners of War (POWs). A full explanation of the changes is provided in respect of similar amendments to the Veterans Entitlements Act to extend benefits to the widow/ers and dependent children of former POWs (Division 2 of Part 4 of the Bill refers).

Clauses involved in the changes

Clause 9 would amend section 17A of the Principal Act to provide for payment of pension to the widow and dependent children of a deceased Australian mariner who was a POW in the course of employment as an Australian mariner and whose death is not accepted as being related to service under section 12 of the Principal Act.

Clause 10 would amend section 25A of the Principal Act to provide for these pensions, in certain circumstances, to be automatically paid on the death of the Australian mariner. This amendment will operate in a similar way as the amendment to the corresponding provision in the Veterans' Entitlements Act proposed by clause 14.

Commencement

These changes will commence on 1 January 1993 (subclause 2(4)).

Division 3 - Pension rate increases

Summary of proposed changes

This amendment would provide for a one-off increase in the rate of:

- war widows pension;
- the general rate of disability pension; and
- the intermediate rate of disability pension.

This amendment would provide for an anticipation of the 1993 March indexation of these amounts and would bring forward and pay the increase in early February 1993.

Background

Pension rates are normally increased twice yearly in line with movements in the Consumer Price Index (CPI). This occurs on the first pension payday after 20 March and 20 September each year. Due to the overall negative rate of the CPI over the last six months, pensions did not increase in September 1992 and risk falling below the Government's target rate of 25% of Average Weekly Earnings.

Clauses involved in the changes

Clause 9 would update the intermediate rate of disability pension located in section 18 of the Principal Act.

Clause 10 would amend section 18AA of the Principal Act to provide that war widows pension and the general and intermediate rates of disability pension would not be indexed on 20 March 1993.

Clause 11 would update the rate of war widows pension and the general rate of disability pension located in Schedule 1 to the Principal Act.

Commencement

This amendment will commence on 4 February 1993 (subclause 2(6)).

PART 4 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Division 1 - Preliminary

This Division would provide that, in this Part, the "Principal Act" means the *Veterans' Entitlements Act 1986* (clause 12).

Division 2 - Dependants of former POWs

Summary of proposed changes

This amendment will provide eligibility for war widows/ers pensions and orphans pensions to dependants of certain former Prisoners of War (POWs). To be eligible, the person must be the dependant of a person who while on operational service was a POW. For the purposes of this amendment a person was on operational service if the person was:

- a Member of the Defence Force;
- a member of a Commonwealth or Allied Defence Force who was domiciled in Australia immediately before appointment or enlistment in the Forces of the Commonwealth or Allied country with whom he or she served;
- a person employed by the Commonwealth on a special mission outside Australia;
- an eligible civilian in World War II who was detained by the enemy (eg, a British subject resident in the then Territories of Papua and New Guinea (but not indigenous inhabitants of that country)); or
- an Australian mariner.

Background

Currently war widow/er pension and pension for dependent children of deceased veterans, may be granted automatically if, prior to the veterans' death, the veteran was in receipt of:

- special rate pension;
- extreme disablement adjustment; or
- additional pension in respect of one of the first eight items in column 1 of the table in section 27 of the Act ("double amputee" rate).

About 80% of the spouses and dependants of former POWs currently qualify for war widow/er pensions. This includes about 31% (compared with 13% of cases from the general veteran community) who qualify on the basis that the former POW received a pension which would give the widow/er and dependants automatic entitlement to pensions. The balance would be eligible after the veteran's death is determined to be war-caused.

In recognition of the trauma of incarceration and the ongoing difficulties of re-adjustment experienced by former prisoners of war and their families, an automatic grant of war widow/er pension and dependent child's pension is proposed for the spouses and children of deceased ex-POWs.

Clauses involved in the changes

Clause 13 would amend section 13 of the Principal Act to provide for the payment of pension to the widow/er and dependent children of a deceased veteran who was a POW at a time when the veteran was on operational service and whose death is not war-caused.

Clause 14 would amend section 13A to provide that where the provisions outlined in clause 13 apply, the pension may be payable to the dependant without the dependant having to make a claim for the pension and without the Repatriation Commission having to make a formal determination under section 19 of the Principal Act. This clause is framed in a way which requires a claim to be lodged by those dependants about whom there is insufficient information to automatically determine their entitlement to pension. For example, the Department may not be aware of the existence of a dependant of the veteran until long after the veteran's death, or may be aware of the person's existence, but have insufficient details about the arrangements for payment of pension. In such cases the dependant will be required to lodge a claim for pension in accordance with the provisions of section 14 of the Principal Act.

Clause 15 would amend section 86 to ensure that the dependants of deceased ex-prisoners of war who are entitled to pensions under these provisions are also eligible to be provided with treatment under the Act.

Clause 16 amends the definition of "eligible child of a veteran" in section 116 of the Principal Act for the purposes of extending benefits under the Veterans' Children Education Scheme to the children of eligible deceased ex-POWs.

Commencement

These changes will commence on 1 January 1993 (subclause 2(4)).

Division 3 - Pension rate increases

Summary of proposed changes

This amendment would provide for a one-off increase in the rate of:

- service pension (both the married and single rates);
- war widows and war widowers pensions;
- the general rate of disability pension;
- the special rate of disability pension;
- the intermediate rate of disability pension; and
- items 1-6 of the table at subsection 27(1) (the "double amputee" rate).

This amendment would provide this increase in an anticipation of the 1993 March indexation of these amounts and would bring forward and pay the increase in early February 1993.

The rate of extreme disablement adjustment will also increase without the need for legislative amendment. This rate is fixed at 150% of the general rate of disability pension.

Background

Pension rates are normally increased twice yearly in line with movements in the Consumer Price Index (CPI). This occurs on the first pension payday after 20 March and 20 September each year. Due to the overall negative rate of the CPI over the last six months, pensions did not increase in September 1992 and risk falling below the Government's target rate of 25% of Average Weekly Earnings.

Clauses involved in the changes

Clause 17 - 25 would update the rates of these amounts wherever they occur in the Principal Act.

Clause 26 would provide that item 1 of the table at section 59B (ie, both rates of service pension) would not be indexed on 20 March 1993.

Clause 27 would amend section 198 of the Principal Act to provide that war widows pension, war widowers pension, the disability pension amounts and the "double amputee" rate would not be indexed on 20 March 1993.

Commencement

This amendment will commence on 4 February 1993 (subclause 2(6)).

Division 4 - Investments

Summary of proposed changes

It is proposed to amend the Principal Act to:

- provide uniform assessment rules for all post 1 January 1988 accruing return investments, certain pre 1 January 1988 accruing return investments and post 9 September 1988 market linked investments;

allow the offset of managed investments losses against managed investment income where those investments are assessed on an ongoing basis; and

- allow the costs incurred in disposing of a managed investment to be offset against a return on managed investments where those investments are assessed on an ongoing basis;

continue the current assessment of certain pre 1 January 1988 accruing return investments and pre 9 September 1988 market linked investments by assessing income only on realisation of the investment. However, the formula used to calculate this income will consider capital growth on the investment during the person's "assessable period". A person's assessable period will not include any period of two years or more when the person was not in receipt of a pension or benefit.

Background

The current income test treatment of managed investments is extremely complex with the assessment rules depending on the type of investment and the date that the investment was acquired. For most accruing return investments made prior to 1 January 1988 and all market linked investments made prior to 9 September 1988, no ongoing income is assessed on the investment. Capital growth is assessed on realisation of the investment.

For accruing return investments made after 1 January 1988, capital growth plus any bonuses or distributions are assessed on an ongoing basis using a current rate of return.

For market linked investments made after 9 September 1988, an administered rate of return deemed at 11% is generally used. Pensioners or fund managers must apply for a lower rate to be used in pension assessment where appropriate. The reviewing of the 11% benchmark is provided for under the Social Security Act. Any reassessed rate is applied to investments made by service pensioners.

Explanation of the changes

These amendments abolish the distinction between those market-linked investments and accruing return investments that are assessed on an ongoing basis. The current method of assessing accruing return investments will now be applied to all managed investments (ie, using a rate of return based on the performance of the investment over the previous twelve months).

Currently, where an investment makes a loss, no recognition is given to the impact of this loss on a pensioner's investment income. These amendments allow negative rates of return on managed investments where those investments are assessed on an ongoing basis.

Clauses involved

Clause 28 would insert "investment product" and "managed investment" definitions into section 5J. It would also insert new subsections (1A) to (1C) which provide an expanded definition of a "managed investment".

Clause 29 would repeal section 46 of the Principal Act and replace it with the structure of the division detailing the new forms of investments.

Clause 30 would insert a new Subdivision in Division 8. New Subdivision AA contains the assessment rules for managed investments (new sections 46AA-46AG).

New section 46AA would detail the types of investments to be assessed under this subdivision.

New section 46AB would assess the income from managed investments by calculating the capital growth on the investment. This would be achieved by multiplying the current value of the investment by the annualised rate of return.

New section 46AC would assess the loss in value of the managed investment by calculating the capital loss on the investment.

Subsection (1) would assess the loss by multiplying the current value of the investment by the annualised rate of loss.

Subsection (2) would provide that the sum of losses from managed investments cannot exceed the total returns made from managed investments.

New section 46AD would provide a formula for calculating whether a managed investment produces a return or a loss. This would be achieved by subtracting the opening value of the investment from the sum of the closing value of the investment and any distributions and bonuses paid in respect of that investment.

New section 46AE would allow the loss or return from the investment to be converted into an annual figure for service pension assessment purposes.

New section 46AF would provide that investment costs incurred in acquiring or disposing of an investment can be offset against a return assessed under this Subdivision.

New section 46AG would provide that the actual return or loss from a managed investment is disregarded for the purposes of pension assessment.

Clause 31 would amend the heading to the subdivision dealing with accruing return investments to reflect that the assessment rules only apply to accruing return investments made or acquired before 1 January 1988.

Clause 32 would amend section 46B (assessment of pre 1 January 1988 accruing return investments) by providing that assessment of income on realisation of the investment is based only on the assessable period of the person.

Clause 33 would repeal sections 46C to 46H of the Principal Act which relate to the assessment of post 1 January 1988 accruing return investments. Under this proposal their assessment would be provided for by new Subdivision AA.

Clause 34 would amend the heading to the subdivision dealing with market linked investments to reflect that the assessment rules only apply to market linked investments made or acquired before 9 September 1988.

Clause 35 would amend section 46J (assessment of pre 9 September 1988 market linked investments) by providing that assessment of income on realisation of the investment is based on the assessable period of the person.

Clause 36 would repeal sections 46L to 46R of the Principal Act which relate to the assessment of post 9 September 1988 market linked investments. Under this proposal their assessment would be provided for by new Subdivision AA.

Clauses 37 to 41 would provide consequential amendments to provisions in Divisions 1A & 1B of Part III of the Principal Act.

Commencement

This amendment will commence on 1 April 1993 (subclause 2(8)).

Division 5 - Rent assistance

Background

Rent assistance is a payment designed to assist service pensioners in meeting the costs of private rental accommodation. Rent assistance is paid in addition to the basic rate of service pension.

Over recent years a number of changes have been made to rent assistance with the aim of providing more assistance to those in most need. Despite this, a review of housing needs found that a significant number of pensioners who rent private accommodation continue to pay a high proportion of their available income (including pension) on accommodation. Single pensioners without children were found to be the most disadvantaged group.

Summary of proposed changes

This proposal will:

- increase and individualise rent thresholds;
- index the new rent thresholds;
- calculate rent assistance on a 75 cents in the dollar formula; and
- provide one-off increase to the maximum rate of rent assistance for single pensioners without children.

Division 15 of this Bill will provide a savings provision to ensure that no current rent assistance recipients are disadvantaged by the introduction of these reforms.

These measures will be discussed individually.

Increase and individualise rent thresholds

Currently, the Veterans' Entitlements Act provides a standard rent threshold of \$1300 per year (\$50 per fortnight) irrespective of the pensioner's circumstances. Under this proposal, four rent thresholds will be introduced and the amount applicable will be dependent on the person's familial circumstances.

The new thresholds will be:

- \$1560 per year (\$60 per fortnight) for a pensioner who is not a member of a couple and does not have any dependent children.

\$2080 per year (\$80 per fortnight) for a pensioner who is not a member of a couple and does have dependent children;

\$2600 per year (\$100 per fortnight) combined for a pensioner couple who do not have any dependent children; and

- \$3120 per year (\$120 per fortnight) combined for a pensioner couple who do have dependent children.

Clauses involved

Clauses 42 to 45 would update the references to the rent thresholds contained in the rate calculators. This would require amendment to points 41-C2, 42-D2, 43-D2 and 44-C2 to provide the appropriate rent thresholds (particular to that rate calculator) in the eligibility provisions for rent assistance. A person must be paying more rent than the applicable rent threshold to be eligible for rent assistance.

These clauses would also update the Rate A amounts contained in the table at points 41-C6, 42-D6 and 44-C6 to enable the calculation of the rate of rent assistance payable using the person's actual circumstances. This rate is then compared to the maximum rent assistance payable (Rate B amounts of the table) and the lesser of these amounts is the rate of rent assistance a person is entitled to.

Index the new rent thresholds

Commencing 20 September 1993, all rent thresholds will be indexed twice yearly in line with increases in the Consumer Price Index.

Clauses involved

Clause 46 would insert new item 6A in the table at section 59A and new item 3A in the table at section 59B to provide for the indexing of the rent thresholds.

Calculate rent assistance on a 75 cents in the dollar formula

Currently, the rate of rent assistance payable to a pensioner is calculated at the rate of 50 cents rent assistance for every dollar of rent paid above the rent threshold, up to the maximum amount of rent assistance payable.

This applies to a person who is either not a member of a couple or who is a member of a couple where the person's partner does not receive rent assistance.

For a pensioner couple where both receive rent assistance in respect of the same home, the rate payable by this formula is halved for each member of the pensioner couple.

Under the proposal, the basis for calculating rent assistance will be at the rate of 75 cents rent assistance for every dollar of rent paid above the applicable rent threshold, up to the maximum amount of rent assistance. Similarly, for a member of a pensioner couple where both members receive rent assistance in respect of the same home, the rate of rent assistance calculated by this method is halved for each pensioner.

Clauses involved

Clauses 42, 43 and 45 would update the formulae contained in the Rate A amounts in the table at points 41-C6, 42-D6 and 44-C6 to assess rent assistance as 75 cents for every dollar of rent the person pays above the applicable rent threshold. For a pensioner couple, each member receives half of the amount calculated by this method.

This rate is then compared to the maximum rent assistance payable (Rate B amounts of the table) and the lesser of these amounts is the rate of rent assistance a person is entitled to.

Provide one-off increase to the maximum rate of rent assistance for single pensioners without children

Studies of rental housing circumstances have shown that single pensioners without children suffer the most severe housing affordability problems. For this reason, these pensioners have been targeted for the increase.

Clauses involved

Clauses 42(d) and 45(d) will insert a new point in the rent assistance modules in sections 41 & 44, respectively, to provide that the item 1 & 2 amounts in column 4, from the preceding table, are increased on 1 April 1993 by \$104 in addition to the March 1993 indexation of the amounts.

Commencement

These amendments will commence on 1 April 1993 (subclause 2(8)).

Division 6 - Superannuation investments prior to pension age

Summary of proposed changes

This amendment would extend the special assessment rules for compulsorily preserved superannuation to all superannuation or roll over funds held by the pensioner.

Therefore, a pensioner's superannuation fund investment would be income and asset exempt until the pensioner reached pension age unless he/she withdraws any money that was not rolled over.

Background

Currently, the Principal Act contains special assessment rules for compulsorily preserved superannuation benefits. Compulsorily preserved superannuation benefits are superannuation benefits that can not normally be accessed until the investor is at least 55 years of age and has retired.

Until a person has reached pension age:

- the asset value of the superannuation benefit is disregarded for the assets test; and
- no income is maintained on the investment.

If, prior to pension age, the person withdraws from the superannuation fund and does not roll over the withdrawn funds, the capital growth of the benefit that accrued after service pension was granted is assessed on the withdrawal and maintained as income for twelve months from the date of the withdrawal.

If the withdrawal is rolled over, no income is assessed on the withdrawal.

Once the person has reached pension age, the investment is treated under the managed investment rules.

Clauses involved

Clause 48 will amend section 5 (Income test definitions) to provide the income exemption for the superannuation benefit.

Clause 49 inserts new definitions "investment" and "realise", and new subsections (6) to (8) in section 5J of the Principal Act. These new definitions encompass the definition of "realises an investment" contained in the current section 46BA and provide the rules to determine when a superannuation fund amount has been realised.

These provisions apply equally to:

- the assessment of money received from a superannuation fund prior to pension age (as detailed in clause 53); and
- the assessment of superannuation fund amounts realised after the person has reached pension age, which is determined under the managed investment rules (as detailed in Division 4 in Part 4 of this Bill).

Clauses 50, 51 and 52 repeal the current section 46BA and update references to realising an investment in the notes after sections 46B & 46J.

Clause 53 inserts a new Subdivision D of Division 8 of Part III of the Principal Act including new sections 46S & 46SA. These new sections describe the assessment of a superannuation or roll over fund amount if withdrawn before pension age.

Clause 54 will amend section 52 (Certain assets to be disregarded in calculating the value of a person's assets) to provide the assets exemption for the superannuation benefit.

Commencement

This proposal will commence on 1 April 1993 (subclause 2(8)).

Division 7 - Fringe benefits and treatment benefits

Summary of proposed changes

This amendment extends fringe benefit entitlement to all service pensioners.

It will, however, prevent a consequential flow-on to treatment entitlement under Division 15 of Part III of the Principal Act. Only those veteran service pensioners who could meet the current requirements for this treatment entitlement (subject to increases in the income or assets test limits) will continue to be eligible under Subdivision C of this Division.

Background

Fringe benefits are rebates and discounts offered by various Commonwealth, State and local government authorities to certain service pensioners.

Currently, the following persons are entitled to fringe benefits:

blind service pensioners;

service pensioners who are neither income nor assets reduced;

income reduced service pensioners who satisfy the fringe benefits ordinary income test;

assets reduced service pensioners who satisfy the fringe benefits assets test; and

persons to whom section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* applies.

Explanation of the changes

This amendment would be achieved by repealing the fringe benefits ordinary income test and the fringe benefits assets test from Subdivision B of Division 15 and allowing all service pensioners fringe benefits entitlement. The former fringe benefits tests now apply to the assessment of treatment benefits under this Division. Subdivision C of Division 15 would insert two new tests for the payment of treatment benefits to veteran service pensioners.

These treatment benefits tests apply to veterans whose only entitlement for treatment at departmental expense is by means of their service pension eligibility. No other treatment entitlement under the Act is subject to a means test.

Part V of the Principal Act details the other categories of people eligible for treatment at departmental expense.

Clauses involved

Clauses 55 to 57 update references to Division 15 contained in other sections of the Principal Act.

Clause 58 amends the heading to Division 15 to "Service pensioner benefits".

Clause 59 amends Subdivision A to provide that a person eligible for fringe benefits under this Division has access to benefits and concessions of various kinds made available by Commonwealth, State, Territory and local governments and authorities. This amendment also provides that an age or invalidity service pensioner who meets certain conditions (outlined in section 53D) is also entitled to treatment at Departmental expense.

Clause 60 repeals the current sections 53A, 53B and 53C. It also inserts new section 53A to provide that all service pensioners are eligible for fringe benefits. Notes 1 & 2 would provide that some persons continue to be eligible for fringe benefits because of the operation of section 17 of the *Veterans' Entitlements (Rewrite) Transition Act 1991*.

Clauses 61 and 62 establish the criteria necessary for a veteran described under section 53D to be eligible for treatment at Departmental expense (new section 53E).

Treatment at Departmental expense will be provided if:

- the veteran is permanently blind;
- the veteran's service pension rate is neither income nor assets reduced;
- the veteran's service pension rate is income reduced and the veteran satisfies the treatment benefits ordinary income test; or
- the veteran's service pension rate is assets reduced and the veteran satisfies the treatment benefits assets test.

Notes 1 & 2 signpost the calculators contained in new sections 53F & 53G.

These clauses would also insert the Treatment Benefits Income Test Calculator and the Treatment Benefits Assets Test Calculator. These calculators would establish whether a veteran satisfies the treatment benefits ordinary income and assets tests.

New section 53F would provide that the Treatment Benefits Income Test Calculator at the end of the section is to be used to establish whether a person satisfies the treatment benefits ordinary income test for the purposes of this Division.

TREATMENT BENEFITS INCOME TEST CALCULATOR

Point 53F-1 would set out a four step method statement for the Treatment Benefits Income Test Calculator. The method statement would establish a person's eligibility for treatment benefits under the treatment benefits ordinary income test and include

references to subsequent points that provide the rules for working out the components used in this test.

Point 53F-2 would provide that the treatment benefits income of a person who does not have dependent children is the person's annual rate of ordinary income.

A note would signpost that Module D of the service pension rate calculator in section 41 would explain how to calculate the person's annual rate of ordinary income.

Point 53F-3 would provide that the treatment benefits income of a person who has dependent children is calculated using Table F-1.

Point 53F-4 would provide that, to calculate a person's treatment benefits income, the person's ordinary income is reduced by the amount provided in Table F-1 for each dependent child of the person.

Note 1 would signpost the "dependent child" definition.

Note 2 would signpost that Module E of the service pension rate calculator in section 42 would explain how to calculate the person's annual rate of ordinary income.

Point 53F-5 would provide that the reduction amount used in calculating a person's treatment benefits income is reduced by the amount of any payment received in respect of a dependent child of the person unless the payment is one which is specified in point 53F-7.

Point 53F-6 would provide that the reduction amount used to calculate a person's treatment benefits income, where that person has a partner who is also receiving a pension, is reduced by 50% for any payment received in respect of the dependent child unless the payment is one which is specified in point 53F-7.

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

Point 53F-7 would provide a list of payments that do not cause a reduction under point 53F-5 or 53F-6.

A note would signpost the definition of "Aboriginal study assistance scheme".

Point 53F-8 would provide that a person's treatment benefits income includes any amount per year that is taken into account under subsection 52Z(5) - financial hardship.

Point 53F-9 would provide that, where a person's treatment benefits income exceeds the relevant treatment benefits income free area by no more than 25% of that free area, the person will be regarded as satisfying the treatment benefits ordinary income test for a period of 13 weeks starting on the first pension payday after the day the person's treatment benefits income exceeded the relevant limit. Where the person's

annual rate of treatment benefits income exceeds the free area by more than 25%, this provision would no longer apply.

Point 53F-10 would direct the reader to Table F-2 to work out a person's treatment benefits income free area. This would be done by working out which family situation is applicable and then checking the corresponding amount in the "basic free area" column of the table. Column 4 would provide the amounts to be added to the person's treatment benefits income free area where the person has a dependent child or dependent children.

A note would direct the reader that the basic free area amounts are indexed in line with the CPI increases.

New section 53G would provide that the Treatment Benefits Assets Test Calculator at the end of the section is to be used to establish whether a person satisfies the treatment benefits assets test for the purposes of this Division.

TREATMENT BENEFITS ASSETS TEST CALCULATOR

Point 53G-1 would provide that a person satisfies the treatment benefits assets test if the value of the person's assets does not exceed his or her treatment benefits assets value limit.

A note would signpost the provision explaining the "treatment benefits assets value limit".

Point 53G-2 would provide that a person's treatment benefits assets value limit is calculated using the Table at the end of the point. The assets value limit is the amount coinciding with the person's family and property ownership situations.

Note 1 would signpost the definition of "property owner".

Notes 2 & 3 would indicate which amounts in the Table are indexed annually in line with CPI increases and which are adjusted annually.

Clauses 63 to 74 would update references throughout the Principal Act to benefits provided under Division 15 of Part III of that Act consequential to this proposal.

Commencement

This amendment commences on 1 April 1993 (subclause 2(8)).

Division 8 - Carer service pension

Summary of proposed changes

To amend the Principal Act to provide the following carer service pension amendments:

- increase the period of temporary cessation of care from 28 days to 42 days;
allow carer service pensioners to travel overseas during periods of temporary cessation of care;
allow carer service pensioners to undertake training, education or employment for up to 10 hours per week;
extend the earnings credit provisions to carer service pensioners; and
- extend the lump sum bereavement provisions to certain non-partner carer service pensioners.

Background

Eligibility for carer service pension is based on the carer providing constant care and attention to a severely handicapped veteran. This criteria is modified by currently allowing the carer up to 28 days temporary cessation of care from the veteran without losing entitlement to the carer service pension.

A residential limitation is placed on carer service pension. It is not currently payable if the carer is outside Australia. This would apply even if the carer wished to travel overseas during a period of respite from his/her caring duties.

Clauses involved

Clause 75 updates section 39 of the Principal Act to provide that the number of days a carer may temporarily cease to provide care and yet retain eligibility for carer service pension will be 42 days.

This clause also inserts new subsection 39(2A) which allows the carer to cease providing care for up to 10 hours per week and retain eligibility for carer service pension if the reason for the cessation is to undertake training, education or employment.

Clause 76 inserts new subsection 39QA which, in certain circumstances, will pay a lump sum bereavement payment to a carer service pensioner upon the death of the severely handicapped veteran.

The person will be entitled to a lump sum bereavement payment if:

- the veteran being cared for was not the person's partner;
- the veteran being cared for dies;
- the veteran was single; or
- the veteran was not a member of pensioner couple,

The payment is equal to:

- seven times the rate of carer service pension the person actually receives; or
- seven times the "partnered (partner getting pension)" rate of pension;

whichever is the lesser of the two amounts.

A note would also explain that if the partner of the veteran was in receipt of pension or benefit it would be the partner who would be eligible to receive the bereavement payment.

Clauses 77 to 79 amend the earnings credit provisions contained in Division 11 of Part III of the Principal Act to allow carer service pensioners access to an earnings credit.

If the carer service pensioner meets the necessary eligibility criteria, he or she may commence to accrue an earnings credit from 1 January 1993. However, the carer service pensioner would only be able to access any accrued credit from 1 July 1993.

Clause 80 amends the service pension portability provisions contained in section 58K by inserting new subsection (2A). This new subsection allows a person to retain the payment of carer service pension during an absence from Australia if the absence is due to a temporary cessation of care provided for by subsection 39(2).

Commencement

These amendments will commence from 1 July 1993 (subclause 2(9)).

Division 9 - Shares and other listed securities

Summary of proposed changes

This amendment will treat shares and other listed securities in a similar manner to managed investments by:

assessing any capital growth that accrues on shares and other securities as ongoing income;

- allowing the capital loss from shares and other listed securities to be offset against income from managed investments, shares or other listed securities; and
- allowing establishment and disposal fees as a deduction against ordinary income from managed investments, shares or other listed securities.

The changes to the treatment of shares will effectively consider the overall performance of the share, rather than separating the dividend from the capital growth or loss.

Background

This amendment addresses anomalies that currently exist between investments where the capital growth is currently included in the assessment of ongoing income and investments in shares or other securities where growth is not considered.

Currently, direct investment in shares is treated differently under the ordinary income test to indirect investment in shares in the form of equity trusts. While indirect investment has its capital growth taken into account for pension purposes, direct investment in shares does not. This situation is inequitable given that the two types of investment differ only in the manner in which they are acquired.

Also no account is taken of any losses experienced by the investor in the overall performance of their share investments. The full dividend is treated as income regardless of whether the capital value of the share had increased or reduced.

Clauses involved

Clause 81 inserts new definitions of "investment product" and "listed security" into subsection 5J(1) of the Principal Act.

Clause 82 amends the heading to new Subdivision AA to include a reference to "listed securities".

Clause 83 amends new section 46AA to clarify what types of investments are assessed under new Subdivision AA. These provisions are inserted by Division 4 of this Part.

Commencement

This amendment will commence on 20 September 1993 (subclause 2(10)).

Division 10 - Pharmaceutical allowance

Summary of proposed changes

This amendment will provide for pharmaceutical allowance to be added to other service pension components before the application of the income and assets test. The amendment will ensure that, where a person's rate of service pension is reduced because of the application of either the ordinary income test or the assets test, pharmaceutical allowance will be the last component in the reduction process. At no time will the service pensioner receive less than her/his full rate of pharmaceutical allowance.

Background

Pharmaceutical allowance is paid to certain pensioners to offset charges made for prescription items supplied under the Pharmaceutical Benefits Scheme and under the Repatriation Pharmaceutical Benefits Scheme (RPBS).

Part VIIA of the Principal Act contains all the current provisions for pharmaceutical allowance with the exception of the indexation provisions.

Eligibility for the allowance is specified in section 118A. In essence, a person is eligible if the person is:

- a service pensioner;
- a war widow/er or an orphan; or
- a person who is eligible for pharmaceutical benefits under the RPBS.

It should be noted that it is possible for a person to satisfy more than one of these criteria. For example, the person may be in receipt of a service pension and may also be eligible for benefits under the RPBS. However, only one instalment of the allowance is payable.

The allowance is currently paid as a discrete allowance and is an addition to pension. In respect of service pensioners, this means that the allowance is not taken into account in the application of the income and assets tests.

The amendments proposed by this Bill will only affect the payment of pharmaceutical allowance to service pensioners.

Clauses involved in the changes

Clause 84 inserts a new section 5PA into the Principal Act (*Pharmaceutical allowance and advance pharmaceutical allowance definitions*).

Clauses 85 to 88 amend sections 36A, 37A, 38A and 39A respectively to amend the payability provisions of Part III. In specified circumstances a person will be taken to

be receiving service pension even though on a particular payday the person does not receive a payment.

Clause 89 amends section 40 (Steps in rate calculation) to include reference to pharmaceutical allowance.

Clause 90 amends section 40C (Application of income and assets test reductions for income tax purposes) to include reference to pharmaceutical allowance as the last component in the reduction process.

Clause 91 amends section 41 (Rate of age, invalidity, partner and carer service pension (no dependent children)) to include pharmaceutical allowance in the rate calculation process.

Clauses 92, 93 and 94 make the equivalent amendments to section 42 (Rate of age, invalidity, partner and carer pension (dependent child or children), section 43 (Rate of age and invalidity service pension (blinded veterans)) and section 44 (Rate of partner service pension for widows, widowers and non-illness separated spouses).

Clause 95 amends section 45 (Rate of age, invalidity and carer service pensions (war widow and widower) to ensure that pharmaceutical allowance is not added into the service pension rate calculation process for these "frozen rate" widows and widowers. The allowance will be paid to these pensioners under Part VIIA of the Act in addition to the "frozen" rate of service pension.

Clause 96 will amend section 58A (Calculation of amount of fortnightly instalment) to ensure that where pharmaceutical allowance is added into the rate calculation process for service pension the minimum amount payable will be equivalent to the person's fortnightly rate of pharmaceutical allowance.

Clauses 97 to 104 will make consequential amendments to Part VIIA of the Principal Act (Pharmaceutical allowance and advance pharmaceutical allowance) required as a result of the incorporation of pharmaceutical allowance provisions for service pensioners into Part III of the Act.

Clauses 105 and 106 amend the indexation and adjustment provisions of the Principal Act to make necessary consequential amendments to the provisions which increase pharmaceutical allowance in line with CPI increases.

Explanation of the changes

Rate calculator amendments

Pharmaceutical allowance is to be added to other service pension components before the application of the income and assets tests. The allowance will remain as a separate, readily identifiable amount, and will not be incorporated into the **maximum basic rate**. To achieve this it is necessary to amend the rate calculators included in sections 41, 42, 43 and 44 of Part III of the Act.

For example, amendments are to be made to the Service Pension Rate Calculator Where There Are No Dependent Children (section 41). These amendments will:

insert a new step 2A into the Method statement in point 41-A1 to add pharmaceutical allowance (if any) to the maximum basic rate and to the component for rent assistance (where applicable) in order to calculate a person's maximum payment rate; and

include a new Module CA to be used to work out the annual amount (if any) of pharmaceutical allowance to be added into the calculation.

A description of the points in new Module CA in section 41 follow.

Note that, whereas pharmaceutical allowance rates were previously specified in fortnightly amounts, in order to incorporate the amounts into the rate calculation process described in the rate calculators the amounts have been "annualised".

New point 41-CA1 provides the eligibility criteria for pharmaceutical allowance for service pensioners. Pharmaceutical allowance will not be added to the person's maximum basic rate if one of the situations outlined in new points 41-CA2, 41-CA3 and 41-CA5 apply. This was previously provided for in section 118A.

New point 41-CA2 prohibits the payment of pharmaceutical allowance if the person is receiving pharmaceutical allowance under the Social Security Act. This was previously provided for in subsection 118B(2).

New point 41-CA3 further restricts payment of pharmaceutical allowance if the person has received an advance pharmaceutical allowance under either the Principal Act or under the Social Security Act and the person's advance payment period has not ended. The advance payment period is defined in new point 41-CA4 and starts on the day on which the advance pharmaceutical allowance is paid and ends after the number of paydays covered by the advance has elapsed. This was previously specified in section 118B.

New point 41-CA5 precludes payment of pharmaceutical allowance if the total amounts received by way of pharmaceutical allowance and advance pharmaceutical allowance total the amount that the person is entitled to for that calendar year. This calculation includes amounts of pharmaceutical allowance or advance pharmaceutical allowance received under the Social Security Act (new point 41-CA). This was previously specified in section 118D.

New points 41-CA7 and 41-CA8 specify the annual rates of pharmaceutical allowance payable to a person depending on the person's personal circumstances. This was previously provided for in section 118C (as fortnightly rates).

Corresponding amendments are made to the Service Pension Rate Calculator Where There Are Dependent Children (section 42) with the following exceptions:

the new Step to be included in the Method statement will be step 3A; and
the new Module to be inserted will be Module DA.

These variations are necessary because this rate calculator includes an additional step to add in amounts for dependent children.

The amendments are repeated for the Service Pension Rate Calculator for Blinded Veterans (section 43) - Step 3A and Module DA - and for the Service Pension Rate Calculator for Widows, Widowers and Non-illness Separated Spouses (section 44) - Step 2A and Module CA.

The method used to include pharmaceutical allowance in the rate calculation process will mean that the amount is readily identifiable as an additional amount added to the maximum basic rate of service pension. There will, therefore, not be any flow-on effect to the calculation of patient contributions for nursing homes or in determining rentals payable to State housing authorities. The patient contributions and the rental charges are based on the **maximum basic rate** plus the maximum rate of rent assistance payable to the person. Pharmaceutical allowance is not included in the **maximum basic rate**.

Access to advance pharmaceutical allowance payments for service pensioners will continue to be provided under Division 2 of Part VIIA of the Principal Act.

"Frozen rate" widowers

Amendments to section 45 of the Act will provide that "frozen rate" widows and widowers will not have pharmaceutical allowance included in the rate calculation process to determine their rate of service pension. Pharmaceutical allowance will be paid under Part VIIA of the Act to this category of pensioners in order to ensure that the allowance is paid in addition to the "frozen rate" of service pension.

Minimum payment

Where a person's rate of service pension is reduced because of the income or the assets tests, the order of reduction of the various components is currently specified under section 40C. This section will be amended to ensure that pharmaceutical allowance is the last remaining component in the reduction process.

Currently, the minimum amount of service pension payable after the application of the income and assets tests is set at \$1.00 per fortnight (section 58A). This section will be amended to provide that where pharmaceutical allowance has been added into the calculation of a person's pension rate and the fortnightly rate of pension determined after the application of the income and assets test would be less than the person's fortnightly rate of pharmaceutical allowance, the rate of the fortnightly instalment will be increased to the fortnightly rate of pharmaceutical allowance.

Person taken to be receiving service pension

Section 36A of the Principal Act provides, in part, that even though a person may be eligible for service pension the pension is not "payable" if the person's rate of service pension would be nil. This in effect means that where a person's rate of service pension, after the application of the income and assets tests, is reduced to nil the person is not normally eligible for fringe benefits etc. as the person is no longer "receiving" service pension.

Under the arrangements now proposed by this Bill, where an advance pharmaceutical allowance has been paid to the person and the person's advance payment period has not elapsed, pharmaceutical allowance will not be added into the calculation of a person's service pension rate. Consequently, a person who is receiving an income or assets reduced pension may, where advance pharmaceutical allowance has been paid, have no entitlement to payment on a particular payday for no reason other than the fact that the person has received her/his pharmaceutical allowance instalment in advance.

To ensure that where this situation arises the person is still considered to be "receiving" service pension, and therefore eligible for fringe benefits etc., section 36A will be amended to specify that service pension is considered to be payable in such circumstances.

Related consequential amendments will also be required to the remote area allowance modules of the rate calculators. Generally, remote area allowance is not payable if a person's rate of service pension would otherwise be nil. The changes will allow a person whose rate is nil solely because s/he has used up her/his pharmaceutical allowance limit for the calendar year, to continue to receive remote area allowance.

Consequential amendments to Part VIIA

As pharmaceutical allowance is also payable to person's who are not service pensioners, pharmaceutical allowance provisions will be required to be retained in Part VIIA of the Principal Act. Consequential amendments to Part VIIA will, however, be required as a result of the incorporation of the provisions related to service pensioners into Part III of the Act.

Notably, section 118B (Pharmaceutical allowance not payable in some circumstances) will be amended to include a new subsection which will specifically prohibit the payment of pharmaceutical allowance under Part VIIA where the person is receiving a service pension under Part III that includes an amount of pharmaceutical allowance.

Subdivision C of Division 2 of Part VIIA (Amount of advance pharmaceutical allowance) will also be amended to take account of the fact that pharmaceutical allowance rates have been "annualised" in Part III to enable inclusion in the rate calculation process before the income and assets test.

Other minor consequential amendments are also included.

Definitions

New section 5PA (Pharmaceutical allowance and advance pharmaceutical allowance definitions) provides a tool to be used to calculate a notional fortnightly amount of pharmaceutical allowance that has been paid to a person in order to determine when a person reaches their annual limit of pharmaceutical allowance. This is completely independent of any calculation required to determine how much money the person receives on a particular payday.

Indexation

Indexation of pharmaceutical allowance takes place on 1 January each year to take account of increases in the cost of living (identified by changes in the Consumer Price Index). This is currently provided for in section 198E of the Principal Act. The rate of pharmaceutical allowance which is currently subject to indexation is the lower fortnightly rate (payable to a person whose partner also receives pharmaceutical allowance). The higher rate (payable to a person who is not a member of a couple or who is a member of a couple but whose partner does not receive pharmaceutical allowance) is paid at twice the lower rate.

Amendments which are required to incorporate pharmaceutical allowance into the rate calculation process mean that the lower rate of pharmaceutical allowance will no longer be specified in the Principal Act as a fortnightly amount. Consequently, the rates of the allowance specified in Parts III and VIIA will be "adjusted" in line with the rate in the Social Security Act. Amendments to Division 21 of Part III (Indexation) will provide for this adjustment.

Commencement

Amendments relating to the incorporation of pharmaceutical allowance into the rate calculators in Part III of the Act commence on 20 March 1993 (subclause 2(7)).

All other amendments commence on 1 January 1993 (subclause 2(4)).

Division 11 - Rounding base for rent assistance

Summary of proposed changes

This amendment will change the rounding base used for the indexation of rent assistance. This will correct an anomaly affecting rent assistance for service pensioner couples.

Background

Rates of rent assistance are subject to automatic six monthly indexation. New rates are worked out by multiplying the existing rates by an indexation factor and then rounding off the result.

The rounding base of \$2.60 for rent assistance was originally selected to ensure that fortnightly rates of rent assistance would always be a multiple of 10 cents. This does not, however, take into account the fact that each partner of a pensioner couple shares rent assistance. As a result, the fortnightly rate of rent assistance for each member of a pensioner couple is a multiple of 5 cents.

In the calculation of a person's fortnightly instalment of pension (including any rent assistance component) the final amount is rounded to the nearest 10 cents. As a consequence, the total of the fortnightly rates of rent assistance for each member of a pensioner couple can be higher than the amount payable to an individual.

Clauses involved in the changes

Clause 107 amends section 59B (CPI Indexation Table).

Explanation of the changes

Section 59B sets out the amounts under Part III of the Act which are to be indexed in accordance with increases in the Consumer Price Index (CPI). Item 3 in the Table in subsection 59B(1) provides for the indexation of rent assistance. The current rounding base of \$2.60 (column 6) will be increased to \$5.20. This will ensure that fortnightly rates of rent assistance will always be a multiple of 10 cents and that the same rates of rent assistance apply equally to all pensioners.

Commencement

These changes will commence on the day of Royal Assent (subclause 2(1)).

Division 12 - Attributed interest

Summary of proposed changes

This amendment will clarify the deeming rules relating to both deposit and available money for a pensioner couple. A combined deeming exemption of \$4,000 will apply irrespective of the distribution of savings between the members of the couple.

Background

Division 8A of Part III of the Principal Act outlines the income rules applicable to persons with deposit money (low interest accounts) and/or available money (cash-on-hand).

Under these rules, a person's income money is the sum of the person's available money and deposit money in excess of \$2,000 that attracts interest at a rate lower than the assumed rate (currently 6% per annum). The person is then taken to receive interest on the income money assessed at the assumed rate. That interest is then counted as income for the purposes of the income test.

These rules apply to amounts of available and/or deposit money over \$2,000 per person, irrespective of whether or not the person is a member of a couple.

Currently, these rules have the potential to disadvantage members of a couple depending on the distribution of the available and deposit money between each member of the couple. For example, if one member of the couple has \$3,000 of income money and the other member of the couple has \$500 of income money, interest will be attributed to the amount of income in excess of \$2,000 for each member of the couple - in this example interest would be deemed to be received on \$1,000. Under the changes proposed by this amendment the couple in the example would not be deemed to receive interest on any of their combined income money.

Clauses involved in the changes

Clause 108 amends section 46W (Basic concept - income money and interest received).

Explanation of the changes

Subsection 46W(2) outlines steps which show how to work out which money is a person's income money. Notes will be inserted in the method statement to direct the reader to new substantive provisions which will deal specifically with the treatment of the money of members of a couple.

The provisions will be new subsections 46W(2A), (2B) and (2C). These new subsections will have the effect of equally distributing the available and deposit money of a couple between each member of that couple for the purposes of the deeming rules.

Commencement

These changes will commence on the day of Royal Assent (subclause 2(1)).

Division 13 - Income test definitions

Summary of proposed changes

This amendment will exempt from the income test any payments from the Mark Fitzpatrick Trust to victims of medically acquired HIV and AIDS.

Background

The Mark Fitzpatrick Trust was established in 1989 by the Government with a grant of \$13.2 million to provide special financial assistance to people with medically acquired HIV infection and AIDS, or their dependants and carers. Payments from the Trust can take the form of lump sums or periodic payments.

As the legislation currently stands, payments from the Trust would constitute income for the purposes of the income test. In line with the Government's intention when the trust was established, an amendment is required to exempt such payments from the income test.

Clauses involved in the changes

Clause 109 amends section 5H (*Income test definitions*).

Explanation of the changes

Subsection 5H(8) of the Principal Act, which specifies that certain amounts are not income for the purposes of the Act, will be amended to insert new paragraph 5H(8)(xa) relating to payments from the Mark Fitzpatrick Trust.

Commencement

These changes will commence on the day of Royal Assent (subclause 2(1)).

Division 14 - Favourable determinations

Summary of proposed changes

This amendment will provide that when a non-pensioner partner of a service pensioner dies and the Department becomes aware of the death within 4 weeks of the date of the death, the service pensioner's reassessed rate of pension will be payable from the date of the death of the partner.

Background

The maximum rate of service pension payable to a service pensioner who is a member of a couple and whose partner is not in receipt of either a pension or benefit (as defined in subsection 5E(5) of the Principal Act) is the same maximum rate as that which applies to a person who is not a member of a couple. The application of the income test, however, takes into account any income of a person's partner regardless of whether or not the partner is a pensioner. The service pensioner's rate may therefore be reduced because of the partner's income.

In the event of the death of the non-pensioner partner, the rate of service pension payable to the survivor will not be affected unless the non-pensioner partner was receiving some form of income.

In this situation, on the death of the partner subsection 56G(2) only provides authorisation to increase the service pensioner's rate from the payday after the day the person notifies the Department of his or her partner's death. Where the deceased person was not a pensioner, but had income which was being taken into account in the assessment of the rate of pension payable to the pensioner partner, the surviving pensioner is disadvantaged by this provision. The person no longer has the benefit of the partner's income and yet still receives a lower pension rate which assumes that this money is available.

Clauses involved in the changes

Clause 110 amends section 56G (Date of effect of favourable determination).

Explanation of the changes

A new subsection 56G(2C) will be inserted into the Principal Act to specifically provide that if a non-pensioner partner of a service pensioner dies and the Department is notified or otherwise becomes aware of the partner's death within 4 weeks of the date of that person's death, a favourable determination made to reassess the rate of service pension payable would be effective from the date of death of the partner.

Commencement

These changes will commence on the day of Royal Assent (subsection 2(1)).

Division 15 - Saving and transitional

Rent assistance (changes introduced on 20 March 1993)

Summary of proposed changes

Division 5 of this Part 4 provides for rent assistance reforms. This savings provision will compliment these reforms. It will ensure that service pensioners receiving a rate of rent assistance, prior to the introduction of the reforms, will be protected from a lesser rate of rent assistance under the reforms.

If the new rate of rent assistance calculated under the rent reforms is less than the rate assessed before the introduction of the reforms, the pensioner's rate of rent assistance included in the calculation of the overall rate of service pension will be frozen at the rate payable prior to the reforms. The saved amount will not be protected from fluctuations in the person's ordinary income and assets which will have their usual effect in calculating the person's overall rate of service pension.

Clauses involved in the changes

Clause 111 will contain the savings provision.

Subclause 111(1) would provide that the savings provision applies to a person who was in receipt of service pension prior to 20 March 1993 where:

the person's service pension included a rent assistance component; and

- the savings provision has continued to apply to the person.

Subclause 111(2) would extend the savings provision to a person where there is a decision, after 20 March 1993, which retrospectively entitles the person to rent assistance prior to 20 March 1993.

Subclause 111(3) would extend the savings provision to a person who had saved status under the *Social Security Act 1991* and commenced to receive service pension under the *Veterans' Entitlements Act 1986* after 20 March 1993.

Subclause 111(4) would describe a person's "floor amount". It is the amount of rent assistance that is included in the person's service pension assessment prior to the application of the income and assets tests. This rate is the amount assessed immediately before 20 March 1993. This definition is qualified by new subclauses (7) to (9) which describe situations where a person, who is covered by this savings provision, subsequently becomes a member of a couple.

Subclause 111(5) would provide the circumstances where the savings provision no longer applies to a person. These are if the person:

ceases to be eligible for service pension; or

ceases to be eligible for rent assistance; or

- would receive an equal or greater amount of rent assistance under the assessment rules in force after 20 March 1993; or
- has a change in his/her circumstances that the Commission considers would affect the amount of rent assistance payable.

The Commission discretion in paragraph 111(5)(d) would cover situations where the person moves to considerably cheaper accommodation and the amount of rent the person pays would entitle him/her to a much lower rate of rent assistance.

Subclause 111(6) would allow the Commission to reinstate a person's status under this savings provision if the Commission considered that the person's circumstances warranted such treatment.

If, other than this subclause, the savings provision would cease to apply to the person, the Commission can reinstate the person under the savings provision if:

- the cessation was within 42 days or a longer period as determined by the Commission; and
- the Commission considers that the change in the person's circumstances is such that the savings provision should continue to apply to the person.

This provision would allow each case to be considered but would also address anomalous situations where ordinarily the savings provision would no longer apply to the person.

For example, if a service pensioner receiving rent assistance takes an overseas holiday the person no longer meets the eligibility criteria for rent assistance. (Point 41-C2 of the *Veterans' Entitlements Act 1986* illustrates this criteria and, in part, requires the person to be in Australia.) If that person were someone to whom this savings provision applies, paragraph (b) of new subclause (5) would operate to cancel the person's saved status. In this case, the Commission would consider the duration of the person's absence from Australia and the type of accommodation the person takes up on returning to Australia, to assess whether new subclause (6) should apply.

Subclauses 111(7) to 111(9) would provide a qualification on the assessment of the person's "floor amount" (calculated under new subclause (4)) where the person becomes a member of a pensioner couple.

Factors that would affect the person's floor amount will be:

whether the person's partner is also covered by a savings provision (under the *Veterans' Entitlements Act 1986* or the *Social Security Act 1991*); and

if the partner is receiving an amount of rent assistance provided for by the savings provision, which floor amount is the highest (the person's or the person's partner's).

Commencement

This amendment will commence from 20 March 1993 (subclause 2(7)).

PART 5 - FURTHER AMENDMENTS

This Part of the Bill provides for consequential and minor amendments to be made to the following Acts:

- the *Veterans' Entitlements Act 1986*;
- the *Seamen's War Pensions and Allowances Act 1940*; and
- the *Social Security Act 1991*.

The amendments are contained in two Schedules. Schedule 1 provides for increases in the rates of remote area allowance and Schedule 2 provides for other consequential, minor and technical amendments.

SCHEDULE 1 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986 RELATING TO REMOTE AREA ALLOWANCES

Summary of proposed changes

The amendments in this Schedule will provide a 25% increase in the two base rates of remote area allowance.

Background

Remote area allowance is an additional amount paid to service pensioners as compensation for the higher living costs incurred in isolated parts of Australia.

The allowance is currently paid at three rates;

\$12.00 per fortnight for each member of a pensioner couple;

- \$14.00 per fortnight for a pensioner who is not a member of a pensioner couple; and
an additional \$7.00 per fortnight for each dependent child of the pensioner.

Explanation of the changes

The rates of remote area allowance are specified in the following provisions:

Table G of point 41-G2;

Table H of point 42-H2;

Table E of point 43-E2; and

- Table G of point 44-G2.

The amendments will increase the two base rates of the allowance to:

\$15.00 per fortnight for each member of a pensioner couple; and

\$17.50 per fortnight for a pensioner who is not a member of a pensioner couple.

The additional allowance paid in respect of dependent children will not be increased.

Commencement

This amendment will apply from 1 January 1993 (subclause 2(4)).

SCHEDULE 2 - CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS

Part 1 - Amendments Commencing On Royal Assent

Amendments in this Part all commence on the day of Royal Assent. The amendments can be categorised as follows:

- amendments to correct minor drafting errors;
- amendments to correct unintentional consequences arising from the *Veterans' Entitlements Amendment Act 1991* which provided for the "plain English" rewrite of Part III of the *Veterans' Entitlements Act 1986*;
- drafting enhancements consistent with the "plain English" style; and
- amendments required to clarify the meaning of a provision where the intention of that provision is not clear.

Of these amendments further comment will only be made on the final category of amendment - those to clarify the meaning of certain provisions.

The first of these amendments is to the definition of "cash maintenance" in section 5K (*Maintenance income* definitions). The amendment will clarify that a cash maintenance payment is a periodic payment received by a person or a dependent child of the person, or is an amount of \$1500 or less that is paid as maintenance. Periodic payments will also be defined to mean payments that are one in a series of related payments, even if the payments are irregular in time and amount, or making up for arrears in payment.

The other amendment required for clarification purposes will be made to section 135 of the *Veterans' Entitlements Act*. This amendment will clarify the jurisdiction of the *Veterans' Review Board*. The Act provides that, where the *Repatriation Commission* has reviewed a decision under section 31 of the Act, the Commission may:

- affirm the decision;
- vary the decision;
- revoke the decision; or
- revoke the decision and substitute a new decision in its place.

The amendments to section 135 will make it clear that the *Veterans' Review Board* has jurisdiction to review:

- the decision of the Commission as varied;
- the decision of the Commission to revoke the original decision; or
- the new decision of the Commission substituted for the original decision.

Part 2 - Amendments Commencing On 1 July 1991

The amendments in Part 2 of Schedule 2 will commence on 1 July 1991. These amendments provide:

- for amendment to sections 205, 205AA and 205B of the Veterans' Entitlements Act to include a reference to the *Social Security Act 1991* in addition to the *Social Security Act 1947* - this is required as a consequence of the enactment of the *Social Security Act 1991* on 1 July 1991; and

for the insertion of new subsections into the *Social Security Act 1991* to provide the pension limitation for an "armed services widower" to correspond to similar provisions which apply for "armed services widows". These amendments were inadvertently overlooked when repatriation benefits were extended to the dependants of female veterans by the *Veterans' Affairs Legislation Amendment Act 1991* in 1991.

Part 3 - Amendments Commencing On 1 July 1991, Immediately After The Commencement Of The Veterans' Entitlements Amendment Act 1991

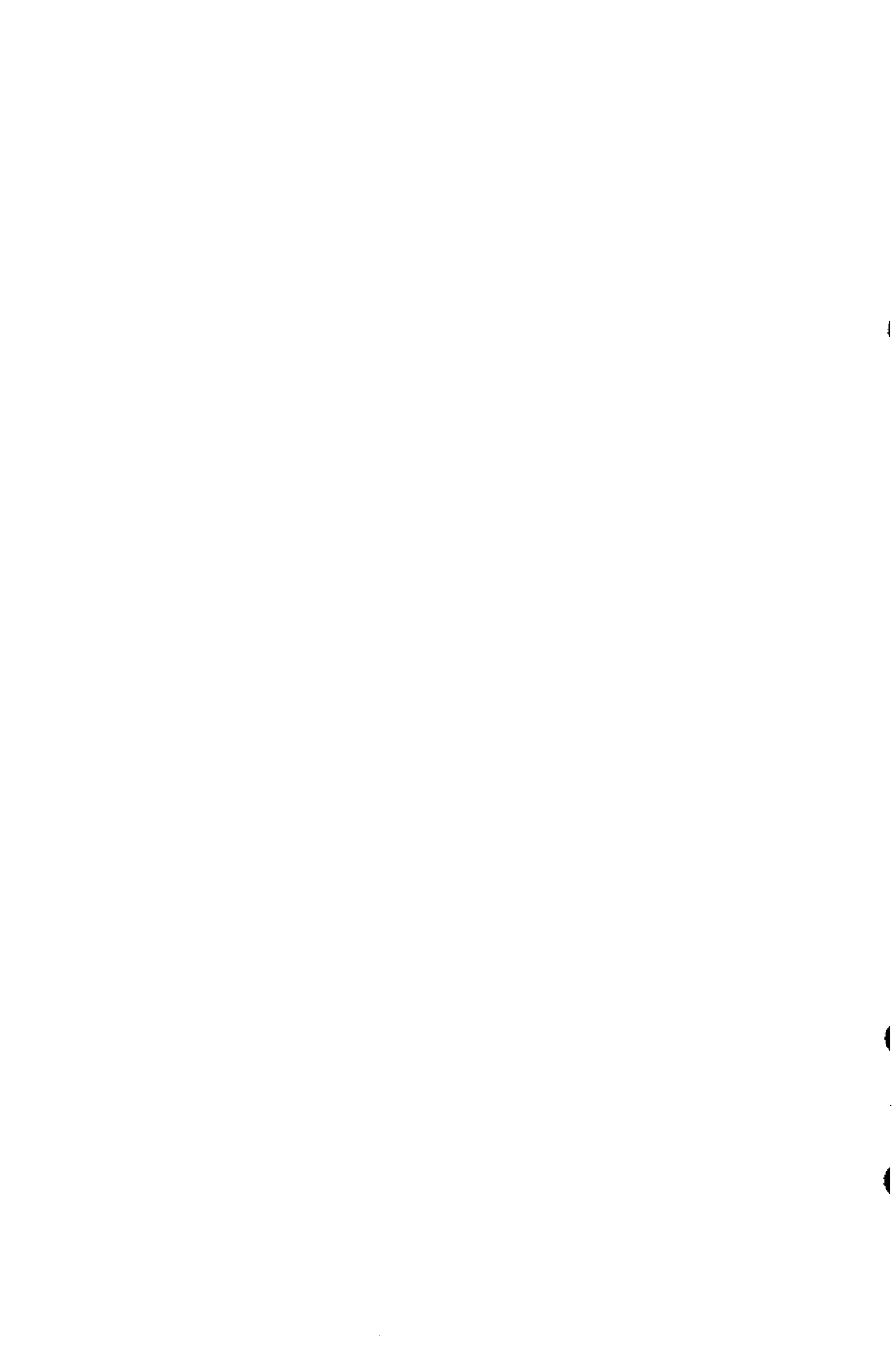
The amendments included in Part 3 of Schedule 2 will correct unintentional omissions arising from the "plain English" rewrite of Part III of the *Veterans' Entitlements Act 1986* - enacted by the *Veterans' Entitlements Amendment Act 1991*.

The amendments relate to:

- the date of effect of a favourable determination following the death of a pensioner partner of a service pensioner where the surviving pensioner is either not entitled to bereavement payments or elects not to receive the bereavement payments; and
- remote area allowance - to clarify that the allowance is not payable if a person's rate of service pension is nil; and
- the reinstatement of "disposal limit" provisions in relation to the disposal of assets disposed of prior to 1 March 1991 which were inadvertently omitted.

Part 4 - Amendments Commencing On 1 January 1993, Immediately After The Commencement Of The Social Security (Family Payment) Amendment Act 1992

The amendments contained in Part 4 of the Schedule are consequential terminology changes required as a result of the introduction of the new family payment structure under the Social Security Act. The new family payment structure will commence on 1 January 1993.

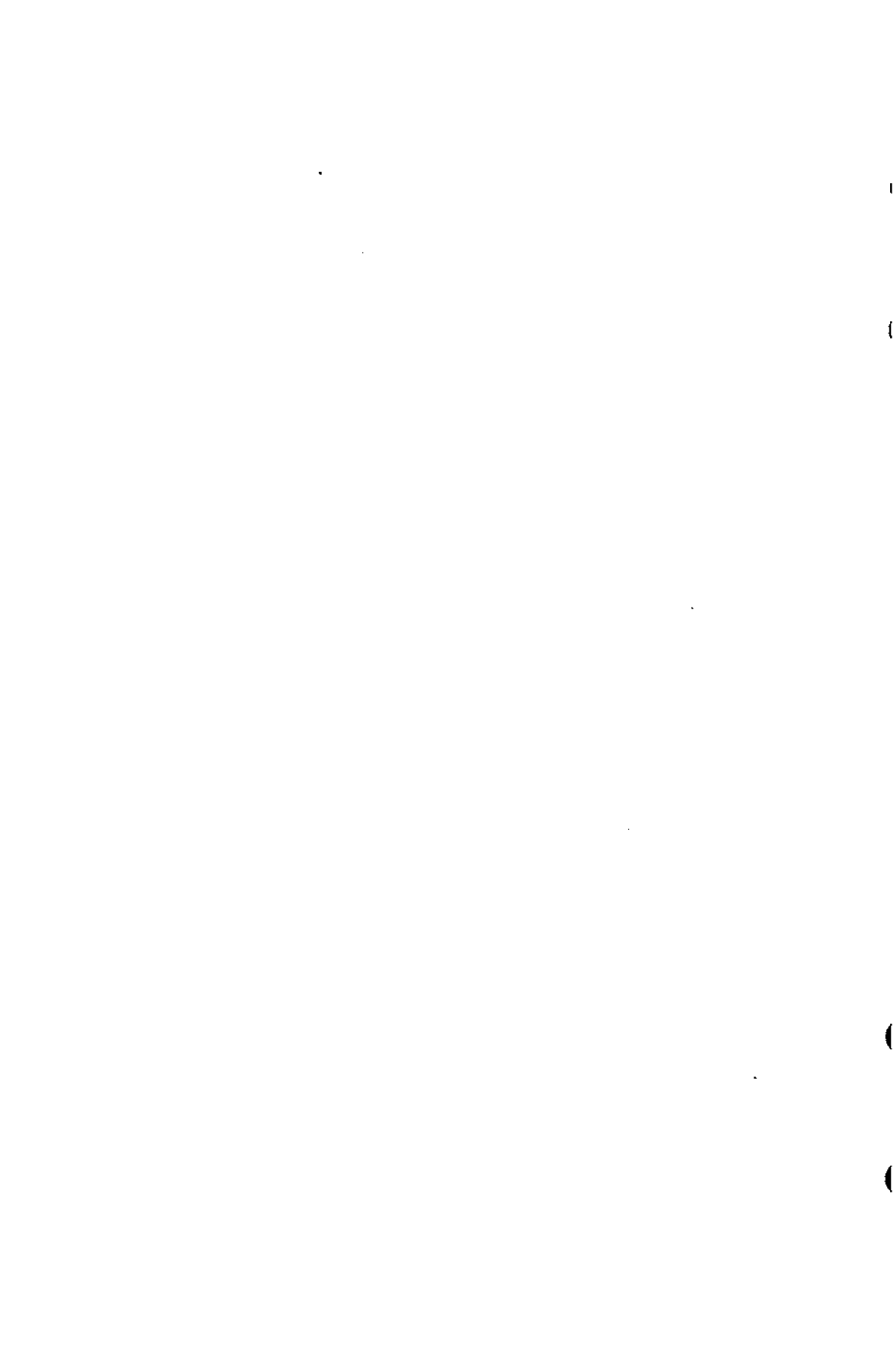


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