Veterans’ Entitlements Act 1986

Act No. 27 of 1986 as amended

This compilation was prepared on 10 October 2006
taking into account amendments up to Act No. 108 of 2006

**Volume 1** includes: Table of Contents
Sections 1 – 45UY

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

**Volume 2** includes: Table of Contents
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Attorney-General’s Department, Canberra
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An Act to provide for the payment of pensions and other benefits to, and to provide medical and other treatment for, veterans and certain other persons, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Veterans’ Entitlements Act 1986.

2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

3 Repeal

(1) The Acts specified in Parts I, II, III, IV and V of Schedule 1 are repealed.

(2) The Acts specified in column 1 of Part VI of Schedule 1 are amended as set out in columns 2 and 3 of that Schedule.

4 Extension of Act to external Territories

This Act extends to the external Territories.

4A Application of the Criminal Code

Chapter 2 of the Criminal Code applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.
## 5 Index of definitions

Each expression listed in the Index below is defined, for the purposes of this Act, in the provision listed in the Index opposite that expression.

Note: the Index does not contain every defined expression used in the Act. It contains every defined expression used in Part III and some defined expressions used elsewhere.

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In this Act, unless the contrary intention appears:

acting commissioner means a person who is acting as a commissioner because of an appointment under section 191.
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*Acting Deputy President* means a commissioner or acting commissioner who is acting as Deputy President because of an appointment under section 192.

*Acting President* means a commissioner or acting commissioner who is acting as President because of an appointment under section 192 or 193.

*Commission* means the Repatriation Commission continued in existence by section 179.

*commissioner* means a person holding an office of commissioner because of an appointment under section 182.

*Deputy President* means the Deputy President of the Commission.

*President* means the President of the Commission.

5AB  Repatriation Medical Authority and Specialist Medical Review Council definitions

(1) In this Act, unless the contrary intention appears:

*Chairperson* means the Chairperson of the Repatriation Medical Authority.

*Convener* means the Convener of the Review Council.

*councillor* means the Convener or any other person holding office as a member of the Review Council.

*member* means the Chairperson or any other person holding office as a member of the Repatriation Medical Authority.

*registered medical practitioner* means a person registered or licensed as a medical practitioner under a law of a State or Territory but does not include a person so registered or licensed:

(a) whose registration, or licence to practice, as a medical practitioner in any State or Territory has been suspended, or cancelled, following an inquiry relating to his or her conduct; and

(b) who has not, after that suspension or cancellation, again been authorised to register or practise as a medical practitioner in that State or Territory.
Review Council means the Specialist Medical Review Council established by section 196V.

sound medical-scientific evidence, in relation to a particular kind of injury, disease or death, has the meaning given by subsection (2).

(2) Information about a particular kind of injury, disease or death is taken to be sound medical-scientific evidence if:

(a) the information:

(i) is consistent with material relating to medical science that has been published in a medical or scientific publication and has been, in the opinion of the Repatriation Medical Authority, subjected to a peer review process; or

(ii) in accordance with generally accepted medical practice, would serve as the basis for the diagnosis and management of a medical condition; and

(b) in the case of information about how that kind of injury, disease or death may be caused—meets the applicable criteria for assessing causation currently applied in the field of epidemiology.

5B War and operational area related definitions

(1) In this Act, unless the contrary intention appears:

allotted for duty in an operational area has the meaning given by subsection (2).

operational area means an area described in column 1 of Schedule 2 during the period specified in column 2 of Schedule 2 opposite to the description of the area in column 1.

period of hostilities means:

(a) World War 1 from its commencement on 4 August 1914 to 11 November 1918 (both included); or

(b) World War 2 from its commencement on 3 September 1939 to 29 October 1945 (both included); or

(c) the period of hostilities in respect of Korea from 27 June 1950 to 19 April 1956 (both included); or
(d) the period of hostilities in respect of Malaya from 29 June 1950 to 31 August 1957 (both included); or
(e) the period of hostilities in respect of war-like operations in operational areas from 31 July 1962 to 11 January 1973 (both included).

**war to which this Act applies** means World War 1 or World War 2.

**World War 1** means:
(a) the war that commenced on 4 August 1914; and
(b) any other war in which the Crown became engaged after 4 August 1914 and before 11 November 1918.

**World War 2** means:
(a) the war that commenced on 3 September 1939; and
(b) any other war in which the Crown became engaged after 3 September 1939 and before 3 September 1945.

**Allotted for duty**

(2) A reference in this Act to a person, or a unit of the Defence Force, that was allotted for duty in an operational area is a reference:
(a) in the case of duty that was carried out in an operational area described in item 1, 2, 3, 4, 5, 6, 7 or 8 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument issued by the Defence Force for use by the Commission in determining a person’s eligibility for entitlements under this Act; or
(b) in the case of duty that was carried out in an operational area described in item 9, 10, 11, 12, 13 or 14 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person’s eligibility for entitlements under this Act; or
(c) to a person, or unit of the Defence Force, that is, by written instrument signed by the Minister for Defence, taken to have been allotted for duty in an operational area described in item 4 or 8 in Schedule 2 (in column 1).
End of World War 1 and 2

(3) For the purposes of this Act:

(a) World War 1 is taken to have ended on 1 September 1921; and

(b) World War 2 is taken to have ended on 28 April 1952.

Note 1: 1 September 1921 is the date fixed by Proclamation under the Termination of the Present War (Definition) Act 1919.

Note 2: 28 April 1952 is the date on which the Treaty of Peace with Japan came into force.

5C Eligibility related definitions

(1) In this Act, unless the contrary intention appears:

_allied country_ means any country (not being Australia or a Commonwealth country):

(a) that was, at the relevant time, at war with the enemy; or

(b) the forces of which were, at the relevant time, engaged in an operational area against forces against which the forces of the Commonwealth were engaged in that area;

and includes:

(c) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

(d) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of such a country.

_allied mariner_ means a person who:

(a) was during the period of World War 2 from its commencement to and including 29 October 1945:

(i) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship that was engaged in trading; or

(ii) a master, officer, seaman or apprentice employed in a lighthouse tender or pilot ship; or

(iii) employed as a pilot; or

(iv) a master, officer, seaman or apprentice employed in sea-going service on a ship (being a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel)
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that was operated by, or on behalf of, a foreign country; and

(b) was at any time during the course of that employment during the period referred to in paragraph (a) on a ship that was:
   (i) operating from a port in Australia or from a port in a Commonwealth country or an allied country; or
   (ii) engaged in trading with Australia or with a Commonwealth country or an allied country; or
   (iii) engaged in providing assistance or support to the Defence Force, or to the forces, or any part of the forces, of a Commonwealth country or an allied country; or
   (iv) engaged in providing assistance or support to Australia or to a Commonwealth country or an allied country;

but does not include:

(c) an Australian mariner; or

(d) a person who has, at any time, been employed by a foreign country that was, at that time, at war with Australia; or

(e) a person who has, at any time, been employed:
   (i) on a ship that operated to, or was operating from, a port in a country that was, at that time, at war with Australia; or
   (ii) on a ship that was engaged in trading with a country that was, at that time, at war with Australia; or
   (iii) on a ship that was engaged in providing assistance or support to the enemy or to a country that was, at that time, at war with Australia.

**allied veteran** means a person:

(a) who has been appointed or enlisted as a member of the defence force established by an allied country; and

(b) who has rendered continuous full-time service as such a member during a period of hostilities;

but does not include a person who has served at any time:

(c) in the forces of a country that was, at that time, at war with Australia, or in forces engaged in supporting or assisting the forces of such a country; or

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(d) in forces that were, at that time, engaged in war-like operations against the Naval, Military or Air Forces of Australia.

*Australian mariner* means a person who was, during the period of World War 2 from its commencement to and including 29 October 1945:

(a) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered in Australia that was engaged in trading between a port in a State or Territory and any other port; or

(b) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered outside Australia who was, or whose dependants were, resident in Australia for at least 12 months immediately before he or she entered into the agreement or indenture; or

(c) a master, officer, seaman or apprentice employed on a lighthouse tender, or pilot ship of the Commonwealth or of a State; or

(d) a pilot employed or licensed by Australia or a State or by an authority constituted by or under a law of the Commonwealth or of a State; or

(e) a master, officer, seaman or apprentice employed in sea-going service on a ship owned in Australia and operating from an Australian port, being a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel; or

(f) a member or employee of the Commonwealth Salvage Board engaged in sea-going service under the direction of that Board; or

(g) a master, officer, seaman or apprentice employed in sea-going service on a ship registered in New Zealand who the Commission is satisfied was engaged in Australia and is not entitled to compensation under a law of a Commonwealth country providing for the payment of pensions and other payments to seamen who suffered death or disablement as a result of World War 2.
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**Commonwealth country** means a country (other than Australia) that is, or was at the relevant time, a part of the Dominions of the Crown, and includes:

(a) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

(b) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of a part of such a country.

**Commonwealth veteran** means a person who rendered continuous full-time service as a member of:

(a) the naval, military or air forces; or

(b) the nursing or auxiliary services of the naval, military or air forces; or

(c) the women’s branch of the naval, military or air forces; of a Commonwealth country during a period of hostilities.

**continuous full-time service** means:

(a) in relation to a member of the Defence Force:

(i) service in the Naval Forces of the Commonwealth of the kind known as continuous full-time naval service; or

(ii) service in the Military Forces of the Commonwealth of the kind known as continuous full-time military service; or

(iii) service in the Air Force of the Commonwealth of the kind known as continuous full-time air force service; or

(b) in relation to a member of the naval, military or air forces of a Commonwealth country or an allied country—service in those forces of a kind similar to a kind of service referred to in subparagraph (a)(i), (ii) or (iii).

Note: see also subsection 5R(1).

**Defence Force** has the same meaning as in the Defence Act 1903.

**defence force established by a Commonwealth country** means:

(a) the naval, military or air forces of the country; or
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(b) the nursing and auxiliary services of the naval, military or air forces of the country; or
(c) the women’s branch of the naval, military or air forces of the country.

defence force established by an allied country means:
(a) the regular naval, military or air forces; and
(b) the nursing or auxiliary services of the regular naval, military or air forces; and
(c) the women’s branch of the regular naval, military or air forces;
raised by an allied country and operated by the country with regular military-like lines of command, that is to say, raised and operated in such a manner that the members of those forces and services:
(d) were formally appointed to, or enlisted in, those forces or services; and
(e) were required to wear uniforms or insignia distinguishing them as members of those forces or services; and
(f) were required to carry arms openly; and
(g) were subject to the rules and conventions of warfare.

Note 1: for extended meaning of this term in relation to a government-in-exile, see subsection (3).

Note 2: for an extended meaning of this term in relation to an allied veteran see subsection 5R(2).

eligible civilian means a person:
(a) who was killed, or detained by the enemy, during World War 2; and
(b) who was, at the time the person was killed or first detained:
        (i) a British subject; and
        (ii) a resident, but not an indigenous inhabitant, of the Territory of Papua or the Territory of New Guinea; and
(c) who was not, at that time:
        (i) rendering service as a member of the Defence Force; or
        (ii) employed by the Commonwealth on a special mission outside Australia.
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**enemy** means:
(a) in relation to World War 1 or World War 2—the naval, military or air forces, or any part of the naval, military or air forces, of a State at war with the Crown during that war; and
(b) in relation to service in, or a period of hostilities in respect of, an operational area—the naval, military or air forces against which the Naval, Military or Air Forces of the Commonwealth were engaged in that operational area; and
(c) persons assisting any of those forces.

**fishing vessel** means a ship employed in connection with the occupation of sea fishing for profit.

**former refugee** means a person who was a refugee but does not include a person who ceased to be a refugee because his or her entry permit or visa (as the case may be) was cancelled.

**government-in-exile**, in relation to an allied country, includes a person, or group of persons, claiming to represent, or administer, the country or a part of the country or the people of the country.

**member of a unit of the Defence Force** means:
(a) a member of the Defence Force; or
(b) another person who is:
   (i) a member of the unit; or
   (ii) attached to the unit; or
   (iii) appointed for continuous full-time service with the unit.

Note: see also subsection 5R(1).

**member of the Defence Force** includes a person appointed for continuous full-time service with a unit of the Defence Force.

**member of the Interim Forces** means a person who:
(a) enlisted or re-engaged in, or was appointed or re-appointed to, the Defence Force for continuous full-time service for a term of not more than 2 years; or
(b) was appointed for continuous full-time service with a unit of the Defence Force for a term of not more than 2 years; on or after 1 July 1947 and before 1 July 1949.
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**non-warlike service** means service in the Defence Force of a kind determined in writing by the Minister for Defence to be non-warlike service.

**operational service** has the meaning given by sections 6 to 6F.

**qualifying service** has the meaning given in section 7A.

**refugee** has the meaning given by subsection (4).

**special mission** means a mission that, in the opinion of the Commission, was of special assistance to the Commonwealth in the prosecution of a war to which this Act applies.

**unit of the Defence Force** means a body, contingent or detachment of the Defence Force.

**veteran** means:

(a) a person (including a deceased person):

(i) who is, because of section 7, taken to have rendered eligible war service; or

(ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and

(b) in Parts III and VIIC also includes a person who is:

(i) a Commonwealth veteran; or

(ii) an allied veteran; or

(iv) an allied mariner.

Note: *Commonwealth veteran, allied veteran* and *allied mariner* are defined in this subsection.

**warlike service** means service in the Defence Force of a kind determined in writing by the Minister for Defence to be warlike service.

**Army Medical Corps Nursing Service**

(2) For the purposes of this Act, a member of the Army Medical Corps Nursing Service who:

(a) rendered service during World War I, either within or outside Australia; and

(b) rendered the service as such a member in accordance with an acceptance or appointment by the Director-General of Medical Services for service outside Australia;
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is taken to have been serving as a member of the Defence Force while rendering that service.

Defence force of government-in-exile

(3) In relation to any period during which there was a government-in-exile in relation to an allied country, defence force established by an allied country includes:

(a) the regular naval, military or air forces; and
(b) the nursing or auxiliary services of the regular naval, military or air forces; and
(c) the women’s branch of the regular naval, military or air forces;

raised by that government-in-exile and operated by it with regular military-like lines of command, that is to say, raised and operated in such a manner that the members of those forces and services:

(d) were formally appointed to, or enlisted in, those forces or services; and
(e) were required to wear uniforms or insignia distinguishing them as members of those forces or services; and
(f) were required to carry arms openly; and
(g) were subject to the rules and conventions of warfare.

Note: for an extended meaning of the defence force of a government-in-exile in relation to an allied veteran see subsection 5R(2).

Refugee

(4) For the purposes of Part III, a person is a refugee if the person:

(a) is taken, under the Migration Reform (Transitional Provisions) Regulations, to be the holder of a transitional (permanent) visa because the person was, immediately before 1 September 1994, the holder of:

(i) a visa or entry permit that fell within Division 1.3— Group 1.3 (Permanent resident (refugee and humanitarian) (offshore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

(ii) a visa or entry permit that fell within Division 1.5— Group 1.5 (Permanent resident (refugee and humanitarian) (on-shore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or
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(b) was, immediately before 1 February 1993, the holder of a visa or entry permit of a class prescribed under the Migration Regulations as then in force that corresponds to a visa or entry permit referred to in subparagraph (a)(i) or (ii); or

(c) is the holder of:
   (i) a permanent protection visa; or
   (ii) a permanent visa of a class referred to in Schedule 2A; or
   (iii) a permanent visa of a class referred to in a declaration of the Minister under subsection (5) that is in force.

Declaration of class of visas

(5) If:
   (a) after the commencement of this subsection, a class of permanent visas (other than a class referred to in Schedule 2A) is prescribed by regulations made for the purposes of section 31 of the Migration Act 1958; and
   (b) the Minister is of the view that a person holding a visa of that class should be regarded as a refugee for the purposes of Part III;
then the Minister may declare in writing that class of visas to be a class of visas for the purposes of subparagraph (4)(c)(iii). The declaration is a disallowable instrument.

5D Injury/disease definitions

(1) In this Act, unless the contrary intention appears:

blinded in an eye has the meaning given by subsection (3).

disease means:
   (a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
   (b) the recurrence of such an ailment, disorder, defect or morbid condition;
but does not include:
   (c) the aggravation of such an ailment, disorder, defect or morbid condition; or
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(d) a temporary departure from:
   (i) the normal physiological state; or
   (ii) the accepted ranges of physiological or biochemical
       measures;
       that results from normal physiological stress (for example,
       the effect of exercise on blood pressure) or the temporary
       effect of extraneous agents (for example, alcohol on blood
       cholesterol levels).

*incapacity from a defence-caused injury or incapacity from a
  defence-caused disease* has the meaning given by subsection (2).

*incapacity from a war-caused injury or incapacity from a
  war-caused disease* has the meaning given by subsection (2).

*injury* means any physical or mental injury (including the
recurrence of a physical or mental injury) but does not include:
   (a) a disease; or
   (b) the aggravation of a physical or mental injury.

*War-caused injury; war-caused disease; defence-caused injury;
  defence-caused disease*

(2) In this Act, unless the contrary intention appears:
   (a) a reference to the *incapacity* of a veteran *from a war-caused
       injury or a war-caused disease*; or
   (b) a reference to the *incapacity* of a person who is a member of
       the Forces, or a member of a Peacekeeping Force (as defined
       by subsection 68(1)), *from a defence-caused injury or a
       defence-caused disease*;
       is a reference to the effects of that injury or disease and not a
reference to the injury or disease itself.

   Note: for *war-caused injury and war-caused disease* see section 9.

*Blinded in an eye*

(3) For the purposes of this Act, a person is taken to have been *blinded
   in an eye* if:
   (a) the person has lost the eye; or
(b) in the opinion of the Commission, the eyesight of the person in that eye is so defective that the person has no useful sight in that eye.

5E  Family relationships definitions—couples

(1) In this Act, unless the contrary intention appears:

couple has the meaning given by subsections (2), (3) and (4).

member of a couple has the meaning given by subsections (2), (3), (4) and (4A).

non-illness separated spouse means a person:

(a) who is legally married to another person but living separately and apart from that other person on a permanent basis; and

(b) whose separation has not resulted in a direction under subsection 5R(5).

partner, in relation to a person who is a member of a couple, means the other member of the couple.

partnered has the meaning given by subsection (5).

partnered (partner getting benefit) has the meaning given by subsection (5).

partnered (partner getting neither pension nor benefit) has the meaning given by subsection (5).

partnered (partner getting pension) has the meaning given by subsection (5).

partnered (partner getting pension or benefit) has the meaning given by subsection (5).

Note: social security pension includes a rehabilitation allowance.

war widow means a woman:

(a) who was the partner of, was legally married to, or was the wholly dependent partner of:

(i) a veteran; or

(ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or
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(iii) a person who was a member (within the meaning of the MRCA);
       immediately before the death of the veteran or person; and

(b) who:

(i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or

(ii) has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or is receiving a weekly amount mentioned in that paragraph; or

(iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

war widower means a man:

(a) who was the partner of, was legally married to, or was the wholly dependent partner of:

(i) a veteran; or

(ii) a person who was a member of the Forces for the purposes of Part II or IV of this Act; or

(iii) a person who was a member (within the meaning of the MRCA);
       immediately before the death of the veteran or person; and

(b) who:

(i) is receiving a pension payable under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or

(ii) has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or is receiving a weekly amount mentioned in that paragraph; or

(iii) is receiving a pension that is payable under the law of a foreign country, and that is, in the opinion of the Commission, similar in character to a pension referred to in subparagraph (i).

wholly dependent partner has the meaning given by the MRCA.
widow means:
(a) a woman who was the partner of a man immediately before he died; or
(b) a woman who was legally married to a man, but living separately and apart from him on a permanent basis, immediately before he died.

widower means:
(a) a man who was a partner of a woman immediately before she died; or
(b) a man who was legally married to a woman, but living separately and apart from her on a permanent basis, immediately before she died.

Member of a couple—general

(2) A person is a member of a couple for the purposes of this Act if:
(a) the person is legally married to another person and is not living separately and apart from the other person on a permanent basis; or
(b) all of the following conditions are met:
   (i) the person is living with a person of the opposite sex (in this paragraph called the partner);
   (ii) the person is not legally married to the partner;
   (iii) the person and the partner are, in the Commission’s opinion (formed as mentioned in section 11A), in a marriage-like relationship;
   (iv) the person and the partner are not within a prohibited relationship for the purposes of section 23B of the Marriage Act 1961.

Note 1: for living with a person see subsection (3).

Note 2: a prohibited relationship for the purposes of section 23B of the Marriage Act 1961 is a relationship between a person and:
- an ancestor of the person; or
- a descendant of the person; or
- a brother or sister of the person (whether of the whole blood or the part-blood).

Note 3: subsection 5R(5) (determination in relation to an illness separated couple) is a qualification to the definition of a member of a couple.

Note 4: subsection 5R(6) (determination in relation to a respite care couple) is a qualification to the definition of a member of a couple.
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(3) For the purposes of subparagraph (2)(b)(i), a person is to be treated as living with another person during:
   (a) any temporary absence of one of those persons;
   (b) an absence of one of those persons resulting from illness or infirmity;
   if the Commission is of the opinion that they would, but for the absence, have been living together during that period.

Member of a couple—special excluding determination

(4) A person is not a member of a couple if a determination under subsection 5R(3) is in force in relation to the person.

Note: subsection 5R(3) allows the Commission to treat a person who is a member of a couple as not being a member of a couple in special circumstances.

(4A) The partner of a person who:
   (a) is receiving a youth allowance under the Social Security Act; and
   (b) is not independent within the meaning of Part 3.5 of that Act;
   is not a member of a couple for the purposes of:
   (c) the provisions of this Act referred to in the table at the end of this subsection; and
   (d) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (c).

Note: Paragraph (d) has the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test or compensation recovery provisions, including section 5H (Income test definitions), section 5L (Assets test definitions), section 5NB (Compensation recovery definitions) and Divisions 1 to 11 of Part IIB (General provisions relating to the income and assets tests).

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Veterans’ Entitlements Act 1986
Chapter 5F

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Standard family situation categories

(5) For the purposes of this Act:

(a) a person is **partnered** if the person is a member of a couple; and

(b) a person is **partnered (partner getting neither pension nor benefit)** if the person is a member of a couple and the person’s partner:

(i) is not receiving a service pension; and

(ii) is not receiving income support supplement; and

(iii) is not receiving a social security pension; and

(iv) is not receiving a social security benefit; and

(c) a person is **partnered (partner getting pension or benefit)** if the person is a member of a couple and the person’s partner is receiving:

(i) a service pension; or

(ii) income support supplement; or

(iii) a social security pension; or

(iv) a social security benefit; and

(d) a person is **partnered (partner getting pension)** if the person is a member of a couple and the person’s partner is receiving:

(i) a service pension; or

(ii) income support supplement; or

(iii) a social security pension; and

(e) a person is **partnered (partner getting benefit)** if the person is a member of a couple and the person’s partner is receiving a social security benefit.

Note: **social security pension** includes a rehabilitation allowance (see subsection 5Q).

5F Family relationships definitions—children

(1) In this Act, unless the contrary intention appears:

*Aboriginal study assistance scheme* means:

(a) the ABSTUDY Scheme; or

(b) the Aboriginal Overseas Study Assistance Scheme; or

(c) a scheme prescribed for the purposes of this definition.
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*adopted child* means a child adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

*child* means:
(a) a person who has not turned 16; or
(b) a person who:
   (i) has turned 16 but has not turned 25; and
   (ii) is receiving full-time education at a school, college or university;

but does not include such a person if the person is receiving:
(c) a disability support pension; or
(d) a wife pension; or
(e) a carer payment; or
(f) a pension PP (single); or
(g) a widow B pension; or
(h) a widowed person allowance; or
(i) a rehabilitation allowance; or
(j) a social security benefit (except youth allowance paid because the person is at least 16 but less than 25 and is receiving full-time education at a school, college or university);

under the Social Security Act.

Note: see also subsection (5) (receiving full-time education).

*dependent child* has the same meaning as in the Social Security Act.

*family tax benefit* has the meaning given by subsection 3(1) of the Family Assistance Act.

*FTB child* has the meaning given by Subdivision A of Division 1 of Part 3 of the Family Assistance Act.

*maximum Part A rate of family tax benefit* is the maximum rate worked out in step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act.

*parent* means, in relation to an adopted child, an adoptive parent of the child.
When a person becomes a dependent child

(2) A person becomes a dependent child at the time when the person would become a dependent child for the purposes of the Social Security Act if that Act applied in respect of the person.

5G Australian residence definitions

(1) In this Act, unless the contrary intention appears:

_Australian resident_ has the meaning given by subsection (1AA).

_holder_, in relation to a visa, has the same meaning as in the Migration Act 1958.

Permanent visa, special category visa and special purpose visa have the same meanings as in the Migration Act 1958.

(1AA) An _Australian resident_ is a person who:

(a) resides in Australia; and

(b) is one of the following:

(i) an Australian citizen;

(ii) the holder of a permanent visa;

(iii) the holder of a special category visa who is likely to remain permanently in Australia;

(iv) the holder of a special purpose visa who is likely to remain permanently in Australia.

Note 1: For _holder_, _permanent visa_ and _special purpose visa_ see subsection (1).

Note 2: _Australian citizen_ is defined in the Australian Citizenship Act 1948.

(1A) In deciding for the purposes of this Act whether or not a person resides in Australia, regard must be had to:

(a) the nature of the accommodation used by the person in Australia; and

(b) the nature and extent of the family relationships the person has in Australia; and

(c) the nature and extent of the person’s employment, business or financial ties with Australia; and

(ca) the nature and extent of the person’s assets located in Australia; and
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(c) the frequency and duration of the person’s travel outside Australia; and

d) any other matter relevant to determining whether the person intends to remain permanently in Australia.

Papua New Guinea residents

(2) For the purposes of this Act (other than Part VIIC), a person (other than an indigenous inhabitant of the Territory of Papua or the Territory of New Guinea) resident in Papua New Guinea immediately before it became an independent sovereign State, is taken to be an Australian resident so long as the person continues to reside in Papua New Guinea.

(3) If:

(a) a service pensioner or income support supplement recipient is taken to be an Australian resident under subsection (2); and

(b) the pensioner’s partner was resident in Papua New Guinea after it became an independent sovereign State;

the partner is, for the purposes of Parts III, IIIA and IIIB, also taken to be an Australian resident.

(4) If:

(a) a service pensioner or income support supplement recipient is taken to be an Australian resident under subsection (2); and

(b) the pensioner’s non-illness separated spouse was resident in Papua New Guinea after it became an independent sovereign State;

the non-illness separated spouse is, for the purposes of Parts III, IIIA and IIIB, also taken to be an Australian resident.

5H Income test definitions

(1) In this Act, unless the contrary intention appears:

adjusted income, in relation to a person for the purpose of assessment of the rate of income support supplement, means the sum of:

(a) the person’s ordinary income; and
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(b) a payment that is disability pension under paragraph (d) of the definition of disability pension in section 5Q payable to the person;

(c) any instalment of pension payable to the person under subsection 30(1); and

(ca) if the person was paid a lump sum mentioned in subparagraph 234(1)(b)(i) of the MRCA (wholly dependent partner payment)—any weekly amounts that the person would have been paid if the person had chosen the weekly amount mentioned in subparagraph 234(1)(b)(ii) of that Act; and

(cb) any payment of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA (wholly dependent partner payment); and

(d) any instalment of pension that is payable to the person under the law of a foreign country and is, in the opinion of the Commission, similar in character to the pension referred to in paragraph (c).

approved exchange trading system has the meaning given by subsection 5H(11).

available money, in relation to a person, means money that:

(a) is held by or on behalf of the person; and

(b) is not deposit money of the person; and

(c) is not the subject of a loan made by the person.

deposit money, in relation to a person, means the person’s money that is deposited in an account with a financial institution.

disposes of ordinary income has the meaning given by section 48.

domestic payment has the meaning given by subsection (3).

earned, derived or received has the meaning given by subsection (2).

exchange trading system has the meaning given by subsection 5H(10).

home equity conversion agreement, in relation to a person, means an agreement under which the repayment of an amount paid to or on behalf of the person, or the person’s partner, is secured by a
mortgage of the principal home of the person or the person’s partner.

Note: see also subsection (7).

income, in relation to a person, means:
(a) an income amount earned, derived or received by the person for the person’s own use or benefit; or
(b) a periodical payment by way of gift or allowance; or
(c) a periodical benefit by way of gift or allowance;
but does not include an amount that is excluded under subsection (4), (5) or (8).

Income amount means:
(a) valuable consideration; or
(b) personal earnings; or
(c) moneys; or
(d) profits;
(whether of a capital nature or not).

Ordinary income means income that is not maintenance income or an exempt lump sum.

Note 1: for maintenance income see subsection 5K(1). For exempt lump sum, see subsection (12).

Note 2: The receipt of periodic compensation payments may result in reduction of the person’s rate of service pension or income support supplement under Part IIIIC. If this happens, the payments are not treated as ordinary income (see section 59X).

Note 3: For provisions affecting the amount of a person’s ordinary income see sections 46 and 46A (ordinary income concept), sections 46B and 46C (business income), sections 46D to 46L (deemed income from financial assets) and sections 46Q to 46Y (income from income streams).
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**Earned, derived or received**

(2) A reference in this Act to an income amount *earned, derived or received* is a reference to:

(a) an income amount earned, derived or received by any means; and

(b) an income amount earned, derived or received from any source (whether within or outside Australia).

**Domestic payments**

(3) A payment received by a person is a *domestic payment* for the purposes of this Act if:

(a) the person receives the payment on the disposal of an asset of the person; and

(b) the asset was used, immediately before the disposal, by the person or the person’s partner wholly or substantially for private or domestic purposes; and

(c) the asset was used by the person or the person’s partner wholly or substantially for those purposes for:

   (i) a period of 12 months before the disposal; or

   (ii) if the Commission considers it appropriate—a period of less than 12 months before the disposal.

**Excluded amounts—home equity conversion (not a member of a couple)**

(4) If a person is not a member of a couple, an amount paid to or on behalf of the person under a home equity conversion agreement is an *excluded amount* for the person to the extent that the total amount owed by the person from time to time under home equity conversion agreements does not exceed $40,000.

**Excluded amounts—home equity conversion (member of a couple)**

(5) If a person is a member of a couple, an amount paid to or on behalf of the person or the person’s partner under a home equity conversion agreement is an *excluded amount* for the person to the extent that the total amount owed by the person and the person’s partner under home equity conversion agreements from time to time does not exceed $40,000.
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Home equity conversion (amount owed)

(6) For the purposes of this Act, the amount owed by a person under a home equity conversion agreement is the principal amount secured by the mortgage concerned and does not include:
(a) any amount representing mortgage fees; or
(b) any amount representing interest; or
(c) any similar liability whose repayment is also secured by the mortgage.

Home equity conversion (principal home)

(7) For the purposes of the definition of home equity conversion agreement in subsection (1), an asset cannot be a person’s principal home unless the person or the person’s partner has a beneficial interest (but not necessarily the sole beneficial interest) in the asset.

Excluded amounts—general

(8) The following amounts are not income in relation to a person for the purposes of this Act:
(a) a payment under Part III or Part IIIA;
(b) a payment of an instalment of pension under Part II or IV;
(ba) a payment of an instalment of an allowance under section 118A, 118F or 118Q (pharmaceutical and telephone allowance);
(c) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable because of subsection 4(6) or (8B) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986;
(e) a payment (other than a payment referred to in paragraph (b) or (c)) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged;
(ea) any payment of compensation (other than a payment referred to in paragraph (e)) to the extent that the payment is taken into account:
(i) under Division 5A of Part II; or
(ii) under section 74;
to reduce a disability pension payable to the person under Part 2 or Part 4, as the case requires;

Note: however, a payment referred to in paragraph (b), (c), (e) or (ea):
- is counted in working out the amount of rent assistance a person is entitled to, and may reduce that amount (see Rent Assistance Module of relevant Rate Calculator); and
- is counted in working out a person’s total income for the purposes of the hardship rules (see section 52Z).

(f) a payment by way of allowance (other than a loss of earnings allowance) under Part VI of this Act;

Note: however, a payment referred to in paragraph (f) is counted in working out a person’s total income for the purposes of the hardship rules (see section 52Z).

(g) a payment under Part VIIAB, including a payment made under regulations made under that Part;

(ga) a payment under Part VIIAC (utilities allowance);

(gb) a payment under Part VIIAD (seniors concession allowance);

(h) a payment under the Social Security Act;

(ha) a payment under the ABSTUDY Scheme;

(haa) the amount or value of a scholarship known as a Commonwealth Trade Learning Scholarship;

(hb) the amount or value of:
- (i) a scholarship known as a Commonwealth Education Costs Scholarship; or
- (ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the Higher Education Support Act 2003;

(hc) an amount covered by subsection (8A) (about reductions of amounts payable for enrolment or tuition in certain courses);

(hd) a payment covered by subsection (8B) (about payments that are made to an educational institution or the Commonwealth to reduce a person’s liability to the educational institution or Commonwealth and that are made by someone other than the person);

(i) any return on a person’s investment in:
- (i) a superannuation fund; or
- (ii) an approved deposit fund; or
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(iii) a deferred annuity; or

(iiiia) an ATO small superannuation account;

until the person:

(iv) reaches pension age; or

(v) commences to receive a pension or annuity out of the fund;

Note 1: for pension age see subsection (9) and sections 5QA and 5QB.

Note 2: for superannuation fund, approved deposit fund, deferred annuity and ATO small superannuation account see subsection 5J(1).

(j) the value of emergency relief or like assistance;

(l) a payment under the Handicapped Persons Assistance Act 1974;

(m) a payment under Part III of the Disability Services Act 1986 or the value of any rehabilitation program (including any follow-up program) provided under that Part;

(n) a payment of domiciliary nursing care benefit under Part VB of the National Health Act 1953 as in force immediately before 1 July 1999;

(na) a payment of subsidy under Part 3.1 of the Aged Care Act 1997 made to an approved provider (within the meaning of that Act) in respect of care provided to the person;

(nb) an accommodation bond balance (within the meaning of the Aged Care Act 1997) refunded to the person under that Act;

(nc) while a person is accruing a liability to pay an accommodation charge—any rent from the person’s principal home that the person, or the person’s partner, earns, derives or receives from another person;

Note 1: Accommodation charge has the same meaning as in the Aged Care Act 1997: see subsection 5L(1).

Note 2: For rent, see subsection 5N(2).

Note 3: Under subsections 5L(6A) and (7), the principal home of a person in a care situation may be a place other than the place where the person receives care.

(nd) while a person is liable to pay all or some of an accommodation bond by periodic payments—any rent from the person’s principal home that the person, or the person’s partner, earns, derives or receives from another person;
(o) a payment under a Commonwealth law, one of whose objects is that of assisting people to purchase or build their own homes;

(oa) a payment by a State or Territory for the purpose of assisting people to purchase or build their own homes;

(p) a payment made to the person for or in respect of a child of the person;

(pa) if:

(i) the person owes money under a mortgage or other arrangement; and

(ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and

(iii) payments are made to the creditor under the insurance; a payment so made;

(q) insurance or compensation payments made because of the loss of, or damage to, buildings, plant or personal effects;

Note: these payments are to be disregarded in calculating the value of a person’s assets (see paragraph 52(1)(o)).

(r) money from an investment that is:

(i) an investment of payments of the kind referred to in paragraph (q); and

(ii) an investment for:

(A) a period of not more than 12 months after the person receives the payments; or

(B) if the Commission thinks it appropriate—of 12 months or more after the person receives those payments;

(s) an amount paid, under a law of, or applying in, a country or part of a country, by way of compensation for a victim of National Socialist persecution;

(u) if the person pays, or is liable to pay, rent—a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;

(v) a payment received by a trainee in full-time training under a program included in the programs known as the Labour
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Force Programs, to the extent that the payment includes one or more of the following amounts:

(i) an amount calculated by reference to a rate of newstart allowance or youth allowance under the Social Security Act;

(ii) an amount known as the training component;

(iii) an amount by way of a living away from home allowance;

(w) a payment received by a trainee in part-time training under a program included in the programs known as the Labour Force Programs, if the trainee is also receiving:

(i) a service pension; or

(iia) an age pension; or

(iii) a disability support pension; or

(iv) a wife pension; or

(v) a carer payment; or

(vi) a pension PP (single); or

(vii) a rehabilitation allowance; or

(ix) a widowed person allowance; or

(x) a widow B pension;

(x) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme;

(xa) a payment made by the Mark Fitzpatrick Trust or the New South Wales Medically-Acquired HIV Trust to a person by way of assistance with expenses incurred in relation to a person who has medically acquired HIV infection;

(y) a benefit under a law of the Commonwealth that relates to the provision of:

(i) pharmaceutical, sickness or hospital benefits; or

(ii) medical or dental services;

(ya) a payment towards the cost of personal care support services for the person that is made under a scheme approved under section 35A of the Social Security Act;

(z) a payment that:

(i) is made by an organisation that is registered under a law referred to in paragraph (y); and

(ii) is made in respect of expenses incurred by a person for:
(A) hospital treatment; or
(B) medical treatment; or
(C) dental treatment;

(za) in the case of a member of:
   (i) the Naval Reserve; or
   (ii) the Army Reserve; or
   (iii) the Air Force Reserve;

the pay and allowances paid to the person as such a member
(other than pay and allowances in respect of continuous
full-time service);

(zb) a payment that is a bereavement payment under section 98A;

or

(zd) a periodical payment by way of gift or allowance, or a
periodical benefit by way of gift or allowance, from the
person’s father, mother, son, daughter, brother or sister;

(ze) the value of board or lodging received by the person;

(zf) a domestic payment;

(zh) a payment received by the person for serving, or being
summoned to serve, on a jury;

(zi) a payment received by the person for expenses incurred by
the person as a witness, other than an expert witness, before a
court, tribunal or commission;

(zj) a return on an exempt funeral investment;

(zk) an amount paid by a buyer under a sale leaseback agreement;

(zl) if a person is a member of an approved exchange trading
system—an amount credited to the person’s account for the
purposes of the scheme in respect of any goods or services
provided by the person to another member;

Note: For approved exchange trading system see subsections (10) and
(11).

(zm) an advance payment of pension under Part IVA;

(zn) an amount worked out under section 115G;

(zo) a payment under section 47, 56, 81, 205, 214, 217, 226, 239
or 266 of the MRCA to reimburse costs incurred in respect of
the provision of goods or services (other than a payment to
the person who provided the goods or service);
(zp) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the MRCA (permanent impairment);

(zq) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;

(zr) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight, worked out under section 5I of this Act, that would, apart from this paragraph, be income of the person;

Note: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

(zs) a payment under the Motor Vehicle Compensation Scheme under section 212 of the MRCA;

(zt) a payment of an allowance under section 221, 245 or 300 of the MRCA (telephone and pharmaceutical allowance);

(zu) a payment of a lump sum mentioned in paragraph 234(1)(a) or subparagraph 234(1)(b)(i), or of a weekly amount mentioned in subparagraph 234(1)(b)(ii), of the MRCA (wholly dependent partner payment);

(zv) a payment under section 242 or 255 of the MRCA (continuing permanent impairment and incapacity etc. payments);

(zw) a payment under section 251 or 253 of the MRCA (eligible young person payment);

(zx) a payment under the scheme set up under section 258 of the MRCA (education scheme for eligible young persons);

(zy) a payment under section 262 of the MRCA (compensation for other dependants);

(zz) a payment under Part 2 of Chapter 6, or Division 2 or 3 of Part 4 of Chapter 6, or subsection 328(4), of the MRCA (compensation for treatment etc.);

(zz) a payment under section 424 of the MRCA (special assistance);

(zzaa) 2006 one-off payment to older Australians under Part VIID;

(zzab) a payment under a scheme determined under Schedule 2 to the Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006;
(zzb) the value of the benefit provided under the initiative known as the Tools for Your Trade initiative;

(zzc) a payment under the scheme determined under Schedule 4 to the Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006.

Note: However:

(a) some of the amounts referred to in paragraphs (8)(zp), (zq), (zr) and (zu) are counted for the purposes of the hardship rules (see subsection 52Z(3A)); and

(b) the amounts referred to in paragraph (8)(zp) are counted for the purposes of rent assistance (see Module C of the Rate Calculator).

(8A) This subsection covers the amount of a reduction (by discount, remission or waiver) of an amount that would otherwise be payable by a person:

(a) to an educational institution for enrolment or tuition of the person by the institution in a course that:

(i) is determined, under section 5D of the Student Assistance Act 1973, to be a secondary course or a tertiary course for the purposes of that Act; or

(ii) is a Masters or Doctoral degree course accredited as a higher education course by the authority responsible for accrediting higher education courses in the State or Territory in which the course is conducted or by the institution, if it is permitted by a law of the Commonwealth, a State or a Territory to accredit higher education courses that it conducts; or

(iii) is a course of vocational training; or

(b) to the Commonwealth as a result of the person’s enrolment in, or undertaking of, such a course at an educational institution.

(8B) This subsection covers a payment:

(a) that is made to discharge, or to prevent from arising, to any extent:

(i) a person’s actual or anticipated liability to an educational institution for enrolment or tuition of the
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person by the institution in a course described in paragraph (8A)(a); or
(ii) a person’s actual or anticipated liability to the Commonwealth resulting from the person’s enrolment in, or undertaking of, such a course at an educational institution; and
(b) that is made by someone other than the person; and
(c) that is made to the institution or the Commonwealth; and
(d) that is not made at the direction of the person.

(9) For the purposes of the application of subsection (8) in relation to income support supplement, the reference in subparagraph (8)(i)(iv) to pension age is taken to be a reference to the qualifying age referred to in subsection 45A(2).

(10) An exchange trading system is an arrangement between a number of people (members) under which each member may obtain goods or services from another member that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:
(a) to which is credited:
(i) the amount representing the value of any goods or services provided by the member to another member; or
(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and
(b) to which is debited:
(i) the amount representing the value of any goods or services supplied to the member by another member; or
(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.

(11) An exchange trading system is an approved exchange trading system if the Commission is satisfied that:
(a) it is a local community-based system; and
(b) its primary purpose is to help people maintain their labour skills and keep them in touch with the labour market; and
(c) it is not a system run by a person or organisation for profit.
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(12) An amount received by a person is an *exempt lump sum* if:

(a) it is not a periodic amount (within the meaning of subsection 5K(1A)); and

(b) it is not income from remunerative work undertaken by the person; and

(c) it is an amount, or one of a class of amounts, that the Commission determines to be an *exempt lump sum*.

5I Special Rate Disability Pension reduction amount

For the purposes of paragraphs 5H(8)(zr) and 5Z(3A)(i), the amount per fortnight is:

\[
\text{Special Rate Disability Pension reduction amount} \times \frac{10}{6}
\]

where:

*Special Rate Disability Pension reduction amount* means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the MRCA (but not below zero).

5J Financial assets and income streams definitions

(1) In this Act, unless the contrary intention appears:

*approved deposit fund* means a fund that is an approved deposit fund for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

*asset-tested income stream (long term)* means an income stream that is an asset-tested income stream (long term) under section 5JD or an income stream that:

(a) is not an asset-test exempt income stream; and

(b) has, on its commencement day:

(i) a term of more than 5 years; or

(ii) if the person who has acquired the income stream has a life expectancy of 5 years or less—a term equal to or greater than the person’s life expectancy.
Section 5J

**asset-tested income stream (short term)** means an income stream that is an asset-tested income stream (short term) under section 5JD or an income stream that is neither:

(a) an asset-test exempt income stream; nor
(b) an asset-tested income stream (long term).

**asset-test exempt income stream** has the meanings given by sections 5JA, 5JB and 5JBA.

**ATO small superannuation account** means an account kept in the name of an individual under the Small Superannuation Accounts Act 1995.

**commencement day**, in relation to an income stream, means the first day of the period to which the first payment under the income stream relates.

**deductible amount**, in relation to an income stream, means the amount that would be the deductible amount in relation to the income stream under subsection 27H(2) of the Income Tax Assessment Act, if the references in that subsection to an annuity were references to an income stream.

**deferred annuity** means an annuity that is a deferred annuity for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

**defined benefit income stream** has the meaning given by subsection (1E).

**family law affected income stream** has the meaning given by subsection 5JC(1).

**financial asset** means:

(a) a financial investment; or
(b) a deprived asset.

Note: For **deprived asset** see subsection 5J(2B).

**financial investment** means:

(a) available money; or
(b) deposit money; or
(c) a managed investment; or
(d) a listed security; or
(e) a loan that has not been repaid in full; or
(f) an unlisted public security; or
(g) gold, silver or platinum bullion; or
(h) an asset-tested income stream (short term).

Note: For loan see subsections (2) and (2A).

**friendly society** means:
(a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
(b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
(c) a body that is permitted, by a law of a State or Territory, to assume or use the expression *friendly society*; or
(d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or
(e) a body that had, before 13 December 1987, been approved for the purpose of the definition of *friendly society* in subsection 115(1) of the *Social Security Act 1947*.

governing rules, in relation to an income stream, means any trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the income stream.

**income stream** means:
(a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or
(b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or
(c) an income stream arising under a retirement savings account; or
(d) an income stream provided by a life insurance business (within the meaning of the *Life Insurance Act 1995*); or
(e) an income stream provided by a friendly society; or
(f) an income stream designated in writing by the Commission for the purposes of this definition, having regard to the guidelines determined under subsection (1F); or
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(fa) a family law affected income stream;
but does not include any of the following:
(g) available money;
(h) deposit money;
(i) a managed investment;
(j) a listed security;
(k) a loan that has not been repaid in full;
(l) an unlisted public security;
(m) gold, silver or platinum bullion.

investment:
(a) in relation to a superannuation fund, approved deposit fund
    or deferred annuity—has the meaning given by
    subsection (6); or
(b) in relation to an ATO small superannuation account—has the
    meaning given by subsection (6A).

investor, in relation to an ATO small superannuation account,
means the person in whose name the account is kept.

life expectancy has the same meaning as life expectation factor
has in section 27H of the Income Tax Assessment Act.

listed security means:
(a) a share in a company; or
(b) another security;
listed on a stock exchange.

managed investment has the meaning given by subsections (1A),
(1B) and (1C).

original family law affected income stream has the meaning given
by subsection 5JC(1).

primary FLA income stream has the meaning given by subsection
5JC(1).

public unit trust means a unit trust that:
(a) except where paragraph (b) applies—was, in relation to the
    unit trust’s last year of income, a public unit trust for the
    purposes of Division 6B of Part III of the Income Tax
    Assessment Act; or
(b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G(1) of the Income Tax Assessment Act.

*purchase price*, in relation to an income stream, means the sum of the payments made to purchase the income stream (including amounts paid by way of employer and employee contributions) less any commuted amounts.

*realise*, in relation to an investment, has the meaning given by subsections (7) and (8).

*relevant number*, in relation to an income stream, means:

(a) if the income stream is payable for a fixed number of years—that number; or

(b) if the income stream is payable during the lifetime of a person and no longer—the number of years of the person’s life expectancy; or

(c) if the income stream:

(i) is jointly owned by a person and his or her partner and is payable for the lifetime of the person or the partner; or

(ii) is payable during the lifetime of a person and then for the lifetime of a reversionary beneficiary;

the number of years in the longer of the relevant life expectancies; or

(d) in any other case—the number that the Commission considers appropriate having regard to the number of years in the total period during which the income stream will be, or may reasonably be expected to be, payable.

*residual capital value*, in relation to an income stream, has the meaning that it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

*retirement savings account* has the meaning that it has in the *Retirement Savings Account Act 1997*.

*return*:
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(a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or

(b) in relation to any other investment (including an investment in the nature of superannuation)—means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment.

**secondary FLA income stream** has the meaning given by subsection 5JC(1).

**superannuation benefit**, in relation to a person, means:

(a) a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person; or

(b) a payment under Part 7 of the *Small Superannuation Accounts Act 1995*, where the payment is in respect of an ATO small superannuation account kept in the name of the person.

**superannuation contributions surcharge** has the meaning that it has in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**superannuation fund** means:

(a) a fund or scheme included in the definition of *superannuation fund* in subsection 27A(1) of the Income Tax Assessment Act, other than a fund covered by subparagraph (a)(ia) of that definition; or

(b) an eligible resident non-complying superannuation fund within the meaning of the Income Tax Assessment Act.

Note: For *foreign superannuation fund* see subsection 5L(1).

**unlisted public security** means:

(a) a share in a public company; or

(b) another security;

that is not listed on a stock exchange.

(1A) Subject to subsections (1B) and (1C), an investment is a managed investment for the purposes of this Act if:
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(a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and

(b) the assets that represent the money or property invested (the invested assets) are not held in the names of investors; and

(c) the investor does not have effective control over the management of the invested assets; and

(d) the investor has a legally enforceable right to share in any distribution of income or profits derived from the invested assets.

(1B) Without limiting the generality of subsection (1A) but subject to subsection (1C), the following are managed investments for the purposes of this Act:

(a) an investment in a public unit trust;

(b) an investment in an insurance bond;

(c) an investment with a friendly society;

(d) an investment in a superannuation fund;

Note: see paragraph (1C)(a) for superannuation investments held before pension age is reached.

(e) an investment in an approved deposit fund;

Note: see paragraph (1C)(b) for investments in approved deposit funds held before pension age is reached.

(f) an investment in a deferred annuity;

Note: see paragraph (1C)(c) for deferred annuities held before pension age is reached.

(g) an investment in an ATO small superannuation account.

Note: See paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.

(1C) The following are not managed investments for the purposes of this Act:

(a) an investment in a superannuation fund if the investor has not yet turned pension age;

(b) an investment in an approved deposit fund if the investor has not yet turned pension age;

(c) an investment in a deferred annuity if the investor has not yet turned pension age;

(ca) an investment in an ATO small superannuation account if the investor has not yet turned pension age;
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(d) deposit money;
(e) a loan;
(f) an asset-test exempt income stream;
(g) an asset-tested income stream (long term);
(h) an asset-tested income stream (short term).

Note 1: for pension age see subsection (1D) and sections 5QA and 5QB.
Note 2: for deposit money see subsection 5H(1).
Note 3: For provisions relating to when a loan is taken to be made see subsection (2).
Note 4: Asset-test exempt income streams are dealt with under sections 46T to 46VA.
Note 5: Asset-tested income streams (long term) are dealt with under sections 46W to 46Y.

(1D) For the purposes of the application of subsection (1C) in relation to income support supplement, the references in paragraphs (1C)(a), (b) and (c) to pension age are taken to be references to the qualifying age referred to in subsection 45A(2).

(1E) An income stream is a defined benefit income stream if the amount of the payments under it:
(a) is not fully determined by the purchase price; but
(b) is determined:
   (i) by reference to the purchaser’s salary before retirement or the purchaser’s years of service; or
   (ii) by the governing rules.

(1F) The Commission may determine, in writing, guidelines to be complied with when designating an income stream for the purposes of the definition of income stream in subsection (1). The determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(2) The following rules apply for the purposes of this Act:
(a) the acquisition by a person of debentures, bonds or other securities is treated as the making of a loan by the person;
(b) a person is not treated as having made a loan merely because:
   (i) the person has an account with a financial institution; or
(ii) the person has paid an entry contribution.

Note: For *entry contribution* see section 52M.

(2A) Subsection (2) does not limit the meaning of the word *loan* in this Act.

(2B) For the purposes of this Act, an asset is a *deprived asset* if:
   (a) a person has disposed of the asset; and
   (b) the value of the asset is included in the value of the person’s assets by Subdivision BA or BB of Division 11 of Part IIIB.

Note: For circumstances in which a person is taken to dispose of assets see section 52E.

(2C) To avoid doubt, neither an accommodation bond (within the meaning of the *Aged Care Act 1997*: see subsection 5L(1) of this Act) nor an accommodation bond balance (within the meaning of that Act) is a financial investment for the purposes of this Act.

(6) For the purposes of this Act, a person has an *investment* in a superannuation fund, approved deposit fund or deferred annuity if the person has benefits in the fund or under the annuity (whether the benefits are attributable to amounts paid by the person or someone else).

(6A) For the purposes of this Act:
   (a) a person has an *investment* in an ATO small superannuation account if:
      (i) the account is kept in the name of the person; and
      (ii) the balance of the account exceeds nil; and
   (b) the amount or value of that investment equals the balance of the account.

(7) For the purposes of this Act, a person *realises an investment* if, and only if:
   (a) all or part of the amount of the investment is withdrawn; or
   (b) where the investment is an ATO small superannuation account—the balance of the account is taken to have been withdrawn for the purposes of the *Small Superannuation Accounts Act 1995*; or
   (c) all or part of the return on the investment is paid to another person; or
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(d) the investment matures; or
(e) the investment is assigned by the person to another person; or
(f) the investment is disposed of by the person otherwise than in the way referred to in paragraph (e).

(8) For the purposes of subsection (7), if:
(a) a person realises an investment; and
(b) the return on the investment is paid to another person;
the return is taken to be received by the person realising the investment.

5JA Meaning of asset-test exempt income stream—lifetime income streams

General requirements

(1) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if:
(a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (4) in respect of the income stream; and
(b) subject to subsections (1B) and (1C), the Commission is satisfied that in relation to an income stream, provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
(c) the Commission is satisfied that the requirements of subsection (2) are being given effect to from the commencement day of the income stream.

Determination under subsection (5)

(1A) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the Commission has made a determination under subsection (5) in respect of the income stream.
Guidelines relating to actuarial certificates

(1B) The Commission may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force. The determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Exception if no actuarial certificate in force

(1C) Paragraph (1)(b) does not apply if, for a period beginning when an actuarial certificate referred to in this section ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meet the requirements of this subsection if the contract or governing rules specify:

(a) that payments under the income stream are to be made at least annually throughout the life of the person and, if there is a reversionary beneficiary:
   (i) throughout the reversionary beneficiary’s life; or
   (ii) if the reversionary beneficiary is a child of the person or of a former reversionary beneficiary under the income stream—at least until he or she turns 16; or
   (iii) if the child referred to in subparagraph (ii) is a full-time student who has turned 16—at least until the end of his or her full-time studies or until he or she turns 25, whichever occurs sooner; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the previous total), and may not exceed the previous total:
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(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (recent index number) exceeds the index number for the same quarter in the immediately preceding year (base index number) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

\[
100 \times \left( \frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right) + 1
\]

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:
   (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
   (ii) if the commutation is made to the benefit of a reversionary beneficiary or of the person’s estate, on the death of the person within the life expectancy period for the income stream; or
   (iii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
   (iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or...
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(iva) to the extent necessary to give effect to an entitlement of the person’s spouse or former spouse under a payment split under Part VIIIB of the Family Law Act 1975; or

(v) to the extent necessary to pay a hardship amount; and

Note 1: For non-commutation funded income stream, see subsection (7).

Note 1A: For life expectancy period, see subsection (7).

Note 1B: For asset-test exempt income stream, see section 5J.

Note 2: For hardship amount see subsection (7).

(i) that the income stream cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary; or

(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and

(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and

(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.
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Matters not required of income stream

(3) For the purpose of determining whether an income stream meets the requirements of subsection (2), it is immaterial that:

(a) if the primary beneficiary dies within the life expectancy period for the income stream, a surviving reversionary beneficiary may be paid an amount equal to the total of the payments that the primary beneficiary would (if he or she had not died) have received from the day of the death until the end of that period; and

(b) if:
   (i) the primary beneficiary dies within the life expectancy period for the income stream; and
   (ii) there is no surviving reversionary beneficiary;
   an amount, not exceeding the difference between:
   (iii) the sum of the amounts that would have been so payable to the primary beneficiary in that period; and
   (iv) the sum of the amounts paid to the primary beneficiary;
   is payable to the primary beneficiary’s estate, and

(c) if:
   (i) the primary beneficiary dies within the life expectancy period for the income stream; and
   (ii) there is a surviving reversionary beneficiary who also dies within that period;
   there is payable to the reversionary beneficiary’s estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

Determination that income stream not asset-test exempt

(4) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a service pension, an income support supplement or a social security payment.
Determination that income stream is asset-test exempt

(5) The Commission may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission is to have regard to the guidelines (if any) determined under subsection (6).

Guidelines to be complied with in making determination

(6) The Commission may determine, in writing, guidelines to be complied with when making a determination under subsection (5). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definitions

(7) In this section:

**hardship amount**, in relation to a person, means an amount determined by the Commission for the purposes of this definition if:

(a) the person applies in writing to the Commission to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and

(b) the Commission is satisfied that:

(i) the person’s circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and

(ii) the person has insufficient liquid assets or other assets (excluding the person’s principal home) that could be realised to avoid the extreme financial hardship; and

(iii) that amount is required to meet unavoidable expenditure.

**life expectancy period**, for an income stream, means the period:

(a) starting on the income stream’s commencement day; and

(b) equal to the shorter of:

(i) the primary beneficiary’s life expectancy on the commencement day; and

(ii) 20 years.
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**liquid assets**, in relation to a person, means the person’s cash and readily realisable assets, and includes:

(a) the person’s shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and

(b) managed investments; and

(c) insurance policies that can be surrendered for money; and

(d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and

(e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person.

**non-commutation funded income stream** means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

**unavoidable expenditure**, in relation to a person, means one or more of the following:

(a) essential medical expenses of the person, or the person’s partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;

(b) the cost of:
   (i) replacing the person’s principal home; or
   (ii) essential repairs to the person’s principal home; to the extent that the cost of the replacement or repairs is not covered by an insurance policy;

(c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

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5JB **Meaning of asset-test exempt income stream—life expectancy income streams**

(1) An income stream provided to a person is also an *asset-test exempt income stream* for the purposes of this Act if either subsection (1A) or (1B) applies.
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No determination under subsection (3)

(1A) This subsection applies if:

(aa) the person to whom the income stream is being provided is:

(i) the primary beneficiary; or

(ii) the primary beneficiary’s reversionary partner (if any) on the day of the primary beneficiary’s death; and

Note: For reversionary partner, see subsection (7).

(a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Commission has not made a determination under subsection (3) in respect of the income stream; and

(b) subject to subsection (1D), the Commission is satisfied that, in relation to an income stream provided by a class of provider specified by the Commission for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and

(c) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the commencement day of the income stream.

Determination under subsection (4)

(1B) This subsection applies if the Commission has made a determination under subsection (4) in respect of the income stream.

Guidelines relating to actuarial certificates

(1C) The Commission may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force. The determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Exception if no actuarial certificate in force

(1D) Paragraph (1A)(b) does not apply if, for a period beginning when an actuarial certificate referred to in this section ceases to be in
force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream’s term, which must comply with subsection (2B) or (2C); and

(aa) that payments under the income stream are to be made at least annually during the income stream’s term; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the previous total), and may not exceed the previous total:

(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (recent index number) exceeds the index number for the same quarter in the immediately preceding year (base index number) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

\[
100 \times \left( \frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right) + 1
\]

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
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(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary’s reversionary partner (if any) on the day of the primary beneficiary’s death survives the primary beneficiary—on or after the partner’s death; or

(iv) if subparagraph (iii) does not apply—on or after the primary beneficiary’s death; or

(ivaa) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(iva) to the extent necessary to give effect to an entitlement of the person’s spouse or former spouse under a payment split under Part VIIIB of the Family Law Act 1975; or

(vi) to the extent necessary to pay a hardship amount; and

Note 1: For non-commutation funded income stream, see subsection (7).

Note 1A: For asset-test exempt income stream, see section 5J.

Note 2: For hardship amount see subsection (7).

(i) that the income stream cannot be transferred except on death; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

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(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and
(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

Compliance with subsection (2) if certain conditions are met

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Term of the income stream

(2B) An income stream’s term complies with this subsection if it is a period of whole years that:
(a) starts on the income stream’s commencement day; and
(b) is at least as long as the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
(c) is at most as long as the greater of:
(i) what would be the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which
the primary beneficiary reaches age 100 (assuming that
the primary beneficiary lives until then).

(2C) An income stream’s term complies with this subsection if it is a
period of whole years that:
(a) starts on the income stream’s commencement day; and
(b) is at least as long as the greater of the life expectancies
(rounded up, if not consisting of a whole number of years, to
the next whole number), on the commencement day, of:
(i) the primary beneficiary; and
(ii) the primary beneficiary’s reversionary partner on that
day; and
(c) is at most as long as the period worked out under
subsection (2D).

(2D) For the purposes of paragraph (2C)(c), the period is the greater of:
(a) the greater of what would be the life expectancies (rounded
up, if not consisting of a whole number of years, to the next
whole number), on the commencement day, of:
(i) the primary beneficiary, if the primary beneficiary were
5 years younger; and
(ii) the primary beneficiary’s reversionary partner on that
day, if the partner were 5 years younger; and
(b) the greater of:
(i) the period (rounded up, if not consisting of a whole
number of years, to the next whole number) starting on
the commencement day and ending on the day on which
the primary beneficiary reaches age 100 (assuming that
the primary beneficiary lives until then); and
(ii) the period (rounded up, if not consisting of a whole
number of years, to the next whole number) starting on
the commencement day and ending on the day on which
the primary beneficiary’s reversionary partner on the
commencement day reaches age 100 (assuming that the partner
lives until then).

_Determination that income stream not asset-test exempt_

(3) The Commission may determine that an income stream that meets
the requirements of subsection (2) is not an asset-test exempt
income stream if the Commission is satisfied that the person who
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has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a service pension, an income support supplement or a social security payment.

Determination that income stream is asset-test exempt

(4) The Commission may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission is to have regard to the guidelines (if any) determined under subsection (5).

Guidelines to be complied with in making determination

(5) The Commission may determine, in writing, guidelines to be complied with when making a determination under subsection (4). The determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Interpretation

(7) In this section:

hardship amount has the same meaning as in section 5JA (see subsection 5JA(7).

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

Note: For member of a couple, see section 5E.

(b) is the person to whom the income stream will revert on the primary beneficiary’s death.
5JBA  Meaning of asset-test exempt income stream—market-linked income streams

General requirements

(1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:

(a) all of the following criteria are satisfied:

(i) the income stream’s commencement day happens on or after 20 September 2004;

(ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary’s reversionary partner (if any) on the day of the primary beneficiary’s death;

(iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);

(iv) the Commission has not made a determination under subsection (10) in respect of the income stream;

(v) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or

Note: For reversionary partner, see subsection (14).

(b) the Commission has made a determination under subsection (11) in respect of the income stream.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream’s term, which must comply with subsection (3) or (4); and

(b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and

(c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream
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relates to the period commencing on the day of that purchase; and

(d) if the income stream is not purchased, but acquired, by or for
the primary beneficiary—that the first payment under the
income stream relates to the period commencing on the day
of that acquisition; and

(e) that the income stream has no residual capital value; and

(f) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded
income stream and the commutation is made within 6
months after the commencement day of the income
stream; or

(ii) if the payment resulting from the commutation is
transferred directly to the purchase of another income
stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary’s reversionary partner (if any)
on the day of the primary beneficiary’s death survives
the primary beneficiary—on or after the partner’s death; or

(iv) if subparagraph (iii) does not apply—on or after the
primary beneficiary’s death; or

(v) to the extent necessary to cover any superannuation
contributions surcharge relating to the income stream;
or

(vi) to the extent necessary to give effect to an entitlement of
the person’s spouse or former spouse under a payment
split under Part VIIIIB of the Family Law Act 1975; or

(vii) to the extent necessary to pay a hardship amount; and

Note 1: For non-commutation funded income stream, see
subsection (14).

Note 2: For asset-test exempt income stream, see section 5J.

Note 3: For hardship amount, see subsection (14).

(g) that the income stream cannot be transferred except on death; and

(h) that neither the capital value of the income stream, nor the
income from it, can be used as security for a borrowing; and

(i) that, if the income stream reverts, it must not have a
reversionary component greater than the account balance
immediately before the reversion; and
(j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

**Term of the income stream**

(3) An income stream’s **term** complies with this subsection if it is a period of whole years that:
   (a) starts on the income stream’s commencement day; and
   (b) is at least as long as the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
   (c) is at most as long as the greater of:
      (i) what would be the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
      (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

(4) An income stream’s **term** complies with this subsection if it is a period of whole years that:
   (a) starts on the income stream’s commencement day; and
   (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
      (i) the primary beneficiary; and
      (ii) the primary beneficiary’s reversionary partner on that day; and
   (c) is at most as long as the period worked out under subsection (4A).

(4A) For the purposes of paragraph (4)(c), the period is the greater of:
   (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
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(i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
(ii) the primary beneficiary’s reversionary partner on that day, if the partner were 5 years younger; and

(b) the greater of:
(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary’s reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

Total amount payable in each financial year—general rule

(5) For each financial year wholly or partly within the income stream’s term, the total amount of the payments to be made under the income stream must not be less than 90%, nor greater than 110%, of the amount worked out under the formula:

\[
\text{Account balance} \times \text{PF}
\]

where:

account balance means:
(a) if the financial year includes the income stream’s commencement day—the opening account balance for the income stream; or
(b) otherwise—the account balance for the income stream at the start of the financial year.

PF means the payment factor for the income stream for the financial year, worked out under principles determined in writing by the Commission.

Other rules about payments under the income stream

(6) If the income stream’s commencement day is not a 1 July, a total amount worked out under subsection (5) for the financial year

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starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

(7) If:
(a) the income stream’s commencement day happens in June; and
(b) no payment is made under the income stream for the financial year in which the commencement day happens;
subsections (5) and (6) do not apply to the income stream for that financial year.

(8) If the amount (the test amount) of a payment to be made under the income stream on a day in a financial year:
(a) is worked out by reference to a total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and
(b) exceeds the income stream’s account balance on that day; then:
(c) the account balance (if any) must be paid instead of the test amount; and
(d) that total amount described in paragraph (a) must be reduced by the amount of the excess.

(9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

*Determining that income stream is not asset-test exempt*

(10) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that:
(a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a service pension, an income support supplement or a social security payment; and
(b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.
Determination that income stream is asset-test exempt

(11) The Commission may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission must have regard to the guidelines (if any) determined under subsection (12).

Guidelines to be complied with in making determination

(12) The Commission may determine, in writing, guidelines to be complied with when making a determination under subsection (11). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Miscellaneous

(13) A determination for the purposes of the definition of *PF* in subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(14) In this section:

*hardship amount* has the same meaning as in section 5JA (see subsection 5JA(7)).

*non-commutation funded income stream* means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

*reversionary partner*, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

Note: For *member of a couple*, see section 5E.

(b) is the person to whom the income stream will revert on the primary beneficiary’s death.
5JC Family law affected income streams

(1) If:

(a) a relevant income stream is acquired or purchased (original family law affected income stream) by a person (member) from a relevant superannuation fund; and

(b) the member’s spouse or former spouse (non-member) becomes entitled to be paid some or all of that income stream under a payment split under Part VIIIIB of the Family Law Act 1975;

then so much (if any) of the income stream paid to the non-member as a series of ongoing payments (secondary FLA income stream) and the remainder (if any) of the income stream paid to the member as such a series of payments (primary FLA income stream) are each family law affected income streams.

(2) In subsection (1):

relevant income stream means an income stream of a kind referred to in paragraph (a), (b) or (c) of the definition of income stream in subsection 5J(1).

relevant superannuation fund means:

(a) a superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993; or

(b) an approved deposit fund; or

(c) a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997.

5JD Asset-tested status of secondary FLA income streams

If there is a primary FLA income stream

(1) If a primary FLA income stream is, or would be if the income stream were assessed for the purposes of this Act:

(a) an asset-tested income stream (long term); or

(b) an asset-tested income stream (short term);

then the secondary FLA income stream to which it is related is also to be treated as if it were assessed as an income stream of that kind.
If there is no primary FLA income stream

(2) If:

(a) there is no primary FLA income stream in relation to a secondary FLA income stream; and
(b) had there been a primary FLA income stream in relation to that secondary FLA income stream it would have been assessed for the purposes of this Act as either an asset-tested income stream (long term) or an asset-tested income stream (short term);

then the secondary FLA income stream is to be treated as if it were assessed as an income stream of that kind.

5K Maintenance income definitions

(1) In this Act, unless the contrary intention appears:

capitalised maintenance income, in relation to a person, means maintenance income of the person:

(a) that is neither a periodic amount nor a benefit provided on a periodic basis; and
(b) the amount or value of which exceeds $1,500.

Note 1: see also section 51 (apportionment of capitalised maintenance income).

Note 2: if maintenance income is caught by paragraphs (a) and (b) of the definition, the whole amount or value of the maintenance income is capitalised maintenance income, not just the part of the maintenance income that exceeds the $1,500 limit.

Note 3: For periodic amount see subsection (1A).

cash maintenance, in relation to a person, means maintenance income of the person that consists of the amount of a payment received by the person or by a dependent child of the person:

(a) that is a periodic amount; or
(b) that is an amount of $1,500 or less.

Note 1: a payment of an amount would have to be a payment of money or the equivalent of a payment of money (e.g. a cheque, money order or electronic funds transfer (EFT)).

Note 2: For periodic amount see subsection (1A).

child support means financial support under the Child Support (Assessment) Act 1989 and includes financial support:
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(a) by way of lump sum payment; or
(b) by way of transfer or settlement of property.

*disability expenses maintenance* has the meaning given by subsection (5).

*in-kind housing maintenance*, in relation to a person, means maintenance income of the person that is not cash maintenance and is received in relation to the provision of a residence that is, or is to be, the person’s principal home.

Note: see also subsections (3) and (4) and section 51A.

*maintained child*, in relation to another person (in this definition called the *adult*), means a child who is:

(a) a dependant of the adult; and

(b) wholly or substantially dependent on the adult.

*maintenance* includes child support.

*maintenance agreement* means a written agreement (whether made within or outside Australia) that provides for the maintenance of a person (whether or not it also makes provision in relation to other matters), and includes such an agreement that varies an earlier maintenance agreement.

*maintenance income*, in relation to a person, means:

(a) child maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the maintenance of a maintained child of the person and is received from:

(i) a parent of the child; or

(ii) the partner or former partner of a parent of the child; or

(b) partner maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the person’s own maintenance and is received from the person’s partner or former partner; or

(c) direct child maintenance—that is, the amount of a payment or the value of a benefit that is received by a maintained child of the person for the child’s own maintenance and is received from:

(i) a parent of the child; or

(ii) the partner or former partner of a parent of the child;
but does not include disability expenses maintenance.

Note: See also subsection (2) and section 51 (apportionment of capitalised maintenance income).

**special maintenance income**, in relation to a person, means:

(a) in-kind housing maintenance of the person; or

(b) in-kind maintenance of the person (other than in-kind housing maintenance or capitalised maintenance income) received from the person’s partner or former partner during the period of 6 months following the person’s separation from the partner or former partner.

Note: see also subsection 51A(1) (in-kind housing maintenance—value of substitute for former family home).

(1A) For the purposes of subsection (1), an amount is a periodic amount if it is:

(a) the amount of one payment in a series of related payments, even if the payments are irregular in time and amount; or

(b) the amount of a payment making up for arrears in such a series.

(2) For the purposes of the definition of maintenance income in subsection (1):

(a) a payment received under subsection 76(1) of the Child Support (Registration and Collection) Act 1988 in relation to a registered maintenance liability (within the meaning of that Act) is taken to be received from the person who is the payer (within the meaning of that Act) in relation to the liability; and

(b) a reference to a benefit received by a person includes a reference to a benefit received by the person because of a payment made to, or a benefit conferred on, another person (including a payment made or benefit conferred under a liability owed to the other person); and

(c) a reference to a payment or benefit received from a person includes a reference to a payment or benefit received:

(i) directly or indirectly from the person; and

(ii) out of any assets of, under the control of, or held for the benefit of, the person; and
(iii) from the person under or as a result of a court order, a court registered or approved maintenance agreement or otherwise.

(3) For the purposes of the definition of in-kind housing maintenance in subsection (1), maintenance received in relation to the provision of a residence includes maintenance consisting of:

(a) a benefit received because of the transfer or settlement of a right or interest in relation to the residence; and

(b) where there is a secured housing loan on the residence—a benefit received because of:

   (i) the payment of interest, charges or other amounts under the loan; or

   (ii) the repayment of amounts borrowed under the loan; and

(c) a benefit received because of the payment of rent (including Government rent), or a like payment, in relation to the residence.

(4) For the purposes of paragraph (3)(b), there is a secured housing loan on a residence if:

(a) there is a loan that is secured by a mortgage or other interest in relation to the residence; and

(b) the sole or principal purpose of the loan is to enable the residence, or a right or interest in relation to the residence, to be acquired.

(5) A payment or benefit is disability expenses maintenance of a person if:

(a) the payment or benefit is provided for expenses arising directly from:

   (i) a physical, intellectual or psychiatric disability; or

   (ii) a learning difficulty;

   of a dependent child of the person; and

(b) the disability or difficulty is likely to be permanent or to last for an extended period; and

(c) the payment or benefit is received:

   (i) by the person for the maintenance of the dependent child; or

   (ii) by the dependent child for the child’s own maintenance; and
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(d) the payment or benefit is received from:
   (i) a parent of the child; or
   (ii) the partner or former partner of a parent of the child.

5L Assets test definitions

(1) In this Act, unless the contrary intention appears:

   accommodation bond has the same meaning as in the Aged Care Act 1997.

   accommodation charge has the same meaning as in the Aged Care Act 1997.

   asset means property or money (including property or money outside Australia).

   dispose of assets has the meaning given by section 52E.

   family member, in relation to a person, means:
   (a) the partner, father or mother of the person; or
   (b) a sister, brother or child of the person; or
   (c) another person who, in the Commission’s opinion, should be treated for the purposes of this definition as one of the person’s relations described in paragraph (a) or (b).

   fishing operations means:
   (a) operations relating directly to the taking or catching of fish, turtles, crustacea, oysters or other shellfish; or
   (b) oyster farming; or
   (c) pearling operations;
   but does not include:
   (d) whaling; or
   (e) operations conducted otherwise than for the purposes of a business.

   foreign superannuation fund means a non-resident superannuation fund as defined in subsection 6E(2) of the Income Tax Assessment Act.

   foreign superannuation pension means a pension presently payable from a foreign superannuation fund.
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Note: For presently payable see subsection 5J(3).

**forest operations** means:
(a) the planting or tending in a plantation or forest of trees intended for felling; or
(b) the felling of trees in a plantation or forest;
but does not include operations conducted otherwise than for the purposes of a business.

**interest that gives reasonable security of tenure** has the meaning given by subsection (8).

**pension year** has the meaning given by subsection (9).

**primary producer** means a person whose principal occupation is primary production.

**primary production** means production resulting directly from:
(a) the cultivation of land; or
(b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or
(c) fishing operations; or
(d) forest operations;
and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

**principal home** has the meaning given by subsections (5) to (7).

**property owner** has the meaning given by subsection (4).

**unrealisable asset** has the meaning given by subsections (11) and (12).

**value** has the meaning given by subsections (2), (3) and (3A).

Note: see also sections 52 (certain assets to be disregarded in calculating the value of a person’s assets), 52C (effect of charge or encumbrance on value of property) and 52KA-52X (special residences).

(2) A reference in this Act to the **value of a particular asset** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of the person’s interest in the asset.
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(3) A reference in this Act to the value of a charge or encumbrance on an asset of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of that charge or encumbrance in so far as it relates to the person’s interest in the asset.

(3A) A reference in this Act to the value of a liability of a person is, if the liability is shared by the person with another person, a reference to the value of the person’s share of the liability.

(3B) To avoid doubt, an accommodation bond balance (within the meaning of the Aged Care Act 1997) in respect of an accommodation bond (within the meaning of that Act: see subsection (1) of this section) paid by a person is taken to be an asset of the person.

(3C) To avoid doubt, a person’s entitlement to be paid a pension bonus is taken not to be an asset of the person for the purposes of this Act.

(3D) Subsection (3C) is to be disregarded in determining whether any other entitlement is an asset for the purposes of this Act.

Property owner

(4) For the purposes of this Act:

(a) a person who is not a member of a couple is a property owner if:
   (i) the person has a right or interest in the person’s principal home; and
   (ii) the person’s right or interest in the home gives the person reasonable security of tenure in the home; and

(b) a person who is a member of a couple is a property owner if:
   (i) the person, or the person’s partner, has a right or interest in one residence that is:
      (A) the person’s principal home; or
      (B) the partner’s principal home; or
      (C) the principal home of both of them; and
   (ii) the person’s right or interest, or the partner’s right or interest, in the home gives the person, or the person’s partner, reasonable security of tenure in the home; and
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(c) a person (whether a member of a couple or not) is a property owner if:
   (i) the person has sold the person’s principal home not more than 12 months previously; and
   (ii) the person is likely to apply some or all of the proceeds of the sale in acquiring another residence that is to be the person’s principal home.

Note: see also sections 52KA-52X (special residences).

Principal home

(5) A reference in this Act to the principal home of a person includes a reference to:
   (a) if the principal home is a dwelling-house—the private land adjacent to the dwelling-house to the extent that the private land, together with the area of the ground floor of the dwelling-house, does not exceed 2 hectares; or
   (b) if the principal home is a flat or home unit—a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.

Note: for private land see subsection (6).

(6) A reference in subsection (5) to private land adjacent to a dwelling-house is a reference to land that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house.

(6A) A residence of a person is taken to be the person’s principal home during:
   (a) if the Commission is satisfied that the residence was previously the person’s principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident—any period during which:
      (i) the person is accruing a liability to pay an accommodation charge (or would be accruing such a liability, assuming that no sanctions under Part 4.4 of the Aged Care Act 1997 were currently being imposed on the provider of the care concerned); and
      (ii) the person, or the person’s partner, is earning, deriving or receiving rent for the residence from another person; and
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(aa) if the Commission is satisfied that the residence was previously the person’s principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident—any period during which:

(i) the person is liable to pay all or some of an accommodation bond by periodic payments (or would be liable to do so, assuming that no sanctions under Part 4.4 of the Aged Care Act 1997 were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person’s partner, is earning, deriving or receiving rent for the residence from another person; and

(b) any period during which the residence is, because of paragraph (a) or (aa), the principal home of the person’s partner.

Note 1: Accommodation charge and accommodation bond have the same meaning as in the Aged Care Act 1997: see subsection (1) of this section.

Note 2: For rent see subsection 5N(2). For in a care situation see subsection 5NC(2). For aged care resident see subsection 5NC(5).

Note 3: This subsection is not meant to imply that a person may have more than one principal home at the same time.

Note 4: A person can be liable to pay an accommodation charge only if certain conditions are met: see Division 57A of the Aged Care Act 1997. For rules about accommodation bonds, see Division 57 of the Aged Care Act 1997.

(7) A residence of a person is to be taken to continue to be the person’s principal home during:

(a) any period (not exceeding 12 months) during which the person is temporarily absent from the residence; and

(b) if the person is in a care situation or is an aged care resident—the period of 2 years beginning when the person started to be either in a care situation or an aged care resident; and

(c) any period during which:

(i) the person is in a care situation or is an aged care resident; and

(ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person’s partner or non-illness separated spouse; and

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(d) if:
   (i) the person is in a care situation or is an aged care resident; and
   (ii) while paragraph (c) applies, the person’s partner or non-illness separated spouse dies while either in a care situation or while an aged care resident; and
   (iii) the person’s partner or non-illness separated spouse had been either in a care situation or an aged care resident for less than 2 years;
   the period of 2 years beginning at the time when the person’s partner or non-illness separated spouse started to be either in a care situation or an aged care resident; and
   (e) where:
      (i) the person is in a care situation or is an aged care resident; and
      (ii) while paragraph (c) applies, the person’s partner or non-illness separated spouse dies (but not while in a care situation or while an aged care resident);
   the period of 2 years from that death; and
   (f) any period of up to 2 years while the person is absent from the residence and is personally providing community-based care for another person.

Note 1: For in a care situation see subsection 5NC(2).
Note 2: For aged care resident see subsection 5NC(5).

(8) If a person has a right or interest in the person’s principal home, the person is to be taken to have a right or interest that gives the person reasonable security of tenure in the home unless the Commission is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

Pension year—disposal of assets

(9) A reference in sections 52E to 52J (disposal of assets) to a pension year, in relation to a person who is receiving a service pension, income support supplement or a social security pension is a reference to:
   (a) if the person is a member of a couple and the person and the person’s partner were, immediately before they became members of that couple, receiving such a pension—the
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period of 12 months commencing on the day on which they became members of that couple; or
(b) in a case (not being a case referred to in paragraph (a)) where the person is a member of a couple and the person’s partner is receiving such a pension—the period of 12 months commencing on the day on which such a pension first became payable to the person or to the person’s partner, whichever was the earlier; or
(c) in any other case—the period of 12 months commencing on the day on which such a pension first became payable; and to each succeeding and each preceding period of 12 months.

No pension year to extend beyond 30 June 2002

(9A) No period after 30 June 2002 is, or is a part of, a pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pension year of a person, the part of that period that ends immediately before that date is taken to be a pension year of the person.

(10) The lending of money after 22 May 1986 is not a disposition of an asset for the purposes of section 52E.

Pre-pension year—disposal of assets

(10A) A reference in sections 52FA and 52GA (disposal of assets) to a pre-pension year, in relation to a person who is claiming:
(a) a service pension; or
(b) income support supplement; or
(c) a social security pension;

is a reference to the period of 12 months ending on the day that is the person’s provisional commencement day and each preceding period of 12 months.

Note: A disposition of assets that is more than 5 years old is disregarded (see section 52J).

No pre-pension year to extend beyond 30 June 2002

(10B) No period after 30 June 2002 is, or is a part of, a pre-pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pre-pension year of a person, the part of that period that ends
immediately before that date is taken to be a pre-pension year of
the person.

Unrealisable asset

(11) An asset of a person is an unrealisable asset if:
(a) the person cannot sell or realise the asset; and
(b) the person cannot use the asset as a security for borrowing.

(12) For the purposes of the application of this Act to a service pension
or an income support supplement, an asset of a person is also an
unrealisable asset if:
(a) the person could not reasonably be expected to sell or realise
the asset; and
(b) the person could not reasonably be expected to use the asset
as a security for borrowing.

5M Retirement village definitions

(1) In this Act:

member of an ordinary couple with different principal homes has
the meaning given by subsection (2).

retirement village has the meaning given by subsections (3) and
(4).

retirement village resident has the meaning given by
subsection (5).

(2) A person is a member of an ordinary couple with different
principal homes if:
(a) the person is a member of a couple; and
(b) the person does not share the person’s principal home with
the person’s partner; and
(c) the person is not a member of an illness separated couple.

(3) Premises constitute a retirement village for the purposes of this
Act if:
(a) the premises are residential premises; and
(b) accommodation in the premises is primarily intended for
persons who are at least 55 years old; and
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(c) the premises consist of:
   (i) one or more of the following kinds of accommodation:
       (A) self-care units;
       (B) serviced units;
       (C) hostel units; and
   (ii) communal facilities for use by occupants of the units referred to in subparagraph (i).

(3A) For the purposes of paragraph (3)(b), if accommodation in premises is primarily intended for persons who are a certain age that is more than 55 years, the accommodation in those premises is taken to be primarily intended for persons who are at least 55 years old.

(4) Residential premises are also to be taken to constitute a retirement village for the purposes of this Act if, in the Commission’s opinion, the premises have similar functions to those referred to in subsection (3).

(5) A person is a retirement village resident if the person’s principal home is in a retirement village.

Note: Subsection (3A) was inserted as a response to the decision of the Federal Court in Repatriation Commission v Clarke (unreported, VG73 of 1991).

5MA Granny flat definitions

(1) In this Act, unless the contrary intention appears:

   granny flat interest has the meaning given by subsection (2).

   granny flat resident has the meaning given by subsection (3).

(2) A person has a granny flat interest in the person’s principal home if:
   (a) the residence that is the person’s principal home is a private residence; and
   (b) the person has acquired for valuable consideration or has retained:
       (i) a right to accommodation for life in the residence; or
       (ii) a life interest in the residence.
(2A) Subsection (2) does not apply:
   (a) to a person to whom Division 8 of Part IIIB applies because the person has transferred his or her qualifying interest in a farm in accordance with paragraph 49A(1)(a) or (2)(a); or
   (b) if the person’s partner has transferred by way of gift:
       (i) to an eligible descendant of the person; or
       (ii) jointly to an eligible descendant of the person and to the descendant’s partner;
   his or her qualifying interest in a farm—to the person’s partner;
   if the person or the person’s partner (as the case may be), on so transferring his or her qualifying interest in the farm, has retained a life interest in the dwelling house on the farm, and in the adjacent private land, that constitute his or her principal home.

(2B) Subsection (2) does not apply:
   (a) to a person to whom Division 8A of Part IIIB applies because the person has transferred his or her eligible interest in a sugarcane farm in accordance with paragraph 49Q(1)(a) or (2)(a); or
   (b) if the person’s partner has transferred by way of gift:
       (i) to an eligible descendant of the person; or
       (ii) jointly to an eligible descendant of the person and to the descendant’s partner;
   his or her eligible interest in a sugarcane farm—to the person’s partner;
   if the person or the person’s partner (as the case may be), on so transferring his or her eligible interest in the farm, has retained a life interest in the dwelling house on the farm, and in the adjacent private land, that constitute his or her principal home.

(3) A person is a granny flat resident if the person has a granny flat interest in the person’s principal home.

5MB Sale leaseback definitions

(1) In this Act, unless the contrary intention appears:

   deferred payment amount has the meaning given by subsections (6), (7) and (8).
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initial payment amount has the meaning given by subsections (4) and (5).

sale leaseback agreement has the meaning given by subsections (2) and (3).

sale leaseback home has the meaning given by subsection (9).

sale leaseback resident has the meaning given by subsections (10) and (11).

(2) An agreement is a sale leaseback agreement, in relation to a person, if:
   (a) under the agreement the person agrees to sell his or her principal home; and
   (b) the residence that is the person’s principal home is a private residence; and
   (c) under the agreement the person retains a right to accommodation in the residence; and
   (d) under the agreement the buyer is to pay an amount when the person vacates the residence or when the person dies.

(3) An agreement is a sale leaseback agreement for the purposes of this Act if the agreement is an agreement in respect of which a determination under subsection 5R(14) is in force.

(4) The initial payment amount, in relation to a sale leaseback agreement, is the amount that the Commission determines to be the initial amount that the buyer is to pay under the sale leaseback agreement.

(5) In making the determination the Commission is to have regard to the following:
   (a) the consideration to be provided by the parties to the sale leaseback agreement;
   (b) when that consideration is to be provided;
   (c) the payments that are to be made under the sale leaseback agreement;
   (d) when those payments are to be made;
   (e) any other relevant matters.
(6) The *deferred payment amount*, in relation to a sale leaseback agreement, is the total amount to be paid by the buyer under the sale leaseback agreement less the initial payment amount.

(7) If the Commission considers that, for any special reason in a particular case, the deferred payment amount should be another amount, the deferred payment amount is that other amount.

Note: sections 52E to 52J (disposal of assets) may be relevant to working out the deferred payment amount.

(8) Without limiting subsection (7), the Commission may consider that the deferred payment amount should be another amount if:

(a) the parties to the sale leaseback agreement are not at arm’s length; or

(b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.

(9) A residence is a *sale leaseback home* if the residence is subject to a sale leaseback agreement.

(10) A person is a *sale leaseback resident* if:

(a) the person’s principal home is subject to a sale leaseback agreement; and

(b) the person is a party to the sale leaseback agreement.

(11) If a person is a member of a couple, the person is a *sale leaseback resident* if:

(a) the person lives in the sale leaseback home; and

(b) the person’s partner is a sale leaseback resident.

Note: subsection (11) will only be used if a person is not a sale leaseback resident under subsection (10).

**5MC Special residence and resident definitions**

(1) In this Act, unless the contrary intention appears:

*actual value* has the meaning given by subsection (4).

*special residence* has the meaning given by subsection (2).

*special resident* has the meaning given by subsection (3).
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(2) A residence is a **special residence** if the residence is:
(a) in a retirement village; or
(b) a granny flat; or
(c) a sale leaseback home.

(3) A person is a **special resident** if the person is:
(a) a retirement village resident; or
(b) a granny flat resident; or
(c) a sale leaseback resident.

(4) In Subdivision C of Division 11 (sections 52KA to 52X), a reference to the **actual value** of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person’s partner, that is, the value that would be the value of the person’s assets apart from the provisions in point SCH6-F2.

5N Rent definitions

(1) In this Act, unless the contrary intention appears:

- **amount of rent paid or payable** has the meaning given by subsections (6) and (7).

- **board**, when used in the expression **board and lodging**, means the provision of meals on a regular basis in connection with the provision of lodging.

- **Government rent** means rent payable to any of the following authorities:
  (a) New South Wales Land and Housing Corporation;
  (b) the Director, within the meaning of the **Housing Act 1983** of the State of Victoria;
  (c) The Queensland Housing Commission;
  (d) The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;
  (e) the South Australian Housing Trust;
  (f) The State Housing Commission established by a law of Western Australia;
  (g) the Director-General of Housing and Construction holding office under a law of Tasmania;

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(h) the Northern Territory Housing Commission;

(i) The Commissioner for Housing within the meaning of the Housing Assistance Act 1987 of the Australian Capital Territory.

Note 1: Subsection (5) deals with the situation when the name of an authority is altered.

Note 2: Rent payable by a person for living in premises in respect of which someone else pays Government rent may also be regarded as Government rent (see subsection (4A)).

ineligible property owner means a property owner other than:

(a) a person who is a property owner by virtue of paragraph 5L(4)(c) (proceeds of sale of principal home disregarded for 12 months); or

(c) a person who:

(i) is absent from the person’s principal home, in relation to which the person is a property owner; and

(ii) is in a care situation but is not residing in a retirement village; or

(ca) a person who:

(i) is absent from the person’s principal home, in relation to which the person is a property owner; and

(ii) is personally providing community-based care for another person; or

(d) a person who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person’s principal home; or

(e) a person who pays amounts for the right to moor a vessel that is the person’s principal home.

Note: For retirement village see subsections 5M(3) and (4), for property owner see subsection 5L(4), for principal home see subsections 5L(5) to (7), for personally providing community-based care, see subsection 5NC(4), for in a care situation see subsection 5NC(2).

rent has the meaning given by this section.

residential care charge means an amount paid by, or on behalf of, a person to an approved provider (within the meaning of the Aged Care Act 1997) for the provision of care to the person, but does not include an accommodation bond within the meaning of that Act.
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(2) Amounts are rent in relation to the person if:

(a) the amounts are payable by the person:

(i) as a condition of occupancy of premises, or of a part of premises, that are in Australia and are occupied by the person as the person’s principal home; or

(ia) as a condition of occupancy of premises, or of a part of premises, that are in Australia and are occupied by the person to allow him or her personally to provide community-based care for another person; or

(ii) for services provided in a retirement village in Australia that is the person’s principal home; or

(iii) if the person is in a care situation and the place where the person receives the care is a place in Australia that is the person’s principal home or would be the person’s principal home apart from subsection 5L(6A) or (7)—for accommodation in the place where the person receives care; or

(iv) for lodging in premises in Australia that are the person’s principal home; or

(v) for the use of a site in Australia for:

(A) a caravan or other vehicle; or

(B) a structure;
occupied by the person as the person’s principal home; or

(vi) for the right to moor in Australia a vessel that is occupied by the person as the person’s principal home; and

(b) either:

(i) the amounts are payable every 3 months or more frequently; or

(ii) the amounts are payable at regular intervals (greater than 3 months) and the Commission is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: for retirement village see subsections 5M(3) and (4) and for principal home see subsections 5L(5) to (7).

(3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).
(3AA) To avoid doubt, an amount that is paid or becomes payable by a person is not rent in relation to the person (either at the time when it is paid or becomes payable or at any later time) if the amount is, or forms part of, a special resident’s entry contribution in relation to the person in respect of a retirement village under section 52M, whether the amount is paid or payable (whether wholly or partly) in a lump sum, by instalments or otherwise.

(3AB) If the whole or any part of an amount that is not rent in relation to a person as mentioned in subsection (3AA) is, or will or may become, repayable to the person, any amount by which the amount so repayable is reduced is not rent in relation to the person (either at the time when the reduction occurs or at any later time).

(3A) If a person is in a care situation and the person’s principal home is not the place where the person receives the care, the person’s rent may be an amount described in any of the subparagraphs of paragraph (2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph (2)(a).

Note: Under subsection 5L(6A) or (7), the principal home of a person in a care situation may be a place other than the place where the person receives care.

(3B) If an amount described in subparagraph (2)(a)(ia) and an amount described in another subparagraph of paragraph (2)(a) are payable by a person, the person’s rent may be an amount described in either of those subparagraphs but cannot include amounts described in different subparagraphs of paragraph (2)(a).

Note: Under subsection 5L(6A) or (7), premises occupied by a person as described in subparagraph (2)(a)(ia) may not be the person’s principal home.

(4) If a person pays, or is liable to pay, rent for living in premises in respect of which another person pays Government rent, the rent paid or payable by the person for living in those premises is taken to be Government rent, unless:

(a) the rent paid by the other person is at or above a rate that the authority receiving the rent has told the Department is the market rate; or

(b) the person shares the premises with that other person and the person’s income has been taken into account in calculating the amount of Government rent payable in respect of those premises.
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(5) If a law of a State or of the Northern Territory alters the name of an authority referred to in the definition of Government rent in subsection (1), a reference to that authority in that definition is to be read as a reference to the authority under the new name.

Board and lodging

(6) Where:
   (a) a person pays, or is liable to pay, amounts for board and lodging; and
   (b) it is not possible to work out the part of each of those amounts that is paid or payable for lodging;

the amount of rent paid or payable by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

People in care situations

(7) Where:
   (a) a person in a care situation pays, or is liable to pay, amounts for accommodation and other services in the care situation; and
   (b) it is not possible to work out the part of each of those amounts that is paid or payable in respect of accommodation;

the amount of rent paid or payable by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

5NA  Indexation and rate adjustment definitions

(1) In this Act, unless the contrary intention appears:

current figure, as at a particular time and in relation to an amount that is to be indexed or adjusted under Division 18 of Part IIIB, means:
   (a) if the amount has not yet been indexed or adjusted under Division 18 before that time—the amount; and
   (b) if the amount has been indexed or adjusted under Division 18 before that time—the amount most recently substituted for the amount under Division 18 before that time.
index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

Publication of substituted index numbers

(2) Subject to subsection (3), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

Change to CPI reference base

(3) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the changed index place, only to index numbers published in terms of the new reference base.

5NB Compensation recovery definitions

(1) In this Act, unless the contrary intention appears:

average weekly earnings, in relation to a lump sum preclusion period, means the amount:

(a) estimated as the average total weekly earnings, during a particular month, of all employees (all persons) in Australia; and

(b) last published by the Australian Statistician before the lump sum compensation payment became payable.

Note: For lump sum preclusion period see subsections 59Q(3) to (7).

compensation has the meaning given by subsection (2).

Note: See also section 59O.

compensation affected pension means:

(a) an invalidity service pension; or

(b) a partner service pension; or

(d) income support supplement;
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payable to a person who has not reached pension age.

Note: For pension age see sections 5QA and 5QB.

compensation part, in relation to a lump sum compensation payment, has the meaning given by subsections (7) and (8).

compensation payer means:
(a) a person who is liable to make a compensation payment; or
(b) an authority of a State or Territory that has determined that it will make a payment by way of compensation to another person, whether or not the authority is liable to make the payment.

event that gives rise to an entitlement to compensation has the meaning given by subsection (11).

periodic payments period means:
(a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or
(b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of arrears payment.

potential compensation payer means a person who, in the Commission’s opinion, may become a compensation payer.

receives compensation has the meaning given by subsection (10).

Compensation

(2) For the purposes of Part IIC, compensation means:
(a) a payment of damages or compensation; or
(b) a payment under a scheme of insurance or compensation under a law of the Commonwealth or of a State or Territory, or under a contract entered into under such a scheme; or
(c) a payment (with or without admission of liability) in settlement of a claim for damages or of a claim under such an insurance scheme;
made wholly or partly in respect of lost earnings or lost capacity to earn. The payment may be in the form of a lump sum (or part of a lump sum) or in the form of periodic payments and may be made either within or outside Australia, but it does not include any
payment that, under subsection (3), (4), (5), (6) or (6A), is
excluded from the application of this subsection.

Note: Under section 59O, a person may be treated as having received
compensation that the person would have received but for the effect of
a State or Territory law.

(3) Subsection (2) does not apply to a periodic payment or a lump sum
payment referred to in paragraph 26(1)(b) or (2)(b) or subsection
30(3).

(4) Subsection (2) does not apply to a compensation payment if:
(a) the recipient has made contributions (for example, by way of
insurance premiums) towards the payment; and
(b) either:
   (i) the agreement under which the contributions are made
does not provide for the amounts that would otherwise
be payable under the agreement being reduced or not
payable because the recipient is eligible for or receives
the compensation affected pension under this Act; or
   (ii) the agreement does so provide but the compensation
payment has been calculated without reference to the
provision.

(5) Subsection (2) does not apply to any payment of compensation
made to a person that was taken into account under Division 5A of
Part II to reduce the amount, or stop the payment, of a pension that,
apart from that Division, would have been payable to the person
under that Part.

(6) Subsection (2) does not apply to any payment of compensation
made to a person that was taken into account under Division 4 of
Part IV to reduce the amount, or stop the payment, of a pension
that, apart from that Division, would have been payable to the
person under that Part.

(6A) A payment under a law of the Commonwealth, a State or a
Territory that provides for the payment of compensation for a
criminal injury does not constitute compensation for the purposes
of this Act.

(6B) The reference in subsection (6A) to a criminal injury is a reference
to a personal injury suffered, or a disease or condition contracted,
as a result of the commission of an offence.
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Compensation part of a lump sum

(7) Subject to subsection (8), for the purposes of Part IIIC, the compensation part of a lump sum compensation payment is:

(a) 50% of the payment if the following circumstances apply:
   (i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and
   (ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(b) 50% of the payment if the following circumstances apply:
   (i) the payment represents that part of a person’s entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and
   (ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and
   (iii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(c) if paragraphs (a) and (b) do not apply—so much of the payment as is, in the Commission’s opinion, in respect of lost earnings or lost capacity to earn, or both.

(8) If a person:

(a) has received periodic compensation payments in respect of lost earnings or lost capacity to earn; and

(b) after receiving those payments, receives a lump sum compensation payment in respect of the lost earnings or lost capacity to earn (the LSP); and

(c) because of receiving the LSP, becomes liable to repay an amount (the Repaid Periodic Compensation Payment—RPCP) equal to the periodic compensation payments received;

then, for the purposes of subsection (7), the amount of the lump sum compensation payment is:

LSP – RPCP.

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(9) For the purposes of Part IIIC, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Note: For the treatment of a payment of arrears of periodic compensation payments where, at the time of the event that gave rise to the compensation payments, the person was receiving a payment under this Act that is covered by Part IIIC, see point SCH6-E4.

Receives compensation

(10) A person receives compensation whether he or she receives it directly or whether another person receives it, on behalf of, or at the direction of the first person.

Event giving rise to entitlement

(11) For the purposes of Part IIIC, the event that gives rise to a person’s entitlement to compensation for a disease, injury or condition is:

(a) if the disease, injury or condition was caused by an accident—the accident; or

(b) in any other case—the disease, injury or condition first becoming apparent;

and is not, for example, the decision or settlement under which the compensation is payable.

Insurer

(12) A reference in Part IIIC to an insurer who is, under a contract of insurance, liable to indemnify a compensation payer or a potential compensation payer against a liability arising from a claim for compensation includes a reference to:

(a) an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or

(b) an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.

5NC In care definitions

(1) In this Act:

aged care resident has the meaning given by subsection (5).
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_in a care situation_ has the meaning given by subsection (2).

_in respite care_ has the meaning given by subsection (8).

_personally providing community-based care_ has the meaning given by subsection (4).

_receiving community-based care_ has the meaning given by subsection (3).

(2) A person is _in a care situation_ if:

(a) the person is residing in premises at which accommodation is provided exclusively or principally for people who have a mental disability; or

(b) the person is a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or

(c) the person is in respite care; or

(d) the person is receiving community-based care.

(3) A person is _receiving community-based care_ if, in the Commission’s opinion, the person needs, and has been receiving or is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.

(4) A person is _personally providing community-based care_ for another person if, in the Commission’s opinion:

(a) the first-mentioned person is personally providing for the other person, in a private residence, a substantial level of care needed by the other person; and

(b) has personally provided, or is likely to personally provide, that level of care for at least 14 consecutive days.

(5) Subject to subsections (6) and (7), a person is an _aged care resident_ for the purposes of this Act if:

(a) the person:

(i) is being provided with residential care through an aged care service conducted by an approved provider; and

(ii) has been provided, or in the Commission’s opinion is likely to be provided, with residential care for at least 14 consecutive days; and
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(b) an approval for residential care or flexible care under Part 2.3 of the Aged Care Act 1997 is in force in respect of the person.

(6) A person is taken not to be an aged care resident if the person is in respite care.

(7) The Commission may determine, for the purposes of subsection (5), that a person is taken not to be an aged care resident on a day that occurs:
   (a) after the person in fact became an aged care resident; and
   (b) before the day occurring 15 days after the person in fact became an aged care resident;
   if the Commission is satisfied that, immediately before the day, the person was liable to pay rent.

(8) A person is in respite care on a particular day if the person is eligible for a respite care supplement in respect of that day under section 44-12 of the Aged Care Act 1997.

(9) In this section, the following terms have the same meanings as in the Aged Care Act 1997:
   aged care service
   approved provider
   flexible care
   provide
   residential care

5P Retirement assistance for farmers definitions

(1) In this Act, unless the contrary intention appears:

   eligible descendant, in relation to a person, means:
   (a) a child, step child or adopted child of the person or of a partner of the person; or
   (b) a descendant in direct line of a child described in paragraph (a); or
   (c) any other person who, in the opinion of the Commission, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).
eligible former partner of a qualifying farmer has the meaning given by subsection (2).

farm means any land that is used:
(a) for the purposes of a farm enterprise; or
(b) in connection with a farm enterprise.

farm enterprise means an enterprise carried on within any of the agricultural, horticultural, pastoral or aquacultural industries.

proprietary company has the meaning that it has in the Corporations Act 2001.

qualifying farmer has the meaning given by subsections (3) and (4).

qualifying interest has the meaning given by subsections (5) and (6).

relevant farm asset, in relation to a farm, means any livestock, crop, plant or equipment that is a produce of, or is used for the purposes of, the farm enterprise.

relevant State land law means any of the following laws:
(a) the Real Property Act 1900 of New South Wales;
(b) the Transfer of Land Act 1958 of Victoria;
(c) the Land Title Act 1994 of Queensland;
(d) the Transfer of Land Act 1893 of Western Australia;
(e) the Real Property Act, 1886 of South Australia;
(f) the Land Titles Act 1980 of Tasmania;
(g) the Real Property Act 1925 of the Australian Capital Territory;
(h) the Real Property Act of the Northern Territory;
(i) a law of a Territory (other than the Australian Capital Territory or the Northern Territory) making similar provision for the registration of dealings with land as the laws mentioned above.

transfer:
(a) in relation to a qualifying interest in a farm—has the meaning given by subsections (7), (8), (10) and (11); or
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(b) in relation to a qualifying interest in a relevant farm asset—has the meaning given by subsections (9) and (11).

(2) A person is an eligible former partner of a qualifying farmer if:

(a) the person was, but no longer is (whether because of death or any other reason), the partner of another person; and

(b) on the day on which the person ceased to be the partner of the other person, the other person was a qualifying farmer; and

(c) after ceasing to be the partner of the other person, the person has not again become a member of a couple; and

(d) the person has a qualifying interest in a farm or farms in which the other person had a qualifying interest.

Note: For qualifying interest see subsection (5).

(3) A person is a qualifying farmer if:

(a) the person has, has not ceased to have, and has continuously had for a period of at least 15 years, a qualifying interest in a farm; and

(b) during a period of 15 years, the person or the person’s partner:

(i) has contributed a significant part of his or her labour and capital to the development of a farm or farms; and

(ii) has derived a significant part of his or her income from that farm or those farms.

Note: For qualifying interest see subsection (5).

(4) A person is also a qualifying farmer if:

(a) the person has a qualifying interest in one or more than one farm; and

(b) the qualifying interest in the farm, or each of the farms, was acquired by the person before 15 September 1997; and

(c) the person or the person’s partner or former partner has been involved in farming in Australia for a continuous period of 20 years, or for periods that together add up to 20 years, by:

(i) contributing a significant part of his or her labour to farm enterprises; and

(ii) deriving a significant part of his or her income from farm enterprises.

Note: For qualifying interest see subsection (5).
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(5) A person has a qualifying interest in a farm if:
   (a) the person has a legal estate or interest in the farm; or
   (b) the person has a transferable legal right or a transferable licence to occupy the farm for a particular purpose of the farm enterprise; or
   (c) as the mortgagor of a legal estate or interest in the farm (being an estate or interest that is not registered under a relevant State land law), the person has an equitable estate or interest in the farm; or
   (d) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm.

(6) A person has a qualifying interest in a relevant farm asset if the person:
   (a) has a legal interest in the farm asset; or
   (b) is a shareholder in a proprietary company that has a legal estate or interest in the farm asset.

(7) Subject to subsections (8), (10) and (11), a qualifying interest that a person has in a farm is transferred to another person if, and only if, the qualifying interest:
   (a) ceases to be vested in the person; and
   (b) becomes vested in the other person.

(8) To avoid any doubt, it is stated that if a person who transfers a legal estate or interest in a farm to another person is, under a relevant State land law, registered as being the proprietor (whether that word or any other word is used) of that estate or interest, the legal estate or interest in the farm is taken not to have become vested in the other person unless and until the transfer is registered in accordance with that law.

Note: For relevant State land law see subsection (1).

(9) Subject to subsection (11), a qualifying interest that a person has in a relevant farm asset is transferred to another person if, and only if, the qualifying interest:
   (a) ceases to be vested in the person; and
   (b) becomes vested in the other person.

(10) If, as the mortgagor of a legal estate or interest in a farm (see paragraph (5)(c)), a person has a qualifying interest in the farm, the
person is taken to have transferred that qualifying interest in the farm to another person only if the person:

(a) has, under a relevant State land law, become registered as the proprietor (whether that word or any other word is used) of the legal estate or interest in the farm; and

(b) has then transferred that legal estate or interest to the other person.

(11) If a person has a qualifying interest in a farm or a relevant farm asset because (see paragraphs (5)(d) and (6)(b)) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm, or a legal interest in the relevant farm asset (as the case may be), the person is taken to have transferred to another person his or her qualifying interest in the farm or relevant farm asset only if the person:

(a) has acquired the company’s legal estate or interest in the farm or the company’s legal interest in the relevant farm asset; and

(b) has then transferred it to the other person.

5PAA Retirement assistance for sugarcane farmers definitions

(1) In this Act, unless the contrary intention appears:

eligible former partner of a qualifying sugarcane farmer has the meaning given by subsection (2).

eligible interest has the meaning given by subsections (5) and (6).

qualifying sugarcane farmer has the meaning given by subsections (3) and (4).

RASF closing day has the meaning given by section 49M.

RASF commencement day has the meaning given by section 49M.

relevant sugarcane farm asset means any relevant farm asset that is a produce of, or is used for the purposes of, a sugarcane farm enterprise.

Note: For relevant farm asset see subsection 5P(1).

sugarcane farm means a farm that is used predominantly for the purposes of a sugarcane farm enterprise.
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Note: For farm see subsection 5P(1).

sugarcane farm enterprise means a farm enterprise where:
(a) a majority of the enterprise is undertaken for the purposes of growing commercial quantities of sugar cane; or
(b) if paragraph (a) does not apply—a significant proportion of the enterprise is undertaken for the purposes of growing commercial quantities of sugar cane and the Commission has determined, in accordance with any guidelines made by the Commission for the purposes of this paragraph, that there are special circumstances that mean that the farm enterprise should be treated as an enterprise to which paragraph (a) applies.

Note: For farm enterprise see subsection 5P(1).

total net value has the meaning given by section 49R.

transfer:
(a) in relation to an eligible interest in a sugarcane farm—has the meaning given by subsections (7), (8), (10), (11) and (12); or
(b) in relation to an eligible interest in a relevant sugarcane farm asset—has the meaning given by subsections (9), (11) and (12).

Note: Subsection 5P(1) also contains other definitions relevant to the operation of Division 8A of Part IIIB.

(2) A person is an eligible former partner of a qualifying sugarcane farmer if:
(a) the person was, but no longer is (whether because of death or any other reason), the partner of another person; and
(b) on the day on which the person ceased to be the partner of the other person, the other person was a qualifying sugarcane farmer; and
(c) after ceasing to be the partner of the other person, the person has not again become a member of a couple; and
(d) the person has an eligible interest in a sugarcane farm or sugarcane farms in which the other person had an eligible interest.

Note: For eligible interest see subsection (5).
(3) A person is a **qualifying sugarcane farmer** if:

(a) the person has, has not ceased to have, and has continuously had for a period of at least 15 years, an eligible interest in a farm; and

(b) the farm is a sugarcane farm and has been a sugarcane farm:
   (i) for at least the last 2 years; and
   (ii) at all times since 29 April 2004; and

(c) during a period of 15 years, the person or the person’s partner:
   (i) has contributed a significant part of his or her labour and capital to the development of a farm or farms; and
   (ii) has derived a significant part of his or her income from that farm or those farms; and

(d) during at least the last 2 years:
   (i) that contribution of labour and capital has been to the development of a sugarcane farm or sugarcane farms; and
   (ii) that derivation of income has been from that sugarcane farm or those sugarcane farms.

Note: For **eligible interest** see subsection (5).

(4) A person is also a **qualifying sugarcane farmer** if:

(a) the person has an eligible interest in one or more than one sugarcane farm; and

(b) the eligible interest in the farm, or each of the farms, was acquired by the person before 29 April 2004; and

(c) the person or the person’s partner or former partner has been involved in farming in Australia for a continuous period of 20 years, or for periods that together add up to 20 years, by:
   (i) contributing a significant part of his or her labour to farm enterprises; and
   (ii) deriving a significant part of his or her income from farm enterprises; and

(d) during at least the last 2 years:
   (i) that contribution of labour has been to sugarcane farm enterprises; and
   (ii) that derivation of income has been from sugarcane farm enterprises.

Note: For **eligible interest** see subsection (5).
(5) A person has an *eligible interest* in a sugarcane farm if:

(a) the person has a legal estate or interest in the farm; or

(b) the person has a transferable legal right or a transferable licence to occupy the farm for a particular purpose of the farm enterprise; or

(c) as the mortgagor of a legal estate or interest in the farm (being an estate or interest that is not registered under a relevant State land law), the person has an equitable estate or interest in the farm; or

(d) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm; or

(e) the value of the person’s assets includes an amount calculated (in accordance with section 52ZZR) by reference to the value of the farm.

Note: The eligible interest in a sugarcane farm that is relevant for the operation of Division 8A of Part IIB is the interest held by a person immediately before that interest is transferred to an eligible descendant. So, for example, to find out whether an interest is covered by paragraph (e), the provisions of Division 11A of Part IIB must be applied in relation to the person’s circumstances as they were immediately before the transfer.

(6) A person has an *eligible interest* in a relevant sugarcane farm asset if:

(a) the person has a legal interest in the relevant farm asset; or

(b) the person is a shareholder in a proprietary company that has a legal estate or interest in the relevant farm asset; or

(c) the value of the person’s assets includes an amount calculated (in accordance with section 52ZZR) by reference to the value of the relevant farm asset.

Note: The eligible interest in a relevant sugarcane farm asset that is relevant for the operation of Division 8A of Part IIB is the interest held by a person immediately before that interest is transferred to an eligible descendant. So, for example, to find out whether an interest is covered by paragraph (c), the provisions of Division 11A of Part IIB must be applied in relation to the person’s circumstances as they were immediately before the transfer.

(7) Subject to subsections (8), (10), (11) and (12), an eligible interest that a person has in a sugarcane farm is *transferred* to another person if, and only if, the eligible interest:

(a) ceases to be vested in the person; and

(b) becomes vested in the other person.
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(8) To avoid any doubt, it is stated that if a person who transfers a legal estate or interest in a sugarcane farm to another person is, under a relevant State land law, registered as being the proprietor (whether that word or any other word is used) of that estate or interest, the legal estate or interest in the farm is taken not to have become vested in the other person unless and until the transfer is registered in accordance with that law.

Note: For relevant State land law see subsection 5P(1).

(9) Subject to subsections (11) and (12), an eligible interest that a person has in a relevant sugarcane farm asset is transferred to another person if, and only if, the eligible interest:
(a) ceases to be vested in the person; and
(b) becomes vested in the other person.

(10) If, as the mortgagor of a legal estate or interest in a sugarcane farm (see paragraph (5)(c)), a person has an eligible interest in the farm, the person is taken to have transferred that eligible interest in the farm to another person only if the person:
(a) has, under a relevant State land law, become registered as the proprietor (whether that word or any other word is used) of the legal estate or interest in the farm; and
(b) has then transferred that legal estate or interest to the other person.

(11) If a person has an eligible interest in a sugarcane farm or a relevant sugarcane farm asset because (see paragraphs (5)(d) and (6)(b)) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm, or a legal interest in the relevant farm asset (as the case may be), the person is taken to have transferred to another person his or her eligible interest in the farm or relevant farm asset only if the person:
(a) has acquired the company’s legal estate or interest in the farm or the company’s legal interest in the relevant farm asset; and
(b) has then transferred it to the other person.

(12) An eligible interest that a person (the first person) has in a sugarcane farm or a relevant sugarcane farm asset because (see paragraphs (5)(e) and (6)(c)) the value of the first person’s assets includes an amount calculated (in accordance with section 52ZZR)
by reference to the value of the farm or relevant farm asset is transferred to another person if:

(a) the first person is divested of that eligible interest; and

(b) as a result, the other person gains an eligible interest in the farm or relevant farm asset of a value that is referable to the full value of the eligible interest divested.

(13) To avoid doubt, if:

(a) a person is able to transfer an eligible interest under either subsection (11) or (12); and

(b) the person transfers that interest under subsection (12);

the person is not required to meet the requirements of subsection (11) in relation to the transfer.

5PA Pharmaceutical allowance and advance pharmaceutical allowance definitions

(1) If:

(a) a person is paid an instalment of service pension or social security pension or social security benefit on a particular day; and

(b) an amount by way of pharmaceutical allowance is to be added to the person’s maximum basic rate in working out the amount of the instalment;

the amount of pharmaceutical allowance paid to the person on that day is worked out using subsections (2), (3), (4) and (5).

(2) If the instalment is an instalment of service pension or social security pension, the amount of allowance paid is:

\[
\text{Pharmaceutical allowance rate} = 26
\]

where:

\textit{pharmaceutical allowance rate} is the yearly amount of pharmaceutical allowance added to the person’s maximum basic rate in working out the amount of the instalment.

(3) If:

(a) the instalment is an instalment of social security benefit; and
(b) the instalment is for a fortnight or a period of whole
fortnights;
the amount of allowance paid is:

\[
\text{Pharmaceutical allowance rate} \times \frac{\text{Number of fortnights}}{10}
\]

where:

- **pharmaceutical allowance rate** is the fortnightly amount of
  pharmaceutical allowance added to the person’s maximum basic rate in working out the amount of the instalment.

- **number of fortnights** is the number of fortnights in the period for which the instalment is paid.

(4) If:

(a) the instalment is an instalment of social security benefit; and
(b) the instalment is for a period of less than a fortnight;
the amount of the allowance paid is:

\[
\text{Pharmaceutical allowance rate} \times \frac{\text{Week days in period}}{10}
\]

where:

- **pharmaceutical allowance rate** is the fortnightly amount of
  pharmaceutical allowance added to the person’s maximum basic rate in working out the amount of the instalment.

- **week days in period** is the number of week days in the period for which the instalment is paid.

(5) If:

(a) the instalment is an instalment of social security benefit; and
(b) the instalment is for a period that consists of:
    (i) a fortnight or a number of whole fortnights; and
    (ii) a period of less than a fortnight;
the amount of allowance paid is:

\[
\text{Pharmaceutical allowance rate} \times \frac{\text{Number of whole fortnights}}{10} \times \frac{\text{Week days in short period}}{10}
\]

where:
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**pharmaceutical allowance rate** is the fortnightly amount of pharmaceutical allowance added to the person’s maximum basic rate in working out the amount of the instalment.

**number of whole fortntights** is the number of whole fortntights in the period for which the instalment is paid.

**week days in short period** is the number of week days in the period that is less than a fortnight.

### 5PB  Seniors health card definitions

1. In this Act, unless the contrary intention appears:

**holder of a seniors health card** has the meaning given by subsection (2).

2. A person is the **holder of a seniors health card** while there is in force a determination under section 118ZG or 118ZP that the person is entitled to a seniors health card.

### 5Q  General definitions

1. In this Act, unless the contrary intention appears:

**account**, in relation to a financial institution, means the account maintained by a person with the institution to which is credited money received on deposit by the institution from that person.

**actual market exchange rate** in relation to a foreign currency, means the on-demand airmail buying rate in relation to that foreign currency available at the Commonwealth Bank of Australia.

**approved Guide to the Assessment of Rates of Veterans’ Pensions** means:

(a) the document, prepared by the Commission under section 29 under the title “Guide to the Assessment of Rates of Veterans’ Pensions”, that has been approved by the Minister and is for the time being in force; or

(b) if an instrument varying that document has been approved by the Minister, that document as so varied.
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**approved Treatment Principles** means:

(a) the document, prepared by the Commission under section 90 under the title “Treatment Principles”, that has been approved by the Minister, and is for the time being in force; or

(b) if an instrument varying that document has been approved by the Minister, that document as so varied.

**Australia** includes the external territories for the purposes of Parts III and IIIA.

**austudy payment** has the meaning given by the *Social Security Act 1991*.

**bank** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

**benevolent home** means a home that is a benevolent home for the purposes of the *Social Security Act*.

**Board** means the Veterans’ Review Board continued in existence by section 134.

**comparable foreign pension** means a payment that is:

(a) available from a foreign country; and

(b) similar to a service pension, income support supplement or a social security pension.


**decision** includes a determination and an assessment.

**Defence Force Income Support Allowance or DFISA** means Defence Force Income Support Allowance under Part VIIAB.

**DFISA bonus** means DFISA bonus under Part VIIAB.

**disability pension**, for the purposes of Parts III and IIIA, means:

(a) a pension under Part II or IV (other than a pension that is payable under section 30 to a dependant of a deceased veteran); or

(b) temporary incapacity allowance under Part VI; or
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(c) a pension payable because of subsection 4(6) or (8B) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 (other than a pension payable in respect of a child); or

(d) a payment (other than a pension referred to in paragraph (a) or (c) of this definition) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged.

**exempt funeral investment** means:

(a) a type A funeral investment of not more than $5,000 (disregarding any return on the investment) that does not relate to a funeral:
   (i) to which another type A funeral investment relates; or
   (ii) to which a type B funeral investment relates; or
   (iii) expenses for which have been paid in advance; or

(b) a type B funeral investment of not more than $5,000 (disregarding any return on the investment) that does not relate to a funeral:
   (i) to which another type B funeral investment relates; or
   (ii) to which a type A funeral investment relates; or
   (iii) expenses for which have been paid in advance.

**Family Assistance Act** means the A New Tax System (Family Assistance) Act 1999.

**financial institution** means a corporation that is an ADI for the purposes of the Banking Act 1959.

**foreign exchange period** means:

(a) the period commencing 20 September and ending on the day before the pension payday that falls closest to the middle of the 6 month period commencing 20 September; and

(b) the period starting from the pension payday referred to in paragraph (a) and ending on 19 March; and

(c) the period commencing 20 March and ending on the day before the pension payday that falls closest to the middle of a 6 month period commencing 20 March; and

(d) the period starting from the pension payday referred to in paragraph (c) and ending on 19 September.
general rate means the maximum rate per fortnight specified in subsection 22(3).

immediate family member, of a person, means an individual:
(a) who is a natural parent, adoptive parent or step-parent of the person; or
(b) who is, or was when the person was under 18 years of age, a legal guardian of the person; or
(c) who is a grandparent of the person; or
(d) who is a sibling of the person.

incentive allowance has the meaning that was given to that expression by the Social Security Act 1991 as in force immediately before 12 November 1991.


joint ownership includes ownership as joint tenants or tenants in common.

Military Rehabilitation and Compensation Commission means the Military Rehabilitation and Compensation Commission established under section 361 of the MRCA.


MRCA commencement date means the date on which section 3 of the MRCA commences.

organisation representing veterans means:
(a) an organisation:
(i) whose members include veterans throughout the Commonwealth; and
(ii) whose objects include that of representing veterans throughout the Commonwealth; or
(b) an organisation:
(i) whose members include persons throughout the Commonwealth who are receiving or eligible to receive pensions under Part II as dependants of veterans; and
Section 5Q

(ii) whose objects include that of representing those persons throughout the Commonwealth.

*pension*, in Parts IIIA, IIIAB, IIIB and IIIC, section 122B and Schedule 6, includes income support supplement.

**pension age:**
(a) in relation to a veteran—has the meaning given by section 5QA; or
(b) in relation to a person other than a veteran—has the meaning given by section 5QB.

Note: The qualifying age for income support supplement is separately provided for (see subsection 45A(2)).

**pension bonus** means pension bonus under Part IIIAB.

**pension payday** means:
(a) the Thursday falling on 11 July 1991; and
(b) each succeeding alternate Thursday.

**pension period** means a period of 2 weeks that:
(a) starts 2 days before the beginning of a pension payday; and
(b) ends 2 days before the beginning of the next pension payday.

**physically present in a remote area** has the meaning given by subsection (2).

**port** includes airport.

**principal beneficiary**, of a special disability trust, has the meaning given by subsection 52ZZZWA(1).

**Rate Calculator** means the Rate Calculator in Part 2 of Schedule 6.

**recoverable amount** has the meaning given by subsection 205(8).

**remote area** means:
(a) those parts of Australia referred to in Part I of Schedule 2 to the Income Tax Assessment Act; and
(aa) those parts of Australia referred to in Part II of that Schedule to that Act that are further than 250 kilometres by the shortest practicable surface route from the nearest urban centre with a
census population (within the meaning of that Act) of 2,500 or more; and

(ab) those places in Australia that, for the purposes of that Act, are treated as if they were in a part of Australia referred to in paragraph (a) or (aa).

**remunerative work** includes any remunerative activity.

**Repatriation Private Patient Principles** means the principles, as in force from time to time, determined by the Commission under section 90A.

**retirement age:**

(a) in relation to a person who is a war widow or a war widower but is not a veteran—means the age that would be the pension age for that person if he or she were a veteran; or

(b) in relation to any other person—means the pension age for that person.

**Secretary** means the Secretary to the Department.

**seniors concession allowance** means seniors concession allowance under Part VIIAD.

**service pension** means:

(a) an age service pension; or

(b) an invalidity service pension; or

(c) a partner service pension.

**service pensioner** means a person who is receiving a service pension.

**sibling** of a person, except for the purposes of sections 123 to 123E, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or foster-sister of the person.

Note: For the meaning of **sibling** in sections 123 to 123E, see subsection 123(1).

**Social Security Act** means the *Social Security Act 1991*.

**social security benefit** has the same meaning as it has in the Social Security Act.
social security payment has the same meaning as in the Social Security Act.

social security pension has the same meaning as it has in the Social Security Act.

special disability trust has the meaning given by section 52ZZZW.

tax file number has the same meaning as in Part VA of the Income Tax Assessment Act 1936.

tax year means:
(a) a year of income (within the meaning of the Income Tax Assessment Act 1936); or
(b) an income year (within the meaning of the Income Tax Assessment Act 1997).

temporarily, in relation to a departure or absence from Australia, has a meaning affected by subsection (3) or (4), as the case requires.

tobacco product means:
(a) tobacco (in any form); or
(b) any product that:
   (i) contains tobacco as its main or a substantial ingredient; and
   (ii) is not included in the Australian Register of Therapeutic Goods kept under the Therapeutic Goods Act 1989.

type A funeral investment means an investment:
(a) that:
   (i) matures on the death of the investor; or
   (ii) matures on the death of the investor’s partner; and
(b) that cannot be realised before maturity; and
(c) the return on which is not payable before maturity; and
(d) the amount paid on whose maturity is to be applied to the expenses of the funeral of the person on whose death it matures.

Type B funeral investment means an investment:
(a) made by:
   (i) a person who is a member of a couple; or
(ii) both members of a couple; and
(b) that matures on the death of:
   (i) whichever member of the couple dies first; or
   (ii) whichever member of the couple dies last; and
(c) that cannot be realised before maturity; and
(d) the return on which is not payable before maturity; and
(e) the amount paid on whose maturity is to be applied to the expenses of the funeral of a member of the couple.

use, in relation to a tobacco product, includes smoke, chew or inhale.

utilities allowance means utilities allowance under Part VIIAC.

war widow/war widower—pensioner means:
(a) a person who is receiving a pension under Part II or IV of this Act at a rate determined under or by reference to subsection 30(1); or
(b) a person who has received a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or who is receiving a weekly amount mentioned in that paragraph.

youth allowance has the meaning given by the Social Security Act 1991.

(1A) In Parts VIII, XI and XIA, unless the contrary intention appears:

defence service has the same meaning as in Part IV.

hazardous service, in relation to a member of the Forces, has the same meaning as in section 120.

member of a Peacekeeping Force has the same meaning as in Part IV.

member of the Forces has the same meaning as in Part IV.

peacekeeping service has the same meaning as in Part IV.

Definition of relates to service for injuries, diseases and deaths

(1B) For the purposes of this Act, an injury, disease or death relates to service rendered by a person if:
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(a) it resulted from an occurrence that happened while the person was rendering that service; or
(b) it arose out of, or was attributable to, that service; or
(c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
   (i) to a place for the purpose of performing duty; or
   (ii) away from a place of duty upon having ceased to perform duty; or
(d) in the case of an injury—it resulted from an accident that would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
(e) in the case of a disease—it would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
(f) in the case of a death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service.

Definition of relates to service for aggravations and material contributions

(1C) For the purposes of this Act, an aggravation of, or a material contribution to, an injury or disease relates to service rendered by a person if:
(a) it resulted from an occurrence that happened while the person was rendering that service; or
(b) it arose out of, or was attributable to, that service; or
(c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
   (i) to a place for the purpose of performing duty; or

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(ii) away from a place of duty upon having ceased to perform duty; or

(d) in the case of an aggravation of, or a material contribution to, an injury—it resulted from an accident that would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or

(e) in the case of an aggravation of, or a material contribution to, a disease—it would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service.

(2) If:
   (a) a person’s usual place of residence is in the remote area; and
   (b) the person is absent from the remote area for a period;

the person is to be taken to be physically present in the remote area during:
   (c) if the period does not exceed 8 weeks—the whole of that period; or
   (d) if the period exceeds 8 weeks—the first 8 weeks of that period.

Note: the rule set out in subsection (2) may be modified by a determination under subsection 5R(11) or 5R(12).

(3) In determining whether a person has left Australia temporarily or otherwise, regard is to be had to the following:
   (a) the purpose for which the person left Australia;
   (b) the intended duration of the person’s absence from Australia;
   (c) the frequency of the occasions on which the person has left Australia.

(4) In determining whether a person is absent from Australia temporarily or otherwise, regard is to be had to the following:
   (a) the purpose of the absence;
   (b) the intended duration of the absence;
   (c) the frequency of such absences.
Section 5QAA

5QAA Equal amounts

(1) Where:
   (a) a provision of this Act refers to:
       (i) the greater or greatest, or the higher or highest; or
       (ii) the lesser or least, or the lower or lowest;
       of 2 or more amounts; and
   (b) the amounts are equal;
   the provision is taken to refer to one only of the amounts.

(2) Where:
   (a) a provision of this Act refers to the greatest or highest of 3 or
       more amounts; and
   (b) 2 or more (but not all) of the amounts are equal and exceed
       the other amount or other amounts;
   the provision is taken to refer to one only of those equal amounts.

(3) Where:
   (a) a provision of this Act refers to the least or lowest of 3 or
       more amounts; and
   (b) 2 or more (but not all) of the amounts are equal and are less
       than the other amount or other amounts;
   the provision is taken to refer to one only of those equal amounts.

5QA Pension age for veterans

(1) This section deals with the pension age for veterans.

   Men

(2) A man reaches pension age when he turns 60 years.

   Women

(3) A woman born before 1 July 1940 reaches pension age when she turns 55.

(4) A woman born within the period specified in column 2 of an item in the following Table reaches pension age when she turns the age specified in column 3 of that item.
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5QB Pension age for persons other than veterans

(1) This section deals with the pension age for persons other than veterans.

Men

(2) A man reaches pension age when he turns 65 years.

Women

(3) A woman born before 1 July 1935 reaches pension age when she turns 60 years.

(4) A woman born within the period specified in column 2 of an item in the following Table reaches pension age when she turns the age specified in column 3 of that item.
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2 Period within which woman was born (both dates inclusive)</th>
<th>Column 3 Pension age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item no.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>From 1 July 1935 to 31 December 1936</td>
<td>60 years and 6 months</td>
</tr>
<tr>
<td>2.</td>
<td>From 1 January 1937 to 30 June 1938</td>
<td>61 years</td>
</tr>
<tr>
<td>3.</td>
<td>From 1 July 1938 to 31 December 1939</td>
<td>61 years and 6 months</td>
</tr>
<tr>
<td>4.</td>
<td>From 1 January 1940 to 30 June 1941</td>
<td>62 years</td>
</tr>
<tr>
<td>5.</td>
<td>From 1 July 1941 to 31 December 1942</td>
<td>62 years and 6 months</td>
</tr>
<tr>
<td>6.</td>
<td>From 1 January 1943 to 30 June 1944</td>
<td>63 years</td>
</tr>
<tr>
<td>7.</td>
<td>From 1 July 1944 to 31 December 1945</td>
<td>63 years and 6 months</td>
</tr>
<tr>
<td>8.</td>
<td>From 1 January 1946 to 30 June 1947</td>
<td>64 years</td>
</tr>
<tr>
<td>9.</td>
<td>From 1 July 1947 to 31 December 1948</td>
<td>64 years and 6 months</td>
</tr>
</tbody>
</table>

(5) A woman born on or after 1 January 1949 reaches pension age when she turns 65 years.

5R Determinations having interpretative effect

Continuous full-time service determination; member of unit of Defence Force determination

(1) The Minister may, by notice in writing published in the Gazette, make, in respect of a person, or of persons included in a class of persons, specified in the notice, all or any of the following determinations:

(a) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person, or a person included in that class of persons, as if he or she was, while he or she was rendering service of a kind specified in the notice (in this subsection referred to as relevant service), a member of the Defence Force who was rendering continuous full-time service;
(b) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person (being a member of the Defence Force), or a person included in that class of persons (being members of the Defence Force), as if he or she was, while he or she was rendering relevant service, rendering continuous full-time service;

(c) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person, or a person included in that class of persons, as if he or she was, while he or she was rendering relevant service, a member of a specified unit of the Defence Force;

and, if the Minister does so, this Act applies, or the specified provisions of this Act apply, as the case may be, accordingly.

Note: for continuous full-time service and member of a unit of the Defence Force see subsection 5C(1).

Allied veteran determination

(2) If a person who is a claimant for an age service pension or an invalidity service pension satisfies the Commission:

(a) that the person had been appointed or enlisted as a member of the forces or services of:

(i) an allied country, being forces or services of a kind referred to in the definition of defence force established by an allied country; or

(ii) the government-in-exile of an allied country, being forces or services of a kind referred to in subsection 5C(3); and

(b) that those forces or services were raised and operated in such a manner that the members of those forces and services:

(i) were formally appointed to, or enlisted in, those forces or services; and

(ii) were subject to the rules and conventions of warfare; and

(c) that the person was not required, as such a member, to wear a uniform or insignia distinguishing the person as a member of those forces or services or to carry arms at all or to carry arms openly; and

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Section 5R

(d) that it would have been unreasonable, having regard to the conditions existing, at the time the person served in those forces or services, in the parts of that country in which the person so could serve, for the person to have been required to wear a uniform or insignia or to carry arms or to carry arms openly;

the Commission must determine that the person is, for the purposes of the definition of allied veteran in subsection 5C(1) to be treated as a person who has been appointed or enlisted as a member of the defence force established by that allied country or that government-in-exile.

**Person may be treated as not being a member of a couple**

(3) The Commission may determine, for any special reason, that a person who is a member of a couple is not to be treated as a member of a couple for the purposes of this Act.

Note: for member of a couple see subsection 5E(2).

(4) The determination must be in writing.

**Illness separated couple determination**

(5) If the Commission is satisfied that:
   (a) 2 people are members of a couple; and
   (b) they are unable to live together in a matrimonial home as a result of the illness or infirmity of either or both of them; and
   (c) because of that inability to live together, their living expenses are, or likely to be greater than they would otherwise be; and
   (d) that inability is likely to continue indefinitely;

the Commission may make a written determination that the 2 people are members of an illness separated couple for the purposes of this Act.

**Respite care couple determination**

(6) If the Commission is satisfied that:
   (a) 2 people are members of a couple; and
   (b) one of the members of the couple is in respite care; and
   (c) the member who is in respite care has remained, or is likely to remain, in that care for at least 14 consecutive days;
the Commission may make a written determination that the 2 people are members of a respite care couple for the purposes of this Act.

Note: For in respite care, see subsection 5NC(8).

(7) A determination under subsection (6) takes effect from the day specified by the Commission in the determination, being a day not earlier than 3 months before the Commission is notified that the person is in respite care.

Remote area determination—current or future absence from remote area

(11) If the Commission is satisfied that:
   (a) a person’s age or invalidity service pension or income support supplement includes an amount of remote area allowance; and
   (b) the person’s remote area allowance includes an amount for an FTB child; and
   (d) the absence is, or is likely to be, longer than 8 weeks; and
   (e) the absence is due to special circumstances (for example, the person’s medical treatment or the person’s attendance at a rehabilitation or training course);
the Commission may make a written determination that, despite that absence, the person’s rate of pension or income support supplement continues to include remote area allowance for the period specified in the determination while the person has an FTB child.

Note 1: For an FTB child see subsection 5F(1).

Note 2: a person whose absence from a remote area is longer than 8 weeks would not normally continue to be entitled to remote area allowance (see subsection 5Q(2)).

Remote area determination—past absence from remote area

(12) If the Commission is satisfied that, in relation to a period:
   (a) a person is receiving an age or invalidity service pension or income support supplement; and
   (b) the person’s usual place of residence is in a remote area; and
   (c) because the person is absent from the remote area for longer than 8 weeks, the person’s rate of service pension or income
support supplement ceases to include an amount by way of remote area allowance; and
(d) immediately before the person’s rate ceases to include remote area allowance, the remote area allowance includes an amount for an FTB child; and
the Commission may make a written determination that, despite that absence, the person’s rate of pension or income support supplement continues to include remote area allowance for the period specified in the determination while the person has an FTB child.

Note 1: For an FTB child see subsection 5F(1).
Note 2: a person whose absence from a remote area is longer than 8 weeks would not normally continue to be entitled to remote area allowance (see subsection 5Q(2)).

(13) The period specified by the Commission in a determination under subsection (12) must not commence earlier than 3 months before the Commission is notified that the person is absent from the remote area.

Sale leaseback agreement determination

(14) The Commission may determine that an agreement is a sale leaseback agreement if the Commission is satisfied that the agreement is substantially similar in its effect to an agreement referred to in subsection 5MB(2).

(15) The determination must be in writing.

5T Lodgment of claims, applications, requests and documents

(1) This section regulates the lodgment of all claims, applications, requests or other documents under this Act.

Note: So far as concerns the lodgment of documents with the Veterans’ Review Board, the Repatriation Medical Authority and the Specialist Medical Review Council, these matters are dealt with in Parts IX, XIA and XIB respectively.

(2) For the purposes of this Act, a claim, application, request or other document, other than a claim, application, request or other document that is approved by the Commission for electronic lodgment and that is transmitted electronically:
(a) is taken to have been lodged at an office of the Department in Australia only if the claim, application, request or other document is:
   (i) lodged at a place approved by the Commission for the purposes of this subsection; or
   (ii) delivered to a person approved by the Commission for the purposes of this subsection; and

(b) is taken to have been so lodged on the day on which it is received at that place or delivered to that person.

(3) For the purposes of this Act, a claim, application, request or other document that is approved by the Commission for electronic lodgment and that is transmitted electronically:
   (a) is taken to have been lodged at an office of the Department in Australia only if the claim, application, request or document is transmitted electronically:
      (i) in a manner approved by the Commission for the purposes of this subsection; and
      (ii) to an electronic address approved by the Commission for the purposes of this subsection;
      in relation to claims, applications, requests or documents of that kind; and
   (b) is taken to have been so lodged on the day on which it is so received at that electronic address.

(4) Claims, applications, requests and other documents transmitted electronically other than in a manner approved by the Commission or to an electronic address other than an electronic address approved by the Commission are not to be treated as having been validly lodged.

(5) The Commission may approve a place within or outside Australia for the purposes of subparagraph (2)(a)(i).

(6) For the purposes of this Act, a claim, application, request or other like document is taken to have been made on the day on which, under subsection (2) or (3), it is taken to have been lodged at an office of the Department in Australia.

(7) For the purposes of this Act, a notice or like document is taken to have been given on the day on which, under subsection (2) or (3),
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it is taken to have been lodged at an office of the Department in Australia.

(8) If any provision of this Act requires any material to be lodged in support of a claim, application, request or other document, that supporting material:

(a) unless paragraph (b) applies—may be lodged in accordance with this section in the same manner as the claim, application, request or other document to which it relates; and

(b) if the supporting material is not appropriate to be lodged in the same manner as the claim, application, request or other document to which it relates—may be lodged in such other manner contemplated by this section as the Commission approves.

5U Notes

For the purposes of this Act, a Note is taken to be part of:

(a) if the Note immediately follows a section that does not contain subsections—the section; or

(b) if the Note immediately follows a subsection—the subsection; or

(c) if the Note immediately follows a point in a Rate Calculator—the point; or

(d) if the Note immediately follows a Step in a Method statement and is aligned with the text of the Step—the Step; or

(e) if the Note immediately follows a Table—the Table; or

(f) if the Note immediately follows a paragraph and is aligned with the text of the paragraph—the paragraph.

6 Operational service—general outline

Sections 6A to 6F deal with operational service as set out in the following table:

<table>
<thead>
<tr>
<th>Operational service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

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#### Operational service

<table>
<thead>
<tr>
<th>Item</th>
<th>Section number</th>
<th>Type of operational service</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>6B</td>
<td>Operational service—Australian mariners</td>
</tr>
<tr>
<td>3</td>
<td>6C</td>
<td>Operational service—post World War 2 service in operational areas</td>
</tr>
<tr>
<td>4</td>
<td>6D</td>
<td>Operational service—other post World War 2 service</td>
</tr>
<tr>
<td>4A</td>
<td>6DA</td>
<td>Operational service—minesweeping and bomb/mine clearance service</td>
</tr>
<tr>
<td>5</td>
<td>6E</td>
<td>Operational service—Korean demilitarised zone and Vietnam</td>
</tr>
<tr>
<td>6</td>
<td>6F</td>
<td>Operational service—warlike and non-warlike service</td>
</tr>
</tbody>
</table>

#### 6A Operational service—world wars

(1) Subject to subsection (3), a person referred to in column 2 of an item in the following table is taken to have been rendering operational service during any period during which the person was rendering continuous full-time service of a kind referred to in column 3 of that item.
### Operational service

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
<th>Nature of service</th>
</tr>
</thead>
</table>
| 1    | A member of the Defence Force | (a) continuous full-time service outside Australia during a war to which this Act applies  
(b) continuous full-time service for a period of at least 3 months in that part of the Northern Territory that is north of the parallel 14 degrees 30 minutes south latitude (including any of the islands adjoining the Northern Territory) between 19 February 1942 and 12 November 1943 (both dates inclusive)  
(c) continuous full-time service during a war to which this Act applies rendered within Australia immediately before, or immediately after, a period of continuous full-time service of the kind referred to in paragraph (a) or (b)  
(d) continuous full-time service rendered within Australia during World War 2 in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy |
| 2    | A member of the Defence Force who enlisted in the Defence Force while living on a Torres Strait Island | (a) continuous full-time service for a period of at least 3 months on that island between 14 March 1942 and 18 June 1943 (both dates inclusive)  
(b) continuous full-time service during a war to which this Act applies rendered within Australia immediately before, or immediately after, a period of continuous full-time service of the kind referred to in paragraph (a) |
Operational service

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>A member of the naval, military or air forces of a Commonwealth country or of an allied country who was domiciled in Australia or an external Territory immediately before his or her appointment or enlistment in those forces</td>
</tr>
</tbody>
</table>

Continuous full-time service during a war to which this Act applies rendered:
(a) outside that country; or
(b) within that country but in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy.

(2) A person referred to in column 2 of an item in the following table is taken to have been rendering operational service during the period, or at the time, specified in column 3 of that item.

Operational service

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A person who was, during a war to which this Act applies, employed by the Commonwealth on a special mission outside Australia</td>
</tr>
</tbody>
</table>

The period during which the person was so employed by the Commonwealth.

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>An eligible civilian who was killed, during the invasion of the Territory of Papua or the Territory of New Guinea during World War 2, as a result of action by the enemy</td>
</tr>
</tbody>
</table>

The time of the event as a result of which the person was killed.

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>An eligible civilian who was detained by the enemy during World War 2</td>
</tr>
</tbody>
</table>

The period during which the person was so detained.

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>A person who, while rendering continuous full-time service as a member of the Defence Force within Australia during World War 2, was injured, or contracted a disease, as a result of enemy action</td>
</tr>
</tbody>
</table>

The time of the event as a result of which the person was injured or contracted the disease.

(3) Any continuous full-time service that was rendered during World War 2 by a member of the Defence Force (other than a member of the Interim Forces) on or after the cut off date for the member is not taken to be operational service.
Section 6B

(4) For the purposes of subsection (3), the cut off date for a member of the Defence Force is the date applicable to the member in accordance with the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Member</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A member who was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service, or solely for service during that war or during that war and a definite period immediately following that war</td>
<td>1 July 1951</td>
</tr>
<tr>
<td>2</td>
<td>A member who was appointed or enlisted in the Citizen Forces and was called up for continuous full-time service for the duration of, or directly in connection with, World War 2</td>
<td>1 July 1951</td>
</tr>
<tr>
<td>3</td>
<td>A member who served in the British Commonwealth Occupation Force in Japan</td>
<td>1 July 1951, or the day on which the member arrived back in Australia on the completion of his or her service in that Force, whichever is the earlier</td>
</tr>
<tr>
<td>4</td>
<td>Any other member</td>
<td>3 January 1949</td>
</tr>
</tbody>
</table>

6B Operational service—Australian mariners

(1) A person is taken to have been rendering operational service during:

(a) any period of employment outside Australia as an Australian mariner on a ship; or

(b) any period of employment within Australia as an Australian mariner on a ship if that period of employment ended immediately before, or started immediately after, the period of employment referred to in paragraph (a).

(2) A person who, while employed within Australia as an Australian mariner on a ship, was injured, or contracted a disease, as a result of enemy action is taken to have been rendering operational service at the time of the event as a result of which the person was injured or contracted the disease.
Section 6C

(3) A person who was employed within Australia as an Australian mariner on a ship in such circumstances that the employment should, in the opinion of the Commission, be treated as employment in actual combat against the enemy is taken to have been rendering operational service while the person was so employed.

(4) Without limiting subsection (1), a person is taken to have been employed outside Australia as an Australian mariner on a ship in each of the following circumstances:

(a) at any time when the person was at a place outside Australia on leave from the ship while the ship was at a port outside Australia;
(b) at any time when the person was outside Australia while on his or her way to take up employment as an Australian mariner on a ship;
(c) while the person was awaiting return to Australia from employment as an Australian mariner on a ship;
(d) while the person was returning to Australia from employment as an Australian mariner on a ship.

(5) For the purposes of this section, if a person was employed as an Australian mariner on a ship undertaking a voyage for the purpose of going from a place within Australia to another place within Australia, the person is taken to have been employed within Australia during the whole of the voyage.

(6) In this section:

Australia does not include an external territory.

6C Operational service—post World War 2 service in operational areas

(1) Subject to this section, a member of the Defence Force who has rendered continuous full-time service in an operational area as:

(a) a member who was allotted for duty in that area; or
(b) a member of a unit of the Defence Force that was allotted for duty in that area;

is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.
(2) A member of the naval, military or air forces of a Commonwealth country or of an allied country who:
   (a) was domiciled in Australia or an external Territory immediately before his or her appointment or enlistment in those forces; and
   (b) has rendered continuous full-time service in an operational area;
   is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.

(3) For the purposes of subsection (1), a member of the Defence Force is, subject to subsection (4), taken to have rendered continuous full-time service in an operational area during the period commencing on:
   (a) if the member was in Australia on the day (relevant day) from which the member, or the unit of the member, was allotted for duty in that area—on the day on which the member left the last port of call in Australia for that service; or
   (b) if the member was outside Australia on the relevant day—on that day;
   and ending at the end of:
   (c) if the member, or the unit of the member, ceased to be allotted for duty—the day from which the member, or the unit, ceased to be allotted for duty; or
   (d) if the member, or the unit of the member, was assigned for duty from the operational area to another area outside Australia (not being an operational area)—the day from which the member, or the unit, was assigned to that other area, or the day on which the member, or the unit, arrived at that other area, whichever is the later; or
   (e) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

(4) If, while rendering continuous full-time service in an operational area, a member of the Defence Force has:
   (a) returned to Australia in accordance with the Rest and Recuperation arrangements of the naval, military or air forces; or
Section 6D

(b) returned to Australia on emergency or other leave granted on compassionate grounds; or
(c) returned to Australia on duty; or
(d) returned to Australia for the purpose of receiving medical or surgical treatment as directed by the medical authorities of the Defence Force;

only so much of the period of service of the member within Australia after his or her return and while the member:
(e) continued to be allotted for duty in an operational area; or
(f) continued to be a member of a unit of the Defence Force allotted for duty in an operational area;

as does not exceed 14 days is taken, for the purposes of subsection (1), to be a period when the member was rendering continuous full-time service in the operational area.

6D Operational service—other post World War 2 service

(1) This section applies to a member of the Defence Force who, or a member of a unit of the Defence Force that:

(a) was assigned for service:

(i) in Singapore at any time during the period from and including 29 June 1950 to and including 31 August 1957; or
(ii) in Japan at any time during the period from and including 28 April 1952 to and including 19 April 1956; or
(iii) in North East Thailand (including Ubon) at any time during the period from and including 31 May 1962 to and including 24 June 1965; or

(b) was, at any time during the period from and including 1 August 1960 and including 27 May 1963, in the area comprising the territory of Singapore and the country then known as the Federation of Malaya;

but so applies only if the member, or the unit of the member, is included in a written instrument issued by the Defence Force for use by the Commission in determining a person’s eligibility for entitlements under this Act.
Section 6DA

(2) A person to whom this section applies is taken to have been rendering operational service during any period during which he or she was rendering continuous full-time service as:
   (a) a member of the Defence Force; or
   (b) a member of a unit of the Defence Force;
while the person was in the area described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be).

(3) For the purposes of subsection (2), the operational service of a person to whom this section applies:
   (a) is taken to have started:
      (i) if the person was in Australia on the relevant day (relevant day) from which his or her unit was assigned for service as described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be)—on the day on which the member left the last port of call in Australia for that service; or
      (ii) if the person was outside Australia on the relevant day—on that day; and
   (b) is taken to have ended:
      (i) if the member was assigned for service in another country or area outside Australia (not being an operational area)—the day from which the member was assigned to that other country or area, or the day on which the member arrived at that other area, whichever is the later; or
      (ii) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

6DA Operational service—minesweeping and bomb/mine clearance service

A member of the Defence Force is taken to have been rendering operational service during any period of service in respect of which the member has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the
6E Operational service—Korean demilitarised zone and Vietnam

A member of the Defence Force who was assigned for service:
(a) in the demilitarised zone between North Korea and South Korea after 18 April 1956; or
(b) on HMA Ship Vampire or Quickmatch in Vietnam during the period from and including 25 January 1962 to and including 29 January 1962;

is taken to have been rendering operational service while he or she was so rendering continuous full-time service in that zone or in Vietnam (as the case may be) during the period in which he or she was so assigned for service.

6F Operational service—warlike and non-warlike service

A member of the Defence Force is taken to have been rendering operational service during any period of warlike service or non-warlike service of the member.

7 Eligible war service

(1) Subject to subsection (2), for the purposes of this Act:
(a) a person who has rendered operational service shall be taken to have been rendering eligible war service while the person was rendering operational service; and
(b) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 1 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and
(c) a person who has rendered continuous full-time service (not being operational service) as a member of the Defence Force during World War 2, being service that commenced before 1 July 1947, shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and
(d) a person who rendered continuous full-time service (not being operational service) as a member of the Interim Forces...
Section 7

during World War 2 on or after 1 July 1947 shall be taken to have been rendering eligible war service while the person was so rendering continuous full-time service; and
(e) a person who was employed on a ship as an Australian mariner is taken to have been rendering eligible war service:
(i) if part of that employment was operational service—for the part of that employment that was not operational service; or
(ii) in any other case—while the person was so employed.

Note 1: For World War 1 and World War 2 see subsection 5B(1).
Note 2: For operational service see sections 6 to 6F.
Note 3: For Australian mariner, continuous full-time service, member of the Defence Force and member of the Interim Forces see subsection 5C(1).
Note 4: Subsections (3) and (4) contain information that is relevant to paragraph (e).

(2) A person who rendered continuous full-time service in the Defence Force during World War 2:
(a) if the person was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service or solely for service in time of that war or during that time and a definite time thereafter—on or after 1 July 1951;
(b) if the person was appointed or enlisted in the Citizen Forces and was called up for continuous full-time service for the duration of, or directly in connection with, World War 2—on or after 1 July 1951; or
(c) if the person was not appointed or enlisted as set out in paragraph (a) or (b)—on or after 3 January 1949; shall not be taken, by virtue of paragraph (1)(c), to have been rendering eligible war service while the person was so rendering continuous full-time service.

(3) Without limiting paragraph (1)(e), a person is taken to be employed on a ship as an Australian mariner while the person was at a place (being a place that is in Australia but is not on land in Australia) in the course of proceeding to employment on a ship as an Australian mariner.
(4) For the purposes of subsection (3), Australia does not include an external territory.

7A Qualifying service

(1) For the purposes of Parts III and VA and sections 85 and 118V, a person has rendered qualifying service:

(a) if the person has, as a member of the Defence Force:

(i) rendered service, during a period of hostilities specified in paragraph (a) or (b) of the definition of period of hostilities in subsection 5B(1), at sea, in the field or in the air in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when the person incurred danger from hostile forces of the enemy in that area or on that aircraft or ship; or

(ii) rendered service after 29 October 1945 in respect of which the person has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the Bomb and Mine Clearance 1945-49 Clasp or the Bomb and Mine Clearance 1945-56 Clasp; or

(iii) rendered service outside Australia in an area described in column 1 of Schedule 2 during the period specified in column 2 of that Schedule opposite to that description, as a member of a unit of the Defence Force that was allotted for duty, or as a person who was allotted for duty, in that area; or

(iv) rendered warlike service; or

(b) if, during a period of hostilities, the person has, as a member of the defence force established by a Commonwealth country, rendered, in connection with war or war-like operations in which the Naval, Military or Air Forces of Australia were engaged:

(i) service, in an area outside that country, at a time when the person incurred danger from hostile forces of the enemy in that area; or
Section 7A

(ii) service within that country, being service in respect of which the person has been awarded, or has become eligible to be awarded, a campaign medal; or

(c) if the person is an allied veteran who, during a period of hostilities, has, as a member of the defence force established by an allied country, rendered, in connection with a war, or war-like operations, in which the Naval, Military or Air Forces of Australia were engaged, service in an area within or outside the country in which the person enlisted in those forces, being service in respect of which the person incurred danger from hostile forces of the enemy; or

(d) if the person was, during a period of hostilities specified in paragraph (a) or (b) of the definition of period of hostilities in subsection 5B(1), employed by the Commonwealth on a special mission outside Australia, and, in the course of carrying out that mission, incurred danger from hostile forces of the enemy; or

(e) if the person is an eligible civilian within the meaning of subsection 5C(1) who was, during a period of hostilities specified in paragraph 5B(1)(b) of the definition of period of hostilities, detained by the enemy; or

(f) if the person is a person in respect of whom a pension is payable in pursuance of subsection 13(6); or

(g) if the person is an Australian mariner as defined by subsection 5C(1) who, in the course of:

(i) any service rendered by the person in employment of a kind specified in paragraph (a), (b), (c), (e) or (g) of that definition; or

(ii) any service rendered by the person as a pilot referred to in paragraph (d) of that definition; or

(iii) any service rendered by the person as a member or employee of the Commonwealth Salvage Board;

was on a ship or in an area at a time when the person incurred danger from hostile forces of the enemy on the ship or in the area, as the case may be; or

(h) if the person is an allied mariner who, in the course of any service rendered by the person in employment of a kind to which paragraphs (a) and (b) of the definition of allied mariner in subsection 5C(1) applies:

(i) was detained by the enemy; or
Section 8

(ii) was in an area service in which would, if the person had been a member of the Defence Force, have entitled the person to the award of a campaign medal and incurred, while he or she was in that area, danger from hostile forces of the enemy.

Note 1: For period of hostilities see subsection 5B(1) and for allotted for duty in an operational area see subsection 5B(2).

Note 2: For allied mariner, allied veteran, Australian mariner, defence force established by a Commonwealth country, defence force established by an allied country, eligible civilian, enemy, member of the Defence Force and special mission see subsection 5C(1).

(2) In subparagraphs (1)(b)(ii) and (1)(h)(ii):

campaign medal, in relation to service during the period of World War 2 from its commencement to and including 29 October 1945, means:

(a) any of the following medals:
   (i) 1939-45 Star;
   (ii) Atlantic Star;
   (iii) Air Crew Europe Star;
   (iv) Africa Star;
   (v) Pacific Star;
   (vi) Burma Star;
   (vii) Italy Star;
   (viii) France and Germany Star; or
(b) any other medal declared by the regulations to be a campaign medal in relation to service during that period.

8 War-caused death

(1) Subject to this section and section 9A, for the purposes of this Act, the death of a veteran shall be taken to have been war-caused if:

(a) the death of the veteran resulted from an occurrence that happened while the veteran was rendering operational service;

(b) the death of the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;

(c) the death of the veteran resulted from an accident that occurred while the veteran was travelling, while rendering
Section 8

eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;

(d) in the opinion of the Commission, the death of the veteran was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran’s environment consequent upon his or her having rendered eligible war service; or

(e) the injury or disease from which the veteran died:

(i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease; or

(f) the injury or disease from which the veteran died is an injury or disease that has been determined in accordance with section 9 to have been a war-caused injury or a war-caused disease, as the case may be;

Note: The effect of paragraph (f) is that, if the veteran has died from an injury or disease that has already been determined by the Commission to be war-caused, the death is to be taken to have been war-caused. Accordingly the Commission is not required to relate the death to eligible war service rendered by the veteran and sections 120A and 120B do not apply.

but not otherwise.

(2) Paragraph (1)(a), (b), (c) or (d) does not apply to the death of a veteran if the death:

(a) resulted from the veteran’s serious default or wilful act; or

(b) arose from:

(i) a serious breach of discipline committed by the veteran; or
(ii) an occurrence that happened while the veteran was committing a serious breach of discipline.

(3) Subsection (1) does not apply to the death of a veteran if the death of the veteran resulted from the serious default or wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.

(4) Paragraph (1)(c) does not apply:

(a) to an accident that occurred while the veteran was travelling on a journey from the veteran’s place of duty in a case where the veteran had delayed commencing the journey for a substantial time after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the veteran’s duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used unless:

(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran’s duties; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran’s duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.
(5) Paragraph (1)(e) does not apply to the death of a veteran from an injury or disease, being injury or disease that has been contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran, unless the veteran has rendered operational service or the period of the eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.

(6) Despite subsection (1), the death of a veteran is taken not to have been war-caused if the veteran’s death is related to the veteran’s eligible war service only because:
   (a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or
   (b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.

9 War-caused injuries or diseases

(1) Subject to this section and section 9A, for the purposes of this Act, an injury suffered by a veteran shall be taken to be a war-caused injury, or a disease contracted by a veteran shall be taken to be a war-caused disease, if:
   (a) the injury suffered, or disease contracted, by the veteran resulted from an occurrence that happened while the veteran was rendering operational service;
   (b) the injury suffered, or disease contracted, by the veteran arose out of, or was attributable to, any eligible war service rendered by the veteran;
   (c) the injury suffered, or disease contracted, by the veteran resulted from an accident that occurred while the veteran was travelling, while rendering eligible war service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place of duty upon having ceased to perform duty;
   (d) the injury suffered, or disease contracted, by the veteran is to be deemed by subsection (2) to be a war-caused injury or a war-caused disease;
   (e) the injury suffered, or disease contracted, by the veteran:
Section 9

(i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease;

but not otherwise.

(2) For the purposes of this Act, where any incapacity of a veteran was, in the opinion of the Commission, due to an accident that would not have occurred, or due to a disease that would not have been contracted, but for his or her having rendered eligible war service or but for changes in the veteran’s environment consequent upon his or her having rendered eligible war service:

(a) if that incapacity was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the veteran as a result of the accident and the injury so suffered shall be deemed to be a war-caused injury suffered by the veteran; or

(b) if the incapacity was due to a disease—the incapacity shall be deemed to have arisen out of that disease and that disease shall be deemed to be a war-caused disease contracted by the veteran.

(3) Paragraph (1)(a), (b), (c) or (d) does not apply to an injury suffered, or disease contracted, by a veteran if the injury or disease:

(a) resulted from the veteran’s serious default or wilful act; or

(b) arose from:

(i) a serious breach of discipline committed by the veteran; or

(ii) an occurrence that happened while the veteran was committing a serious breach of discipline.

(4) Subsections (1) and (2) do not apply to an injury suffered, or disease contracted, by a veteran if the incapacity of the veteran
Section 9

from that injury or disease resulting from the serious default or wilful act of the veteran that happened after the veteran ceased, or last ceased, to render eligible war service.

(5) Paragraph (1)(c) does not apply:

(a) to an accident that occurred while the veteran was travelling on a journey from the veteran’s place of work in a case where the veteran had delayed commencing the journey for a substantial period after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the veteran’s duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the veteran was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used, unless:

(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the veteran’s duty; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of the risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the veteran was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the veteran’s duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.

(6) Paragraph (1)(e) does not apply to an injury suffered, or disease contracted, by a veteran (being an injury or disease that has been
Section 9A

contributed to in a material degree by, or aggravated by, eligible war service rendered by the veteran):

(a) if the aggravation of the injury or disease:
   (i) resulted from the veteran’s serious default or wilful act;
   (ii) arose from a serious breach of discipline committed by the veteran; or

(b) unless the veteran had rendered operational service or the period of eligible war service rendered by the veteran that so contributed to the injury or disease, or by which the injury or disease was aggravated, was 6 months or longer.

(7) Despite subsection (1), the injury or disease of a veteran is taken not to have been war-caused if that injury or disease is related to the veteran’s eligible war service only because:

(a) in the case of a veteran who had not used tobacco products before 1 January 1998—the veteran used tobacco products after 31 December 1997; or

(b) in the case of a veteran who had used tobacco products before 1 January 1998—the veteran increased his or her use of tobacco products after 31 December 1997.

9A Most war-caused injuries, diseases and deaths no longer covered by this Act

(1) A veteran’s injury, disease or death is taken not to be war-caused if:

(a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and

(b) the injury, disease or death either:
   (i) relates to service rendered by the person on or after that date; or
   (ii) relates to service rendered by the person before, and on or after, that date.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such injuries, diseases and deaths.

(2) An injury or disease of a veteran that has been aggravated, or materially contributed to, by service is taken not to be war-caused if:
(a) the aggravation or material contribution occurs on or after the commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and

(b) the aggravation or material contribution either:
   (i) relates to service rendered by the person on or after that date; or
   (ii) relates to service rendered by the person before, and on or after, that date; and

(c) if section 12 of the CTPA applies to the veteran—after receiving a notice under that section, the veteran makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravated injury or disease.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such aggravations and material contributions.

(3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

10 Child of a veteran or other person

(1) In this Act, unless the contrary intention appears, a reference to a child of a veteran, or of a deceased veteran, shall, if the veteran is, or the deceased veteran was, a man, be read as a reference to:
   (a) a child of whom the veteran is the father or a child adopted by the veteran or the veteran and his partner; or
   (b) any other child who is, or was immediately before the death of the veteran, wholly or substantially dependent on the veteran.

(2) In this Act, unless the contrary intention appears, a reference to a child of a veteran shall, if the veteran is a woman, be read as a reference to:
   (a) in the case of a veteran who is alive:
      (i) a child of whom the veteran is the mother or a child adopted by the veteran or by the veteran and her partner; or
(ii) any other child who is wholly or substantially dependent on the veteran; or

(b) in the case of a deceased veteran:
   (i) a child referred to in subparagraph (a)(i); or
   (ii) any other child who was, immediately before the death of the veteran, wholly or substantially dependent on the veteran;

being a child who is not being maintained by a parent, adoptive parent or step-parent of the child.

(3) For the purposes of subsections (1) and (2), where a veteran is, under a law of the Commonwealth or of a State or Territory, liable to maintain a child, the child shall be deemed to be wholly or substantially dependent on that veteran.

(4) In this section, a reference to a veteran shall be read as including a reference to a person who is a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(5) In this Act, unless the contrary intention appears, a reference to a child of a person (not being a person who is a veteran or a member referred to in subsection (4)) shall be read as a reference to a person who would, in accordance with subsection (1) or (2), be a child of that person if that person were a veteran.

11 Dependants

(1) In this Act, unless the contrary intention appears:

   dependant, in relation to a veteran (including a veteran who has died), means:
   (a) the partner; or
   (b) a non-illness separated spouse; or
   (c) a widow or widower (other than a widow or a widower who marries or re-marry); or
   (ca) a reinstated pensioner; or
   (d) a child;

of the veteran.

   Note 1: A veteran may have more than one dependant of the kind referred to in paragraphs (a) to (d) at the same time.

   Note 2: For the meaning of reinstated pensioner see section 11AA.
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Note 3: Subsection (4) affects the meaning of *widow* in paragraph (c).

(2) Without limiting the generality of subsection (1) in its application to a veteran (including a veteran who has died) who is, or was:
   (a) a descendant of an indigenous inhabitant of the Torres Strait Islands; or
   (b) a male aboriginal native of Australia;
who served during World War 2 in the Defence Force at a rate of pay less than the minimum rate of pay that was prescribed as payable to a male member of the Australian Military Forces and whose services have been terminated by discharge or death, a person whom the Commission, by instrument in writing, determines to be, for the purposes of this section, a person who is dependent on the veteran is a dependant of the veteran.

(3) In subsection (1), a reference to a veteran shall be read as including a reference to a person who is a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(4) In paragraph (1)(c), *widow* does not include a reinstated pensioner.

Note: For the meaning of *reinstated pensioner* see section 11AA.

11AA  Reinstated pensioner

In this Act, unless the contrary intention appears:

*reinstated pensioner* means a person who the Commission has determined under section 13AG to be a reinstated pensioner.

11A  Marriage-like relationships

In forming an opinion for the purposes of this Act whether 2 people are living together in a marriage-like relationship, regard is to be had to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:
   (i) any joint ownership of real estate or other major assets and any joint liabilities; and
   (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
   (iii) any legal obligations owed by one person in respect of the other person; and

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(iv) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:
   (i) any joint responsibility for providing care or support of children; and
   (ii) the living arrangements of the people; and
   (iii) the basis on which responsibility for housework is distributed;

(c) the social aspects of the relationship, including:
   (i) whether the people hold themselves out as married to each other; and
   (ii) the assessment of friends and regular associates of the people about the nature of their relationship; and
   (iii) the basis on which the people make plans for, or engage in, joint social activities;

(d) any sexual relationship between the people;

(e) the nature of the people’s commitment to each other, including:
   (i) the length of the relationship; and
   (ii) the nature of any companionship and emotional support that the people provide to each other; and
   (iii) whether the people consider that the relationship is likely to continue indefinitely; and
   (iv) whether the people see their relationship as a marriage-like relationship.
Part II—Pensions, other than service pensions, for veterans and their dependants

Division 1—Interpretation

12 Interpretation

In this Part, unless the contrary intention appears:

\textit{pension} means a pension under this Part.
Division 2—Eligibility for pension

13 Eligibility for pension

(1) Where:
   (a) the death of a veteran was war-caused; or
   (b) a veteran is incapacitated from a war-caused injury or a war-caused disease;

   the Commonwealth is, subject to this Act, liable to pay:
   (c) in the case of the death of the veteran—pensions by way of compensation to the dependants of the veteran; or
   (d) in the case of the incapacity of the veteran—pension by way of compensation to the veteran;

   in accordance with this Act.

(2) Where:
   (a) a veteran has died;
   (b) the death of the veteran was not war-caused; and
   (c) the veteran was, immediately before the veteran’s death:
      (i) a veteran to whom subsection 22(4) or section 24 applied; or
      (ii) a veteran to whom section 22, 23 or 25 applied who was in receipt of a pension the rate of which had been increased by reason that the pension was in respect of an incapacity described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in section 27;

   the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the veteran in accordance with this Act.

(2A) If:
   (a) a veteran has died; and
   (b) the veteran’s death was not war-caused; and
   (c) the veteran was a prisoner of war at a time when the veteran was on operational service;

   the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the veteran in accordance with this Act.
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Subsection (2A) ceases to apply

(2AA) The Commonwealth is not liable, under subsection (2A), to pay a pension to a dependant of a veteran in respect of the veteran’s death if the death occurs on or after the MRCA commencement date.

(2B) The date of commencement of a pension payable under subsection (2A) is not to be earlier than 1 January 1993.

(3) Where a pension in respect of the incapacity of a veteran from war-caused injury or war-caused disease, or both, is granted, after the death of the veteran, as from a date before the death of the veteran, subsection (2) applies as if the veteran had been in receipt of that pension immediately before the veteran died.

(4) Where:
   (a) a veteran who has rendered operational service has died;
   (b) the death of the veteran was not war-caused;
   (c) the veteran is survived by a child of the veteran; and
   (d) the Commission is satisfied that the child is not being maintained by a parent, adoptive parent or step-parent of the child;

the Commonwealth is, subject to subsection (7) of this section and to the other provisions of this Act, liable to pay pension to that child.

(5) The Commonwealth is not liable to pay a pension under subsection (1) to a veteran who is a veteran by reason only that he or she has rendered operational service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2) unless the veteran is residing in, and is physically present in, Australia or an external Territory at the time when he or she makes a claim for the grant of the pension in accordance with section 14 or, if the veteran has made 2 or more such claims, at the time when he or she made the first of those claims.
(6) Where the death of a person who is, or was, a member of the Defence Force, or the incapacity of such a person from injury or disease:

(a) resulted from an occurrence that happened, or a disease that was contracted, on or after 31 July 1962:

(i) as a result of action of hostile forces; or

(ii) while the person was engaged in warlike operations against hostile forces;

being an occurrence that happened, or a disease that was contracted, outside Australia while the person was rendering continuous full-time service as a member of the Defence Force, but otherwise than during any operational service of the person in an operational area; or

(b) has arisen out of or is attributable to:

(i) action by hostile forces; or

(ii) the engagement of the person in warlike operations against hostile forces;

on or after 31 July 1962 outside Australia while the person was rendering continuous full-time service as a member of the Defence Force, but otherwise than during any operational service of the person in an operational area;

the Commonwealth is, subject to subsection (7) of this section and to the other provisions of this Act, liable to pay:

(c) in the case of the death of the person—pensions to the dependants of the person; or

(d) in the case of the incapacity of the person—pension to the person;

in accordance with this Act, and this Act, other than subsections (1) to (5), inclusive, of this section, applies to and in relation to the person as if the person were a veteran and the death of the person were war-caused, the injury suffered by the person were a war-caused injury or the disease contracted by the person were a war-caused disease, as the case may be.

Subsection (6) ceases to apply

(6A) The Commonwealth is not liable, under subsection (6), to pay a pension in respect of a person’s death, or the incapacity of a person, if:

(a) either:
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(i)  the occurrence resulting in the death or incapacity happened on or after the MRCA commencement date;

or

(ii)  the disease was contracted on or after the MRCA commencement date; and

(b)  either:

(i)  the occurrence or disease relates to service rendered by the person on or after that date; or

(ii)  the occurrence or disease relates to service rendered by the person before, and on or after, that date (whether the service spans the commencement date or is rendered during separate periods before and on or after that date).

(7)  The Commonwealth is not liable to pay a pension:

(a)  to a dependant of a veteran, being a child of the veteran, under subsection (1), (2) or (2A);

(b)  to a child of a veteran under subsection (4); or

(c)  to a dependant of a person, being a child of the person, under subsection (6);

if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:

(d)  by way of youth allowance; or

(e)  under the scheme known as the Assistance for Isolated Children Scheme; or

(f)  under the scheme known as the ABSTUDY scheme; or

(g)  under the scheme known as the Post-Graduate Awards Scheme; or

(h)  under the scheme known as the Veterans’ Children Education Scheme.

(7A)  The Commonwealth is liable to pay a pension to a reinstated pensioner.

(8)  Where a dependant of a deceased veteran (not being a reinstated pensioner or a child of the veteran) re-marries or marries after the death of the veteran and after the commencement of this Act:

(a)  the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension:
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(i) was made before the commencement of this Act; or
(ii) was or is made after the commencement of this Act upon consideration or re-consideration of a claim for that pension that was duly made (whether before or after the commencement of this Act) before the re-marriage or marriage occurred; and

(b) a decision granting a pension to the dependant under this section made after the commencement of this Act by the Commission, the Board or the Administrative Appeals Tribunal after that re-marriage or marriage occurred (including a decision granting such a pension as from a date before that re-marriage or marriage occurred) is void and of no effect unless the decision was made upon consideration or re-consideration of a claim for that pension made as described in subparagraph (a)(ii).

Note: For the meaning of reinstated pensioner see section 11AA.

(8A) Where a dependant of a deceased veteran (not being a reinstated pensioner or a child of the veteran) has re-married or married after the death of the veteran but on or before 28 May 1984:

(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension was made before the commencement of section 7 of the Veterans’ Affairs Legislation Amendment Act 1988; and

(b) a decision granting a pension to the dependant under this section made after the commencement referred to in paragraph (a) by the Commission, the Board or the Administrative Appeals Tribunal (including a decision granting such a pension as from a date before that commencement) is void and of no effect.

Note: For the meaning of reinstated pensioner see section 11AA.

(8B) If:

(a) a male dependant of a deceased veteran (not being a child of the veteran) has re-married or married after the death of the veteran; and

(b) the re-marriage or marriage occurred before 22 January 1991; the Commonwealth is not liable to pay a pension to that dependant under this section.
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(9) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow or widower of a deceased veteran, the Commonwealth is not liable to pay another pension to the person under this Part as the widow or widower of another deceased veteran or under Part IV as the widow or widower of a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

(10) Where a person who is in receipt of, or is eligible to receive, a pension under this Part as the child of a deceased person, being a veteran, would, but for this subsection, become eligible to receive a pension under this Part or Part IV as the child of another deceased person, being a veteran, or a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1), the Commonwealth is liable to pay a pension to the person under this Part or Part IV as the child of only one of those deceased persons, and, if the rate at which that pension would be payable as the child of one of those deceased persons (in this subsection referred to as the relevant deceased person) is higher than the rate at which that pension would be payable as the child of the other of those deceased persons, then:

(a) if the relevant deceased person is a veteran—the Commonwealth is liable to pay a pension to the person under this Part as the child of the relevant deceased person; or

(b) in any other case—the Commonwealth is not liable to pay a pension to the person under this Part.

(11) In this section (other than in subsections (7A), (8), (8A), (8B), (9) and (10)), a reference to a veteran shall be read as a reference to a person (including a deceased person) who is, because of section 7, taken to have rendered eligible war service.
Division 2A—Verification determinations for reinstated pensioners

13AA Application for verification determination

A person who wants to be determined by the Commission to be a reinstated pensioner (a verification determination) must make a proper application.

13AB Who may apply

(1) An application for a verification determination may be made:
   (a) by the person (the applicant) who wants to be determined to be a reinstated pensioner; or
   (b) with the approval of the applicant, by another person on behalf of the applicant.

(2) If the applicant is unable, by reason of physical or mental incapacity, to approve a person to make the application on his or her behalf, the Commission may approve another person to make the application.

13AC Application for verification determination

An application for a verification determination:
   (a) must be in writing and in accordance with a form approved by the Commission; and
   (b) must be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application; and
   (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

13AE Investigation by the Secretary

(1) If an application is made for a verification determination, the Secretary must investigate the matters to which the application relates.
(2) When the investigation is completed, the Secretary must submit the application to the Commission for its consideration and determination.

(3) When an application is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the applicant in connection with the application; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the application; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the application.

13AF Duties of Commission in relation to application for verification determination

(1) If an application is submitted to the Commission in accordance with subsection 13AE(2), the Commission must:
   (a) consider all matters that, in the Commission’s opinion, are relevant to the application; and
   (b) determine all matters relevant to the determination of the application.

(2) Without limiting paragraph (1)(a), the matters that the Commission must consider include:
   (a) the evidence and documents that were submitted with the application; and
   (b) any further evidence subsequently submitted to the Commission in relation to the application.

13AG Verification determination

(1) The Commission must determine that a person is a reinstated pensioner if the Commission is satisfied that:
   (a) the person was eligible for and receiving a pension, on or before 28 May 1984, under one of the repealed Acts as a widow of a deceased member of the Forces or a widow of an Australian Mariner; and
   (b) the person remarried on or before that date; and
(c) the pension was cancelled under the repealed Act only because the person married or remarried.

(2) A determination under this section:
   (a) must be in writing; and
   (b) takes effect from the day, under section 13B, that pension becomes liable to be paid to the reinstated pensioner.

(3) In subsection (1):

   Australian Mariner has the meaning it had in the Seamen’s War Pensions and Allowances Act 1940.

   pension means:
   (a) in relation to a repealed Act set out in paragraph (a) of the definition of repealed Act—pension (other than service pension) payable to a widow under that repealed Act in respect of the death of a member of the Forces; and
   (b) in relation to the Seamen’s War Pensions and Allowances Act 1940—pension payable to a widow under that Act in respect of the death of an Australian Mariner.

   repealed Act means:
   (a) an Act specified in Part I, II, III, IV or V of Schedule 1; or
   (b) the Seamen’s War Pensions and Allowances Act 1940.

(4) A reference in subsection (1) to a member of the Forces is a reference to:
   (a) a member of the Forces within the meaning of:
      (i) Divisions 1, 6 and 8 of Part III of the Repatriation Act 1920; or
      (ii) the Repatriation (Far East Strategic Reserve) Act 1956; and
      (iii) the Repatriation (Special Overseas Service) Act 1962;
   (b) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1) of this Act; and
   (c) a member of the Interim Forces within the meaning of the Interim Forces Benefits Act 1947; and
   (d) a person the incapacity or death of whom was taken, by section 7A of the Repatriation (Special Overseas Service)
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Act 1962, to have resulted from an occurrence that happened during a period of special service of the person as a member of the Forces.
Division 3—Claims for pensions and applications for increases in pensions

13A Certain dependants to be automatically paid pension

(1) If:

(a) a veteran dies; and
(b) the veteran is survived by a dependant of the deceased veteran; and
(c) the veteran:
   (i) was, immediately before the veteran’s death, a veteran to whom subsection 22(4) or section 24 applied; or
   (ii) was, immediately before the veteran’s death, a veteran to whom section 22, 23 or 25 applied who was in receipt of a pension the rate of which had been increased under subsection 27(2) by an amount specified in any of items 1 to 8 of the Table in subsection 27(1); or
   (iii) is a veteran to whom subsection 13(3) applies;

the pension payable to the dependant in respect of the death of the veteran is payable:

(d) without the dependant having to make a claim for the pension under section 14; and
(e) without the Commission having to make a determination under section 19.

Note: for the dependant’s eligibility for pension see subsection 13(2).

(1A) If:

(a) a veteran dies; and
(b) the veteran is survived by a person who is a dependant of the veteran; and
(c) the veteran was a prisoner of war at a time when the veteran was on operational service; and
(d) at the time when the veteran dies, the Secretary:
   (i) is aware of the person’s existence; and
   (ii) is aware that the person is a dependant of the veteran; and
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Section 13B

(iii) has enough information about the veteran’s and the person’s circumstances to know that a pension is payable to the dependant under subsection 13(2A); the pension payable to the dependant in respect of the death of the veteran is payable:

(e) without the dependant having to make a claim for the pension under section 14; and

(f) without the Commission having to make a determination under section 19.

Note: for the dependant’s eligibility for pension see subsection 13(2A).

(2) The pension is payable from and including the day after the veteran died.

Note: for the rate at which the pension is payable to the dependant see section 30.

13B  Reinstated pensioners to be automatically paid pension

(1) If the Commission makes a determination under section 13AG that a person is a reinstated pensioner, the pension payable to the reinstated pensioner under subsection 30(1) is payable:

(a) without the reinstated pensioner having to make a claim for the pension under section 14; and

(b) without the Commission having to make a determination under section 19.

(2) The Commonwealth is liable to pay the pension from the later of the following dates:

(a) 1 January 2002; or

(b) the date that an application for the determination in respect of the reinstated pensioner was lodged under section 13AD.

14  Claim for pension

(1) Subject to subsection (2), a veteran, or a dependant of a deceased veteran other than a reinstated pensioner, may make a claim for a pension in accordance with subsection (3).

Note 1: some dependants do not have to make a claim (see section 13A).
Note 2: if it is uncertain whether a person is a dependant and as a result a pension is not payable to the person under section 13A, the person may make a claim for the pension under section 14. The Commission will determine whether the person is entitled to be granted a pension (see subsection 19(3)).

(2) Where a determination under this Act is in force determining that any incapacity from which a veteran is suffering resulted from war-caused injury or war-caused disease, or both, but a pension was not granted to the veteran on the ground that the extent of the incapacity was insufficient to justify the grant of a pension, subsection (1) does not apply to a claim for a pension in respect of that incapacity.

(3) A claim for a pension:
   (a) shall be in writing and in accordance with a form approved by the Commission;
   (b) shall be accompanied by such evidence available to the claimant as the claimant considers may be relevant to the claim; and
   (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(4) Subsection (3) shall not be taken to impose any onus of proof on a claimant or to prevent a claimant from submitting evidence in support of the claim subsequently to the making, but before the determination, of the claim.

(5) Where:
   (a) a veteran has made a claim for a pension under this section in respect of incapacity from a particular injury or disease; and
   (b) the claim has not been finally determined;
the veteran is not empowered to make another claim for a pension under this section in respect of incapacity from that injury or disease.

(6) Where:
   (a) a person has made a claim for a pension under this section in respect of the death of a veteran; and
   (b) the claim has not been finally determined;
the person is not empowered to make another claim for a pension under this section in respect of the death of that veteran.
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(7) For the purposes of this section, a claim is finally determined when either:

(a) a decision that has been made in respect of the claim is not subject to any form of appeal or review; or

(b) a decision that has been made in respect of the claim was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.

15 Application for increase in pension

(1) A veteran who is in receipt of a pension under this Part in respect of the incapacity of the veteran may apply, in accordance with subsection (3) of this section, for an increase in the rate of the pension on the ground that the incapacity of the veteran has increased since the rate of the pension was assessed or last assessed.

(1A) However, a veteran who:

(a) receives a notice under section 12 of the CTPA in respect of an aggravation of, or a material contribution to, an injury or disease; and

(b) after receiving the notice, makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravation or material contribution;

is not entitled to apply for an increase in the rate of the pension on the ground that the veteran’s incapacity has increased because of that aggravation or material contribution.

Note: Under section 12 of the CTPA, a veteran who has a war-caused or defence-caused injury or disease that is aggravated or materially contributed to by service after the MRCA commencement date can choose whether the MRCA or the VEA will apply to the aggravated injury or disease.

(2) Where there is in force in respect of the incapacity of a veteran a determination of a kind referred to in subsection 14(2) but a pension has not been granted to the veteran on the ground that the extent of the incapacity is insufficient to justify the grant of a pension under this Part, the veteran may make application, in accordance with subsection (3) of this section, for a pension on the ground that the incapacity of the veteran has increased since the
grant of a pension in respect of the incapacity was refused or last refused.

(3) An application under subsection (1) or (2):
   (a) shall be in writing and in accordance with a form approved by the Commission;
   (b) shall be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application; and
   (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(4) Subsection (3) shall not be taken to impose any onus of proof on an applicant or to prevent an applicant from submitting evidence in support of the application subsequently to the making, but before the determination, of the application.

(5) Where:
   (a) a person has made an application under this section for a pension at an increased rate, or for a pension; and
   (b) the application has not been finally determined;
the person is not empowered to make another application under this section.

(6) For the purpose of subsection (5), an application is finally determined when either:
   (a) a decision that has been made in respect of the application is not subject to any form of appeal or review; or
   (b) a decision that has been made in respect of the application was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.

16 Who may make claim or application

A claim under subsection 14(1) for a pension for a veteran or for a dependant of a deceased veteran, an application under subsection 15(1) for an increase in the rate of pension payable to a veteran or an application under subsection 15(2) for a pension for a veteran may be made:

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(a) by the veteran or dependant, as the case may be;
(b) with the approval of the veteran or dependant, as the case may be, by another person on behalf of the veteran or dependant;
(c) in the case of a veteran or dependant, as the case may be, who is unable, by reason of physical or mental incapacity, to approve a person to make the claim or application on his or her behalf—by another person, being a person approved by the Commission, on behalf of the veteran or dependant; or
(d) in the case of a dependant who is under the age of 18 years:
   (i) by a parent or guardian of the dependant;
   (ii) by another person approved by a parent or guardian of the dependant; or
   (iii) if there is not a parent or guardian of the dependant alive, or willing and able to make, or approve a person to make, such a claim or application on behalf of the dependant—by another person, being a person approved by the Commission; on behalf of the dependant.

17 Investigation by the Secretary

(1) Where a claim is made for a pension under subsection 14(1), or an application is made for an increased pension under subsection 15(1) or for a pension under subsection 15(2), the Secretary shall cause an investigation to be made into the matters to which the claim or application relates.

(2) The Secretary shall, upon completion of the investigation in respect of a claim or application, cause the claim or application to be submitted to the Commission for its consideration and determination.

(3) A claim or application submitted to the Commission under subsection (2) shall be accompanied by:
   (a) any evidence furnished by the claimant or applicant in connection with the claim or application; and
   (b) the documents relevant to the claim or application that are under the control of the Department, including any evidence or documents relevant to the claim or application obtained in
18 Duties of Commission in relation to pensions

(1) It is the duty of the Commission in considering a claim or application submitted to it, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the determination of the claim or application.

(2) Where the Board, the Administrative Appeals Tribunal or a court makes a decision remitting to the Commission a matter, being:
   (a) the assessment of the rate, or increased rate, at which a pension is to be payable under this Part; or
   (b) the fixing of the date as from which a decision of the Board, the Administrative Appeals Tribunal or the court is to operate;

it is the duty of the Commission to determine that matter having regard to the provisions of this Act and the reasons of the Board, the Administrative Appeals Tribunal or the court, as the case may be, for that decision.

19 Determination of claims and applications

(1) Where a claim or application is submitted to the Commission in accordance with subsection 17(2), the Commission shall:
   (a) consider all matters that, in the Commission’s opinion, are relevant to the claim or application; and
   (b) subject to this section, determine the claim as provided by subsection (3); and
   (c) subject to this section, determine an application under subsection 15(1) under subsection (5D); and
   (d) subject to this section, determine an application under subsection 15(2) as provided by subsection (5).

(2) Without limiting the generality of paragraph (1)(a), the matters that the Commission may consider include:
   (a) the evidence and documents that were submitted with the claim or application in accordance with subsection 17(3); and
   (b) any evidence subsequently submitted to the Commission in relation to the claim or application; and
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(c) any evidence, documents or other material furnished to the Commission under section 32.

(3) The Commission shall determine a claim for a pension as follows:
(a) first, the Commission shall determine whether the claimant is entitled to be granted a pension in respect of:
   (i) the incapacity of a veteran from war-caused injury or war-caused disease, or both; or
   (ii) the death of a veteran that was war-caused;
(b) then, if the Commission determines that the claimant is so entitled, the Commission shall proceed as set out in subsections (5A), (5B), (5C) and (5D).

(4) The Commission must determine an application under subsection 15(2) as provided by subsection (5).

(4A) The Commission must deal with an application under subsection 15(1) in accordance with subsections (5A), (5B) and (5C) and determine the application under subsection (5D).

(5) The Commission must determine an application under subsection 15(2) as follows:
(a) first, the Commission must determine whether the claimant is entitled to be granted a pension in respect of the incapacity of the veteran;
(b) then, if the Commission determines that the applicant is so entitled, the Commission must proceed as set out in subsections (5A), (5B), (5C) and (5D).

(5A) If:
(a) paragraph (3)(b) applies in respect of a claim; or
(b) subsection (4A) applies in respect of an application under subsection 15(1); or
(c) paragraph (5)(b) applies in respect of an application under subsection 15(2);
   the Commission must assess the matters set out in subsection (5C).

(5B) The Commission must assess the matters set out in subsection (5C) in accordance with whichever of sections 22, 23, 24, 25, 27 and 30 are applicable in the particular case.

(5C) The matters that the Commission must assess are:
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(a) the rate or rates at which the pension would have been payable from time to time during the assessment period; and
(b) subject to subsection (6), the rate at which the pension is payable.

(5D) After making an assessment under subsection (5C), the Commission must determine that pension is payable at the rate assessed.

(5E) Pension is payable from the date of effect of the determination made under:
   (i) in the case of a claim—subsection (3); or
   (ii) in the case of an application made under subsection 15(2)—paragraph (5)(a); or
   (iii) in the case of an application made under subsection 15(1)—subsection (5D).

(5F) A determination under:
   (a) subsection (3), in respect of a claim; or
   (b) subsection (5), in respect of an application under subsection 15(2); or
   (c) subsection (5D), in respect of an application under subsection 15(1);

   takes effect from the date on which the determination is made or on such later or earlier date as is specified in the determination.

(6) Where the Commission has, pursuant to subsection (5C), assessed that the pension was payable at some time during the assessment period at the rate provided by section 23 or 24 then, subject to section 24A, the rate at which the pension is payable shall not be lower than the rate provided by whichever of those sections applied, or applied most recently, during the assessment period.

(7) Where:
   (a) the Commission, upon considering a claim for a pension in respect of the incapacity of a veteran from injury or disease determines, or is satisfied, that the veteran suffered the injury or contracted the disease as claimed and that the injury is a war-caused injury or the disease is a war-caused disease, as the case may be; and
(b) the Commission is also satisfied a determination under this Act is in force determining that the veteran has suffered an injury or contracted a disease (not being the injury or disease referred to in paragraph (a)) and that:

(i) that injury is a war-caused injury, or is, in accordance with subsection 70(3), a defence-caused injury for the purposes of subsection 70(1); or

(ii) that disease is a war-caused disease, or is, in accordance with subsection 70(3), a defence-caused disease for the purposes of subsection 70(1);

as the case may be, whether or not a pension under Part II or Part IV, as the case requires, has been granted in respect of that injury or disease;

the Commission shall not, in a case where the claimant is in receipt of a pension under Part II or Part IV in respect of incapacity resulting from the injury or disease referred to in paragraph (b), grant a separate and additional pension to the claimant in respect of incapacity resulting from the injury or disease referred to in paragraph (a), but the Commission shall, having regard to any incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such defence-caused injury as war-caused injury and any such defence-caused disease as war-caused disease:

(c) if the claimant is not in receipt of a pension under Part II or Part IV—determine whether the claimant is entitled to be granted a pension under Part II and, if it determines that the claimant is entitled to be granted such a pension, assess the rate of the pension to be granted to the claimant in accordance with the preceding provisions of this section; or

(d) if the claimant is in receipt of a pension under Part II or Part IV—re-assess the rate of that pension in accordance with the preceding provisions of this section.

(8) Where the Commission grants the whole or a part of a claim or application, the Commission may pay to the claimant or applicant an amount, calculated in accordance with a scale approved by the Commission, in respect of the expenses (if any) incurred by the claimant or applicant in providing for the production of relevant documentary medical evidence.
(9) In this section:

*application* means an application made in accordance with section 15.

*application day*, in relation to a person who has made a claim or application or on whose behalf a claim or application has been made, means:

(a) the day on which the claim or application was received at an office of the Department in Australia; or

(b) if subsection 20(2) or 21(2) applies to the person—the day on which the claim or application referred to in paragraph 20(2)(a) or 21(2)(a) was so received.

*assessment period*, in relation to a claim or application relating to a pension, means the period starting on the application day and ending when the claim or application is determined.

*claim* means a claim made in accordance with section 14.

*relevant documentary medical evidence*, in relation to a claim or application referred to in subsection (8), means certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which the veteran or deceased veteran in respect of whom the claim is made had received medical treatment, in support of the claim or application, being certificates, reports or documents reasonably used:

(a) in support of the claim or application; or

(b) if a part only of the claim or application was granted—in support of that part of the claim or application.

19A Refusal to undergo medical examination etc. may delay consideration of claim or application

(1) Where:

(a) a claimant, being a veteran, has refused or failed to undergo a medical examination for the purpose of the investigation of the claim or the consideration of the claim by the Commission; or

(b) a claimant has refused or failed:

(i) to consent to the release to the Secretary, or to the Commission, of information concerning a veteran for
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the purpose of the investigation or consideration of the claim; or
(ii) to comply with a request under paragraph 32(1)(c) to furnish material to the Commission;

the Commission may, if it is of the opinion that that medical examination, information or material is likely to affect the decision it will make in respect of the claim, defer further consideration of the claim until the veteran has undergone the medical examination, or the claimant has consented to the release of the information or furnished the material, as the case may be, and, if it does so, the Commission shall serve on the claimant a notice, in writing, informing the claimant that the claim has been so deferred.

(2) If, at the expiration of 6 months after a claimant has been informed under subsection (1) that a claim has been deferred by reason of the refusal or failure of a veteran to undergo a medical examination, the veteran has not undergone the medical examination, the claim shall, by force of this subsection, be deemed to have been refused.

(3) If, at the expiration of 6 months after a claimant has been informed under subsection (1) that a claim has been deferred by reason that the claimant has refused or failed to consent to the release of information or to furnish material:
(a) the claimant has not consented to the release of the information; or
(b) the claimant has not furnished the material or satisfied the Commission that the material is not in the claimant’s possession or under the claimant’s control;
as the case may be, the claim shall, by force of this subsection, be deemed to have been refused.

(4) In this section:

claimant means a person who has made a claim under section 14 or an application under section 15.

20  Dates of effect that may be specified in respect of grant of claim for pension

(1) Where a claim in accordance with section 14 for a pension is granted, the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect
of the claim, a date not earlier than 3 months before the date on
which the claim for a pension, in accordance with a form approved
for the purposes of paragraph 14(3)(a) was received at an office of
the Department in Australia.

(2) Where:
(a) a person makes a claim for a pension in writing, but
otherwise than in accordance with a form approved for the
purposes of paragraph 14(3)(a);
(b) the person subsequently makes a claim for the pension in
accordance with a form so approved:
   (i) at a time when the person had not been notified by the
       Department in writing that it would be necessary to
       make the claim in accordance with a form so approved;
       or
   (ii) within 3 months after the person had been so notified;
       and
(c) a pension is granted to the person upon consideration of that
claim in accordance with a form so approved;
the Commission may, subject to this Act, specify as a date that a
determination under subsection 19(3) takes effect in respect of the
claim, a date not earlier than 3 months before the date on which the
claim referred to in paragraph (a) was received at an office of the
Department in Australia.

(3) Nothing in this section empowers the Commission to specify as a
date that a determination of a claim under subsection 19(3) takes
effect in respect of a person who has made a claim for a pension
under section 14, a date before the date that the person became
eligible to be granted the pension.

21 Dates of effect that may be specified in respect of grant of
applications under section 15

(1) The Commission may, subject to this Act, specify as a date that a
determination of an application made under section 15 takes effect
in respect of a person, the date on which the application, in
accordance with a form approved for the purposes of paragraph
15(3)(a) was received at an office of the Department in Australia.
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Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

(2) Where:

(a) a person makes an application in writing of a kind referred to in subsection 15(1) or (2), but otherwise than in accordance with a form approved for the purposes of paragraph 15(3)(a);

(b) the person subsequently makes an application of a kind so referred to in accordance with a form so approved:

(i) at a time when the person had not been notified by the Department, in writing, that it would be necessary to make the application in accordance with a form so approved; or

(ii) within 3 months after the person had been so notified;

and

(c) an increased pension, or a pension, is granted to the person upon consideration of that application in accordance with a form so approved;

the Commission may, subject to this Act, specify as a date that a determination of an application made under section 15 takes effect, the date on which the application referred to in paragraph (a) was received at an office of the Department in Australia.

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).

(3) Nothing in this section empowers the Commission to specify as a date that a determination of an application made under section 15 takes effect in respect of a person, a date before the date that the person became eligible to be granted the increased pension, or pension, as the case may be.

Note: A determination of an application under subsection 15(1) is made under subsection 19(5D). A determination of an application under subsection 15(2) is made under subsection 19(5).
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21A Determination of degree of incapacity

(1) The Commission shall, subject to subsections (2) and (3), determine the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, according to the provisions of the approved Guide to the Assessment of Rates of Veterans’ Pensions.

(2) Subject to subsection (3), the degree of incapacity shall be determined as 10% or a multiple of 10%, but not exceeding 100%.

(3) The Commission may determine that the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, is less than 10% (including 0%), and, where it does so, it shall not assess a rate of pension, but shall refuse to grant a pension to the veteran on the ground that the extent of the incapacity of the veteran from that war-caused injury or war-caused disease, or both, is insufficient to justify the grant of a pension.

22 General rate of pension and extreme disablement adjustment

(1) This section applies to a veteran who is being paid, or is eligible to be paid, a pension under this Part, other than a veteran to whom section 23, 24 or 25 applies.

(2) Subject to this Division, the rate at which pension is payable to a veteran to whom this section applies in respect of the incapacity of the veteran from war-caused injury or war-caused disease, or both, is the rate per fortnight that constitutes the same percentage of the general rate as the percentage determined by the Commission in accordance with section 21A to be the degree of incapacity of the veteran from that war-caused injury or war-caused disease, or both, as the case may be.

(3) For the purposes of this section, the maximum rate per fortnight is $216.90 per fortnight.
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(4) Where:
  (a) either:
      (i) the degree of incapacity of a veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be 100% or has been so determined by a determination that is in force; or
      (ii) a veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the maximum rate per fortnight specified in subsection (3);
  (b) the veteran has attained the age of 65;
  (c) the veteran has an impairment rating of at least 70 points and a lifestyle rating of at least 6 points, each determined in accordance with the approved Guide to the Assessment of Rates of Veterans’ Pensions; and
  (d) the veteran is not receiving a pension at a rate provided for by section 23, 24 or 25;

the rate at which pension is payable to the veteran is $433.65 per fortnight.

(5) For the purpose of subsection (4), a veteran who has been granted a pension at a rate specified in subsection (3) or provided for by section 23, 24 or 25 shall be taken to be receiving a pension at the rate specified in, or provided for by, the provision concerned even if:
  (a) the rate has been reduced, or the pension is not payable, because of section 26, 30C, 30D or 74;
  (b) amounts are being deducted from the pension under section 30P, 79 or 205; or
  (c) the pension has been suspended under subsection 31(6).

23  Intermediate rate of pension

(1) This section applies to a veteran if:
  (aa) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and
  (aab) the veteran had not yet turned 65 when the claim or application was made; and
(a) either:
   (i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be at least 70% or has been so determined by a determination that is in force; or
   (ii) the veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the general rate; and
(b) the veteran’s incapacity from war-caused injury or war-caused disease, or both, is, of itself alone, of such a nature as to render the veteran incapable of undertaking remunerative work otherwise than on a part-time basis or intermittently; and
(c) the veteran is, by reason of incapacity from war-caused injury or war-caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking and is, by reason thereof, suffering a loss of salary or wages, or of earnings on his or her own account, that the veteran would not be suffering if the veteran were free from that incapacity; and
(d) section 24 or 25 does not apply to the veteran.

(2) Paragraph (1)(b) shall not be taken to be fulfilled in respect of a veteran who is undertaking, or is capable of undertaking, work of a particular kind:
   (a) if the veteran undertakes, or is capable of undertaking, that work for 50 per centum or more of the time (excluding overtime) ordinarily worked by persons engaged in work of that kind on a full-time basis; or
   (b) in a case where paragraph (a) is inapplicable to the work which the veteran is undertaking or capable of undertaking—
      if the veteran is undertaking, or is capable of undertaking, that work for 20 or more hours per week.

(3) For the purpose of paragraph (1)(c):
   (a) a veteran who is incapacitated from war-caused injury or war-caused disease, or both, to the extent set out in paragraph (1)(b) shall not be taken to be suffering a loss of salary or wages, or of earnings on his or her own account, by reason of that incapacity:
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(i) if the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both;

(ii) if the veteran is incapacitated, or prevented, from engaging in remunerative work for some other reason; or

(iii) if the veteran has been engaged in remunerative work on a part-time basis or intermittently for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; and

(b) where a veteran, not being a veteran who has attained the age of 65 years, who has not been engaged in remunerative work satisfies the Commission that he or she has been genuinely seeking to engage in remunerative work, that he or she would, but for that incapacity, be continuing so to seek to engage in remunerative work and that that incapacity is the substantial cause of his or her inability to obtain remunerative work in which to engage, the veteran shall be treated as having been prevented, by reason of that incapacity, from continuing to undertake remunerative work that the veteran was undertaking.

(3A) This section applies to a veteran if:

(a) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(b) the veteran had turned 65 before the claim or application was made; and

(c) paragraphs (1)(a) and (1)(b) (as affected by subsection (2)) apply to the veteran; and

(d) the veteran is, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from continuing to undertake the remunerative work (last paid work) that the veteran was last undertaking before he or she made the claim or application; and

(e) because the veteran is so prevented from undertaking his or her last paid work, the veteran is suffering a loss of salary or wages, or of earnings on his or her own account, that he or she would not be suffering if he or she were free from that incapacity; and

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(f) the veteran was undertaking his or her last paid work after the veteran had turned 65; and

(g) when the veteran stopped undertaking his or her last paid work, the veteran:
   (i) if he or she was then working as an employee of another person—had been working for that person, or for that person and any predecessor or predecessors of that person; or
   (ii) if he or she was then working on his or her own account in any profession, trade, employment, vocation or calling—had been so working in that profession, trade, employment, vocation or calling;

   for a continuous period of at least 10 years that began before the veteran turned 65; and

(h) section 24 or 25 does not apply to the veteran.

(3B) For the purposes of paragraph (3A)(e), a veteran who is incapacitated from war-caused injury or war-caused disease or both, to the extent set out in paragraph (1)(b) is not taken to be suffering a loss of salary or wages, or of earnings on his or her own account, because of that incapacity if:

(a) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

(b) the veteran is incapacitated, or prevented from engaging in remunerative work for some other reason; or

(c) the veteran has been engaged in remunerative work on a part-time basis or intermittently for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both.

(4) Subject to subsections (5) and (6), the rate at which pension is payable to a veteran to whom this section applies is $394.50 per fortnight.

(5) The rate at which pension is payable to a veteran to whom section 115D applies (veterans working under rehabilitation scheme) is the reduced amount worked out using the following formula:


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\[
\text{General rate} + \left(14 \times \frac{\text{Reduced daily pension amount}}{\text{worked out under section 115D}}\right)
\]

(6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4) or (5) of this section, reduced in accordance with section 25A.

24 Special rate of pension

(1) This section applies to a veteran if:

(aa) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(aab) the veteran had not yet turned 65 when the claim or application was made; and

(a) either:

(i) the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, is determined under section 21A to be at least 70% or has been so determined by a determination that is in force; or

(ii) the veteran is, because he or she has suffered or is suffering from pulmonary tuberculosis, receiving or entitled to receive a pension at the general rate; and

(b) the veteran is totally and permanently incapacitated, that is to say, the veteran’s incapacity from war-caused injury or war-caused disease, or both, is of such a nature as, of itself alone, to render the veteran incapable of undertaking remunerative work for periods aggregating more than 8 hours per week; and

(c) the veteran is, by reason of incapacity from that war-caused injury or war-caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking and is, by reason thereof, suffering a loss of salary or wages, or of earnings on his or her own account, that the veteran would not be suffering if the veteran were free of that incapacity; and

(d) section 25 does not apply to the veteran.
(2) For the purpose of paragraph (1)(c):

(a) a veteran who is incapacitated from war-caused injury or war-caused disease, or both, shall not be taken to be suffering a loss of salary or wages, or of earnings on his or her own account, by reason of that incapacity if:

(i) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

(ii) the veteran is incapacitated, or prevented, from engaging in remunerative work for some other reason; and

(b) where a veteran, not being a veteran who has attained the age of 65 years, who has not been engaged in remunerative work satisfies the Commission that he or she has been genuinely seeking to engage in remunerative work, that he or she would, but for that incapacity, be continuing so to seek to engage in remunerative work and that that incapacity is the substantial cause of his or her inability to obtain remunerative work in which to engage, the veteran shall be treated as having been prevented by reason of that incapacity from continuing to undertake remunerative work that the veteran was undertaking.

(2A) This section applies to a veteran if:

(a) the veteran has made a claim under section 14 for a pension, or an application under section 15 for an increase in the rate of the pension that he or she is receiving; and

(b) the veteran had turned 65 before the claim or application was made; and

(c) paragraphs (1)(a) and (1)(b) apply to the veteran; and

(d) the veteran is, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from continuing to undertake the remunerative work (last paid work) that the veteran was last undertaking before he or she made the claim or application; and

(e) because the veteran is so prevented from undertaking his or her last paid work, the veteran is suffering a loss of salary or wages, or of earnings on his or her own account, that he or she would not be suffering if he or she were free from that incapacity; and
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(f) the veteran was undertaking his or her last paid work after the veteran had turned 65; and

(g) when the veteran stopped undertaking his or her last paid work, the veteran:
   (i) if he or she was then working as an employee of another person—had been working for that person, or for that person and any predecessor or predecessors of that person; or
   (ii) if he or she was then working on his or her own account in any profession, trade, employment, vocation or calling—had been so working in that profession, trade, employment, vocation or calling;

   for a continuous period of at least 10 years that began before the veteran turned 65; and

(h) section 25 does not apply to the veteran.

(2B) For the purposes of paragraph (2A)(e), a veteran who is incapacitated from war-caused injury or war-caused disease or both, is not taken to be suffering a loss of salary or wages, or of earnings on his or her own account, because of that incapacity if:

   (a) the veteran has ceased to engage in remunerative work for reasons other than his or her incapacity from that war-caused injury or war-caused disease, or both; or

   (b) the veteran is incapacitated, or prevented from engaging in remunerative work for some other reason.

(3) This section also applies to a veteran who has been blinded in both eyes as a result of war-caused injury or war-caused disease, or both.

(4) Subject to subsections (5) and (6), the rate at which pension is payable to a veteran to whom this section applies is $571.70 per fortnight.

(5) The rate at which pension is payable to a veteran to whom section 115D applies (veterans working under rehabilitation scheme) is the reduced amount worked out using the following formula:

\[
\text{General rate} + \left[ 14 \times \frac{\text{Reduced daily pension amount}}{\text{worked out under section 115D}} \right]
\]
(6) If section 25A applies to a veteran, the rate at which pension is payable to the veteran is the rate per fortnight specified in subsection (4) or (5) of this section, reduced in accordance with section 25A.

24A Continuation of rates of certain pensions

(1) Subject to subsections (1A) and (2), if the Commonwealth is or becomes liable to pay a pension to a veteran at the rate applicable under section 23 or 24, that rate continues, while a pension continues to be payable to the veteran, to apply to the veteran unless:

(a) the decision to apply that rate of pension to the veteran would not have been made but for a false statement or misrepresentation made by a person;

(b) in the case of a veteran to whom section 23 applies:

(i) the veteran is undertaking or is capable of undertaking remunerative work of a particular kind for 50% or more of the time (excluding overtime) ordinarily worked by persons engaged in work of that kind on a full time basis; or

(ii) in a case where subparagraph (i) is inapplicable to the work which the veteran is undertaking or is capable of undertaking—the veteran is undertaking or is capable of undertaking that work for 20 or more hours per week; or

(c) in the case of a veteran to whom section 24 applies—the veteran is undertaking or is capable of undertaking remunerative work for periods aggregating more than 8 hours per week.

(1A) However, subsection (1) does not prevent a rate applicable under subsection 24(4) or (5) from being reduced to give effect to subsection 24(6).

(2) Paragraphs (1)(b) and (c) do not apply to a veteran if the veteran is undertaking a rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme or section 115D applies to the veteran.
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25  Temporary payment at special rate

(1) Where the Commission is satisfied that:
    (a) a veteran is temporarily incapacitated from war-caused injury or war-caused disease, or both; and
    (b) if the veteran were so incapacitated permanently, the veteran would be a veteran to whom section 24 applies;
the Commission shall determine the period during which, in its opinion, that incapacity is likely to continue and this section applies to the veteran in respect of that period.

(2) Where this section applies to a veteran in respect of a period, the rate at which pension is payable to the veteran in respect of that period is the rate applicable under subsection 24(4), (5) or (6).

(3) The Commission may, under this section:
    (a) determine a period that commenced before the date on which the determination is made; and
    (b) determine a period in respect of a veteran that commenced or commences upon the expiration of a period previously determined by the Commission under subsection (1) in respect of the veteran.

25A  Offsetting certain SRCA payments

(1) This section applies to a veteran:
    (a) to whom section 23, 24 or 25 applies; or
    (b) who is granted a temporary incapacity allowance under section 107 or a loss of earnings allowance under section 108;
for a war-caused injury or a war-caused disease if the veteran has received an amount of compensation, whether before or after the commencement of this section, under section 24, 25 or 27 of the Safety, Rehabilitation and Compensation Act 1988 for some other injury or disease.

(2) That amount of compensation is to be converted to a fortnightly amount in accordance with advice from the Australian Government Actuary.
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26 Reduction in rate of pension in certain cases

(1) Where:
   (a) a veteran is entitled to receive, or is in receipt of, a pension in respect of incapacity from war-caused injury or war-caused disease, or both; and
   (b) the veteran is also entitled to receive, or is also in receipt of, periodical payments, or a lump-sum payment:
      (i) under the law of a foreign country; or
      (ii) under the law of a State;
   in respect of incapacity resulting from his or her employment in connection with war-like operations in which the Crown was engaged, being incapacity only from injury or disease or both referred to in paragraph (a);
   the rate of the pension referred to in paragraph (a) shall be assessed at the rate per year at which it would, but for this subsection, be assessed, reduced by the rate per year of the periodical payments referred to in paragraph (b) or an amount per year determined by the Commission to be the periodical payment equivalent of that lump-sum payment, as the case may be.

(2) Where:
   (a) a veteran is entitled to receive, or is in receipt of, a pension in respect of incapacity from war-caused injury or war-caused disease, or both; and
   (b) the veteran is also entitled to receive, or is also in receipt of, periodical payments, or a lump-sum payment:
      (i) under the law of a foreign country; or
      (ii) under the law of a State;
   in respect of incapacity resulting from his or her employment in connection with war-like operations in which the Crown
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was engaged, not being incapacity only from the injury or 
disease, or both, referred to in paragraph (a);  
the rate of those periodical payments, or the amount of that 
lump-sum payment, as the case may be, shall be taken into account 
in assessing the rate of the pension referred to in paragraph (a) so 
that the total of the payments by way of that pension and of the 
payments or payment referred to in paragraph (b) do not exceed the 
total of the payments that the veteran would be entitled to receive 
by way of pension under this Part in respect of the incapacity 
referred to in paragraphs (a) and (b), assuming, for the purposes 
only of this subsection, that the incapacity referred to in 
paragraph (b) was wholly incapacity from war-caused injury for 
the purposes of this Part.

(3) Where:

(a) the rate per year by which the rate of a veteran’s pension is 
required by subsection (1) to be reduced exceeds the rate 
that, but for that subsection, would be the rate per year of that 
pension; or 

(b) the rate of the periodical payments or amount of the lump 
sum payment that is required by subsection (2) to be taken 
into account in assessing the rate of a veteran’s pension is 
such as to require the assessment of the rate of that pension at 
a rate that does not exceed nought per centum; 

the veteran is not entitled to be paid pension.

27  Increased rates of pension in certain cases

(1) This section applies to a veteran (other than a veteran to whom 
section 24 applies) who is being paid, or is eligible to be paid, a 
pension under this Part in respect of incapacity from a war-caused 
injury or a war-caused disease of a kind described in column 1 of 
the following table:

<table>
<thead>
<tr>
<th>Kind of incapacity</th>
<th>Rate per fortnight</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Two arms amputated</td>
<td>354.80</td>
</tr>
<tr>
<td>2. Two legs and one arm amputated</td>
<td>354.80</td>
</tr>
</tbody>
</table>

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Part II  
Rates of pensions payable to veterans  
Division 4

Section 27

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Kind of incapacity</strong></td>
<td><strong>Rate per fortnight $</strong></td>
</tr>
<tr>
<td>3. Two legs amputated above the knee</td>
<td>354.80</td>
</tr>
<tr>
<td>4. Two legs amputated and blinded in one eye</td>
<td>354.80</td>
</tr>
<tr>
<td>5. One arm and one leg amputated and blinded in one eye</td>
<td>354.80</td>
</tr>
<tr>
<td>6. One leg and one arm amputated</td>
<td>354.80</td>
</tr>
<tr>
<td>7. One leg amputated above, and one leg amputated below, the knee</td>
<td>112.50</td>
</tr>
<tr>
<td>8. Two legs amputated below the knee</td>
<td>75.90</td>
</tr>
<tr>
<td>9. One arm amputated and blinded in one eye</td>
<td>65.20</td>
</tr>
<tr>
<td>10. One leg amputated and blinded in one eye</td>
<td>65.20</td>
</tr>
<tr>
<td>11. One leg amputated above the knee</td>
<td>32.60</td>
</tr>
<tr>
<td>12. One leg amputated below the knee</td>
<td>17.10</td>
</tr>
<tr>
<td>13. One arm amputated above the elbow</td>
<td>32.60</td>
</tr>
<tr>
<td>14. One arm amputated below the elbow</td>
<td>17.10</td>
</tr>
<tr>
<td>15. Blinded in one eye</td>
<td>25.20</td>
</tr>
</tbody>
</table>

(2) Subject to subsection (3), the rate at which pension is payable under section 22, 23 or 25 to a veteran to whom this section applies is a rate equal to the sum of:

(a) the rate applicable to that pension under section 22, 23 or 25, as the case requires; and
(b) the rate specified in column 2 of the table in subsection (1) of this section opposite to the description of the kind of incapacity described in column 1 from which the veteran is suffering.

(3) If the rate calculated in accordance with subsection (2) in respect of the pension payable to a veteran exceeds:

(a) if section 25A applies to the veteran—the rate specified in subsection 24(6); or
(b) otherwise—the rate specified in subsection 24(4); the rate must be reduced by the amount of the excess.

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(4) For the purpose of the application of a table in subsection (1) to and in relation to a veteran:

(a) amputation of an arm of a veteran below the elbow shall, if the elbow action is lost as a result of the amputation, be treated as if an arm of the veteran had been amputated above the elbow;

(b) amputation of a leg of a veteran below the knee shall, if the knee action is lost as a result of the amputation, be treated as if a leg of the veteran had been amputated above the knee;

(c) amputation of a foot of a veteran shall be treated as amputation of a leg of the veteran below the knee;

(d) amputation of a hand of a veteran shall be treated as amputation of an arm of the veteran below the elbow; and

(e) a leg, foot, hand or arm that has been rendered permanently and wholly useless shall be treated as having been amputated.

27A Calculation of arrears of pension

(1) This section applies if:

(a) a pension becomes payable, or becomes payable at an increased rate, under this Part to a veteran from a date (the operative date) before the date on which a decision to grant the pension, or to increase the rate of the pension, (the decision) is made; and

(b) the veteran is a member of a couple or was a member of a couple at any time during the period (the arrears period) between:

(i) the operative date; and

(ii) immediately before the first pension period during which an instalment of the pension, or an instalment of the pension at the increased rate, is paid to the person; and

(c) the veteran’s partner was receiving:

(i) a social security pension or benefit; or

(ii) income support supplement; at any time during the arrears period; and

(d) the rate at which the social security pension or benefit, service pension or income support supplement is payable to

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the veteran’s partner is reduced as a result of the pension becoming payable to the veteran, or becoming payable to the veteran at an increased rate, as the case requires.

Note: The amount of arrears of pension payable to a veteran may also be affected by section 205 or 205AA.

(2) The amount of the pension payable to the veteran in respect of the arrears period is reduced by an amount calculated as follows:

<table>
<thead>
<tr>
<th>Method statement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1.</strong> Work out the total amount of the pension that would have been paid to the veteran during the arrears period if the decision had been made on the operative date.</td>
</tr>
<tr>
<td><strong>Step 2.</strong> Work out the total amount (if any) of the pension that was paid to the veteran during the arrears period.</td>
</tr>
<tr>
<td><strong>Step 3.</strong> Subtract the amount obtained in Step 2 from the amount obtained in Step 1. The result is called the <em>provisional arrears</em>.</td>
</tr>
<tr>
<td><strong>Step 4.</strong> Work out the total amount of social security pension or benefit, service pension or income support supplement that was paid to the veteran’s partner during the arrears period.</td>
</tr>
<tr>
<td><strong>Step 5.</strong> Work out the total amount (if any) of social security pension or benefit, service pension or income support supplement that would have been payable to the veteran’s partner during the arrears period if the decision had been made on the operative date.</td>
</tr>
<tr>
<td><strong>Step 6.</strong> Subtract the amount obtained in Step 5 from the amount obtained in Step 4. The result is called the <em>excess payment</em>.</td>
</tr>
</tbody>
</table>
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Step 7. If the excess payment is equal to or more than the provisional arrears, the pension payable to the veteran in respect of the arrears period is reduced by the amount of the provisional arrears.

Step 8. If the excess payment is less than the provisional arrears, the amount of the pension payable to the veteran in respect of the arrears period is reduced by the amount of the excess payment.

27B  Certain decisions under section 27A reviewable under the Social Security Act

(1) This section applies if:
(a) a decision is made under section 27A in relation to the amount of arrears of pension to be paid to a veteran; and
(b) subparagraph 27A(1)(c)(i) applies in relation to the veteran.

(2) The calculations made under Steps 4, 5 and 6 of the Method statement in section 27A in relation to the payment and payability of a social security pension or benefit are, for the purposes of the Social Security Act, taken to be decisions made under that Act by an officer (other than the Secretary) of the Department administered by the Minister administering that Act.

28  Capacity to undertake remunerative work

In determining, for the purposes of paragraph 23(1)(b) or 24(1)(b), whether a veteran who is incapacitated from war-caused injury or war-caused disease, or both, is incapable of undertaking remunerative work, and in determining for the purposes of section 24A whether a veteran who is so incapacitated is capable of undertaking remunerative work, the Commission shall have regard to the following matters only:
(a) the vocational, trade and professional skills, qualifications and experience of the veteran;
(b) the kinds of remunerative work which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake; and
(c) the degree to which the physical or mental impairment of the veteran as a result of the injury or disease, or both, has reduced his or her capacity to undertake the kinds of remunerative work referred to in paragraph (b).

29 Guide to the assessment of rates of veterans’ pensions

(1) The Commission may, from time to time, prepare a written document, to be known as the “Guide to the Assessment of Rates of Veterans’ Pensions” setting out:

(a) criteria by reference to which the extent of the incapacity of a veteran resulting from war-caused injury or war-caused disease, or both, shall be assessed; and

(b) methods by which the extent of that incapacity, as assessed in accordance with those criteria, shall be expressed as a percentage of incapacity from that injury or disease, or both, being a percentage not exceeding 100 per centum.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke the approved Guide to the Assessment of Rates of Veterans’ Pensions prepared by it.

(3) A document prepared by the Commission in accordance with subsection (1), and an instrument under subsection (2), have no force or effect unless and until approved by the Minister.

(4) Where the Commission, the Board or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the extent of the incapacity of a veteran resulting from war-caused injury or war-caused disease, or both, the provisions of the approved Guide to the Assessment of Rates of Veterans’ Pensions are binding on the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, in, and in connection with, the carrying out by it of that assessment, re-assessment or review, and the assessment, re-assessment or review of the extent of that incapacity made by it shall be in accordance with the relevant provisions of the approved Guide to the Assessment of Rates of Veterans’ Pensions.

(5) The percentage of incapacity of a veteran from war-caused injury or war-caused disease, or both, ascertained in accordance with the methods referred to in paragraph (1)(b) may be nought per centum.
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(6) In preparing criteria by reference to which the extent of incapacity of a veteran from war-caused injury or war-caused disease, or both, shall be assessed, or in varying those criteria, the Commission shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury or disease and the extent (if any) to which incapacity resulting from the injury or disease may reasonably be capable of being reduced or removed.

(7) When a document prepared by the Commission in accordance with subsection (1), or an instrument under subsection (2), has been approved by the Minister, the Commission shall furnish copies of the document or instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.

(8) The Commission shall make copies of the Guide to the Assessment of Rates of Veterans’ Pensions that has been approved by the Minister, and of any variation of that Guide that has been so approved, available upon application and payment of the prescribed fee (if any).

(9) Sections 48 (other than paragraphs (1)(a) and (b) and subsection (2)), 48A, 48B, 49 and 50 of the Acts Interpretation Act 1901 apply in relation to a document, being the approved Guide to the Assessment of Rates of Veterans’ Pensions or an instrument varying or revoking that Guide that has been approved by the Minister, as if, in those sections, references to regulations were references to a provision of such a document.

(10) For the purpose of the application of the provisions of the Acts Interpretation Act 1901 in accordance with subsection (9) of this section, a document referred to in that subsection shall be deemed to have been made on the date on which it is approved by the Minister under this section.
Division 5—Rates of pensions payable to dependants of deceased veteran

30 Rates at which pensions are payable to dependants

(1) Subject to subsection (3), the rate at which pension is payable under this Part to a dependant of a deceased veteran, being a person who is the widow or widower of the veteran or a reinstated pensioner in relation to the veteran, is a rate per fortnight equal to the sum of:
   (a) $312.10 per fortnight; and
   (b) $25 per fortnight; and
   (c) the supplement amount per fortnight provided for in subsection (1A).

(1A) A person’s supplement amount is the amount of pension supplement that would be payable to the person under point SCH6-BA2 if the person were receiving a pension at the rate listed in column 3 of item 1 of the table in point SCH6-B1, divided by 26.

(2) Subject to subsection (3), the rate at which pension is payable under this Part to a dependant of a deceased veteran, being a person who is a child of the veteran, is:
   (a) if there is no widow or widower of the veteran—$88.80 per fortnight;
   (b) if there is a widow or widower of the veteran, but the child is not being maintained by a parent, adoptive parent or step-parent—$88.80 per fortnight; or
   (c) in any other case—$44.40 per fortnight.

(3) Where, under the law:
   (a) of a foreign country; or
   (b) of a State;
   a dependant of a deceased veteran is entitled to receive, or is in receipt of, periodical payments, or a lump-sum payment, in respect of the death of the veteran resulting from employment in connection with warlike operations in which the Crown has been engaged, the rate of those payments, or the amount of that...
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payment, shall be taken into account in assessing the rate of pension payable under this Part so that the total payments to the dependant shall not exceed the total payments that the dependant would be entitled to receive under this Part if the dependant were not entitled to receive, or were not in receipt of, those periodical payments or that lump-sum payment.
Division 5A—Effect of certain compensation payments on rates of pension

30A  This Division does not apply to certain payments

This Division does not apply to:

(a) a periodic payment or a lump sum payment referred to in paragraph 26(1)(b) or (2)(b) or subsection 30(3), whether the payment was made before or is made after the commencement of this section; or

(b) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the Defence Act 1903; or

(c) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force, where:

(i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and

(ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (b) if the death or injury had occurred on or after 10 June 1997.

30B  Interpretation

(1) In this Division, unless the contrary intention appears:

compensation includes:

(a) any payment in the nature of compensation; and

(b) any damages recoverable at law from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person; and

(c) any amount paid under a compromise or settlement of a claim for damages referred to in paragraph (b);
Section 30C

but does not include any amount that represents expenses incurred in medical or hospital treatment.

(2) For the purposes of this Part, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Note: For lump sum payments of compensation see section 30C. For periodic payments of compensation see section 30D.

(3) In sections 30G and 30H:

damages does not include an amount that has been paid under a notice under section 51 of the Safety, Rehabilitation and Compensation Act 1988.

(4) In sections 30L and 30M:

international organisation means:
(a) an organisation:
   (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
   (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
(b) an organisation that is:
   (i) an organ of, or office within, an organisation described in paragraph (a); or
   (ii) a commission, council or other body established by an organisation so described or such an organ; or
   (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a), or of such an organ, council or body.

30C Lump sum compensation payment

(1) If:
   (a) a lump sum payment of compensation is made to a person who is a veteran or a dependant of the veteran; and
   (b) the compensation payment is paid in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

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\textbf{Section 30C}

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period of the person’s life determined by, or under the instructions of, the Commonwealth Actuary;

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum payment is made to the person; or

(ii) on the day the pension becomes payable to the person; whichever is the earlier day.

\textbf{Note 1:} Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

\textbf{Note 2:} A payment of arrears of periodic compensation is not a lump sum compensation payment (see subsection 30B(2)).

\textit{Lump sum payment—Safety, Rehabilitation and Compensation Act (section 137)}

(2) If:

(a) a lump sum payment is made under section 137 of the \textit{Safety, Rehabilitation and Compensation Act 1988} to a person who is a veteran or a dependant of the veteran; and

(b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period of the person’s life determined by, or under the instructions of, the Commonwealth Actuary;
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Section 30C

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum compensation payment is made to that person; or
(ii) on the day the pension becomes payable to the person;
whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Lump sum payment—Safety, Rehabilitation and Compensation Act (section 30)

(3) If:

(a) a lump sum payment is made under section 30 of the Safety, Rehabilitation and Compensation Act 1988 to a person who is a veteran or a dependant of the veteran; and
(b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and
(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;
(e) the person is taken to have been, or to be, receiving those payments for the period until the person reaches 65;
(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum payment is made to the person; or
(ii) on the day the pension becomes payable to the person;
whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).
Pension payable to one person

(4) Subject to subsection (6), if:
   (a) a person is taken to be in receipt of payments of compensation at a particular rate per fortnight under subsection (1), (2) or (3); and
   (b) but for this subsection, pension referred to in paragraph (1)(c), (2)(c) or (3)(c) would be payable to the person at a particular rate per fortnight;

   after the lump sum payment is made, the rate per fortnight of the pension is to be reduced by the rate per fortnight of compensation.

(5) If, under subsection (4), the rate per fortnight of compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

(6) If:
   (a) a lump sum payment is made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and
   (b) the person or persons are taken to be in receipt of compensation under subsection (1), (2) or (3); and
   (c) apart from this subsection, pensions under this Part in respect of the incapacity of the veteran from that injury or disease, or that death, would be payable to 2 or more persons at particular rates per fortnight;

   after the lump sum payment is made, the sum of those rates per fortnight of pensions is to be reduced by the rate per fortnight of compensation that the person is, or the sum of the rates per fortnight of compensation that the persons are, taken to be in receipt of.

Note: Subsections (8), (9) and (10) set out how the reduction is to be made.

(7) If, under subsection (6), the rate or the sum of the rates per fortnight of compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.
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Section 30C  

How reduction is to be made  

(8) In giving effect to subsection (6), if: 
(a) pensions are payable to 2 or more persons; and  
(b) one pension is to be preferred to another under subsection (12); 

the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.  

(9) If: 
(a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (8); and  
(b) there are 2 or more pensions that are not to be preferred to each other;  

the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula: 

\[
\text{Pension to be reduced} \times \frac{\text{Excess compensation payable}}{\text{Pensions payable}}
\]

where:  

- **pension to be reduced** is the rate per fortnight of the pension to be reduced.  
- **pensions payable** is the sum of the rates per fortnight of the pensions referred to in paragraph (b).  
- **excess compensation payable** is the rate per fortnight of compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.  

(10) If: 
(a) pensions are payable to 2 or more persons; and  
(b) subsections (8) and (9) do not apply;  

the reduction in the rate per fortnight for each pension is to be worked out using the following formula: 

\[
\text{Pension to be reduced} \times \frac{\text{Total compensation payable}}{\text{Total pensions payable}}
\]
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where:

*pension to be reduced* is the rate per fortnight of the pension to be reduced.

*total pensions payable* is the sum of the rates per fortnight of pensions payable to the persons.

*total compensation payable* is the sum of the rates per fortnight of compensation that the persons are taken to be in receipt of.

(11) If:

(a) an amount of damages payable to a veteran, or to a dependant of a veteran, is paid to the Commonwealth under section 30G or 30H; or

(b) the liability of the Commonwealth to pay damages to a veteran or to a dependant of a veteran, is, under section 30K, taken to have been discharged to the extent of a particular amount;

subsection (1) of this section applies to the veteran or the dependant as if pension commences to be payable, only after the veteran or dependant receives payments by way of instalments of pension equal to the amount referred to in paragraph (a) or (b).

*Preferred pensions*

(12) For the purposes of this section:

(a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and

(b) a pension payable under this Part to the spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and

(c) a pension payable under this Part to the widow or widower of a deceased veteran is to be preferred to such a pension payable to a child of the veteran; and

(d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

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(13) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

30D  Periodic payment of compensation

(1) If:

(a) periodic payments of compensation are made to a person who is a veteran or a dependant of the veteran; and
(b) the compensation payments are made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and
(c) the person receives, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the rate per fortnight of the person’s pension that would, apart from this subsection, be payable to the person for the periodic payments period is to be reduced by the rate per fortnight of the periodic compensation.

Note 1: For periodic payments period see subsection (10).

Note 2: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

(2) If, under subsection (1), the rate per fortnight of the periodic compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

(3) If:

(a) periodic payments of compensation are made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and
(b) apart from this subsection, pensions under this Part in respect of the incapacity of the veteran from that injury or disease, or the death of the veteran, would be payable to 2 or more persons for the periodic payments period at particular rates per fortnight;

the sum of those rates per fortnight of pensions for the periodic payments period is to be reduced by the rate per fortnight of the compensation.
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periodic compensation or the sum of the rates per fortnight of the periodic compensation.

Note: Subsections (5), (6) and (7) set out how the reduction is to be made.

(4) If, under subsection (3), the rate or the sum of the rates per fortnight of periodic compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.

_How reduction is to be made_

(5) In giving effect to subsection (3), if:
   (a) pensions are payable to 2 or more persons; and
   (b) one pension is to be preferred to another under subsection (8);
the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.

(6) In giving effect to subsection (3), if:
   (a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (5); and
   (b) there are 2 or more pensions that are not to be preferred to each other;
the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula:

\[
\text{Pension to be reduced} \times \frac{\text{Excess compensation payable}}{\text{Pensions payable}}
\]

where:

- _pension to be reduced_ is the rate per fortnight of the pension to be reduced.
- _pensions payable_ is the sum of the rates per fortnight of the pensions referred to in paragraph (b).
- _excess compensation payable_ is the rate per fortnight of periodic compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.

(7) If:
   (a) pensions are payable to 2 or more persons; and
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(b) subsections (5) and (6) do not apply;
the reduction in the rate per fortnight for each pension is to be worked out using the following formula:

\[
\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Compensation payable}
\]

where:

- **pension to be reduced** is the rate per fortnight of the pension to be reduced.
- **pensions payable** is the sum of the rates per fortnight of pensions payable to the persons.
- **compensation payable** is the sum of the rates per fortnight of periodic compensation that is payable to the persons.

Preferred pensions

(8) For the purposes of this section:
(a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and
(b) a pension payable under this Part to the spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and
(c) a pension payable under this Part to the widow or widower of a veteran is to be preferred to such a pension payable to a child of the veteran; and
(d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

(9) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

(10) In this section:

- **periodic payments period** means:
  (a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or
(b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of arrears payment.

30E  Proceedings against third party

If:

(a) a pension is payable or has been paid under this Part in respect of:

(i) the incapacity of a veteran from a war-caused injury or disease; or

(ii) the death of a veteran; and

(b) a person other than the Commonwealth appears legally liable to pay damages in respect of the incapacity of the veteran from that injury or disease or the death of the veteran; and

(c) the veteran, a dependant of the veteran or a person on behalf of the dependant has:

(i) not instituted proceedings against the person for the recovery of damages for the incapacity or death; or

(ii) not properly prosecuted proceedings that have been instituted; or

(iii) discontinued proceedings that have been instituted;

the Commission may, by written notice, request the veteran or dependant:

(d) to institute proceedings or new proceedings against the person; or

(e) properly to prosecute proceedings against the person.

30F  Failure to comply with Commission’s request made under section 30E

(1) If, within a reasonable time after a notice under section 30E is given to a veteran or a dependant of a veteran, the veteran or dependant:

(a) refuses or fails to institute proceedings; or

(b) discontinues proceedings that have been instituted;

the Commission may, on behalf of the veteran or dependant, institute proceedings or new proceedings against the person for recovery of damages in respect of the incapacity or death.
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(2) If, within a reasonable time after a notice is given, a veteran or a dependant of a veteran fails to prosecute properly proceedings that have been instituted, the Commission may take over the conduct of the proceedings.

(3) If a veteran or a dependant of a veteran institutes proceedings under a notice but refuses or fails to prosecute the proceedings properly, the Commonwealth may take over the conduct of the proceedings.

Commonwealth liability to pay costs

(4) The Commonwealth is liable to pay all the plaintiff’s costs of, or incidental to, the proceedings. The Commonwealth is not liable to pay costs that the plaintiff unreasonably incurs.

Commonwealth may settle etc. proceedings

(5) If the Commonwealth:
(a) institutes proceedings; or
(b) takes over the conduct of the proceedings;
the Commonwealth may:
(c) settle the proceedings, with or without obtaining judgment; and
(d) if a favourable judgment is given in favour of the plaintiff—take such steps as are necessary to enforce that judgment.

Veteran or dependant of veteran must sign all documents relating to proceedings

(6) The veteran, or a dependant of the veteran, must sign any document relevant to the proceedings, including settlement of the proceedings, that the Commonwealth requires the veteran or the dependant to sign.

(7) If the veteran or the dependant fails to sign any such document, the court or tribunal in which the proceedings are being held may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for that purpose.
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30G  Payment of damages by third party to Commonwealth

(1) Subject to subsection (2), if:
   (a) a pension is payable or has been paid under this Part in respect of:
      (i) the incapacity of a veteran from a war-caused injury or disease; or
      (ii) the death of the veteran; and
   (b) a person other than the Commonwealth appears to be legally liable to pay damages in respect of the incapacity of the veteran from that injury or disease or the death of the veteran;

   the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

   Note: Damages in this section do not include certain amounts paid under the Safety, Rehabilitation and Compensation Act 1988 (see subsection 30B(3)).

(2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.

(3) The person must comply with the notice if:
   (a) the person agrees to pay damages to a veteran or dependant in respect of the incapacity or the death; or
   (b) damages against the person are awarded to the veteran or dependant in proceedings instituted in respect of the incapacity or death.

30H  Payment of damages by third party where agreement, or an award against the person, to pay damages has been made

(1) Subject to subsection (4), if:
   (a) pension is payable or has been paid under this Part in respect of:
      (i) the incapacity of a veteran from a war-caused injury or disease; or
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(ii) the death of a veteran; and
(b) an amount of damages is payable by a person other than the Commonwealth in respect of the incapacity of the veteran from that injury or disease or the death of the veteran because:
(i) the person agreed to pay such damages; or
(ii) damages against the person were awarded to the veteran or dependant in proceedings instituted in respect of the incapacity or death;

the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

Note: Damages in this section do not include certain amounts paid under the Safety, Rehabilitation and Compensation Act 1988 (see subsection 30B(3)).

(2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.

(3) The person must comply with the notice.

Effect of notice where damages already paid

(4) If, before a notice under subsection (1) was received by a person, the person had paid to, or in respect of, the veteran or dependant the whole or any part of the damages to which the notice relates, then:
(a) if the whole of the damages had been paid—the notice has no force or effect; or

(b) if part of the damages had been paid—the specified amount of damages is the amount of damages that has not been paid.

30I  Debt due to the Commonwealth

If a person fails to pay an amount to the Commonwealth under a notice under section 30G or 30H, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.
Section 30J

30J  Discharge of liability

The payment of an amount to the Commonwealth under a notice under section 30G or 30H is, to the extent of the amount paid, a discharge of the liability of that person to the veteran or the dependant.

30K  Discharge of liability of Commonwealth to pay damages

If:

(a) pension is payable, or has been paid, under this Part in respect of:
   (i) the incapacity of a veteran from a war-caused injury or disease; or
   (ii) the death of a veteran; and
(b) damages have been awarded against the Commonwealth:
   (i) to a veteran in proceedings instituted to recover damages in respect of the incapacity of the veteran from that injury or disease; or
   (ii) to a dependant of a deceased veteran in proceedings instituted to recover damages in respect of the death of the veteran; and
the liability of the Commonwealth to pay those damages (excluding any part of them that represents expenses incurred in medical or hospital treatment) is taken to have been discharged to the extent of the total of the amounts of the pension that have been paid to the veteran or the dependant.

30L  Other payments of compensation

If:

(a) any pension has been paid under this Part in respect of:
   (i) the incapacity of the veteran from war-caused injury or disease; or
   (ii) the death of the veteran; and
(b) any compensation is paid:
   (i) under the law of a country other than Australia; or
   (ii) by, or under a scheme arranged by, an international organisation;
to, or in respect of:
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(iii) a veteran in respect of the incapacity of the veteran from that injury or disease; or
(iv) a dependant of a deceased veteran in respect of the death of the veteran;

the Commonwealth may recover from the veteran or dependant, by action in a court of competent jurisdiction, an amount equal to the amount of compensation paid that does not exceed the total of the pension paid under this Part to the veteran or dependant.

Note: For international organisation see subsection 30B(4).

30M  Commission may require a statutory declaration

The Commission may, by notice in writing to a claimant or recipient of a pension under this Part, require the person to give the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation: (a) has been paid to, or in respect of, the person; or (b) has been claimed by, or in respect of, the person; under a law of a country other than Australia, or under a scheme arranged by an international organisation in respect of the same incapacity or death for which the person claims or receives a pension under this Part.

Note: For international organisation see subsection 30B(4).

30N  Failure to comply with statutory declaration requirement

(1) If a person refuses or fails to comply with a notice given under section 30M, the person’s right:
(a) to pension under this Part in respect of the incapacity or death to which the notice relates; and
(b) to institute or take any proceedings under this Act in relation to that pension or a claim for that pension; is suspended until the statutory declaration has been given to the Commission.

(2) If a person’s right to pension under this Part is suspended under subsection (1), the person is not entitled to be paid pension under this Part for the period of the suspension.
30P Overpayments of pension

(1) If:

(a) an amount of pension is payable or has been paid under this Part in respect of:
   (i) the incapacity of the veteran from a war-caused injury or disease; or
   (ii) the death of the veteran; and
(b) because of section 25A, 30C or 30D, that amount of pension was not payable to the veteran or dependant;

an amount equal to the amount of pension paid is recoverable from the veteran or dependant.

(2) The amount may be recovered, either in whole or in part, by deduction from any amount of pension payable under this Part to the veteran or dependant in respect of the incapacity or death of the veteran.

(3) Subsection (2) does not prevent the recovery of the amount in a manner other than the one provided for in that subsection. An amount is not to be recovered as provided and also in a manner that is not provided for in subsection (2).
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Division 6—Reviews of pensions by Commission

31  Review by Commission

(1) Where:
   (a) the time has not expired for making application to the Board under section 135 for a review of a decision of the Commission with respect to:
      (i) a claim for a pension in accordance with section 14;
      (ii) an application for an increased pension, or for a pension, in accordance with section 15; or
      (iii) an application for attendant allowance under section 98;
   or
   (b) an application has been duly made to the Board under section 135 for a review of such a decision of the Commission but has not been determined by the Board;
the Commission may, in its discretion, review that decision and, if it varies that decision, it may approve as the date as from which the variation shall operate a date not earlier than the earliest date from which the decision as so varied could have operated if it had been made by the Board, in substitution for the original decision, upon a review of the original decision.

(2) Where application has been duly made, otherwise than by the Commission, to the Administrative Appeals Tribunal under section 175 for a review of:
   (a) a decision of the Commission that has been affirmed by the Board; or
   (b) a decision made by the Board in substitution for a decision of the Commission;
but the review has not been determined, the Commission may, in its discretion, review that decision and, with the consent of the applicant, vary that decision and, if it varies that decision, it may approve as the date as from which the variation shall operate a date not earlier than the earliest date from which the decision as so varied could have operated if the variation had been made by the Administrative Appeals Tribunal upon a review of the decision.
Section 31

(3) The Commission may, for the purpose only of correcting a manifest error, vary the date approved by the Board as the date as from which a decision of the Board made in substitution for a decision of the Commission is to operate.

(4) Where the Commission is satisfied that evidence before the Commission when it made a decision was false in a material particular, the Commission may, in its discretion, review the decision and, if it varies the decision, it may approve as the date as from which the variation shall operate a date, which may be a date before or after the commencement of the review, considered by the Commission to be appropriate in all the circumstances.

(5) For the purposes only of approving a date under subsection (1) as the date as from which a variation of a decision to which paragraph (1)(a) applies shall operate, the Commission shall assume that an application had been made to the Board to review the decision on the date on which the Commission commenced its review of the decision.

(5A) The Commission may, for the purpose of reviewing a decision under this section, of exercising its powers under subsection (6) for a reason specified in paragraph (6)(a) or (b) or of exercising its powers under subsection (8), by notice in writing served on a veteran who is in receipt of a pension under this Part, request the veteran:

(a) to undergo, as provided in the notice, a medical examination for the purpose of the review, or the exercise of those powers, as the case may be; or

(b) to consent to the release to the Commission of information concerning the veteran of a kind described in the notice, being information that, in the opinion of the Commission, may be relevant to the review, or the exercise of those powers, as the case may be.

(6) Where the Commission is satisfied that:

(a) having regard to any matter that affects the payment of a pension or attendant allowance, being a matter that was not before the Commission, the Board or the Administrative Appeals Tribunal, as the case requires, when the decision to grant the pension or attendant allowance, or a decision to
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vary the rate of the pension or attendant allowance, was made;

(b) by reason of a refusal or failure of any person to comply with
a provision of this Act;

(c) by reason of a refusal or failure of a veteran to comply with a
notice served on the veteran under subsection (5A) or with a
request made under paragraph 32(1)(c); or

(d) by reason of the circumstances referred to in a paragraph of
section 24A being applicable to the veteran;

in a case to which paragraph (a), (b) or (c) applies, a pension or
attendant allowance should be cancelled or suspended or is being
paid at a higher rate than it should be or, in a case to which
paragraph (d) applies, a pension is being paid at a higher rate than
it should be, the Commission may, by determination in writing,
cancel or suspend or decrease the rate of the pension or attendant
allowance, or decrease the rate of the pension, as the case may be,
with effect, subject to subsection (7), from the day on which the
determination was made or such later day as is specified in the
determination.

(6A) Where the Commission is, under subsection (6), satisfied that the
rate of a pension payable to a veteran is higher than it should be by
reason that the degree of incapacity of the veteran from war-caused
injury or war-caused disease, or both, is less than 10 per centum
(including nought per centum), it shall cancel the pension that was
payable to the veteran.

(6B) The cancellation of a pension payable to a veteran under
subsection (6A) does not affect any decision of the Commission,
the Board or the Administrative Appeals Tribunal that is in force
determining that the veteran is suffering from a war-caused injury
or a war-caused disease, or both.

(7) Where a determination is made under subsection (6):

(a) by reason of the Commission having regard to a matter that
affects the payment of a pension or attendant allowance in
the circumstances specified in paragraph (6)(a); or

(a) by reason of the refusal or failure of a person to comply with
a provision of this Act, other than:

(i) subsection 127(4) in relation to a notice under paragraph
127(1)(f); or
(ii) subsection 128(4); or
(b) by reason that an amount has been paid by way of pension or attendant allowance that, but for the false statement or misrepresentation of any person, would not have been paid;
a date earlier than the date of the determination may be specified in the determination as the date as from which the cancellation, suspension or decrease, as the case may be, is to take effect.

(7A) Subsection (7) does not apply to a determination made under subsection (6) for a reason set out in paragraph (6)(c).

(8) Where the Commission is satisfied that, having regard to any matter that affects the payment of a pension or attendant allowance, the rate of the pension or attendant allowance is less than it should be, the Commission may, by determination in writing, increase the rate of the pension or attendant allowance with effect from the date of the determination, or such earlier date, or such later date, as is specified in the determination.

(9) Where the Commission determines that a pension or attendant allowance be suspended:
(a) the Commission may, in the same determination, fix the date of re-commencement of the pension or attendant allowance;
or
(b) if the Commission does not so fix the date of re-commencement, the Commission shall, in a subsequent determination, fix the date of re-commencement of the pension or attendant allowance unless it makes a further determination cancelling the pension or attendant allowance.

(10) If the Commission refuses or fails to review, under this section, a decision in relation to a pension or attendant allowance, the refusal or failure is not subject to review by the Board or by the Administrative Appeals Tribunal.

(11) A decision by the Commission upon its review under this section of a decision in relation to a pension or attendant allowance is not subject to review by the Board or the Administrative Appeals Tribunal unless the Commission cancels or suspends the pension or attendant allowance, or varies the decision, reviewed by the Commission.
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(12) This section applies to and in relation to a decision made before or after the commencement of this section but does not apply to or in relation to a decision of the Board referred to in subsection 154(1), or a decision of the Administrative Appeals Tribunal referred to in subsection 178(1), that is binding on the Commission by reason that the period specified in that subsection has not expired.
Division 7—Procedural

32 Commission may take evidence

(1) Subject to subsection (2), the Commission may, for the purposes of its consideration of a claim submitted to it in accordance with subsection 17(2) or of its review under section 31 of a decision in relation to a pension or attendant allowance:
   (a) summon a person to appear before the Commission to give evidence and produce such documents (if any) as are referred to in the summons;
   (b) take evidence on oath or affirmation;
   (c) request:
      (i) in the case of consideration of a claim—the claimant or the Secretary; or
      (ii) in the case of a review under section 31—a person likely to be affected by the review or the Secretary;
         to furnish to the Commission material believed to be under his or her control and relevant to the determination of the claim, or the review of the decision; and
   (d) request:
      (i) in the case of consideration of a claim—the claimant; or
      (ii) in the case of a review under section 31—the person likely to be affected by the review;
         to attend before the Commission for a discussion of the claim, or of the review, as the case may be, or to discuss the claim, or the review, as the case may be, with the Commission by telephone.

(2) Subsection (1) does not authorize the Commission to summon:
   (a) for the purpose of its consideration of a claim—the claimant; or
   (b) for the purpose of a review under section 31—a person likely to be affected by the review;
      to appear before the Commission to give evidence or to produce documents.
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(3) Where a claimant requests the Commission for an opportunity:
   (a) to attend before the Commission and discuss the claim with
       the Commission; or
   (b) to discuss the claim with the Commission by telephone;
       the Commission shall, if it is of the opinion that the request is in all
       the circumstances reasonable, comply with the request.

(4) The oath or affirmation to be taken or made by a person for the
    purposes of this section is an oath or affirmation that the evidence
    the person will give will be true.

(5) The powers and duties of the Commission under this section may
    be exercised or performed on behalf of the Commission:
    (a) in relation to a claim—by a person to whom the Commission
        has delegated its powers under section 19; or
    (b) in relation to a review under section 31—by a person to
        whom the Commission has delegated its powers under that
        section;

    and, for the purpose of the exercise of those powers or the
    performance of those duties, subsections (1), (2) and (3) and (6) to
    (10), inclusive, of this section have effect as if a reference to the
    Commission included a reference to that person.

(6) A person who has been summoned to appear as a witness before
    the Commission shall not, after tender of reasonable expenses, fail
    to appear in answer to the summons.

    Penalty: $1,000 or imprisonment for 6 months, or both.

(6A) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(7) A person who appears before the Commission as a witness in
    answer to a summons shall not refuse to be sworn or make an
    affirmation.

    Penalty: $1,000 or imprisonment for 6 months, or both.

(8) Subject to subsection (9), a person who appears before the
    Commission as a witness, otherwise than in answer to a summons,
    may be requested by the Commission to give evidence on oath,
    and, if the person declines to be sworn or make an affirmation, the
    person’s evidence shall not be received.
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(9) Subsection (8) does not apply to a person who attends before the Commission for a discussion of a claim or review at the request of the Commission under subsection (1) or at his or her own request under subsection (3) or has a discussion with the Commission by telephone under subsection (3).

(10) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not refuse to produce documents or to answer a question that the person is required to answer by the Commission.

Penalty: $1,000 or imprisonment for 6 months, or both.

(11) A person who has been sworn, or made an affirmation, as a witness before the Commission shall not give evidence that is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.

(11A) A person does not commit an offence under this section if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11A). See subsection 13.3(3) of the Criminal Code.

(12) In this section:

- claim includes application.
- claimant includes applicant.

33 Withdrawal of claim or application

(1) A claimant or applicant may, at any time before the claim or application is determined by the Commission, by notice in writing lodged in accordance with section 5T, withdraw the claim or application.

(2) The withdrawal of a claim or application does not prevent the claimant from subsequently making another claim under section 14, or the applicant from subsequently making another application under section 15.
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Section 34

34 Reasons for decisions to be given

(1) Where the Commission makes a decision:
   (a) with respect to a claim for a pension in accordance with
       section 14, or an application for a pension or increased
       pension in accordance with section 15;
   (b) by way of assessing the rate of a pension or attendant
       allowance, or determining the date of commencement or
       cessation of a pension or attendant allowance;
   (c) to vary a decision upon a review carried out under section 31;
   (d) to cancel or suspend a pension or attendant allowance under
       subsection 31(6); or
   (e) to decrease the rate of a pension or attendant allowance under
       subsection 31(6) or to increase the rate of a pension or
       attendant allowance under subsection 31(8);

the Commission shall make a written record of its decision together
with a statement in writing setting out its findings on material
questions of fact, referring to the evidence or other material on
which those findings are based and giving its reasons for the
decision.

(2) As soon as practicable after the Commission makes a decision
   referred to in subsection (1), the Commission shall, subject to
   subsection (3), cause to be served:
   (a) in the case of a decision in respect of a claim or application—
       on the claimant or applicant; or
   (b) in the case of a decision of a kind referred to in
       paragraph (1)(b), (c), (d) or (e)—on the person affected by
       the decision;

   a copy of its decision and of the statement relating to the decision
   made by it in accordance with subsection (1), together with
   particulars of the right of the person on whom it is served to have
   the decision reviewed by the Board.

(3) Where the statement prepared by the Commission in pursuance of
   subsection (1) upon the making of a decision referred to in that
   subsection contains or refers to any information, opinion or other
   matter:
   (a) that, in the opinion of the Commission, is of a confidential
       nature; or
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(b) that, in the opinion of the Commission, it might be prejudicial to the physical or mental health or well-being of the person on whom a copy of the statement is required to be served to communicate to that person;

the document served on the person in pursuance of subsection (2) shall not contain or refer to that information, opinion or matter.
Part III—Service pensions

Division 1—General features

35 Order and structure of Divisions

(1) In this Part:
   (a) Division 2 deals with claims for qualifying service; and
   (b) Divisions 3, 4 and 5 deal with the 3 kinds of service pension
       (age, invalidity and partner service pension respectively).

(2) In Divisions 3, 4 and 5 (dealing with each kind of service pension)
    this is the order in which the provisions are presented:
    (a) eligibility provisions (who is entitled to the pension);
    (b) claim provisions (how a claim is made);
    (c) rates provisions (how much the payment will be).

(3) Other relevant provisions are referred to in notes at the bottom of
    key provisions in the Division.

35A Eligibility for and payability of service pension

Before a person can be paid a service pension under this Part:
   (a) the person must be eligible for the pension; and
   (b) there must be nothing in this Act that makes the pension not
       payable to the person (for example, a dual pension
       provision): the pension must be payable to the person.
Division 2—Claim for qualifying service

Subdivision A—Claim

35B Need for a claim

(1) A veteran who wants to establish that he or she has rendered qualifying service must make a proper claim for a determination that he or she has rendered such service.

(2) A person who wants to establish for the purposes of paragraph 38(1)(aa) or (e) that his or her partner or deceased partner has rendered qualifying service must make a proper claim for a determination that the person’s partner or deceased partner has rendered such service.

Note 1: a veteran will need to establish the rendering of qualifying service in order to be eligible for age service pension or invalidity service pension (see subsections 36(1) and 37(1)).

Note 2: for qualifying service see section 7A.

35C Who can claim?

(1) Subject to subsection (2), a claim for a qualifying service determination must be made by:
   (a) the veteran who wants to establish that he or she has rendered qualifying service; or
   (b) with the approval of the veteran—another person on the veteran’s behalf; or
   (c) a person who wants to establish for the purposes of paragraph 38(1)(aa) or (e) that his or her partner or deceased partner has rendered qualifying service; or
   (d) with the approval of the person referred to in paragraph (c) of this subsection—another person on the person’s behalf.

(2) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.
Part III  Service pensions
Division 2  Claim for qualifying service

Section 35D

35D Making a claim

(1) To be a proper claim, the claim must be:
   (a) made in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by any evidence available to the claimant that
       the claimant considers may be relevant to the claim; and
   (d) lodged at an office of the Department in Australia in
       accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been
    made on a day determined under that section.

35F Claim may be withdrawn

(1) A claimant for qualifying service or a person on behalf of a
    claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at
    an office of the Department in Australia in accordance with
    section 5T.

35FB Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an
office of the Department in Australia.

35FC Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a
claim, the Secretary must give the claimant an acknowledgment
notice in writing stating that:
   (a) an oral withdrawal of the claim was made; and
   (b) the claimant, or a person on behalf of the claimant, may,
       within 28 days from the day the acknowledgment notice is
       given, request the Secretary to treat the withdrawal as if it
       had not been made.
35FD Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 35FC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

Subdivision B—Investigation of claim

35G Secretary to investigate claim and submit it to Commission

(1) If a veteran makes a proper claim for a determination that he or she has rendered qualifying service, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision C—Consideration and determination of claim

35H Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission’s opinion, relevant to the claim and must then determine the claim.
Part III  Service pensions

Division 2  Claim for qualifying service

Section 35J

(2) In considering the claim, the Commission must:
   (a) satisfy itself with respect to; or
   (b) determine;
   (as the case requires) all matters relevant to the determination of
   the claim.

(3) Without limiting subsection (1), the Commission, in considering
the claim, must consider:
   (a) the evidence submitted with the claim under section 35G;
   and
   (b) any further evidence subsequently submitted to the
   Commission in relation to the claim.

Note: a claimant may apply to the Commission for review of a
determination made under this section (see Division 16).

35J  Determination of qualifying service to be proof of qualifying
service

A determination by the Commission that a veteran has rendered
qualifying service is proof, for all purposes of this Act, that the
veteran has rendered qualifying service.

Note: this provision also applies to a decision of the Administrative Appeals
Tribunal that a person has rendered qualifying service. This is because
subsection 43(6) of the Administrative Appeals Tribunal Act 1975
provides that the Tribunal’s decision is taken to be the decision of the
original decision-maker (in this case, the Commission).
Division 3—Age service pension

Subdivision A—Eligibility for and payability of age service pension

36 Eligibility for age service pension

(1) Subject to subsection (4), a person is eligible for an age service pension if the person:
   (a) is a veteran; and
   (b) has rendered qualifying service; and
   (c) has reached pension age.

Note 1A: For veteran see subsection 5C(1).
Note 1: for qualifying service see section 7A.
Note 2: For pension age see section 5QA.

Additional eligibility criterion for Commonwealth veterans, allied veterans and allied mariners

(2) Subject to subsection (2A), a person who is a veteran by reason only of being a Commonwealth veteran, an allied veteran or an allied mariner must, in addition to meeting the requirements of subsection (1), have been an Australian resident for a continuous period of at least 10 years.

(2A) Subsection (2) does not apply to:
   (a) a refugee; or
   (b) a former refugee.

(3) Where:
   (a) a veteran has been an Australian resident during more than one period; and
   (b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and
   (c) the aggregate of those periods is more than 10 years;

   in the application of subsection (2) to the veteran, the period of 10 years specified in that subsection is to be reduced by a period equal to the period by which the aggregate is more than 10 years.
Part III  Service pensions
Division 3  Age service pension

Section 36A

(4) If:

(a) a veteran lodges a proper claim for an age service pension before meeting the eligibility requirements referred to in subsection (1); and
(b) the veteran ceases to be an Australian resident after lodging the claim and before the claim is determined;

the veteran is not eligible for age service pension unless:

(c) the day on which the veteran met all the eligibility requirements; and
(d) the day from which age service pension would, if the claim were granted, be payable;

are earlier than the day on which the veteran ceased to be an Australian resident.

36A  Age service pension may not be payable in some circumstances

(1) Even though a veteran is eligible for an age service pension, the pension may not be payable to the veteran because:

(a) the pension has not commenced to be payable (see section 36B); or
(b) the veteran is in gaol (see sections 55 and 55A); or
(c) the veteran is receiving another pension (see section 36C); or
(d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or
(e) the person has not provided a tax file number for the person or the person’s partner (see section 128A).

(2) Subject to subsections (3) and (4), an age service pension is not payable to a veteran if the veteran’s age service pension rate would be nil.

Note: a veteran whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a veteran if the veteran’s rate is nil merely because an advance pharmaceutical allowance has been paid to the veteran under:

(a) Division 2 of Part VIIA of this Act; or
(b) Part 2.23 of the Social Security Act.
(4) Subsection (2) does not apply to a veteran if the veteran’s rate is nil merely because of the operation of Part IVA.

36B  Age service pension generally not payable before claim

_Provisional commencement day_

(1) An age service pension is not payable to a veteran before the veteran’s provisional commencement day.

(1A) Subject to subsection (2), a veteran’s provisional commencement day is the day on which the veteran claims the age service pension.

_Initial incorrect claim followed by proper claim_

(2) If:

(a) a veteran makes a claim (in this subsection called the *initial claim*) for age service pension; and

(b) the claim is not a proper claim; and

(c) on the day on which the veteran makes the initial claim, the veteran is eligible for age service pension; and

(d) the veteran subsequently makes a proper claim:

(i) within 3 months after being notified that the initial claim was not a proper claim; or

(ii) if the veteran was not so notified—at any time;

then the veteran’s provisional commencement day is the day on which the initial claim was lodged.

36C  Restrictions on dual pensions

An age service pension is not payable to a veteran if the veteran is receiving:

(a) another service pension; or

(b) a social security pension; or

(c) a social security benefit.

_Note:_  *social security pension* includes a rehabilitation allowance and *social security benefit* includes newstart allowance.
Part III  Service pensions
Division 3  Age service pension

Section 36CA

36CA  Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and
(b) the payment is made on the basis that the person is a full-time student; and
(c) in the calculation of the payment, an amount identified as living allowance is included; and
(d) the payment relates to a period; age service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for age service pension

36D  Need for a claim

A veteran who wants to be granted an age service pension must make a proper claim for that pension.

36E  Who can claim?

(1) Subject to subsection (2), the claim must be made by:

(a) the veteran who wants to be granted the age service pension; or
(b) with the approval of the veteran—another person on the veteran’s behalf.

(2) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

36F  Making a claim

(1) To be a proper claim, the claim must be:

(a) made in writing; and
(b) in accordance with a form approved by the Commission; and
(c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
(d) lodged at an office of the Department in Australia in accordance with section 5T.
Section 36H

(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:
(a) the pension bonus scheme (see Part IIIAB); or
(b) the corresponding scheme under Part 2.2A of the Social Security Act.

(3) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

36H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the veteran making the claim, or on whose behalf the claim is being made, is:
(a) an Australian resident; and
(b) in Australia;
on the day on which the claim is lodged.

Note: for Australian resident see section 5G.

(2) Subsection (1) does not apply to a veteran’s claim if:
(a) the veteran is outside Australia and is receiving:
(i) invalidity service pension; or
(ii) partner service pension; or
(iii) income support supplement; or
(iv) a social security pension; and
(b) the veteran would, if that pension or allowance were cancelled, be eligible for age service pension.

Note 1: if the veteran ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 36), the veteran’s eligibility is not affected.

Note 2: For social security pension see subsection 5Q(1).

36J Claim may be withdrawn

(1) A claimant for age service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.
Part III  Service pensions
Division 3  Age service pension

Section 36JB

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

36JB  Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

36JC  Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and
(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

36JD  Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 36JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

36JE  Secretary may require claimant to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed an age service pension; and
(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

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the Secretary may give the claimant a notice that requires the
claimant to take reasonable action to obtain the comparable foreign
pension.

(2) The notice:
   (a) must be in writing; and
   (b) must be given personally or by post; and
   (c) must specify the period within which the reasonable action is
to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14
days after the day on which the notice is given.

(4) The Commission may reject a claim if:
   (a) the claimant is given the notice; and
   (b) the Commission is satisfied that the claimant has not taken
reasonable action to obtain the comparable foreign pension
within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to
obtain a comparable foreign pension only if the person takes
reasonable action to obtain the pension at the highest rate
applicable to the person.

Subdivision C—Investigation of claim

36K Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for age service pension, the
Secretary must cause an investigation to be made into the matters
to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the
claim to be submitted to the Commission for consideration and
determination.

(3) When the claim is submitted to the Commission it must be
accompanied by:
   (a) any evidence supplied by the claimant in support of the
claim; and
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Division 3  Age service pension

Section 36L

(b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
(c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision D—Consideration and determination of claim

36L  Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must:
   (a) consider the claim; and
   (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
   (c) determine all matters requiring determination before the claim can be determined; and
   (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 36K; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:
   (a) first, the Commission must determine whether the pension is to be granted to the person; and
   (b) if the Commission determines that the pension is to be granted to the person, the Commission then must:
      (i) work out the person’s age service pension rate under section 36N; and
      (ii) determine that the pension is payable to the person at that rate.

Note:  a claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIB).
36M Date of effect of determination

If the Commission determines under section 36L that age service pension is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, age service pension is payable to the person at the rate specified in the determination.

Note: Age service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 36C).

Subdivision E—Rate of age service pension

36N How to work out the rate of a veteran’s age service pension

A veteran’s age service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under the New Enterprise Incentive Scheme (see Division 9 of Part IIIB).
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Division 4  Invalidity service pension

Section 37

Division 4—Invalidity service pension

Subdivision A—Eligibility for and payability of invalidity service pension

37  Eligibility for invalidity service pension

(1) Subject to subsection (6), a person is eligible for an invalidity service pension if the person:
   (a) is a veteran; and
   (b) has rendered qualifying service; and
   (c) is permanently incapacitated for work in accordance with a determination under section 37AA.

Note 1: For veteran see subsection 5C(1).
Note 2: For qualifying service see section 7A.

Additional eligibility criterion for Commonwealth veterans, allied veterans and allied mariners

(3) Subject to subsection (3A), a person who is a veteran by reason only of being a Commonwealth veteran, an allied veteran or an allied mariner must, in addition to meeting the requirements of subsection (1), have been an Australian resident for a continuous period of at least 10 years.

(3A) Subsection (3) does not apply to:
   (a) a refugee; or
   (b) a former refugee.

(4) For the purpose of applying subsection (3), where:
   (a) a veteran has been an Australian resident during more than one period; and
   (b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and
   (c) the aggregate of those periods is more than 10 years;

in the application of subsection (3) to the veteran, the period of 10 years specified in that subsection is to be reduced by a period equal to the period by which the aggregate is more than 10 years.
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(5) Subsection (3) does not apply to a veteran if:
(a) the veteran became permanently incapacitated for work while the veteran was an Australian resident; and
(b) the veteran’s permanent incapacity for work was not brought about with a view to obtaining a service pension or a social security pension; and
(c) the veteran does not have an enforceable claim against any person, under any law or contract, for adequate compensation in respect of the permanent incapacity.

(6) If:
(a) a veteran lodges a proper claim for an invalidity service pension before meeting the eligibility requirements referred to in subsection (1); and
(b) the veteran ceases to be an Australian resident after lodging the claim and before the claim is determined;
the veteran is not eligible for invalidity service pension unless:
(c) the day on which the veteran met all the eligibility requirements; and
(d) the day from which invalidity service pension would, if the claim were granted, be payable;
are earlier than the day on which the veteran ceased to be an Australian resident.

37AA  Commission must determine circumstances in which persons are permanently incapacitated for work

(1) The Commission must, by written determination, specify the circumstances in which persons are permanently incapacitated for work for the purposes of paragraph 37(1)(c).

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

(3) A determination under this section is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
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Division 4  Invalidity service pension

Section 37AAA

37AAA  Continued eligibility for invalidity service pension if person undertaking a rehabilitation program etc.

If:
(a) a person is receiving an invalidity service pension; and
(b) the person ceases to be permanently incapacitated for work while, or as a result of, undertaking a rehabilitation program under the Veterans' Vocational Rehabilitation Scheme;
the person does not cease to be eligible for the invalidity service pension from the time at which the person ceases to be permanently incapacitated for work until the end of the period of 5 years mentioned in subsection 115G(2).

37A  Invalidity service pension may not be payable in some circumstances

(1) Even though a veteran is eligible for an invalidity service pension, the pension may not be payable to the veteran because:
(a) the pension has not commenced to be payable (see section 37B); or
(b) the veteran is in gaol (see sections 55 and 55A); or
(c) the veteran is receiving another pension (see section 37C); or
(d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or
(e) the person has not provided a tax file number for the person or the person’s partner (see section 128A); or
(f) the person or the person’s partner is entitled to receive compensation (see Division 3 of Part IIIC).

(2) Subject to subsections (3) and (4), an invalidity service pension is not payable to a veteran if the veteran’s invalidity service pension rate would be nil.

Note: a veteran whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52V and 52Z).

(3) Subsection (2) does not apply to a veteran if the veteran’s rate is nil merely because an advance pharmaceutical allowance has been paid to the veteran under:
(a) Division 2 of Part VIIA of this Act; or
(b) Part 2.23 of the Social Security Act.

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(4) Subsection (2) does not apply to a veteran if the veteran’s rate is nil merely because of the operation of Part IVA.

37B Invalidity service pension generally not payable before claim

Provisional commencement day

(1) An invalidity service pension is not payable to a veteran before the veteran’s provisional commencement day.

(1A) Subject to subsection (2), a veteran’s provisional commencement day is the day on which the veteran claims the invalidity service pension.

Initial incorrect claim followed by proper claim

(2) If:
(a) a veteran makes a claim (in this subsection called the initial claim) for invalidity service pension; and
(b) the claim is not a proper claim; and
(c) on the day on which the veteran makes the initial claim, the veteran is eligible for invalidity service pension; and
(d) the veteran subsequently makes a proper claim:
   (i) within 3 months after being notified that the initial claim was not a proper claim; or
   (ii) if the veteran was not so notified—at any time;
then the veteran’s provisional commencement day is the day on which the initial claim was lodged.

37C Restrictions on dual pensions

An invalidity service pension is not payable to a veteran if the veteran is receiving:
(a) another service pension; or
(b) a social security pension; or
(c) a social security benefit.

Note: social security pension includes a rehabilitation allowance and social security benefit includes newstart allowance.
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Division 4  Invalidity service pension

Section 37CA

37CA Exclusion of certain participants in ABSTUDY Scheme

If:
   (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
   (b) the payment is made on the basis that the person is a full-time student; and
   (c) in the calculation of the payment, an amount identified as living allowance is included; and
   (d) the payment relates to a period;
invalidity service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for invalidity service pension

37D Need for a claim

A veteran who wants to be granted an invalidity service pension must make a proper claim for that pension.

37E Who can claim?

(1) A veteran may not claim an invalidity service pension if he has turned 65 or she has reached pension age (within the meaning of subsections 5QB(3), (4) and (5)).

(2) Subject to subsection (3), a claim for invalidity service pension must be made by:
   (a) the veteran who wants to be granted the invalidity service pension; or
   (b) with the approval of the veteran—another person on the veteran’s behalf.

(3) If the veteran is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

37F Making a claim

(1) To be a proper claim, the claim must be:
   (a) made in writing; and
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(b) in accordance with a form approved by the Commission; and
(c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
(d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

37H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the veteran making the claim, or on whose behalf the claim is being made, is:
   (a) an Australian resident; and
   (b) in Australia;
   on the day on which the claim is lodged.

   Note: for Australian resident see section 5G.

(2) Subsection (1) does not apply to a veteran’s claim if:
   (a) the veteran is outside Australia and is receiving:
      (i) age service pension; or
      (ii) partner service pension; or
      (iii) income support supplement; or
      (iv) a social security pension; and
   (b) the veteran would, if that pension or allowance were cancelled, be eligible for invalidity service pension.

   Note 1: if the veteran ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 37), the veteran’s eligibility is not affected.

   Note 2: For social security pension see subsection 5Q(1).

37J Claim may be withdrawn

(1) A claimant for invalidity service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.
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(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

37JB  Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

37JC  Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:
(a) an oral withdrawal of the claim was made; and
(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

37JD  Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 37JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

37JE  Secretary may require claimant to take action to obtain a comparable foreign pension

(1) If:
(a) a person has claimed an invalidity service pension; and
(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

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the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(2) The notice:
   (a) must be in writing; and
   (b) must be given personally or by post; and
   (c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:
   (a) the claimant is given the notice; and
   (b) the Commission is satisfied that the claimant has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

**Subdivision C—Investigation of claim**

**37K Secretary to investigate claim and submit it to Commission**

(1) If a veteran makes a proper claim for an invalidity service pension, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
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Section 37L

(b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
(c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision D—Consideration and determination of claim

37L Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must:
(a) consider the claim; and
(b) satisfy itself with respect to all matters relevant to the determination of the claim; and
(c) determine all matters requiring determination before the claim can be determined; and
(d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
(a) the evidence submitted with the claim under section 37K; and
(b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:
(a) first, the Commission must determine whether the pension is to be granted to the person; and
(b) if the Commission determines that the pension is to be granted to the person, the Commission then must:
   (i) work out the person’s invalidity service pension rate under section 37N; and
   (ii) determine that the pension is payable to the person at that rate.

Note: a claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).
37M Date of effect of determination

If the Commission determines under section 37L that invalidity service pension is payable to the person:

(a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and

(b) subject to this Act, invalidity service pension is payable to the person at the rate specified in the determination.

Note: Invalidity service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 37C).

Subdivision E—Rate of invalidity service pension

37N How to work out the rate of a veteran’s invalidity service pension

A veteran’s invalidity service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under the New Enterprise Incentive Scheme (see Division 9 of Part IIIB).
Division 5—Partner service pension

Subdivision A—Eligibility for and payability of partner service pension

38 Eligibility for partner service pension

(1) Subject to subsections (1B) and (4), a person is eligible for a partner service pension if the person:

(a) is a person:

(i) who is a member of a couple; and
(ii) whose partner is a veteran who is receiving an age service pension or invalidity service pension, or who would be receiving such a pension if not for the operation of one or more disqualifying provisions; or

(aa) is a person:

(i) who is a member of a couple; and
(ii) whose partner is a veteran who has rendered qualifying service; and
(iii) who is qualified for an age pension under the Social Security Act, or would be so qualified if, in spite of subsection 7(4) of that Act, residence of a person in Norfolk Island was taken to be residence of the person in Australia; or

(b) is a person:

(i) who is the non-illness separated spouse of a veteran; and
(ii) whose non-illness separated spouse is receiving an age service pension or an invalidity service pension, or would be receiving such a pension if not for the operation of one or more disqualifying provisions; or

(c) is a person:

(i) who is the widow or widower of a veteran; and

(ia) whose partner or non-illness separated spouse, immediately before his or her death, was receiving an age service pension or an invalidity service pension, or would have been receiving such a pension if not for the operation of one or more disqualifying provisions; and
(ii) who was receiving a partner service pension or a social security pension immediately before the veteran’s death; or

(d) is a person:

(i) who is the widow or widower of a veteran; and

(ii) who had, before the veteran’s death, made a claim for a partner service pension which had not been determined at the date of the death; and

(iii) whose partner or spouse:

(A) was, immediately before his or her death, receiving an age service pension or invalidity service pension; or

(B) had, before his or her death, made a claim for an age service pension or invalidity service pension which had not been determined at the date of the death but which the Commission determines would have been granted if the veteran had not died; or

(e) is a person:

(i) who is the widow or widower of a veteran who has rendered qualifying service; and

(ii) who is qualified for an age pension under the Social Security Act, or would be so qualified if, in spite of subsection 7(4) of that Act, residence of a person in Norfolk Island was taken to be residence of the person in Australia; or

(f) is a person:

(i) who is a member of a couple; and

(ii) whose partner is a veteran who is registered as a member of the pension bonus scheme (see Part IIIAB); or

(g) is a person:

(i) who is the non-illness separated spouse of a veteran; and

(ii) whose non-illness separated spouse is registered as a member of the pension bonus scheme (see Part IIIAB); or

(h) is a person:

(i) who is the widow or widower of a veteran; and

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(ii) whose partner or non-illness separated spouse, immediately before his or her death, was registered as a member of the pension bonus scheme (see Part IIIAB), was receiving an age service pension or an invalidity service pension, or would have been receiving such a pension if not for the operation of one or more disqualifying provisions; and

(iii) who, immediately before the veteran’s death, was registered as a member of the pension bonus scheme (see Part IIIAB) or of the corresponding scheme under Part 2.2A of the Social Security Act or was receiving a partner service pension or a social security pension; or

(i) is a person:

(i) who is the widow or widower of a veteran; and

(ii) who had, before the veteran’s death, made a claim for a partner service pension which had not been determined at the date of the death; and

(iii) whose partner or spouse was, immediately before his or her death, registered as a member of the pension bonus scheme (see Part IIIAB).

(1A) For the purposes of subsection (1), a disqualifying provision is a section of this Part or of Part IIIB or IIIC that has the effect that an age service pension or an invalidity service pension that would otherwise be payable to a person is not, or ceases to be, payable.

(1B) Subject to subsections (1C) and (1D), a person is not eligible for a partner service pension under subsection (1) unless the person:

(a) has reached the age of 50 years; or

(b) has a dependent child when he or she makes a claim for the pension.

(1C) Subsection (1B) does not apply to a person:

(a) whose claim for a partner service pension had not been determined before 1 October 1995 but who was eligible, at the date of the claim, for the pension; or

(b) who was determined by the Commission, before 1 October 1995, to be eligible for a partner service pension; unless the person’s pension is or has been cancelled for any reason.

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(1D) Subsection (1B) does not apply to a person whose partner:

(a) is a veteran to whom section 24 applies; or

(b) is receiving, or eligible to receive, a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA.

Note: A person is still eligible to receive a Special Rate Disability Pension even if the amount of the pension is totally offset under section 204 of the MRCA.

(2) If a veteran:

(a) makes a claim for age service pension or invalidity service pension at a time when the veteran is receiving age pension or disability support pension under the Social Security Act; and

(b) the veteran dies before the claim is determined;

the Commission is, for the purpose of the determination under sub-subparagraph (1)(d)(iii)(B), to disregard the fact that the veteran was receiving social security pension at the time of the claim.

(2A) A person’s eligibility under paragraph (1)(b) or (g) ceases if:

(a) in the Commission’s opinion, the person was in a marriage-like relationship with another person when this subsection commenced; or

(b) after this subsection commenced, the person enters into a relationship with another person and, in the Commission’s opinion, the relationship was a marriage-like relationship.

Note 1: The Commission’s opinion is to be formed as mentioned in section 11A.

Note 2: If the person starts living permanently again with his or her veteran spouse, the person regains eligibility for a partner service pension (see paragraph (1)(a) or (f)).

(2B) If:

(a) a person is the non-illness separated spouse of a veteran; and

(b) the veteran dies; and

(c) immediately before the veteran’s death, the person was not eligible for a partner service pension because of subsection (2A); and

(d) apart from this subsection, the person would be eligible for a partner service pension under paragraph (1)(c), (d), (h) or (i);

the person’s eligibility under that paragraph ceases.
(3) If:

(a) a person is eligible for partner service pension because of paragraph (1)(c), (d), (e), (h) or (i); and

(b) the person becomes legally married to a person after the death of the veteran;

the person’s eligibility under paragraph (1)(c), (d), (e), (h) or (i) ceases.

(3A) A person’s eligibility under paragraph (1)(c), (d), (e), (h) or (i) ceases if:

(a) in the Commission’s opinion, the person:

(i) entered into a marriage-like relationship with a person after the death of the veteran; and

(ii) was in that marriage-like relationship when this subsection commenced; or

(b) the person:

(i) enters into a relationship with another person after this subsection commenced and, in the Commission’s opinion, the relationship was a marriage-like relationship; and

(ii) entered into that relationship after the death of the veteran.

Note: The Commission’s opinion is to be formed as mentioned in section 11A.

(4) If:

(a) a person lodges a proper claim for a partner service pension before meeting the eligibility requirements referred to in subsection (1); and

(b) the person ceases to be an Australian resident after lodging the claim and before the claim is determined;

the person is not eligible for partner service pension unless:

(c) the day on which the person met all the eligibility requirements; and

(d) the day from which partner service pension would, if the claim were granted, be payable;

are earlier than the day on which the person ceased to be an Australian resident.
38AA Disclosure or use of personal information relevant to partner service pension eligibility

(1) A record keeper who has possession or control of a record that contains personal information relating to a veteran may:
   (a) disclose to the veteran’s partner personal information to the effect that, with effect from a specified date, the veteran has become a veteran to whom section 24 applies so as to facilitate the making of a claim, or of a further claim, by the veteran’s partner for partner service pension; or
   (b) otherwise use that information for the purpose of dealing with a claim, or a further claim, by the veteran’s partner for such a pension.

(2) To avoid doubt, if information is disclosed or used in accordance with subsection (1), the disclosure or use is taken, for the purposes of the Information Privacy Principles set out in section 14 of the Privacy Act 1988, to be authorised by law.

(3) Unless the contrary intention appears, an expression used in this section has the same meaning as in the Privacy Act 1988.

38A Partner service pension may not be payable in some circumstances

(1) Even though a person is eligible for a partner service pension, the pension may not be payable to the person because:
   (a) the pension has not commenced to be payable (see section 38B); or
   (b) the person is in gaol (see sections 55 and 55A); or
   (c) the person is receiving another pension (see section 38C); or
   (d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or
   (e) the person has not provided a tax file number for the person or the person’s partner (see section 128A); or
   (f) the person or the person’s partner is entitled to receive compensation (see Division 3 of Part IIIC).
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(2) Subject to subsections (3) and (4), a partner service pension is not payable to a person if his or her partner service pension rate would be nil.  

Note: a person whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).  

(3) Subsection (2) does not apply to a person if the person’s rate is nil merely because an advance pharmaceutical allowance has been paid to the person under:  

(a) Division 2 of Part VIIA of this Act; or  

(b) Part 2.23 of the Social Security Act.  

(4) Subsection (2) does not apply to a person if the person’s rate is nil merely because of the operation of Part IVA.  

38B  Partner service pension generally not payable before claim  

Provisional commencement day  

(1) A partner service pension is not payable to a person before the person’s provisional commencement day.  

(1A) Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the partner service pension.  

Initial incorrect claim followed by proper claim  

(2) If:  

(a) a person makes a claim (in this subsection called the initial claim) for partner service pension; and  

(b) the claim is not a proper claim; and  

(c) on the day on which the person makes the initial claim, the person is eligible for partner service pension; and  

(d) the person subsequently makes a proper claim:  

(i) within 3 months after being notified that the initial claim was not a proper claim; or  

(ii) if the person was not so notified—at any time;  

then the person’s provisional commencement day is the day on which the initial claim was lodged.
After a person makes a claim, the person’s partner becomes a special rate disability pensioner

(3) If:
(a) a person makes a claim for partner service pension; and
(b) that claim is refused; and
(c) that claim would not have been refused if, on the day on which the claim was made, the person’s partner was a veteran to whom section 24 applied; and
(d) after that claim is refused, the Secretary notifies the person’s partner that he or she is a veteran to whom section 24 applies; and
(e) within 3 months after that notification, the person makes another claim for partner service pension;
then the person’s provisional commencement day is the later of:
(f) the day the person made the claim referred to in paragraph (a); and
(g) the day the person’s partner became a veteran to whom section 24 applies.

38C Restrictions on dual pensions

(1) A partner service pension is not payable to a person if the person is receiving:
(a) another service pension; or
(b) a social security pension; or
(c) a social security benefit.

Note:  
\textit{social security pension} includes a rehabilitation allowance and \textit{social security benefit} includes newstart allowance.

(2) A partner service pension is not payable to a war widow or a war widower.

Note:  for \textit{war widow} and \textit{war widower} see subsection 5E(1).

38CA Exclusion of certain participants in ABSTUDY Scheme

If:
(a) a payment is made in respect of a person under the ABSTUDY Scheme; and
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(b) the payment is made on the basis that the person is a full-time student; and
(c) in the calculation of the payment, an amount identified as living allowance is included; and
(d) the payment relates to a period;
partner service pension is not payable to the person in respect of any part of the period.

Subdivision B—Claim for partner service pension

38D  Need for a claim

A person who wants to be granted a partner service pension must make a proper claim for that pension.

38E  Who can claim?

(1) Subject to subsection (2), the claim must be made by:
   (a) the person who wants to be granted the partner service pension; or
   (b) with the approval of the person—another person on his or her behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

38F  Making a claim

(1) To be a proper claim, the claim must be:
   (a) made in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
   (d) lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.
(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:
   (a) the pension bonus scheme (see Part IIIAB); or
   (b) the corresponding scheme under Part 2.2A of the Social Security Act.

38H Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:
   (a) an Australian resident; and
   (b) in Australia;
   on the day on which the claim is lodged.

Note: for Australian resident see section 5G.

(2) Subsection (1) does not apply to a person’s claim if:
   (a) the person is outside Australia and is receiving:
      (i) age service pension; or
      (ii) invalidity service pension; or
      (iii) a social security pension; and
   (b) the person would, if that pension were cancelled, be eligible for partner service pension.

Note 1: if the person ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (section 38), the person’s eligibility for partner service pension is not affected.

Note 2: For social security pension see subsection 5Q(1).

38J Claim may be withdrawn

(1) A claimant for partner service pension or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.
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38JB  Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

38JC  Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and
(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

38JD  Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph 38JC(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

38JE  Secretary may require claimant to take action to obtain a comparable foreign pension

(1) If:

(a) a person has claimed a partner service pension; and
(b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(2) The notice:

(a) must be in writing; and

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(b) must be given personally or by post; and
(c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:
(a) the claimant is given the notice; and
(b) the Commission is satisfied that the claimant has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

Subdivision C—Investigation of claim

38K Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a partner service pension, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
(a) any evidence supplied by the claimant in support of the claim; and
(b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
(c) any other documents or other evidence under the control of the Department that are relevant to the claim.
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Subdivision D—Consideration and determination of claim

38L  Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must:
   (a) consider the claim; and
   (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
   (c) determine all matters requiring determination before the claim can be determined; and
   (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 38K; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:
   (a) first, the Commission must determine whether the pension is to be granted to the person; and
   (b) if the Commission determines that the pension is to be granted to the person, the Commission then must:
      (i) work out the person’s partner service pension rate under section 38N; and
      (ii) determine that the pension is payable to the person at that rate.

Note: a claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part III B).

38M  Date of effect of determination

If the Commission determines under section 38L that partner service pension is payable to the person:
   (a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and
(b) subject to this Act, partner service pension is payable to the person at the rate specified in the determination.

Note: Partner service pension is not payable to a person who is receiving another service pension or a social security pension or benefit (see section 38C).

Subdivision E—Rate of partner service pension

38N How to work out the rate of a person’s partner service pension

A person’s partner service pension rate is worked out in accordance with the Rate Calculator.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation process.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of the receipt of payments under the New Enterprise Incentive Scheme (see Division 9 of Part IIIB).
Part IIIA—Income support supplement

Division 1—Eligibility for and payability of income support supplement

45A  Eligibility for income support supplement (age, dependent child, incapacity for work)

(1) A person who has made a claim for income support supplement but whose claim has not yet been determined is eligible for income support supplement if:
   (a) the person is a war widow or war widower; and
   (b) the person:
      (i) has reached the qualifying age (see subsection (2)); or
      (ii) has a dependent child; or
      (iii) is permanently incapacitated for work in accordance with a determination under section 45AA; or
      (iv) is partnered (partner getting pension).

Note: For partnered (partner getting pension) see paragraph 5E(5)(d).

(2) For the purposes of paragraph (1)(b), the qualifying age for a person is:
   (a) if the person is a veteran—the pension age for that person; or
   (b) if the person is not a veteran—the age that would be the pension age for that person if he or she were a veteran.

Note: For pension age see section 5QA.

(4) If the Commission has determined under section 45Q that the person’s claim is to be granted, the person is eligible for income support supplement if the person is a war widow or war widower.

45AA  Commission must determine circumstances in which persons are permanently incapacitated for work

(1) The Commission must, by written determination, specify the circumstances in which persons are permanently incapacitated for work for the purposes of subparagraph 45A(1)(b)(iii).
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Section 45B

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

(3) A determination under this section is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

45B Income support supplement may not be payable in some circumstances

(1) Even though a person is eligible for income support supplement, income support supplement may not be payable to the person because:

(a) the pension has not commenced to be payable (see section 45C); or
(b) the person is in gaol (see sections 55 and 55A); or
(c) a person is receiving an age service pension, an invalidity service pension, a social security pension, a social security benefit or another income support supplement (see section 45D); or
(d) the pension is cancelled or suspended (see sections 56E, 56EA, 56J and 56K); or
(e) the person has not provided a tax file number for the person or the person’s partner (see section 128A); or
(f) the person or the person’s partner is entitled to receive compensation (see Division 3 of Part IIC).

(2) Subject to subsection (3), income support supplement is not payable to a person if the person’s income support supplement rate would be nil.

Note: A person whose rate might otherwise be nil under the Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

(3) Subsection (2) does not apply to a person if the person’s income support supplement rate is nil merely because of the operation of Part IVA.
Part IIIA  Income support supplement
Division 1  Eligibility for and payability of income support supplement

Section 45C

45C  Income support supplement generally not payable before claim

(1) Income support supplement is not payable to a person before the day on which the person claimed, or is taken to have claimed, income support supplement.

Initial incorrect claim followed by proper claim

(2) If:
(a) a person has made a claim (initial claim) for income support supplement; and
(b) the claim is not a proper claim; and
(c) on the day on which the person made the initial claim, the person was eligible for income support supplement; and
(d) the person subsequently makes a proper claim:
   (i) within 3 months after being notified that the initial claim was not a proper claim; or
   (ii) if the person was not so notified—at any time; then:
   (e) subsection (1) does not apply to the person; and
   (f) income support supplement is not payable to the person before the day on which the initial claim was lodged.

(3) Subsections (1) and (2) have effect subject to subsection 45R(2).

45D  Restrictions on dual pensions

(1) Income support supplement is not payable to a person if the person is receiving:
(a) an age service pension; or
(b) an invalidity service pension; or
(c) a social security benefit.

(1A) Income support supplement is not payable to a person if the person is already receiving an income support supplement.

(2) Income support supplement is not payable to a person if:
(a) the person:
   (i) elected under subsection 45E(2); or
   (ii) is taken under subsection 45E(3) to have elected;
   to continue to receive a social security pension; and

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(b) that pension has not ceased to be payable to the person under the Social Security Act.

(3) Income support supplement is not payable to a person if:

(a) the person:
   (i) elected under subsection 45F(2) or 45G(2); or
   (ii) is taken under subsection 45F(3) or 45G(3) to have elected;

   to receive a social security pension in the event that it was granted to him or her; and

(b) that pension:
   (i) was granted to the person; and
   (ii) has not ceased to be payable to the person under the Social Security Act.

45DA Exclusion of certain participants in ABSTUDY Scheme

If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance is included; and

(d) the payment relates to a period;

income support supplement is not payable to the person in respect of any part of the period.

45E Election to continue to receive social security pension

(1) This section applies to a war widower or war widow who immediately before the day (commencing day) on which this Part commences was receiving a social security pension.

(2) A person to whom this section applies may, on the commencing day, by notice in writing given to the Secretary, elect to continue to receive, on and after that day, the social security pension that he or she was receiving immediately before that day.

Note: As a result of that election, the person is precluded from receiving income support supplement under this Part (see section 45D) for as
Part IIIA  Income support supplement
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Section 45F

long as the social security pension continues to be payable to the person.

(3) If:
(a) a person to whom this section applies has failed to make an election under subsection (2); and
(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of the person’s incapacity or absence from Australia);
the Commission may determine that the person is to be taken for the purposes of this Act to have elected to continue to receive the social security pension.

45F Claim for social security pension by war widower or war widow pending at commencement of Part

(1) This section applies to a war widower or war widow if:
(a) before the day (commencing day) on which this Part commences, he or she had made a claim for a social security pension under the Social Security Act; and
(b) on the commencement of this Part, the claim has not been determined.

(2) A person to whom this section applies may, on the commencing day, elect to receive the social security pension in the event that it is granted to him or her.

Note: If the social security pension is granted, the person is, as a result of that election, precluded from receiving income support supplement under this Part (see section 45D) for as long as the social security pension continues to be payable to the person.

(3) If:
(a) a person to whom this section applies has failed to make an election under subsection (2); and
(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of a person’s incapacity or absence from Australia);
the Commission may determine that the person is to be taken for the purposes of this Act to have elected to receive the social security pension in the event that it is granted to him or her.

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45G  Review of decision rejecting a claim by war widower or war widow for social security pension pending at commencement of Part

(1) This section applies to a war widower or war widow if:
(a) before the day (commencing day) on which this Part commences, he or she had made a claim for a social security pension, and the claim had been rejected, under the Social Security Act; and
(b) on the commencement of this Part:
   (i) the decision to reject the claim (or a decision confirming the decision) is still subject to review following an application for review under Chapter 6 of the Social Security Act; or
   (ii) an application for review of the decision to reject the claim (or of a decision confirming the decision) may still be made under Chapter 6 of that Act, as a result of which a favourable determination may be made under that Act that will take effect (if made) as provided under whichever backdating provision is applicable to the determination.

(2) A person to whom this section applies may, on the commencing day, elect to receive the social security pension in the event that it is granted to him or her at the end of the review process.

Note: If the social security pension is granted, the person is, as a result of that election, precluded from receiving income support supplement under this Part (see section 45D) for as long as the social security pension continues to be payable to the person.

(3) If:
(a) a person to whom this section applies has failed to make an election under subsection (2); and
(b) the Commission is satisfied that the person was unable to make the election because of circumstances beyond his or her control (for example, because of a person’s incapacity or absence from Australia);

the Commission may determine that the person is to be taken for the purposes of this Act to have elected to receive the social security pension in the event that it is granted to him or her.
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(4) In this section:

*backdating provision*, in relation to a determination under the Social Security Act relating to a social security pension, means:

(a) in the case of an age pension—subsection 80(2) or (4) of the Social Security Act; or

(b) in the case of a disability support pension—subsection 115(2) or (4) of the Social Security Act; or

(c) in the case of a wife pension—subsection 184(2) or (4) of the Social Security Act; or

(d) in the case of a carer payment—subsection 209(2) or (4) of the Social Security Act; or

(e) in the case of disability wage supplement—subsection 431(2) or (4) of the Social Security Act.

**45H Review of decision concerning rate of social security pension paid to war widower or war widow pending at commencement of Part**

(1) This section applies if:

(a) immediately before the day (*commencing day*) on which this Part commences, a social security pension was payable to a war widower or war widow; and

(b) on the commencing day:

(i) a decision (*adverse decision*) under the Social Security Act affecting the rate at which the pension should be paid to the war widower or war widow (or a decision confirming the adverse decision) is still subject to review following an application for review under Chapter 6 of the Social Security Act; or

(ii) an application for review of an adverse decision (or of a decision confirming the adverse decision) may still be made under Chapter 6 of that Act, as a result of which a favourable determination may be made under that Act that will take effect (if made) as provided under whichever backdating provision is applicable to the determination; and

(c) the war widower or war widow does not make an election under subsection 45E(2).
(2) Chapter 6 of the Social Security Act continues to apply until no further application for review of the adverse decision can be made under that Chapter.

(3) This Act has effect as if on the commencing day:
   (a) the war widower or war widow had made a claim for income support supplement under section 45I; and
   (b) the Commission had determined under section 45Q that:
      (i) the claim was to be granted; and
      (ii) income support supplement was payable to the war widower or war widow at a rate equal to the rate (operative rate) at which the social security pension was payable to him or her immediately before the commencing day; and
   (c) in the event that the operative rate of the social security pension is varied as a result of the review—the war widower or war widow had made, as provided in subsection (4), an application for review of the decision of the Commission concerning the rate of which income support supplement was to be paid to him or her.

(4) For the purposes of paragraph (3)(c), an application for review by the war widower or war widow is taken to have been made:
   (a) if immediately before the commencing day the adverse decision under the Social Security Act was being reviewed by the Administrative Appeals Tribunal—to the Administrative Appeals Tribunal under section 175 of this Act; and
   (b) in any other case—to the Commission under section 57A of this Act.

(5) In this section:

*backdating provision*, in relation to a determination under the Social Security Act relating to a social security pension, means:
   (a) in the case of an age pension—subsection 80(2) or (4) of the Social Security Act; or
   (b) in the case of a disability support pension—subsection 115(2) or (4) of the Social Security Act; or
   (c) in the case of a wife pension—subsection 184(2) or (4) of the Social Security Act; or
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Section 45H

(d) in the case of a carer payment—subsection 209(2) or (4) of the Social Security Act; or
(e) in the case of disability wage supplement—subsection 431(2) or (4) of the Social Security Act.
Division 2—Claim for income support supplement

45I Need for a proper claim

Subject to section 45N, a person is not entitled to be granted income support supplement unless the person has made a proper claim for that supplement.

45J Who can claim?

(1) Subject to subsection (2), the claim must be made by:

(a) the person (claimant) who wants to be granted income support supplement; or

(b) with the approval of the claimant—another person on the claimant’s behalf.

(2) If the claimant is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

45K Making a claim

(1) To be a proper claim, the claim must be:

(a) made in writing; and

(b) in accordance with a form approved by the Commission; and

(c) accompanied by any evidence that the person making the claim considers may be relevant to the claim; and

(d) lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) The approved form may require the claimant to disclose whether the claimant is registered as a member of:

(a) the pension bonus scheme (see Part IIIAB); or

(b) the corresponding scheme under Part 2.2A of the Social Security Act.
Section 45M

45M Claimant must be Australian resident and in Australia

(1) Subject to subsection (2), a claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and
(b) in Australia;

on the day on which the claim is lodged.

Note: For Australian resident see section 5G.

(2) Subsection (1) does not apply to a claim if the person making the claim, or on whose behalf the claim is being made:

(a) is outside Australia; and

(b) is receiving a service pension or a social security pension; and

(c) would, if that pension were cancelled, be eligible for income support supplement.

Note: If the person ceases to be an Australian resident after having made a proper claim and after having met all the eligibility requirements (see section 36), the person’s eligibility is not affected.

45N Not necessary to make a claim in certain circumstances

(1) This section applies to:

(a) a war widower or war widow:

(i) to whom section 45E applies; and
(ii) who has not made, or is not taken to have made, an election under subsection 45E(2); and

(b) a war widower or war widow:

(i) to whom section 45F or 45G applies; and
(ii) who has not made, or is not taken to have made, an election under subsection 45F(2) or 45G(2) (as the case may be); and

(iii) to whom a social security pension is granted; and

(ba) a war widower or war widow who:

(i) is granted a pension under Part II or Part IV, at a rate determined under or by reference to subsection 30(1), on or after the commencement of Part 3 of Schedule 1 to the Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Act 2004; and
Section 45N

(ii) immediately before being granted the pension was receiving an age pension under Part 2.2 of the Social Security Act from the Department, acting on behalf of the Commonwealth, under an arrangement with the Department administered by the Minister administering that Part; and

(bb) a war widow who:

(i) is granted a pension under Part II or Part IV, at a rate determined under or by reference to subsection 30(1), on or after the commencement of Part 3 of Schedule 1 to the Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Act 2004; and

(ii) immediately before being granted the pension was receiving a wife pension under Part 2.4 of the Social Security Act from the Department, acting on behalf of the Commonwealth, under an arrangement with the Department administered by the Minister administering that Part; and

(iii) has reached the qualifying age (see subsection (1A)); and

(c) a war widower or war widow who, immediately before being granted a pension under Part II or Part IV at a rate determined under or by reference to subsection 30(1), was receiving a partner service pension; and

(d) a war widower or war widow who, immediately before receiving a lump sum mentioned in paragraph 234(1)(b) of the MRCA, or a weekly amount mentioned in that paragraph, was receiving a partner service pension.

(1A) For the purposes of subparagraph (1)(bb)(iii), the qualifying age for a person who is a war widow is:

(a) if the person is a veteran—the pension age for that person; or

(b) if the person is not a veteran—the age that would be the pension age for that person if she were a veteran.

Note: For pension age see section 5QA.

(2) A person to whom this section applies does not have to make a proper claim under section 45I to be entitled to income support supplement unless the Commission asks him or her to do so.
Section 45NA

(3) If this section applies to the person other than because of paragraph (1)(ba) or (bb) and the person is not required by the Commission to make a claim for income support supplement, this Act applies to the person as if:

(a) the person had made a claim for income support supplement under section 45I on the day on which this Part commenced; and
(b) the Commission had, on that day, determined under section 45Q that the claim was to be granted.

(4) If this section applies to the person because of paragraph (1)(ba) or (bb), and the person is not required by the Commission to make a claim for income support supplement, this Act applies to the person as if:

(a) the person had made a claim for income support supplement under section 45I on the day on which the person was granted the pension under Part II or Part IV; and
(b) the Commission had, on that day, determined under section 45Q that the claim was to be granted.

45NA Claim may be withdrawn

(1) A claimant for income support supplement or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

45NC Oral withdrawal of a claim

An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

45ND Acknowledgment of oral withdrawal of a claim

As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of a claim has been made; and
(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day on which the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

45NE Reactivating the withdrawn claim

If, within 28 days from the day on which the Secretary gave the acknowledgment notice, the claimant, or a person on behalf of the claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under section 45NE has the effect of reactivating the claim. In particular the commencement day of the claim stays the same.

45NF Secretary may require claimant to take action to obtain a comparable foreign pension

(1) If:
   (a) a person has claimed income support supplement; and
   (b) the Secretary is satisfied that the claimant may be entitled to a comparable foreign pension if the claimant applied for that pension;

   the Secretary may give the claimant a notice that requires the claimant to take reasonable action to obtain the comparable foreign pension.

(2) The notice:
   (a) must be in writing; and
   (b) must be given personally or by post; and
   (c) must state the period within which reasonable action must be taken.

(3) The period stated under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) The Commission may reject a claim if:
   (a) the claimant is given the notice; and
(b) the Commission is satisfied that the claimant has not taken reasonable action to obtain the comparable foreign pension within the period stated in the notice.

(5) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.
Division 3—Investigation of claim

45P Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for income support supplement, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.
Section 45Q

Division 4—Consideration and determination of claim

45Q  Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must:
   (a) consider the claim; and
   (b) satisfy itself with respect to all matters relevant to the determination of the claim; and
   (c) determine all matters requiring determination before the claim can be determined; and
   (d) determine the claim as provided by subsection (4).

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 45P; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

(4) The Commission must determine the claim as follows:
   (a) first, the Commission must determine whether income support supplement is to be granted to the person; and
   (b) if the Commission determines that income support supplement is to be granted to the person, the Commission then must:
      (i) work out the person’s income support supplement rate under section 45S; and
      (ii) determine that income support supplement is payable to the person at that rate.

Note: A claimant may apply to the Commission for review of a determination made under this section (see Division 16 of Part IIIB).

45R  Date of effect of determination

(1) If the Commission determines under section 45Q that income support supplement is payable to the person:
   (a) the determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination; and
(b) subject to this Act, income support supplement is payable to the person at the rate specified in the determination.

Note: Income support supplement is not payable to a person who is receiving a service pension or a social security pension or benefit (see section 45D).

(2) Despite paragraph (1)(a), if:

   (a) any of the following applies:

      (i) a pension is payable to a person under Part II or IV at a rate determined under or by reference to subsection 30(1) from a particular day (the benefit day); or

      (ii) a lump sum mentioned in subparagraph 234(1)(b)(i) of the MRCA is payable to a person, in respect of the death of a deceased member on a particular day (the benefit day); or

      (iii) a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA is payable to a person from a particular day (the benefit day); and

   (b) as a result, a social security pension or a social security benefit that was payable to the person immediately before the benefit day is no longer payable; and

   (c) the person makes a claim for income support supplement on a day (the ISS claim day) after the benefit day; and

   (d) had the person made a claim for income support supplement on the benefit day, he or she would have been eligible for income support supplement throughout the period beginning on the benefit day and ending on the ISS claim day; the determination takes effect on, and income support supplement is payable to the person on and from, the benefit day.
Division 5—Rate of income support supplement

45S  How to work out the rate of income support supplement

(1) The rate of income support supplement is to be calculated in accordance with the Rate Calculator.
Part IIIAB—Pension bonus

Division 1—Introduction

45T  Simplified outline

The following is a simplified outline of this Part:

- A person may be able to get a single lump-sum pension bonus if:
  - (a) the person becomes eligible for an age service pension, but defers claiming it; or
  - (b) the person is eligible for a partner service pension after reaching pension age, but defers claiming it; or
  - (c) the person is eligible for income support supplement after reaching qualifying age, but defers claiming it.

- A person who wants to get a pension bonus must register as a member of the pension bonus scheme.

- To get a pension bonus, a person must accrue between 1 and 5 bonus periods while deferring age service pension, partner service pension or income support supplement.

- Generally, a bonus period runs for 1 year.

- To accrue a bonus period, the person must pass the work test for that period.

- To pass the work test for a year, either the person, or the person’s partner, must gainfully work for at least 960 hours during that year.
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- The amount of a person’s pension bonus depends on the number of accrued bonus periods and the person’s annual rate of age service pension, partner service pension or income support supplement. A person may get a bigger bonus by accruing more bonus periods.
- Division 12 modifies the other provisions of the Part to deal with the case where a person was, before becoming a war widow/war widower—pensioner, either registered, or eligible to be registered, as a member of the pension bonus scheme under Part 2.2A of the Social Security Act 1991.

45TA Definitions

In this Part:

accruing member of the pension bonus scheme has the meaning given by section 45TM.

bonus period has the meaning given by section 45TR.

carer payment means carer payment under the Social Security Act.

carer preclusion period has the meaning given by section 45UU.

designated pension means:
  (a) age service pension; or
  (b) partner service pension; or
  (c) income support supplement.

disposal preclusion period has the meaning given by section 45UT or 45UTA.

full-year period means a continuous period of 365 days.

gainful work has the meaning given by sections 45TV to 45TZ (inclusive).

non-accruing member of the pension bonus scheme has the meaning given by sections 45TN and 45TO.

part-year period means a continuous period of less than 365 days.
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**passing the work test** has the meaning given by sections 45TS and 45TT.

**post-70/75 member of the pension bonus scheme** has the meaning given by section 45TQ.

**qualifying age** has the meaning given by subsection 45A(2).

**registration as a member of the pension bonus scheme** means registration under section 45TI.

**special date of eligibility**, in relation to a designated pension, has the meaning given by section 45TB.

### 45TB  Special date of eligibility for a designated pension

**Age service pension**

(1) For the purposes of this Part, a person’s **special date of eligibility** for an age service pension is the first day on which the person becomes eligible for an age service pension.

**Partner service pension**

(2) For the purposes of this Part, a person’s **special date of eligibility** for a partner service pension is worked out as follows:

(a) identify the day (the **pension age day**) on which the person reached pension age;

(b) the special date of eligibility is the first day occurring on or after the pension age day on which the person is eligible for a partner service pension.

**Income support supplement**

(3) For the purposes of this Part, a person’s **special date of eligibility** for income support supplement is worked out as follows:

(a) identify the **threshold day** as whichever of the following days is applicable:

(i) the day the person reached qualifying age;

(ii) if the person was granted a pension under Part II or IV after the person reached qualifying age because the person is a war widow or war widower—the day the pension commenced;
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(iii) if, after reaching the qualifying age, the person became entitled to be paid a lump sum or a weekly amount mentioned in paragraph 234(1)(b) of the MRCA—the date of the death of the member in respect of whom the lump sum or weekly amount was payable;

(b) the special date of eligibility is the first day occurring on or after the threshold day on which the person is eligible for income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5).

Residency assumption

(4) For the purposes of this Part, a person’s special date of eligibility for a designated pension is to be worked out on the assumption that:

(a) being an Australian resident; and

(b) being in Australia;

were additional requirements for the designated pension.

2 or more special dates of eligibility

(5) For the purposes of this section, if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.
Division 2—Qualification for pension bonus

45TC Qualification for pension bonus

Deferral of age service pension

(1) A person is qualified for a pension bonus if:
   (a) the person starts to receive an age service pension at or after the time when the person makes a claim for the pension bonus; and
   (b) the person has not received an age service pension at any time before making a claim for the pension bonus; and
   (c) the person is registered as a member of the pension bonus scheme; and
   (d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and
   (e) the person has not received:
      (i) a social security pension (other than a carer payment); or
      (ii) a social security benefit; or
      (iii) a service pension (other than an age service pension or a carer service pension); or
      (iv) income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5); at any time after the person’s special date of eligibility for an age service pension; and

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the person’s partner: see subsection 23(1D) of the Social Security Act.

(f) the person has not already received:
   (i) another pension bonus; or
   (ia) DFISA bonus; or
   (ii) a bonus under Part 2.2A of the Social Security Act.
Deferral of partner service pension

(2) A person is qualified for a pension bonus if:
   (a) the person starts to receive a partner service pension at or after the time when the person makes a claim for the pension bonus; and
   (b) the person has not received a partner service pension at any time during the period:
      (i) beginning on the person’s special date of eligibility for a partner service pension; and
      (ii) ending immediately before the time when the person makes a claim for the pension bonus; and
   (c) the person is registered as a member of the pension bonus scheme; and
   (d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and
   (e) the person has not received:
      (i) a social security pension (other than a carer payment); or
      (ii) a social security benefit; or
      (iii) a service pension (other than a partner service pension or a carer service pension); at any time after the person’s special date of eligibility for a partner service pension; and
   (f) the person has not already received:
      (i) another pension bonus; or
      (ia) DFISA bonus; or
      (ii) a bonus under Part 2.2A of the Social Security Act.

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the person’s partner: see subsection 23(1D) of the Social Security Act.
A person is qualified for a pension bonus if:

(a) the person starts to receive income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) at or after the time when the person makes a claim for the pension bonus; and

(b) the person has not received income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) at any time during the period:
   (i) beginning on the person’s special date of eligibility for income support supplement; and
   (ii) ending immediately before the time when the person makes a claim for the pension bonus; and

(c) the person is registered as a member of the pension bonus scheme; and

(d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and

(e) the person has not received:
   (i) a social security pension (other than a carer payment); or
   (ii) a social security benefit; or
   (iii) a service pension (other than a carer service pension); at any time after the person’s special date of eligibility for income support supplement; and

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the person’s partner: see subsection 23(1D) of the Social Security Act.

(f) the person has not already received:
   (i) another pension bonus; or
   (ia) DFISA bonus; or
   (ii) a bonus under Part 2.2A of the Social Security Act.
Part IIIAB Pension bonus
Division 3 Registration as a member of the pension bonus scheme

Section 45TD

Division 3—Registration as a member of the pension bonus scheme

Subdivision A—Membership of the pension bonus scheme

45TD Application for registration

A person may apply for registration as a member of the pension bonus scheme.

45TE Making an application

(1) An application:
   (a) must be in writing; and
   (b) must be in accordance with a form approved by the Commission; and
   (c) must be lodged at an office of the Department in Australia in accordance with section 5T.

(2) An application lodged in accordance with section 5T is taken to have been made on a day determined under that section.

45TF Relevant information

(1) An approved form may require the applicant to provide relevant information (see subsection (4)).

(2) The Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, within a specified period, further relevant information. The Commission may refuse to register the applicant until the applicant gives the Secretary the information.

(3) A period specified for the purposes of subsection (2) must run for at least 14 days after the notice was given.

(4) For the purposes of this section, relevant information includes (but is not limited to):
   (a) information that would be likely to assist the Secretary in advising the applicant about the operation of this Part; and
(b) information that is relevant to determining whether a disposal preclusion period or carer preclusion period has arisen, or is likely to arise, in relation to the applicant; and
(c) a statement of the applicant’s present expectations in relation to any or all of the following matters:
   (i) the number of bonus periods that the person is likely to accrue while registered as a member of the pension bonus scheme;
   (ii) the likely nature and extent of the person’s participation in the workforce during those periods;
   (iii) if the person has a partner—the likely nature and extent of the partner’s participation in the workforce during those periods.

45TH Timing of application and registration

Special date of eligibility for designated pension on or after 1 July 1998

(1) If a person’s special date of eligibility for a designated pension occurs on or after 1 July 1998:
   (a) the person must lodge an application during the period that begins 13 weeks before the person’s special date of eligibility for the designated pension and ends 13 weeks after that date; and
   (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on the person’s special date of eligibility for the designated pension.

Note: The Commission may extend the period: see subsection (3).

Special date of eligibility for designated pension before 1 July 1998

(2) If a person’s special date of eligibility for a designated pension occurs before 1 July 1998:
   (a) the person must lodge an application during the period that begins on the commencement of this section and ends 13 weeks after 1 July 1998; and
   (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on 1 July 1998.
Note: The Commission may extend the period: see subsection (3).

Late applications

(3) The Commission may extend the period within which a person must lodge an application. If registration occurs as a result of an application lodged during an extended period, the registration takes effect:

(a) on the date on which the application is lodged; or
(b) if the Commission decides that it should take effect on another date—on that other date.

(4) The Commission must not make a decision to extend the period within which a person must lodge an application unless, if it were assumed that the person had been a member of the pension bonus scheme throughout the pre-application period:

(a) the person would have been a non-accruing member for all of the pre-application period; or
(b) both:
   (i) the person would have been an accruing member for some or all of the pre-application period; and
   (ii) the person would have passed the work test for each test period that is applicable to the person.

Note 1: Pre-application period is defined by subsection (5).
Note 2: Test period is defined by subsection (6).

(5) For the purposes of this section, the pre-application period is the period beginning on:

(a) in the case of a person whose special date of eligibility for a designated pension occurs on or after 1 July 1998—the person’s special date of eligibility for the designated pension; or
(b) in the case of a person whose special date of eligibility for a designated pension occurs before 1 July 1998—1 July 1998; and ending on the date on which the person lodged the application.

(6) For the purposes of this section, to work out what is a test period:

(a) identify the overall accruing period, which is that part of the pre-application period for which, if it were assumed that the person had been a member of the pension bonus scheme...
throughout the pre-application period, the person would have been an accruing member of the scheme;
(b) if the overall accruing period is 365 days or less—the overall accruing period is the only test period;
(c) if the overall accruing period is longer than 365 days—each of the following periods is a test period:
   (i) the full-year period beginning at the start of the overall accruing period;
   (ii) if 2 or more succeeding full-year periods are included in the overall accruing period—each of those full-year periods;
   (iii) the remainder (if any) of the overall accruing period.

(7) For the purposes of subsection (4), the Commission is taken to have waived compliance with the applicable record-keeping requirements in relation to each test period.

2 or more special dates of eligibility

(8) For the purposes of this section, if a person would otherwise have 2 or more special dates of eligibility for a designated pension, only the first date is to be counted.

45TI Registration

(1) If an application is made in accordance with this Subdivision, the Commission must register the applicant as a member of the pension bonus scheme.

(2) This section has effect subject to subsection 45TF(2).

45TJ Duration of membership

A person’s membership of the pension bonus scheme begins on the date on which the registration of that membership takes effect and continues until the membership is cancelled under this Act.

45TK Cancellation of membership

A person’s membership of the pension bonus scheme is cancelled if:
(a) the person’s claim for pension bonus is determined; or
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(b) in a case where the person is eligible for an age service pension—the person starts to receive:
   (i) a social security pension (other than a carer payment);
   or
   (ii) a social security benefit; or
   (iii) a service pension (other than an age service pension or a carer service pension); or
   (iv) income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5);
   at any time after the person’s special date of eligibility for an age service pension; or

(c) in a case where the person is eligible for a partner service pension—the person starts to receive:
   (i) a social security pension (other than a carer payment);
   or
   (ii) a social security benefit; or
   (iii) a service pension (other than a partner service pension or a carer service pension);
   at any time after the person’s special date of eligibility for a partner service pension; or

(d) in a case where the person is eligible for income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5)—the person starts to receive:
   (i) a social security pension (other than a carer payment);
   or
   (ii) a social security benefit; or
   (iii) a service pension (other than a carer service pension);
   at any time after the person’s special date of eligibility for income support supplement; or

(e) the person does not make a proper claim for a pension bonus when the person claims a designated pension; or

(f) the person requests the Commission, in writing, to cancel the person’s membership.
Section 45TL

45TL  Application for registration is not to be treated as a claim

To avoid doubt, an application for registration as a member of the pension bonus scheme is not to be treated as a claim for the purposes of any law of the Commonwealth.

Subdivision B—Classification of membership of the pension bonus scheme

45TM  Accruing membership

For the purposes of this Part, a person’s membership of the pension bonus scheme at a particular time is **accruing** unless the person’s membership is non-accruing or post-70/75 at that time.

45TN  Non-accruing membership—preclusion periods

*Disposal preclusion period*

(1) For the purposes of this Part, if a person is subject to a disposal preclusion period at a particular time when the person is a member of the pension bonus scheme, the person’s membership of the scheme is **non-accruing** at that time.

Note:  *Disposal preclusion period* is defined by sections 45UT and 45UTA.

*Carer preclusion period*

(2) For the purposes of this Part, if a person is subject to a carer preclusion period at a particular time when the person is a member of the pension bonus scheme, the person’s membership of the scheme is **non-accruing** at that time.

Note:  *Carer preclusion period* is defined by section 45UU.

45TO  Non-accruing membership—Commission’s discretion

(1) The Commission may, by written notice published in the Gazette, declare that, for the purposes of this Part, a specified kind of member of the pension bonus scheme is a **non-accruing** member throughout a period ascertained in accordance with the declaration. The period must not begin before the publication of the notice.
Part IIIAB Pension bonus
Division 3 Registration as a member of the pension bonus scheme

Section 45TP

(2) The kinds of members that may be specified under subsection (1) include (but are not limited to):
   (a) a member who is a participant in the Community Development Employment Program; and
   (b) a member who is in gaol; and
   (c) a member who is not a participant in the workforce, but whose partner:
      (i) is a participant in the workforce; and
      (ii) is not a registered member of the pension bonus scheme or of the corresponding scheme under Part 2.2A of the Social Security Act; and
      (iii) intends to become a registered member of the pension bonus scheme or of the corresponding scheme under Part 2.2A of the Social Security Act; and
   (d) a member who is on sick leave for a continuous period of at least 4 weeks and not more than 26 weeks.

(3) A declaration under this section has effect accordingly.

45TP Continuity of accruing membership is not broken by a period of non-accruing membership

If:
   (a) a person has been an accruing member of the pension bonus scheme for a continuous period (the first accruing membership period) (including a period that is applicable because of one or more applications of this section); and
   (b) the first accruing membership period is followed by a continuous period of non-accruing membership of the scheme; and
   (c) the period of non-accruing membership is followed by a further continuous period of accruing membership of the scheme (the second accruing membership period);

the first accruing membership period and the second accruing membership period are together taken to constitute a continuous period of accruing membership of the scheme.
45TQ Post-70/75 membership

A person’s membership of the pension bonus scheme is post-70/75 at all times on or after:

(a) if the person is eligible for an age service pension or income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) on the day the person reaches age 70—that day; or

(b) in any other case—the day the person reaches age 75.
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Division 4  Accrual of bonus periods

Section 45TR

Division 4—Accrual of bonus periods

45TR Accrual of bonus periods

Full-year bonus period

(1) The first bonus period that accrues to a person is the full-year period of the person’s accruing membership of the pension bonus scheme:
   (a) that began on whichever of the following dates is applicable:
      (i) if the person was an accruing member of the pension bonus scheme on the date the person’s registration as a member took effect—the date the registration took effect;
      (ii) in any other case—the date on which the person first became an accruing member of the pension bonus scheme; and
   (b) for which the person passes the work test.

Note: Accruing membership is defined by section 45TM.

(2) Each succeeding full-year period of the person’s accruing membership of the pension bonus scheme:
   (a) that is specified in the person’s claim for pension bonus; and
   (b) for which the person passes the work test;
   is a bonus period that accrues to the person.

Part-year bonus period

(3) A part-year period of the person’s accruing membership of the pension bonus scheme is a bonus period that accrues to the person if:
   (a) the person passes the work test for that period; and
   (b) the person specifies the period in the person’s claim for pension bonus; and
   (c) the period begins immediately after the end of a full-year bonus period that accrues to the person; and
   (d) the period is the last bonus period that accrues to the person.

Note: Accruing membership is defined by section 45TM.
Bonus periods must be consecutive

(4) A person cannot accrue more than one bonus period unless:
   (a) the bonus periods are consecutive; or
   (b) the bonus periods are separated only by a period of
       non-accruing membership.
Division 5—Passing the work test

Subdivision A—The work test

45TS  Work test—full-year period

For the purposes of this Part, a person passes the work test for a full-year period of the person’s accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Commission that the total number of hours gainfully worked by the person during that period was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Commission that the total number of hours gainfully worked by the person’s partner during that period while the partner was a partner of the person and was:
   (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
   (ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;
   was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Commission that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:
   (i) accruing members, or post-70/75 members, of the pension bonus scheme; or
   (ii) accruing members, or post-75 members, of the corresponding scheme under Part 2.2A of the Social Security Act;
   was at least 960 and that at least 640 of that total number of hours were worked in Australia;

and either:
(d) the person satisfies the Commission that the applicable record-keeping requirements (see section 45UA) have been complied with in relation to that period; or
(e) the Commission decides to waive compliance with the applicable record-keeping requirements in relation to that period.

45TT Work test—part-year period

(1) For the purposes of this Part, a person passes the work test for a part-year period of the person’s accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Commission that the total number of hours gainfully worked by the person during that period was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Commission that the total number of hours gainfully worked by the person’s partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Commission that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:

(i) accruing members, or post-70/75 members, of the pension bonus scheme; or

(ii) accruing members, or post-75 members, of the corresponding scheme under Part 2.2A of the Social Security Act;
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Section 45TU

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia;

and either:

(d) the person satisfies the Commission that the applicable record-keeping requirements (see section 45UA) have been complied with in relation to that period; or

(e) the Commission decides to waive compliance with the applicable record-keeping requirements in relation to that period.

(2) For the purposes of this section, the pro-rated number of hours applicable to a period is worked out using the formula:

\[ \frac{960 \times \text{Number of days in the period}}{365} \]

45TU  Commission’s discretion to treat gainful work outside Australia as gainful work in Australia

(1) If a person satisfies the Commission that:

(a) the person, or the person’s partner, has carried on gainful work outside Australia; and

(b) because of special circumstances, the gainful work should be treated as gainful work carried on in Australia;

the Commission may determine that this Part has effect as if the gainful work were carried on in Australia.

(2) The determination has effect accordingly.

Subdivision B—Gainful work

45TV  Gainful work—basic rule

(1) For the purposes of this Part, gainful work is work for financial gain or reward, whether as an employee, a self-employed person or otherwise, where:

(a) the work involves a substantial degree of personal exertion on the part of the person concerned; and

(b) the work is carried on within or outside Australia.
(2) Subsection (1) is to be ignored in determining the meaning of an expression used in a provision of this Act other than this Part.

45TW Commission’s discretion to treat activity as gainful work

(1) If a person satisfies the Commission that:
   (a) the person, or the person’s partner, has engaged in a particular activity; and
   (b) the activity involves a substantial degree of personal exertion on the part of the person or the person’s partner, as the case may be; and
   (c) the activity does not consist of voluntary work for a charitable, welfare or community organisation; and
   (d) because of special circumstances, the activity should be treated as gainful work;

the Commission may determine that this Part has effect as if the activity were gainful work.

(2) The determination has effect accordingly.

45TX Irregular, infrequent and minor absences from a workplace count as gainful work

For the purposes of this Part, if a person is engaged in gainful work, the total hours gainfully worked by the person during a period are to be determined as if the person had been engaged in gainful work during any absences from the workplace that are irregular, infrequent and minor.

45TY Management of family financial investments does not count as gainful work

(1) Unless the Commission otherwise determines, work undertaken by a person is taken not to be gainful work for the purposes of this Part to the extent to which the work consists of the management or administration of one or more financial investments in which any of the following has a legal or equitable interest:
   (a) a member of the person’s family group (see subsection (2));
   (b) a company that is a family company in relation to the person (see subsection (2));
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(c) the trustee or trustees of a trust that is a family trust in relation to the person (see subsection (2)).

Note:  Financial investment is defined by subsection 5J(1).

(2) In this section:

family company, in relation to a person, means a company where:

(a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person’s family group; or

(b) any or all of the members of the person’s family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or

(c) both:

(i) the company has one or more shareholders; and

(ii) each shareholder is a member of the person’s family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has no family members, the person is taken to be a family group in his or her own right.

Note:  Family member is defined by subsection 5L(1).

family trust, in relation to a person, means a trust where a member of the person’s family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

45TZ. Domestic duties in relation to a person’s place of residence do not count as gainful work

(1) Unless the Commission otherwise determines, work undertaken by a person is taken not to be gainful work for the purposes of this Part if the work consists of carrying out:

(a) domestic tasks; or

(b) household maintenance tasks; or

(c) gardening tasks; or

(d) similar tasks;
Section 45U

in relation to:
(e) the person’s place of residence; or
(f) if the person has 2 or more places of residence—any of those
places of residence.

(2) For the purposes of this section, a **place of residence** includes:
(a) if the place is a dwelling-house—any land or building that is
adjacent to the dwelling-house and that is used primarily for
private or domestic purposes in association with that
dwelling-house; or
(b) if the place is a flat or home unit—a garage or storeroom that
is used for private or domestic purposes in association with
the flat or home unit.

45U  **Evidentiary certificate**

**Hours worked during full-year period**

(1) The Commission may, if requested to do so by a member of the
pension bonus scheme, issue a written certificate stating that:
(a) the member was an accruing member of the scheme
throughout a specified full-year period; and
(b) the total number of hours gainfully worked by the member
during that period was at least a specified number of hours;
and
(c) the total number of hours gainfully worked in Australia by
the member during that period was at least a specified
number of hours.

(2) The Commission may, if requested to do so by a member of the
pension bonus scheme, issue a written certificate stating that:
(a) the member was an accruing member of the scheme
throughout a specified full-year period; and
(b) the total number of hours gainfully worked by a specified
person during that period while the person was the partner of
the member and was:

(i) an accruing member, or a post-70/75 member, of the
pension bonus scheme; or
(ii) an accruing member, or a post-75 member, of the
corresponding scheme under Part 2.2A of the Social
Security Act;
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was at least a specified number of hours; and  
(c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
   (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
   (ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;
was at least a specified number of hours.

Hours worked during part-year period

(3) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
   (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
   (b) the total number of hours gainfully worked by the member during that period; and
   (c) the total number of hours gainfully worked in Australia by the member during that period.

(4) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
   (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
   (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
      (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
      (ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act; and
   (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
      (i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or
(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act.

Record-keeping requirements

(5) If:
   (a) a person makes a request for a certificate under subsection (1), (2), (3) or (4) relating to a particular period; and
   (b) the applicable record-keeping requirements have not been complied with in relation to that period (see section 45UA); the Commission may refuse to issue the certificate.

Non-accruing membership

(6) The Commission may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that the member was a non-accruing member of the scheme throughout a specified period.

Evidence

(7) In any proceedings relating to this Part, a certificate under this section is prima facie evidence of the matters in the certificate.

Subdivision C—Record-keeping requirements

45UA Record-keeping requirements

Record-keeping requirements for person

(1) For the purposes of the application of paragraph 45TS(a) or 45TT(1)(a) or subsection 45U(1) or (3) to a person, the applicable record-keeping requirements have been complied with in relation to a period of the person’s accruing membership of the pension bonus scheme if:
   (a) in a case where the person has:
      (i) been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the Taxation Administration Act 1953) in respect of any
Section 45UA

gainful work carried on by the person during that period; or

(ii) lodged an income tax return that relates to any gainful work carried on by the person during that period;

the person would be in a position to produce a copy of the certificate or of the return, as the case may be, to the Secretary if the Secretary were to require the person to produce that copy; and

(b) both:

(i) the person has kept a recognised work record (see subsection (3)) in relation to gainful work carried on by the person during that period; and

(ii) the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Record-keeping requirements for partner of person

(2) For the purposes of the application of paragraph 45TS(b) or (c) or 45TT(1)(b) or (c) or subsection 45U(2) or (4) to a partner of a person, the applicable record-keeping requirements have been complied with in relation to a period of the person’s accruing membership of the pension bonus scheme if:

(a) in a case where the partner has been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

the person would be in a position to produce a copy of the certificate to the Secretary if the Secretary were to require the person to produce that copy; and

(b) in a case where the partner has lodged an income tax return that relates to any gainful work carried on by the partner
during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

the person would be in a position to produce a copy of the return to the Secretary if the Secretary were to require the person to produce that copy; and

(c) in any case—the partner has kept a recognised work record (see subsection (3)) in relation to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-70/75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-75 member, of the corresponding scheme under Part 2.2A of the Social Security Act;

and the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Recognised work record

(3) For the purposes of this section, a recognised work record, in relation to a person, is a written statement signed by the person that sets out, in relation to gainful work carried on by the person during a particular period:

(a) the nature of the gainful work; and

(b) the dates on which the gainful work was carried on; and

(c) the total number of hours gainfully worked; and

(d) the total number of hours gainfully worked in Australia; and

(e) in a case where any of the gainful work was carried on in the capacity of employee—the name or names of the employer or employers concerned; and

(f) such other particulars as the Secretary requires.
Division 6—Amount of pension bonus

45UB How to calculate the amount of pension bonus

(1) To calculate the amount of a person’s pension bonus:
   (a) work out which of the person’s bonus periods count as qualifying bonus periods (see section 45UC);
   (b) work out the person’s overall qualifying period (see section 45UD);
   (c) work out the person’s pension multiple (see section 45UE);
   (d) work out the person’s annual pension rate (see section 45UF);
   (e) apply the appropriate formula in section 45UG.

Note: Bonus period is defined by section 45TR.

(2) For the purposes of this Division, a number of years is to be calculated to 3 decimal places. However, if a number worked out in accordance with this subsection would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the number is to be increased by 0.001.

45UC Qualifying bonus periods

(1) For the purposes of this Division, if a person has accrued only one bonus period, that bonus period is the person’s qualifying bonus period.

(2) For the purposes of this Division, if a person has accrued only 2 bonus periods, each of those bonus periods is a qualifying bonus period.

(3) For the purposes of this Division, if a person has accrued only 3 bonus periods, each of those bonus periods is a qualifying bonus period.

(4) For the purposes of this Division, if a person has accrued only 4 bonus periods, each of those bonus periods is a qualifying bonus period.
(5) For the purposes of this Division, if a person has accrued only 5 bonus periods, each of those bonus periods is a **qualifying bonus period**.

(6) For the purposes of this Division, if:
   
   (a) a person has accrued more than 5 bonus periods; and
   
   (b) the last bonus period is a full-year period;

   each of the 5 most recent bonus periods are **qualifying bonus periods**.

(7) For the purposes of this Division, if:
   
   (a) a person has accrued more than 5 bonus periods; and
   
   (b) the last bonus period is a part-year period;

   each of the 5 most recent full-year bonus periods are **qualifying bonus periods**.

### 45UD Overall qualifying period

(1) For the purposes of this Division, if a person has only one qualifying bonus period, that period is the person’s **overall qualifying period**.

(2) For the purposes of this Division, if a person has 2 or more qualifying bonus periods, the person’s **overall qualifying period** is the period:

   (a) beginning at the start of the first qualifying bonus period; and
   
   (b) ending at the end of the last qualifying bonus period.

However, any period of non-accruing membership of the pension bonus scheme is taken not to form part of the person’s overall qualifying period.

### 45UE Pension multiple

For the purposes of this Division, a person’s **pension multiple** is worked out using the formula:

\[
0.094 \times \text{No. of years in the person's overall qualifying period}
\]
### 45UF Annual pension rate

For the purposes of this Division, a person’s *annual pension rate* is set out in the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>In this case:</th>
<th>The person’s annual pension rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The person:</td>
<td>the rate that would be the person’s provisional payment rate under Method statement 1 in subpoint SCH6-A1(2), ascertained as at the date of the grant, if it were assumed that Steps 2 and 3 were omitted from the Method statement.</td>
</tr>
<tr>
<td></td>
<td>(a) is granted an age service pension or a partner service pension; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is not permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) is not a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>The person:</td>
<td>the sum of the amounts worked out under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), ascertained as at the date of the grant.</td>
</tr>
<tr>
<td></td>
<td>(a) is granted an age service pension or a partner service pension; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) is not a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>The person:</td>
<td>the lesser of the following rates (or, if the rates are the same, the first rate):</td>
</tr>
<tr>
<td></td>
<td>(a) is granted an age service pension; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is not permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) is a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) the person’s ceiling rate under point SCH6-A4, ascertained as at the date of the grant;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the rate that would be the person’s provisional payment rate under Method statement 1 in subpoint SCH6-A1(2), ascertained as at the date of the grant, if it were assumed that the Method statement applied and Steps 2 and 3 were omitted from the Method statement.</td>
<td></td>
</tr>
</tbody>
</table>
### 45UG Amount of pension bonus

**No change in marital status during overall qualifying period**

(1) If:

(a) a person either:
   (i) was a member of a couple throughout the person’s overall qualifying period; or
   (ii) was not a member of a couple at any time during that period; and

(b) the person remained eligible for the same pension throughout that period; and

(c) if the person is a war widow/war widower—pensioner—the person was such a person during the whole of the person’s overall qualifying period;

#### Annual pension rate

<table>
<thead>
<tr>
<th>Item</th>
<th>In this case:</th>
<th>The person’s annual pension rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>The person:</td>
<td>the person’s ceiling rate under point SCH6-A4, ascertained as at the date of the grant</td>
</tr>
<tr>
<td></td>
<td>(a) is granted an age service pension; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) is a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>The person:</td>
<td>the rate that would be the person’s provisional payment rate under Method statement 5 in subpoint SCH6-A1(6), ascertained as at the date of the grant, if it were assumed that:</td>
</tr>
<tr>
<td></td>
<td>(a) is granted income support supplement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is not permanently blind</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>The person:</td>
<td>the person’s ceiling rate under point SCH6-A4, ascertained as at the date of the grant</td>
</tr>
<tr>
<td></td>
<td>(a) is granted income support supplement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is permanently blind</td>
<td></td>
</tr>
</tbody>
</table>
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the amount of the person’s pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

\[ \text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person’s overall qualifying period}}{\text{No. of years in the person’s qualifying period}} \]

(1A) If:

(a) a person either:
   (i) was a member of a couple throughout the person’s overall qualifying period; or
   (ii) was not a member of a couple at any time during that period; and
(b) the person is a war widow/war widower—pensioner; and
(c) the person was not a war widow/war widower—pensioner throughout some or all of the person’s overall qualifying period;

the amount of the person’s pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

\[ \frac{\text{Apportioned amount}}{\text{No. of years in the person’s overall qualifying period}} \times \text{Pension multiple} \times \frac{\text{No. of years in the person’s overall qualifying period}}{\text{No. of years in the person’s qualifying period}} \]

where:

*apportioned amount* has the meaning given by section 45UIA.

**Change in marital status during overall qualifying period**

(2) If neither subsection (1) nor (1A) applies to a person, the amount of the person’s pension bonus is worked out using the following formula (for rounding up, see subsection (4)):

\[
\left( \frac{\text{Annual notional single pension rate}}{\text{Pension multiple}} \times \frac{\text{No. of years in the person’s overall qualifying period}}{\text{No. of years in the person’s qualifying period}} \right) + \left( \frac{\text{Annual notional partnered pension rate}}{\text{Pension multiple}} \times \frac{\text{No. of years in the person’s overall qualifying period}}{\text{No. of years in the person’s qualifying period}} \right)
\]

where:

*annual notional single pension rate* has the meaning given by section 45UH.
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*annual notional partnered pension rate* has the meaning given by section 45UI.

(3) For the purposes of this section:

(a) the number of *single years* during the overall qualifying period is the number of years during the overall qualifying period when the person was not a member of a couple; and

(b) the number of *partnered years* during the overall qualifying period is the number of years during the overall qualifying period when the person was a member of a couple.

*Rounding up*

(4) An amount calculated under subsection (1), (1A) or (2) is to be rounded to the nearest 10 cents (with 5 cents being rounded up).

45UH Annual notional single pension rate

(1) For the purposes of this Division, a person’s *annual notional single pension rate* is set out in the following table:

<table>
<thead>
<tr>
<th>Annual notional single pension rate</th>
<th>In this case:</th>
<th>The person’s annual notional single pension rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td></td>
<td>the sum of the adjusted percentage of the person’s maximum basic rate under point SCH6-B1 and the person’s pension supplement under Module BA, worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date</td>
</tr>
<tr>
<td>Item 2</td>
<td></td>
<td>the sum of the amounts worked out under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), ascertained as at the date of grant of the designated pension, if it were assumed that the person was not a member of a couple as at that date</td>
</tr>
</tbody>
</table>
Section 45UH

Annual notional single pension rate

<table>
<thead>
<tr>
<th>Item</th>
<th>In this case:</th>
<th>The person’s annual notional single pension rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>The person:</td>
<td>the person’s annual pension rate worked out as at the date of grant of the designated pension</td>
</tr>
<tr>
<td></td>
<td>(a) is a war widow/war widower—pensioner; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) was a war widow/war widower—pensioner throughout so much of the overall qualifying period as occurred when the person was not a member of a couple</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>The person:</td>
<td>the apportioned single amount worked out under subsection (2)</td>
</tr>
<tr>
<td></td>
<td>(a) is a war widow/war widower—pensioner; but</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) was not a war widow/war widower—pensioner for some or all of the overall qualifying period occurring while the person was not a member of a couple</td>
<td></td>
</tr>
</tbody>
</table>

(2) For the purposes of this section, the **apportioned single amount** is:

\[
\frac{\text{Period not a war widow or war widower}}{\text{Single part of overall qualifying period}} \times \frac{\text{Provisional payment rate}}{\text{Annual pension rate}} + \frac{\text{Period a war widow or war widower}}{\text{Single part of overall qualifying period}} \times \frac{\text{Provisional payment rate}}{\text{Annual pension rate}}
\]

where:

*period not a war widow or war widower* is the number of days in so much of the single part of overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

*single part of overall qualifying period* is the number of days in so much of the overall qualifying period as occurred when the person was not a member of a couple.

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provisional payment rate is:

(a) if the person:
   (i) has, during some or all of the single part of the person’s overall qualifying period, deferred an age service pension or a partner service pension; and
   (ii) the person is not permanently blind;
   the sum of the adjusted percentage of the person’s maximum basic rate under point SCH6-B1 and the person’s pension supplement under Module BA worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

(b) if the person:
   (i) has, during some or all of the single part of the person’s overall qualifying period, deferred an age service pension or a partner service pension; and
   (ii) the person is permanently blind;
   the sum of the amounts under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), worked out as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

(c) if the person:
   (i) has, during some or all of the single part of the person’s overall qualifying period, deferred an age pension; and
   (ii) is not permanently blind;
   the sum of:
   (iii) the adjusted percentage of the person’s maximum basic rate under Table B in point 1064-B1 of the Social Security Act 1991; and
   (iv) the person’s pension supplement under point 1064-BA2 of that Act;
   worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date; or

(d) if the person:
   (i) has, during some or all of the single part of the person’s overall qualifying period, deferred an age pension; and
   (ii) is permanently blind;
   the sum of:
Part IIIAB  Pension bonus
Division 6  Amount of pension bonus

Section 45UI

(iii) the maximum basic rate under Table B in point 1065-B1 of the _Social Security Act 1991_; and
(iv) the person’s pension supplement under point 1065-BA2 of that Act;
worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were not a member of a couple at that date.

_The period a war widow or war widower_ is the number of days in so much of the single part of overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

_The annual pension rate_ is the person’s annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

Note: There may be circumstances where one or other of the bracketed parts of the formula will have a nil value.

(3) For the purposes of this section, a person’s _adjusted percentage_ is the percentage worked out using the following formula (for rounding up, see subsection (4)):

\[
\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100
\]

where:

_maximum basic rate_ is the sum of the amounts worked out under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), ascertained as at the date of grant of the designated pension.

(4) A percentage worked out under subsection (3) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (3) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

45UI  Annual notional partnered pension rate

(1) For the purposes of this Division, a person’s _annual notional partnered pension rate_ is set out in the following table:
### Annual notional partnered pension rate

<table>
<thead>
<tr>
<th>Item</th>
<th>In this case:</th>
<th>The person’s annual notional partnered pension rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The person:</td>
<td>the sum of the adjusted percentage of the person’s maximum basic rate under point SCH6-B1 and the person’s pension supplement under Module BA, worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date</td>
</tr>
<tr>
<td></td>
<td>(a) is not permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is not a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>The person:</td>
<td>the sum of the amounts worked out under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), ascertained as at the date of grant of the designated pension, if it were assumed that the person was a member of a couple as at that date</td>
</tr>
<tr>
<td></td>
<td>(a) is permanently blind; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) is not a war widow/war widower—pensioner</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>The person:</td>
<td>the person’s annual pension rate worked out as at the date of grant of the designated pension</td>
</tr>
<tr>
<td></td>
<td>(a) is a war widow/war widower—pensioner; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) was a war widow/war widower—pensioner throughout so much of the overall qualifying period as occurred when the person was a member of a couple</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>The person:</td>
<td>the apportioned partnered amount worked out under subsection (2)</td>
</tr>
<tr>
<td></td>
<td>(a) is a war widow/war widower—pensioner; but</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) was not a war widow/war widower—pensioner for some or all of the overall qualifying period occurring while the person was a member of a couple</td>
<td></td>
</tr>
</tbody>
</table>
Part IIIAB  Pension bonus
Division 6  Amount of pension bonus

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(2) For the purposes of this section, the *apportioned partnered amount* is:

\[
\frac{\text{Period not a war widow or war widower}}{\text{Partner part of overall qualifying period}} \times \text{Provisional payment rate} + \frac{\text{Period a war widow or war widower}}{\text{Partner part of overall qualifying period}} \times \text{Annual pension rate}
\]

where:

*period not a war widow or war widower* is the number of days in so much of the partner part of overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

*partner part of overall qualifying period* is the number of days in so much of the overall qualifying period as occurred when the person was a member of a couple.

*provisional payment rate* is:

(a) if the person:

(i) has, during some or all of the partnered part of the person’s overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) is not permanently blind;

the sum of the adjusted percentage of the person’s maximum basic rate under point SCH6-B1 and the person’s pension supplement under Module BA worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or

(b) if the person:

(i) has, during some or all of the partnered part of the person’s overall qualifying period, deferred an age service pension or a partner service pension; and

(ii) the person is permanently blind;

the sum of the amounts under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), worked out as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or

(c) if the person:
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(i) has, during some or all of the partnered part of the person’s overall qualifying period, deferred an age pension; and
(ii) is not permanently blind;
the sum of:
(iii) the adjusted percentage of the person’s maximum basic rate under Table B in point 1064-B1 of the Social Security Act 1991; and
(iv) the person’s pension supplement under point 1064-BA2 of that Act;
worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date; or
(d) if the person:
(i) has, during some or all of the partnered part of the person’s overall qualifying period, deferred an age pension; and
(ii) is permanently blind;
the sum of:
(iii) the maximum basic rate under Table B in point 1065-B1 of the Social Security Act 1991; and
(iv) the person’s pension supplement under point 1065-BA2 of that Act;
worked out, in each case, as at the date of grant of the designated pension if it were assumed that the person were a member of a couple at that date.

*period a war widow or war widower* is the number of days in so much of the partner part of overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

*annual pension rate* is the person’s annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

Note: There may be circumstances where one or other of the bracketed parts of the formula will have a nil value.

(3) For the purposes of this section, a person’s *adjusted percentage* is the percentage worked out using the following formula (for rounding up, see subsection (4)):
Part IIIAB  Pension bonus
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\[
\text{Annual pension rate} \times 100
\]

where:

**maximum basic rate** is the sum of the amounts worked out under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), ascertained as at the date of grant of the designated pension.

(4) A percentage worked out under subsection (3) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (3) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

45UIA  Apportioned amount

For the purposes of subsection 45UG(1A), the **apportioned amount** is:

\[
\left(\frac{\text{Period not a war widow or war widower}}{\text{Overall qualifying period}} \times \frac{\text{Provisional payment rate}}{\text{Period a war widow or war widower}} \times \frac{\text{Annual pension rate}}{\text{Overall qualifying period}}\right)
\]

where:

**annual pension rate** is the person’s annual pension rate, worked out as at the date of grant of the designated pension, in accordance with section 45UF.

**period a war widow or war widower** is the number of days in so much of the overall qualifying period as occurred when the person was a war widow/war widower—pensioner.

**period not a war widow or war widower** is the number of days in so much of the overall qualifying period as occurred when the person was not a war widow/war widower—pensioner.

**provisional payment rate** is:

(a) if the person has, during some or all of the person’s overall qualifying period, deferred:

(i) an age service pension; or

(ii) a partner service pension; and

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the person is not permanently blind—the person’s provisional payment rate under method statement 1 in subpoint SCH6-A1(2), worked out as at the date of grant of the designated pension, if it were assumed that steps 2 and 3 were omitted from the method statement; or

(b) if the person has, during some or all of the person’s overall qualifying period, deferred:
   
   (i) an age service pension; or
   (ii) a partner service pension; and

   the person is permanently blind—the sum of the amounts under steps 2 and 2A of method statement 2 in subpoint SCH6-A1(3), worked out as at the date of grant of the designated pension; or

(c) if the person has, during some or all of the person’s overall qualifying period, deferred age pension and is not permanently blind—the person’s provisional annual payment rate under the method statement in point 1064-A1 of the Social Security Act 1991, worked out as at the date of grant of the designated pension, if it were assumed that steps 2 and 3 were omitted from the method statement; or

(d) if the person has, during some or all of the person’s overall qualifying period, deferred age pension and is permanently blind—the sum of the maximum basic rate under Table B in point 1065-B1 of the Social Security Act 1991 and the person’s pension supplement under point 1065-BA2, worked out as at the date of grant of the designated pension.

Note: If the person did not accrue any pension bonus in relation to the designated pension, the latter bracketed part of the formula for the apportioned amount will have a nil value.
Division 7—Claim for pension bonus

45UJ Need for a claim

A person who wants to be granted a pension bonus must make a proper claim for the bonus.

45UK Proper claim

(1) To be a proper claim, a claim for pension bonus must be:
   (a) in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) either:
      (i) attached to, or submitted in relation to, a proper claim made by the person for a designated pension; or
      (ii) made in accordance with an invitation under subsection (3); and
   (d) lodged at an office of the Department in Australia in accordance with section 5T within the applicable lodgment period (see section 45UL).

(1A) A claim for pension bonus can only be attached to a proper claim for a designated pension in accordance with subparagraph (1)(c)(i) if neither claim is transmitted electronically.

(1B) A claim for pension bonus lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) A claim for pension bonus is a proper claim even though it is not certain whether the person will start to receive a designated pension at or after the time when the person makes the claim. The claim has effect as a claim that is contingent on the person receiving a designated pension.

(3) If:
   (a) a person makes a proper claim for a designated pension; and
   (b) the claim is in accordance with a form that does not require the claimant to disclose whether the claimant is a registered member of:
      (i) the pension bonus scheme; or

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(ii) the corresponding scheme under Part 2.2A of the Social Security Act; and
(c) the person is, to the knowledge of the Secretary, registered as a member of the pension bonus scheme; and
(d) a claim by the person for pension bonus is not attached to the claim for the designated pension;

the Secretary must give the claimant a written notice inviting the claimant to lodge a claim for pension bonus at an office of the Department in Australia in accordance with section 5T, within such period after the lodgment of the claim for the designated pension as is specified in the invitation.

(3A) A claim for pension bonus lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(4) If a claim for pension bonus is made in accordance with an invitation under subsection (3), this Part (other than this section) has effect as if the person had claimed the pension bonus at the same time as the person claimed the designated pension.

45UL Lodgment period for claim

(1) This section sets out rules for determining the period (the lodgment period) within which a claim for pension bonus must be made.

Lodgment period where last bonus period is a full-year period

(2) If a person’s last bonus period is a full-year period, the lodgment period applicable to the person’s claim for pension bonus is the period of 13 weeks beginning at the end of that bonus period. However, this rule does not apply if:
(a) the person is an exempt partnered person (see subsection (8)) as at the end of the person’s last bonus period; or
(b) the person’s membership of the pension bonus scheme becomes non-accruing immediately after the end of the person’s last bonus period; or
(c) the person is a post-70/75 member of the pension bonus scheme and has a post-70/75 work period (see subsection (9)).

Note: For the rule in these cases, see subsections (5), (6) and (7).
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Lodgment period where last bonus period is a part-year period

(3) If a person’s last bonus period is a part-year period, the lodgment period applicable to the person’s claim for pension bonus is:

(a) the period of 13 weeks beginning at the end of that bonus period; or

(b) if the Commission allows a longer period—that longer period.

However, this rule does not apply if:

(c) the person is an exempt partnered person (see subsection (8)) as at the end of the person’s last bonus period; or

(d) the person’s membership of the pension bonus scheme becomes non-accruing immediately after the end of the person’s last bonus period; or

(e) the person is a post-70/75 member of the pension bonus scheme and has a post-70/75 work period (see subsection (9)).

Note: For the rule in these cases, see subsections (5), (6) and (7).

(4) If:

(a) subsection (3) applies to a person’s claim for pension bonus; and

(b) the claim is lodged within a period allowed under paragraph (3)(b);

Division 6 has effect, in relation to the calculation of the amount of that pension bonus, as if the person had not accrued the part-year bonus period.

Lodgment period for exempt partnered person

(5) If a person is an exempt partnered person as at the end of the person’s last bonus period because the person is a member of a couple, the lodgment period applicable to the person’s claim for pension bonus is the period:

(a) beginning at the end of that bonus period; and

(b) ending at:

(i) the time of the last occasion on which the person’s partner could have lodged a claim for a pension bonus; or
Part IIIAB
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(ii) the end of the period of 13 weeks after the person ceases to be a member of the same couple (whether because of the death of the person’s partner or for any other reason);

whichever comes first.

Lodgment period for non-accruing member

(6) If a person’s membership of the pension bonus scheme becomes non-accruing immediately after the end of the person’s last bonus period, the lodgment period applicable to the person’s claim for pension bonus is the period:

(a) beginning at the end of the person’s last bonus period; and

(b) ending 13 weeks after the time when the person’s membership of the scheme ceases to be non-accruing.

Lodgment period for post-70/75 member who has a post-70/75 work period

(7) If a post-70/75 member of the pension bonus scheme has a post-70/75 work period, the lodgment period applicable to the person’s claim for pension bonus is the period of 13 weeks beginning at the end of the period nominated in the claim as the person’s post-70/75 work period.

Exempt partnered person

(8) For the purposes of this section, a person is an exempt partnered person at a particular time if, at that time, the person is a member of a couple, and:

(a) the person’s partner is an accruing or non-accruing member of the pension bonus scheme; or

(b) the person’s partner is an accruing or non-accruing member of the corresponding scheme under Part 2.2A of the Social Security Act.

Post-70/75 member with a post-70/75 work period

(9) For the purposes of this section, a post-70/75 member of the pension bonus scheme has a post-70/75 work period if:

(a) the person’s claim for pension bonus nominates a particular period as the person’s post-70/75 work period; and
Section 45UM

(b) the nominated period begins immediately after the end of the person’s last bonus period; and

(c) if it were assumed that the person had been an accruing member of the pension bonus scheme throughout each test period that is applicable to the person, the person would have passed the work test for each test period.

Note:  
Test period is defined by subsection (10).

(10) For the purposes of subsection (9), to work out what is a test period:

(a) identify the extended period, which is that part of the nominated period when the person was neither:
   (i) subject to a carer preclusion period; nor
   (ii) covered by a declaration under section 45TO;
(b) if the extended period is 365 days or less—the extended period is the only test period;
(c) if the extended period is longer than 365 days—each of the following periods is a test period:
   (i) the full-year period beginning at the start of the extended period;
   (ii) if 2 or more succeeding full-year periods are included in the extended period—each of those full-year periods;
   (iii) the remainder (if any) of the extended period.

(11) In addition to its effect apart from this subsection, section 45U (evidentiary certificates) also has the effect it would have if each reference in paragraph 45U(1)(a), (2)(a), (3)(a) or (4)(a) to an accruing member of the pension bonus scheme were a reference to a post-70/75 member of the scheme.

Last bonus period

(12) For the purposes of this section, if a person has accrued only one full year bonus period, that period is the person’s last bonus period.

45UM Withdrawal of claim

(1) A claimant for a pension bonus may withdraw a claim that has not been determined.
(2) A claim that is withdrawn is taken not to have been made.

(3) A withdrawal may be made orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(3A) A withdrawal made by lodging a document in accordance with section 5T is taken to have been so made on a day determined in accordance with that section.

(4) If:
   (a) a person claims both a pension bonus and a designated pension; and
   (b) the claim for the designated pension is withdrawn;
then the claim for pension bonus is taken to have been withdrawn.

(5) If:
   (a) a person claims both a pension bonus and a designated pension; and
   (b) the claim for the designated pension is rejected as a direct or indirect result of the operation of Subdivision BA or BB of Division 11 of Part IIIB (dispositions of assets);
then the claim for pension bonus is taken to have been withdrawn.
Division 8—Determination of claim

45UN  Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a pension bonus, the Secretary must cause an investigation to be made into the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission, it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

45UO  Commission to determine claim

(1) The Commission must, in accordance with this Act, determine a claim for pension bonus.

(2) If a person claims both a pension bonus and a designated pension, the Commission must not determine the claim for pension bonus until the claim for the designated pension has been granted.

45UP  Grant of claim

The Commission must determine that a claim for pension bonus is to be granted if the Commission is satisfied that the person is qualified for the pension bonus.
Division 9—Payment of pension bonus

45UQ  Payment of pension bonus

If a claim for pension bonus is granted, the bonus is payable to the person concerned on:
(a) the first pension payday after the grant; or
(b) if the Commission considers that it is not practicable to pay the bonus on that payday—the next practicable day.

45UR  Payment of bonus after death

(1) This section sets out the only circumstances in which a pension bonus will be payable after the death of the person concerned.

Claim granted before death

(2) If:
(a) a person claims a pension bonus; and
(b) the person dies; and
(c) at the time of the person’s death, the claim had been granted, but the person had not received the bonus;
the bonus is payable to the legal personal representative of the person.

Claim not granted before death

(3) If:
(a) a person claims a pension bonus; and
(b) the person dies; and
(c) at the time of the person’s death, the claim had not been determined;
then:
(d) the Commission must determine the claim after the person’s death as if the person had not died; and
(e) if the claim is granted—the bonus is payable to the legal personal representative of the person.
Part IIIAB  Pension bonus  
Division 9  Payment of pension bonus  

Section 45UR  

(4) If:  

(a) under paragraph (3)(d), the Commission is required to determine a claim for pension bonus after a person’s death; and  

(b) at the time of the person’s death, the person’s claim for a designated pension had not been determined;  

then, in determining the claim for pension bonus, this Part is modified as set out in the following table:  

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<td><strong>This provision:</strong></td>
<td><strong>Is modified in this way:</strong></td>
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<tr>
<td>1</td>
<td>Paragraph 45TC(1)(a)</td>
<td>The condition in this paragraph is taken to be satisfied if the person would have started to receive an age service pension if the person had not died.</td>
</tr>
<tr>
<td>2</td>
<td>Paragraph 45TC(2)(a)</td>
<td>The condition in this paragraph is taken to be satisfied if the person would have started to receive a partner service pension if the person had not died.</td>
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<tr>
<td>3</td>
<td>Paragraph 45TC(3)(a)</td>
<td>The condition in this paragraph is taken to be satisfied if the person would have started to receive income support supplement (other than income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5) if the person had not died.</td>
</tr>
<tr>
<td>4</td>
<td>Division 6</td>
<td>A reference in the Division to a particular rate is taken to be a reference to the rate that would have been applicable to the person if the person had not died.</td>
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<tr>
<td>5</td>
<td>Division 6</td>
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<td>6</td>
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<td>The subsection is to be disregarded.</td>
</tr>
<tr>
<td>7</td>
<td>Subsection 45UO(2)</td>
<td>The subsection is to be disregarded.</td>
</tr>
</tbody>
</table>

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Liability of Commonwealth

(5) If a pension bonus is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus.
Division 10—Protection of pension bonus

45US  Pension bonus to be absolutely inalienable

(1) A pension bonus is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise. This subsection has effect subject to subsections (2) and (3) and section 58J.

Deduction from bonus to pay tax debts that are unrelated to the bonus

(2) The Commission may make a deduction from a pension bonus payable to a person if the person asks the Commission:

(a) to make the deduction; and

(b) to pay the amount to be deducted to the Commissioner of Taxation.

Note 1: The Commission must make deductions from a person’s pension or pension bonus if requested by the Commissioner of Taxation—see section 58J.

Note 2: Under the Income Tax Assessment Act 1997, pension bonus is exempt from income tax.

Deduction from bonus at recipient’s request

(3) The Commission may make a deduction from a pension bonus payable to a person if the person consents under paragraph 205(2)(e) to the Commission making the deduction.

Note: Paragraph 205(2)(e) enables the Commission to recover a debt from a person other than the debtor if the person is receiving a benefit under this Act.
Division 11—Preclusion periods

45UT Disposal preclusion period—dispositions before 1 July 2002

(1) For the purposes of this Part, if:

(a) either:

(i) a person has, during a designated year of the person, disposed of an asset of the person; or

(ii) the partner of a person has, during a designated year of the person, disposed of an asset of the partner; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person and/or the person’s partner during that designated year, exceeds $10,000;

the person is subject to a disposal preclusion period throughout the period of 5 years that starts on the day on which the disposition referred to in paragraph (a) took place.

Note: Designated year is defined by subsection (3).

(1A) This section applies only to dispositions of assets that took place before 1 July 2002.

(2) For the purposes of this Part, if:

(a) a person ceases to be a member of a couple (whether because of the death of the person’s partner or for any other reason); and

(b) immediately before the cessation, the person was subject to a particular disposal preclusion period that arose wholly because the person’s partner disposed of a particular asset; and

(c) if that disposition had been disregarded, the person would not have been subject to that disposal preclusion period; then, despite subsection (1), that disposal preclusion period ends at the cessation.

(3) For the purposes of this section, a designated year of a person is:

(a) the 12-month period ending on the person’s special date of eligibility for a designated pension; and

(b) each preceding 12-month period; and
Part IIIAB  Pension bonus
Division 11  Preclusion periods

Section 45UTA

(c) each succeeding 12-month period.

(4) This section applies to a disposal even if the disposal took place before the commencement of this section.

(5) No period after 30 June 2002 is, or is a part of, a designated year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a designated year of a person, the part of that period that ends immediately before that date is taken to be a designated year of the person.

45UTA  Disposal preclusion period—dispositions on or after 1 July 2002

A person is subject to a disposal preclusion period throughout any period for which an amount is included in the value of the person’s assets under Subdivision BB of Division 11 of Part IIIB.

45UU  Carer preclusion period

(1) For the purposes of this Part, if a person receives:
   (a) a carer payment; or
   (b) a carer service pension; or
   (c) income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5;
   during a particular period, the person is subject to a carer preclusion period throughout that period.

(2) This section applies to a carer payment, a carer service pension or income support supplement even if it was received before the commencement of this section.
Division 12—Modification of this Part in relation to certain persons previously qualified for age pension under social security law

45UV Persons to whom this Division applies

This Division applies to a person:
(a) who is a war widow/war widower—pensioner; and
(b) who registers under this Act as a member of the pension bonus scheme in respect of income support supplement; and
(c) who either:
   (i) was registered as a member of the pension bonus scheme under Part 2.2A of the Social Security Act 1991 (the SSA pension bonus scheme) with effect from a date before becoming a war widow/war widower—pensioner; or
   (ii) although not so registered, could, in the opinion of the Commission, have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration; and
(d) who has not received age pension under the social security law; and
(e) who has not claimed pension bonus under that law before becoming a war widow/war widower—pensioner.

45UW Commission may request the provision of information

The Commission may, by notice in writing, request a person to whom this Division applies to provide to the Commission, within a period specified in the notice, any information that it considers would have been relevant:
(a) for the purpose of determining whether the person:
   (i) was registered as a member of the SSA pension bonus scheme; or
   (ii) in the opinion of the Commission, could have been so registered before becoming a war widow/war

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Division 12  Modification of this Part in relation to certain persons previously qualified for age pension under social security law

Section 45UX

 widower—pensioner had the person applied for that registration; and
(b) for the purpose of working out the bonus periods that the person would have accrued under the social security law:
  (i) if the person was registered as a member of the SSA pension bonus scheme—if the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and
  (ii) if the person was not so registered but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration—if the person had been so registered from the earliest day that the person could have been so registered and, immediately before becoming a war widow/war widower—pensioner, had made a claim for pension bonus under that law.

45UX  Commission may determine whether periods occurring before becoming a war widow/war widower—pensioner are bonus periods under the social security law

(1) If a person:
  (a) is a person to whom this Division applies; and
  (b) was registered as a member of the SSA pension bonus scheme;
the Commission may, subject to subsection (3), determine, having regard to information supplied to it under this Act or the social security law, that if:
  (c) the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and
  (d) the claim had been made in respect of a period the whole or part of which the Commission determines would have been a period of accruing membership of that scheme; that period, or that part of that period, would have accrued to the person as a bonus period under that law.
(2) If a person:
   (a) is a person to whom this Division applies; and
   (b) was not registered as a member of the SSA pension bonus scheme but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration;

the Commission may, subject to subsection (3), determine, having regard to information supplied to it under this Act or the social security law, that if:

   (c) the person had been so registered from the earliest possible date that the person could have been so registered; and
   (d) the person had made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner; and
   (e) the claim had been made in respect of a period the whole or part of which the Commission determines would have been a period of accruing membership of that scheme;

that period, or that part of that period, would have accrued to the person as a bonus period under that law.

(3) If the Commission determines, in respect of a person to whom this Division applies, that:

   (a) a period would have been:
       (i) if the person was registered as a member of the SSA pension bonus scheme—a part-year period of accruing membership of that scheme; or
       (ii) if the person was not, but, in the opinion of the Commission, could have been so registered before becoming a war widow/war widower—pensioner had the person applied for that registration and had the person been so registered from the earliest possible date that the person could have been so registered—such a part-year period of accruing membership of that scheme; and

   (b) the period was not immediately preceded by another period that would have accrued to that person as a bonus period under the social security law;
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Section 45UY

the Commission may, despite the terms of subsection 92T(3) of the Social Security Act 1991, treat that part-year period as a bonus period under the social security law if, had the person made a claim for pension bonus under that law immediately before becoming a war widow/war widower—pensioner, the person would have passed the work test under that law in respect of that period.

45UY  Modification of provisions of this Part in respect of persons to whom this Division applies

(1) For the purposes of working out the amount of the pension bonus payable under this Part to a person to whom this Division applies and subject to subsection (2), if the Commission determines, under section 45UX, that a period would have accrued to the person as a bonus period under the social security law, then:

(a) that bonus period is to be treated as if it were a bonus period that had accrued to the person under this Act; and

(b) that bonus period, or if more than one, the last such bonus period, is to be treated as if it were continuous with the first bonus period (if any) that accrues to the person under this Act after the person becomes a war widow/war widower—pensioner.

(2) Subsection (1) applies in relation to a part-year period that the Commission determines is a bonus period that would have accrued, under the social security law, to a person to whom this Division applies only if:

(a) that bonus period is immediately preceded by a period that the Commission determines would have been another bonus period accruing to the person under that law; or

(b) that bonus period, when aggregated with any bonus period or bonus periods accruing to the person under this Act after the person becomes a war widow/war widower—pensioner, would amount to at least one year.
(3) If:

(a) a person to whom this Division applies has a part-year period of accruing membership of the pension bonus scheme under this Act; and

(b) the part-year period does not begin immediately after a bonus period accruing to that person under this Act;

then, for the purposes of applying subsection 45TR(3) of this Act in determining whether that part-year period is a bonus period under this Act, the Commission may treat that part-year period as if it were immediately preceded by a bonus period accruing to that person under this Act.
Veterans’ Entitlements Act 1986

Act No. 27 of 1986 as amended

This compilation was prepared on 10 October 2006
taking into account amendments up to Act No. 108 of 2006

**Volume 2** includes: Table of Contents
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The text of any of those amendments not in force
on that date is appended in the Notes section.

The operation of amendments that have been incorporated may be
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Division 1—Ordinary income concept

46 General meaning of ordinary income

A reference in this Act to a person’s ordinary income for a period is a reference to the person’s gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Division 2.

Note 1: For *ordinary income* see subsection 5H(1).

Note 2: For other provisions affecting the amount of a person’s ordinary income see sections 46B and 46C (business income), sections 46D to 46L (deemed income from financial assets) and sections 46Q to 46Y (income from income streams).

46A Certain amounts taken to be received over 12 months

If a person receives, whether before or after the commencement of this section, an amount that:

(a) is not income within the meaning of Division 3 or 4 of this Part; and

(b) is not:

(i) income in the form of periodic payments; or

(ii) ordinary income from remunerative work undertaken by the person; or

(iii) an exempt lump sum;

the person is, for the purposes of this Act, taken to receive one fifty-second of that amount as ordinary income of the person during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.
Division 2—Business income

46B Ordinary income from a business—treatment of trading stock

(1) If:
   (a) a person carries on a business; and
   (b) the value of all the trading stock on hand at the end of a tax
       year is greater than the value of all the trading stock on hand
       at the beginning of that tax year;

       the person’s ordinary income for that tax year in the form of profits
       from the business is to include the amount of the difference in
       values.

(2) If:
   (a) a person carries on a business; and
   (b) the value of all the trading stock on hand at the end of a tax
       year is less than the value of all the trading stock on hand at
       the beginning of that tax year;

       the person’s ordinary income for that tax year in the form of profits
       from the business is to be reduced by the amount of the difference in
       values.

Note: Different provisions apply when working out a person’s ordinary
income from a farm to find whether:
   (a) the person satisfies the farmers’ income test for the purposes of
       Division 8 (see subparagraph 49J(3)(b)(ii) and paragraph
       49J(3)(e)); or
   (b) the person satisfies the sugarcane farmers’ income test for the
       purposes of Division 8A (see subparagraph 49Y(3)(b)(ii) and
       paragraph 49Y(3)(e)).

46C Permissible reductions of business income

(1) Subject to subsection (2), if a person carries on a business, the
person’s ordinary income from the business is to be reduced by:
   (a) losses and outgoings that relate to the business and are
       allowable deductions for the purposes of section 8-1 of the
       Income Tax Assessment Act 1997; and
   (ba) amounts that relate to the business and can be deducted for
       the decline in value of depreciable assets under
Subdivision 40-B of the *Income Tax Assessment Act 1997*; and

(c) amounts that relate to the business and are allowable deductions under subsection 82AAC(1) of the *Income Tax Assessment Act 1936*.

Note: Different provisions apply when working out a person’s ordinary income from a farm to find whether:

(a) the person satisfies the farmers’ income test for the purposes of Division 8 (see subparagraph 49J(3)(b)(ii) and paragraph 49J(3)(e)); or

(b) the person satisfies the sugarcane farmers’ income test for the purposes of Division 8A (see subparagraph 49Y(3)(b)(ii) and paragraph 49Y(3)(e)).

(2) If, under Division 3, a person is taken to receive ordinary income on a financial investment, that ordinary income is not to be reduced by the amount of any expenses incurred by the person because of that investment.

Note: For *financial investment* see subsection 5J(1).

(3) If a person’s ordinary income for a period includes rental income from a property that is not business income, the person’s ordinary income from that property is to be reduced by losses and outgoings that relate to the property and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997* for that period.

(4) If the amount of the allowable deductions relating to a property for a period under section 8-1 of the *Income Tax Assessment Act 1997* exceeds the amount of the rental income from that property for that period, the amount of the ordinary income from the property for that period is taken to be nil.
Division 3—Deemed income from financial assets

46D  Deemed income from financial assets—persons other than members of couples

(1) This section applies to a person who is not a member of a couple.

Note: The whole of Division 3 does not apply when working out a person’s ordinary income to find whether:

(a) the person satisfies the farmers’ income test for the purposes of Division 8 (see paragraphs 49J(2)(c) and (3)(c)); or

(b) the person satisfies the sugarcane farmers’ income test for the purposes of Division 8A (see paragraphs 49Y(2)(c) and (3)(c)).

(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

(3) This is how to work out the ordinary income that the person is taken to receive:

Method statement

Step 1. Calculate the total value of the person’s financial assets and compare it with the person’s deeming threshold.

Note 1: For financial assets see subsection 5J(1).

Note 2: For deeming threshold see subsection 46H(1).

Step 2. This step applies only if the total value of the person’s financial assets is equal to or less than the person’s deeming threshold. Multiply the total value of the financial assets by the below threshold rate. The result represents the ordinary income that the person is taken to receive per year on his or her financial assets.

Note: For below threshold rate see subsection 46J(1).
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Step 3. This step applies only if the total value of the person’s financial assets is higher than the person’s deeming threshold. Work out the person’s deemed income as follows:

(a) multiply the deeming threshold by the below threshold rate;

(b) subtract the deeming threshold from the total value of the person’s financial assets;

(c) multiply the remainder by the above threshold rate;

Note: For above threshold rate see subsection 46J(2).

(d) add up the amounts worked out at paragraph (a) and (c): the result represents the ordinary income that the person is taken to receive per year on his or her financial assets.

Example: How deemed income of a person who is not a member of a couple is worked out

Facts: Elaine, a single pensioner, has $36,500 worth of financial assets. $1,500 is in a cheque account not earning any interest. $25,000 is earning 6% in interest and $10,000 is earning 8% in interest. The below threshold rate is 5%. The above threshold rate is 7%.

Result:

Step 1. The total value of Elaine’s financial assets ($36,500) is higher than her deeming threshold ($30,000—see subsection 46H(1)). So, the deeming threshold is multiplied by the below threshold rate:

$30,000 \times \frac{5}{100} = $1,500

Step 2. Elaine’s deeming threshold of $30,000 is subtracted from the total value of her financial assets ($36,500). The remainder is $6,500.

Step 3. The amount of $6,500 is multiplied by the above threshold rate (7%):

$6,500 \times \frac{7}{100} = $455.

Step 4. The amounts worked out at Steps 1 and 3 are added together:

$1,500 + $455 = $1,955.
The ordinary income that Elaine is deemed to receive from her financial assets is $1,955 per year.

(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) as ordinary income of the person during each week.

46E Deemed income from financial assets—members of a couple

(1) This section applies to the members of a couple.

Note: The whole of Division 3 does not apply when working out a person’s ordinary income to find whether:

(a) the person satisfies the farmers’ income test for the purposes of Division 8 (see paragraphs 49J(2)(c) and (3)(c)); or

(b) the person satisfies the sugarcane farmers’ income test for the purposes of Division 8A (see paragraphs 49Y(2)(c) and (3)(c)).

(2) If one or both of the members of a couple have financial assets, the members of the couple are taken, for the purposes of this Act, to receive together ordinary income on those assets in accordance with this section.

(3) This is how to work out the ordinary income that the couple is taken to receive:

Method statement

Step 1. Calculate the total value of the couple’s financial assets and compare it with the couple’s deeming threshold.

Note 1: For financial assets see subsection 5J(1).

Note 2: For deeming threshold see subsection 46H(2).

Step 2. This step applies only if the total value of the couple’s financial assets is equal to or less than the couple’s deeming threshold. Multiply the total value of the financial assets by the below threshold rate. The result represents the ordinary income that the couple is taken to receive per year on their financial assets.

Note: For below threshold rate see subsection 46J(1).
Step 3. This step applies only if the total value of the couple’s financial assets is higher than the couple’s deeming threshold. Work out the couple’s deemed income as follows:

(a) multiply the deeming threshold by the below threshold rate;

(b) subtract the deeming threshold from the total value of the couple’s assets;

(c) multiply the remainder by the above threshold rate;

Note: For above threshold rate see subsection 46J(2).

(d) add up the amounts worked out at paragraph (a) and (c): the result represents the ordinary income that the couple is taken to receive per year on their financial assets.

Example: How deemed income of a couple is worked out

Facts: Maree and Peter, a couple, have $68,500 worth of financial assets. They have $3,500 in a savings account earning interest at 2.8% and deposits of $25,000 and $40,000 earning 5% p.a. and 8% p.a. in interest respectively. The below threshold rate is 5%. The above threshold rate is 7%.

Result:

Step 1. The total value of the couple’s financial assets ($68,500) is higher than their deeming threshold ($50,000—see subsection 46H(2)). So, the deeming threshold is multiplied by the below threshold rate:

$50,000 \times \frac{5}{100} = 2,500$

Step 2. The couple’s deeming threshold of $50,000 is subtracted from the total value of their financial assets ($68,500). The remainder is $18,500.

Step 3. The amount of $18,500 is multiplied by the above threshold rate (7%):

$18,500 \times \frac{7}{100} = 1,295$
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Step 4. The amounts worked out at Steps 1 and 3 are added together:

\[ \$2,500 + \$1,295 = \$3,795 \]

The ordinary income that the couple is deemed to receive from their financial assets is $3,795 per year.

(4) Each member of the couple is taken, for the purposes of this Act, to receive, as ordinary income during each week, an amount calculated according to the formula:

\[
\text{Amount calculated under subsection (3)} \times \frac{1}{2}
\]

46H  Deeming threshold

(1) The deeming threshold for a person who is not a member of a couple is $30,000.

(2) The deeming threshold for a couple is $50,000.

Note: The amounts fixed by subsections (1) and (2) are indexed every 1 July. See sections 59A to 59C.

46J  Below threshold rate, above threshold rate

(1) For the purposes of this Division, the below threshold rate is the rate that is the below threshold rate for the purposes of Division 1B of Part 3.10 of the Social Security Act.

(2) For the purposes of this Division, the above threshold rate is the rate that is the above threshold rate for the purposes of Division 1B of Part 3.10 of the Social Security Act.

46K  Actual return on financial assets not treated as ordinary income

(1) Subject to subsection (2), any return on a financial asset that a person actually earns, derives or receives is taken, for the purposes of this Act, not to be ordinary income of the person.

Note: When working out a person’s ordinary income to find whether the person satisfies the farmers’ income test for the purposes of Division 8 or the sugarcane farmers’ income test for the purposes of Division 8A, actual returns on financial assets are taken to be ordinary income (see paragraphs 49J(2)(d) and (3)(d) and 49Y(2)(d) and (3)(d)).
(2) If, because of:
   (a) a determination under subsection 46L(1); or
   (b) the operation of subsection 46L(1A);

   a financial investment is not to be regarded as a financial asset for
   the purposes of section 46D or 46E, subsection (1) of this section
   does not apply to any return on the investment that the person
   actually earns, derives or receives.

46L Certain money and financial investments not taken into account

(1) The Minister may determine that:
   (a) specified financial investments; or
   (b) a specified class of financial investments;

   are not to be regarded as financial assets for the purposes of
   section 46D or 46E.

(1A) If the Commission makes a determination under section 52Y in
   relation to a person, any unrealisable asset of the person or the
   person’s partner is not regarded as a financial asset for the
   purposes of section 46D or 46E.

(3) A determination under subsection (1) must be in writing.

(4) A determination under subsection (1) takes effect on the day on
   which it is made or on such other day (whether earlier or later) as is
   specified in the determination.

46M Valuation and revaluation of certain financial investments

The total value of a person’s listed securities and managed
investments (being listed securities and managed investments that
fluctuate depending on the market) (the relevant investments) is
determined in accordance with the following:

(a) an initial total valuation is to be given to the relevant
   investments on 1 July 1996, or when a new claim is
   determined, by the method set out in departmental
   guidelines;

(b) that total valuation continues in effect until the relevant
   investments are revalued by the method set out in
   departmental guidelines, and that revaluation must occur:
      (i) on 20 March in each calendar year after 1996; and
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(ii) on 20 September in each calendar year after 1996; and
(iii) when the person requests a revaluation of one or more
     of the person’s listed securities and managed
     investments; and
(iv) following an event that affects the relevant investments
     and is the subject of a recipient notification notice.
Division 4—Income from income streams

Subdivision B—Income streams that are not family law affected income streams

46SA Scope of Subdivision

This Subdivision applies to income streams that are not family law affected income streams.

46T Income from asset-test exempt income stream

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under section 46U or 46V.

Note: For asset-test exempt income stream see sections 5JA, 5JB and 5JBA.

(2) Sections 46U and 46V do not apply if:

(a) the income stream is covered by subsection 5JBA(1); or
(b) on the income stream’s commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection.

Note: See section 46VA.

46U Income—income stream not a defined benefit income stream

If the asset-test exempt income stream to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

\[
\text{Annual payment} = \frac{\text{Purchase price}}{\text{Relevant number}}
\]

where:

annual payment means the amount payable to the person for the year under the income stream.
Part III B  Provisions applicable to service pensions and income support supplement

Division 4  Income from income streams

Section 46V

**purchase price** has the meaning given by subsection 5J(1).

**relevant number** has the meaning given by subsection 5J(1).

Example: Mark is 65 years old and single. He purchases an annuity for $100,000 with a term based on life expectancy (i.e. 15.41 years, which he chooses to round up to 16 years). The annuity has all the revised characteristics listed in the legislation. His annual payment from the annuity totals $9,895. Mark’s assessable income from this income stream is:

\[
\begin{align*}
\text{Assessable Income} & = \text{Purchase Price} - \left( \frac{\text{Purchase Price}}{\text{Relevant Number}} \right) \\
& = 100,000 - \left( \frac{100,000}{16} \right) \\
& = 100,000 - 6,250 = 93,750
\end{align*}
\]

46V Income—income stream is a defined benefit income stream

If the asset-test exempt income stream to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

**annual payment** means the amount payable to the person for the year under the income stream.

**deductible amount** has the meaning given by subsection 5J(1).

46VA Income from market-linked asset-test exempt income stream

(1) If either of the following conditions is satisfied in relation to the asset-test exempt income stream to which this Subdivision applies:

(a) the income stream is covered by subsection 5JBA(1);

(b) on the income stream’s commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection;

the annual rate of ordinary income of a person from the income stream is worked out under whichever of subsections (2) and (3) is applicable.
Recipient makes election

(2) If:

(a) the person has elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the payment period) that:

(i) consists of the whole or a part of a particular financial year; and

(ii) begins on or after the income stream’s commencement day; and

(b) the election is in force on a particular day in the payment period;

the annual rate of ordinary income of the person from the income stream on that day is worked out using the following formula:

\[
\text{Annual rate} = \left( \frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right) \times 365
\]

where:

- *purchase price* has the meaning given by subsection 5J(1).
- *relevant number* has the meaning given by subsection 5J(1).
- *total payments* means the payment, or the total of the payments, to be made under the income stream in respect of the payment period.

Recipient does not make election

(3) If the person has not elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the payment period) that:

(a) consists of the whole or a part of a particular financial year; and

(b) begins on or after the income stream’s commencement day;

the annual rate of ordinary income of the person from the income stream on each day during the payment period is worked out using the following formula:

\[
\text{Annual rate} = \left( \frac{\text{Default amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right) \times 365
\]
Section 46W

where:

**default amount** means 100% of the amount worked out for the financial year using the formula in subsection 5JBA(5) (for pro-rating, see subsection (4)).

**purchase price** has the meaning given by subsection 5J(1).

**relevant number** has the meaning given by subsection 5J(1).

(4) If the income stream’s commencement day is not a 1 July, the default amount (within the meaning of subsection (3)) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

*Exception—income stream’s commencement day happens in June*

(5) If:

(a) the income stream’s commencement day happens in June; and

(b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (2), (3) and (4) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

**46W Income from asset-tested income stream (long term)**

For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under section 46X or 46Y.

**46X Income—income stream not a defined benefit income stream**

If the asset-tested income stream (long term) to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:
Section 46Y

Annual payment = \left( \frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}} \right)

where:

annual payment means the amount payable to the person for the year under the income stream.

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

residual capital value has the meaning given by subsection 5J(1).

Note: For treatment of asset-tested income streams (short term) see Division 3 of Part IIIB.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000, with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Sally’s assessable income from her 10 year annuity is:

\$18,337 \div \frac{\$150,000 - \$20,000}{10} = \$5,337

46Y Income—income stream is a defined benefit income stream

If the asset-tested income stream (long term) to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment = Deductible amount

where:

annual payment means the amount payable to the person for the year under the income stream.

deductible amount has the meaning given by subsection 5J(1).

Subdivision C—Family law affected income streams

46Z Scope of Subdivision

This Subdivision applies to family law affected income streams.
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 4  Income from income streams

Section 46ZA

46ZA  Income from asset-test exempt income streams

For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under:

(a) if the income stream is not a defined benefit income stream—the guidelines determined by the Commission for the purposes of this paragraph; or

(b) if the income stream is a defined benefit income stream—the guidelines determined by the Commission for the purposes of this paragraph.

46ZB  Income from asset-tested income stream (long term)

For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under:

(a) if the income stream is not a defined benefit income stream—the guidelines determined by the Commission for the purposes of this paragraph; or

(b) if the income stream is a defined benefit income stream—the guidelines determined by the Commission for the purposes of this paragraph.

46ZC  Determination of guidelines is a disallowable instrument

A determination of guidelines under section 46ZA or 46ZB is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
Division 6—Income tests—conversion of foreign currency amounts

47 Application of Division

(1) The Commission may determine in writing that this Division applies in relation to a foreign currency.

(2) This Division applies in relation to a foreign currency in relation to which a determination under subsection (1) is in force.

(3) This Division applies for the purposes of the Rate Calculator.

47A Conversion of foreign currency amounts

The value in Australian currency of a payment received by a person in foreign currency is to be worked out using:

(a) if section 47C applies—the re-assessed exchange rate; or
(b) in any other case—the base exchange rate (see section 47B).

47B Base exchange rate

The base exchange rate for a foreign currency for a foreign exchange period is the average (calculated to 4 decimal places) of the actual market exchange rates available on each working day of the first month of the year to start during the immediately preceding foreign exchange period.

47C Re-assessed exchange rate

(1) If for 10 consecutive working days:
   (a) starting after a month of the year in relation to which section 47B operates; and
   (b) ending before the next month of the year in relation to which section 47B operates;
the actual market exchange rate available differs, by at least 10%, from:
   (c) unless paragraph (d) applies—the base exchange rate for the next foreign exchange period; or
Section 47D

The Commission must determine in writing the day on which a re-assessed exchange rate becomes applicable.

(2) The day determined under subsection (1) is to be no later than 6 weeks after the tenth consecutive working day covered by subsection 47C(1).

(3) A re-assessed exchange rate:
   (a) becomes applicable on the day determined under subsection (1), unless a new re-assessed exchange rate has already become applicable; and
   (b) remains applicable until:
    (i) a new re-assessed exchange rate becomes applicable; or
    (ii) the commencement of the next exchange period the base exchange rate for which has been worked out by reference to working days later than those by reference to which the re-assessed exchange rate was worked out.

47E Rounding off exchange rates

If an exchange rate worked out under this Division would, if it were calculated to 5 decimal places, end in a number greater that 4, the rate worked out is to be taken to be the rate calculated to 4 decimal places and increased by 0.0001.
Division 7—Income tests—disposal of ordinary income

48 Disposal of ordinary income

(1) For the purposes of this Act, a person disposes of ordinary income of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the rate of the person’s ordinary income and either:

(a) the person receives no consideration in money or money’s worth for the diminution; or

(b) the person receives inadequate consideration in money or money’s worth for the diminution; or

(c) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person’s partner to obtain a service pension, income support supplement or a social security pension or benefit; or

(ii) to obtain or enable the person’s partner to obtain a service pension, income support supplement or a social security pension or benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person’s partner would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Note: For amount of disposition see section 48A.

48A Amount of disposition

If a person disposes of ordinary income, the amount of the disposition is the amount that, in the Commission’s opinion, is:

(a) if the person receives no consideration for the diminution in the rate of the person’s ordinary income—the annual rate of the diminution of the person’s ordinary income; or

(b) if the person receives consideration for the diminution in the rate of the person’s ordinary income—the annual rate of the diminution less the part (if any) of the consideration that the Commission determines, in writing, to be fair and reasonable in all the circumstances of the case.
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 7  Income tests—disposal of ordinary income

Section 48B

48B  Disposal of ordinary income—not a member of a couple

If a person who is not a member of a couple has, on or after 1 June 1984, disposed of ordinary income of the person, the amount of that disposition is to be included in the person’s ordinary income for the purposes of this Act.

Note 1: for *disposes of income* see section 48.
Note 2: for *amount of disposition* see section 48A.
Note 3: for *ordinary income* see subsection 5H(1): *ordinary income* includes investment income but does not include maintenance income.

48C  Disposal of ordinary income—members of couples

(1) Subject to subsections (2), (3) and (4), if a person who is a member of a couple has, on or after 1 June 1984, disposed of ordinary income of the person:

(a) 50% of the amount of the disposition is to be included in the person’s ordinary income; and

(b) 50% of the amount of the disposition is to be included in the person’s partner’s ordinary income.

Note 1: for *disposes of income* see section 48.
Note 2: for *amount of disposition* see section 48A.

(2) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and

(b) the person and the person’s partner cease to be members of the same couple;

any amount that was included in the ordinary income of the person’s former partner because of the disposition is to be included in the person’s ordinary income.

(3) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and

(b) the person dies;
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no amount is to be included in the ordinary income of the person’s partner because of the disposition.

(4) If:
   (a) an amount is included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and
   (b) the person’s partner dies;

any amount that would, if the person’s partner had not died, be included in the ordinary income of the person’s partner because of the disposition is to be included in the person’s ordinary income.

Note: for ordinary income see subsection 5H(1): ordinary income includes investment income but does not include maintenance income.

48E Dispositions more than 5 years old to be disregarded

This Division does not apply to a disposition of ordinary income that took place:

(a) more than 5 years before the time when:
    (i) the person who disposed of the ordinary income; or
    (ii) if the person who disposed of the ordinary income was, at the time of disposition, a member of a couple—the person’s partner;

became eligible to receive a service pension or an income support supplement; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of the ordinary income could reasonably have expected that the person or the person’s partner would become eligible to receive a service pension or an income support supplement.
Division 8—Retirement assistance for farmers

Subdivision 1—General

49  Purpose of Division

This Division deals with the transfer of farming interests to family members of a younger generation. The purpose of the Division is to provide that, if the conditions set out in the Division are met, the value of any such interests transferred by a qualifying farmer, his or her partner, or a former partner of the qualifying farmer, will be disregarded in determining:

(a) whether a service pension or an income support supplement is payable; or

(b) at what rate a service pension or an income support supplement is payable.

49AA  Applicable cut-off date

In this Division:

**applicable cut-off date** means:

(a) in relation to a transfer, where:

(i) the transfer was not completed before 1 July 2001; and

(ii) a pre-assessment request in relation to the transfer was lodged with the Department before 1 August 2001; and

(iii) the Department responded affirmatively to the request; the first day after the end of the period of 3 months beginning on the day on which the Department responded to the request; and

(b) in relation to any other transfer—1 July 2001.

49AB  Pre-assessment request

**Pre-assessment request**

(1) For the purposes of this Division, a **pre-assessment request** is a written request by a person:

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Section 49AB

(a) for advice about whether this Division would apply to the person, or to the person’s partner, in the event that a proposed transfer were to take place; and

(b) that sets out sufficient information to enable the advice to be given.

(2) For the purposes of subsection (1), a written request does not include a request made by email.

Contact by telephone etc.—timing of request

(3) For the purposes of this Division, if:

(a) a person contacted the Department:
   (i) by telephone; or
   (ii) by fax; or
   (iii) by email; or
   (iv) in person;
   for advice about whether this Division would apply to the person, or to the person’s partner, in the event that a proposed transfer were to take place; and

(b) the person followed up that contact by lodging a pre-assessment request with the Department within 21 days after the day on which the person contacted the Department;

the person is taken to have lodged the pre-assessment request on the day on which the person contacted the Department.

Affirmative response to pre-assessment request

(4) For the purposes of this Division, if a person lodges a pre-assessment request, the Department is taken to have responded affirmatively to that request if, and only if, the Secretary, or an officer of the Department, gives the person a written notice:

(a) that contains advice to the effect that this Division would apply to the person, or to the person’s partner, in the event that the proposed transfer were to take place; and

(b) that specifies the date on which the notice was issued.

Timing of response

(5) The Department is taken to have responded to a pre-assessment request on the date specified in the notice as the date on which the notice was issued.
49A Division to apply to certain transfers of estates in farms etc.

(1) Subject to subsection (3), this Division applies to a person if:

(a) at any time after 14 September 1992 but before the applicable cut-off date, the person, being then a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant (either solely to the eligible descendant or jointly to him or her and his or her partner):

(i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and

(ii) all the qualifying interests that he or she had in relevant farm assets; and

(b) the person, or (if the person is a member of a couple) the person or his or her partner:

(i) has reached retirement age; or

(ii) will reach retirement age before 1 July 2001; and

(c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed $500,000; and

(d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:

(i) had been actively involved with the farm or any of the farms; or

(ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and

(e) if the person is a member of a couple—the person’s partner does not have:

(i) a legal estate or interest in the farm or farms referred to in subparagraph (a)(i) or in any other farm; or

(ii) a legal interest in any relevant farm asset; and

(f) the person satisfies the farmers’ income test for the purposes of this Division.

Note 1: For qualifying farmer, transfer, eligible descendant, qualifying interest, farm and relevant farm assets, see subsection 5P(1).

Note 2: For retirement age see subsection 5Q(1).

Note 3: For the value for the purposes of this section of a farm or relevant farm asset see subsection (4) and for actively involved with a farm see subsection (5).

Note 4: For the farmers’ income test see section 49J.
(2) Subject to subsection (3), this Division also applies to a person if:

(a) at any time after 14 September 1992 but before the applicable cut-off date, the person, being then an eligible former partner of a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant of the farmer (either solely to the eligible descendant or jointly to him or her and his or her partner):

(i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and

(ii) all the qualifying interests that he or she had in relevant farm assets; and

(b) the person has reached retirement age or will reach retirement age before 1 July 2001; and

(c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed $500,000; and

(d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:

(i) had been actively involved with the farm or any of the farms; or

(ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and

(e) the person satisfies the farmers’ income test for the purposes of this Division.

Note 1: For eligible former partner of a qualifying farmer, transfer, eligible descendant, qualifying interest, farm and relevant farm assets see subsection 5P(1).

Note 2: For retirement age see subsection 5Q(1).

Note 3: For the value for the purposes of this section of a farm or relevant farm asset see subsection (4) and for actively involved with a farm see subsection (5).

Note 4: For the farmers’ income test see section 49J.

(3) This Division does not apply to the person if:

(a) immediately before the transfer, the eligible descendant, or one of the eligible descendants, referred to in paragraph (1)(a) or (2)(a) (as the case may be) had a qualifying interest in:
(i) the farm or one of the farms referred to in paragraph (1)(a)(i) or (2)(a)(i); or
(ii) any relevant farm asset; and
(b) the eligible descendant had acquired the qualifying interest in the farm, or in the relevant farm asset, after 14 September 1997; and
(c) the consideration, or part of the consideration, for the interest so acquired was the wages forgone by the eligible descendant while he or she was working as an employee on the farm or any of the farms.

Note: For transfer, eligible descendant, qualifying interest, farm and relevant farm asset see subsection 5P(1).

(4) If a person transfers a qualifying interest that the person has in a farm or a relevant farm asset, then:
(a) if paragraph (b) does not apply—the value for the purposes of this section of the farm or relevant farm asset is its value when the transfer is completed; or
(b) if, immediately before the transfer by the person of his or her qualifying interest in the farm or relevant farm asset, the transferee had a qualifying interest in the farm or relevant farm asset—the value for the purposes of this section of the farm or relevant farm asset is its value when the transfer is completed less the value of the transferee’s qualifying interest in it at that time.

(5) For the purposes of paragraphs (1)(d) and (2)(d), a person is taken to have been actively involved with a farm during a particular period if, during that period, the person:
(a) has contributed a significant part of his or her labour to the development of the farm; or
(b) has undertaken educational studies or training in a field that, in the opinion of the Commission, is relevant to the development or management of the farm enterprise.

49B How to assess the value of farms etc. subject to a transfer

Value of farm affected by previous transaction

(1) If:
Section 49B

(a) a transfer of a kind referred to in paragraph 49A(1)(a) or
(2)(a) is completed after 14 September 1997; and
(b) at any time before the transfer but after 14 September 1997,
the person making the transfer entered into a transaction or
transactions as a result of which:

(i) the value of the farm or farms in which the person had a
qualifying interest immediately before the transfer is
less than the value that that farm or those farms would
have had immediately before the transfer if the person
had not entered into the transaction or transactions (the
unreduced farm value); or

(ii) the value of the relevant farm assets in which the person
had a qualifying interest immediately before the transfer
is less than the value that those relevant farm assets
would have had immediately before the transfer if the
person had not entered into the transaction or
transactions (the unreduced assets value);

then, for the purposes of section 49A:

(c) the value of that farm or those farms is taken to be an amount
equal to the unreduced farm value; and

(d) the value of those relevant farm assets is taken to be an
amount equal to the unreduced assets value.

Life interest retained in principal home on farm

(2) If, when transferring by way of gift to another person his or her
qualifying interest in a farm, a person retains a freehold estate, a
leasehold interest or a life interest in the dwelling-house on the
farm, and the adjacent private land, that constitute the person’s
principal home, then, for the purposes of section 49A:

(a) the person is taken to have transferred the whole of his or her
qualifying interest in the farm by way of gift; but

(b) when assessing the value of the farm, the value of the
dwelling-house and the adjacent private land is not to be
included.

General rule

(3) Subject to this section, apply section 52CA in working out the
value of a farm or farms, and any relevant farm assets, for the
purposes of this Division.
Part IIIB  Provisions applicable to service pensions and income support supplement
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Note: For transfer, qualifying interest, eligible descendant, farm and relevant farm asset see subsection 5P(1).

Subdivision 2—Modification of provisions relating to assets test

49C  Transfer of estate in farm etc. not disposal of an asset

(1) If this Division applies to a person because of subsection 49A(1), then, subject to subsections (3) and (5):
   (a) the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 52E); and
   (b) if the person’s partner has also transferred by way of gift to an eligible descendant of the person any qualifying interest in a farm or in a relevant farm asset, that transfer is taken not to be a disposal of an asset (within the meaning of section 52E).

(2) If this Division applies to a person because of subsection 49A(2), then, subject to subsections (4) and (5), the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 52E).

(3) If the applicable cut-off date in relation to the transfer referred to in paragraph (1)(a) was 1 July 2001, and:
   (a) when the transfer was completed; or
   (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;
neither the person making the transfer nor his or her partner had reached retirement age, subsection (1) only applies after one of them reaches that age.

(4) If the applicable cut-off date in relation to the transfer referred to in subsection (2) was 1 July 2001, and:
   (a) when the transfer was completed; or
   (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;
the person making the transfer had not reached retirement age, subsection (2) only applies after the person reaches that age.

Note 1: For transfer, qualifying interest, eligible descendant, farm and relevant farm asset see subsection 5P(1).

Note 2: For retirement age see subsection 5Q(1).
(5) Disregard subsections (1) and (2) when working out a rate for the purposes of Division 6 of Part IIIAB.

Note: Part IIIAB provides for the payment of a pension bonus to a person who qualifies for an age service pension if the person has deferred claiming that pension for a period of at least one year and the person, or the person’s partner, has worked gainfully during that period.

Subdivision 3—Claims for service pension or income support supplement

49D Provisional commencement day

If:

(a) a person, or a person’s partner, has reached retirement age; and

(b) this Division applies because of a transfer of qualifying interests by the person or the person’s partner; and

(c) the person makes a claim under this Act for a service pension or an income support supplement;

then, despite any other provision of this Act, the claimant’s provisional commencement day is:

(d) if the transfer was completed before 15 September 1997 and the person makes the claim before 15 September 1998—

15 September 1997 or the day on which the person becomes qualified for the pension or supplement, whichever is later; or

(e) if the transfer was completed after 14 September 1997 but before 15 September 1998 and the person makes the claim before 15 September 1998:

(i) the day on which the transfer was completed; or

(ii) the day on which the person becomes qualified for the pension or supplement;

whichever is later; or

(f) if the transfer was completed after 14 September 1998 but before the applicable cut-off date and the person makes the claim during the period of 3 months that starts on the day on which the transfer was completed:

(i) the day on which the transfer was completed; or

(ii) the day on which the person becomes qualified for the pension or supplement;

whichever is later; or
Section 49E

(g) in any other case—the day on which the claim is made.

Subdivision 4—Requests for increase in rate of service pension or income support supplement

49E Application

(1) This Subdivision applies if:

(a) a person, or a person’s partner, has reached retirement age; and

(b) this Division applies because of a transfer of qualifying interests by the person or the person’s partner; and

(c) the person is receiving a service pension or an income support supplement under this Act; and

(d) the value of the qualifying interests has been included in the value of the person’s assets, or the partner’s assets, when calculating the rate of the person’s pension or supplement.

49F Request for increase

If:

(a) the rate at which a service pension or an income supplement is being, or has been, paid to a person is less than the rate (the increased rate) at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person’s partner had not been included in the value of the person’s assets, or of the partner’s assets, in calculating the rate of the person’s pension or supplement; and

(b) the person wants the pension or supplement to be paid at the increased rate;

the person must make a request to that effect.

49G Making a request

(1) A request under section 49F:

(a) must be made in writing; and

(b) must be in accordance with a form approved by the Commission; and
Section 49H

(1) If:

(a) a person makes a request under section 49F in respect of a service pension or an income support supplement; and

(b) the Commission is satisfied that the rate at which the pension or supplement is being, or has been, paid to the person is less than the rate at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person’s partner had not been included in the value of the person’s assets, or the partner’s assets, when calculating the rate of the person’s pension or supplement;

the Commission must determine that the request is to be granted.

(2) The determination takes effect:

(a) if the transfer was completed before 15 September 1998 and the person makes the request before that day—on 15 September 1997 or the day on which the transfer was completed, whichever is later; or

(b) if the transfer was completed after 14 September 1998 but before the applicable cut-off date and the person makes the request during the period of 3 months that starts on the day on which the transfer is completed—on the day on which the transfer was completed; or

(c) in any other case—on the day on which the request is made.

Subdivision 5—Farmers’ income test

49J Does a person satisfy the farmers’ income test?

How to work out whether the farmers’ income test is satisfied

(1) This is how to work out whether a person who has transferred his or her qualifying interest in a farm or farms satisfies the farmers’ income test for the purposes of this Division:
Method statement

Step 1. Work out under subsection (2) the amount of the person’s ordinary income (other than ordinary income from farming) for each of the last 3 financial years before the applicable completion day (the income test years).

If the person was a member of a couple on the applicable completion day, work out also under subsection (2) the amount of his or her partner’s ordinary income (other than ordinary income from farming) for the 3 income test years.

Add up all the amounts so obtained. The result is called the person’s total non-farm income.

Step 2. Work out under subsection (3) the amount of the person’s ordinary income from farming for each of the 3 income test years.

If the person was a member of a couple on the applicable completion day, work out also under subsection (3) the amount of his or her partner’s ordinary income from farming for the 3 income test years.

Add up all the amounts of positive income for both the person and the person’s partner and deduct from that total the amounts of negative income (if any) for both the person and the person’s partner. The result is called the person’s total farm income (which may be either positive or negative).

Step 3. Work out the person’s total income for the 3 income test years:

(a) if the person’s total farm income is a positive amount—by adding that amount to the amount of the person’s total non-farm income; or
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(b) if the person’s total farm income is a negative amount—by deducting that amount from the amount of the person’s total non-farm income.

Step 4. Work out under subsection (4) the maximum basic rate for age service pension applicable to the person. Multiply that rate by 3. The result is called the person’s maximum basic entitlement.

Step 5. If the person’s total income for the 3 income test years is less than the person’s maximum basic entitlement, the person satisfies the farmers’ income test for the purposes of this Division.

If the person’s total income for the 3 income test years equals or exceeds the person’s maximum basic entitlement, the person does not satisfy the farmers’ income test for the purposes of this Division.

Person’s ordinary income from all sources other than farming

(2) For the purpose of working out a person’s ordinary income from all sources other than farming during a financial year, the following provisions have effect:

(a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
(b) Division 2 of this Part applies to the person as if any reference in that Division to a tax year were a reference to that financial year;
(c) Division 3 of this Part does not apply to the person;
(d) any return on a financial asset that the person has actually received during the financial year is taken to be ordinary income of the person.

Person’s ordinary income from farming

(3) For the purpose of working out a person’s ordinary income from farming during a financial year, the following provisions have effect:

(a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
(b) Division 2 of this Part applies to the person as if:


(i) any reference in subsection 46B(1) to a tax year were a reference to that financial year; and
(ii) subsection 46B(2) and section 46C were omitted;
(c) Division 3 of this Part does not apply to the person;
(d) any return on a financial asset that the person has actually received during the financial year and that relates to a farm or a relevant farm asset is taken to be ordinary income of the person from farming;
(e) if, at the end of the financial year, the value of all trading stock on hand that relates to a farm is less than the value of all such trading stock on hand at the beginning of that financial year—the amount of the difference is to be deducted from that part of the person’s ordinary income from farming for that financial year that is income in the form of profits;
(f) there is also to be deducted from the person’s ordinary income from farming:
   (i) losses and outgoings that relate to a farm and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and
   (iiia) amounts that relate to a relevant farm asset and can be deducted for the decline in value of the asset under Subdivision 40-B of the *Income Tax Assessment Act 1997*; and
   (iii) amounts that relate to a farm or a relevant farm asset and are allowable deductions under subsection 82AAC(1) of the *Income Tax Assessment Act 1936*;
(g) if a negative result is obtained after applying paragraphs (e) and (f)—the person’s ordinary income from farming for the financial year is a negative income;
(h) if paragraph (g) does not apply—the person’s ordinary income from farming for the financial year is a positive income.

*Person’s maximum basic rate for age service pension*

(4) For the purposes of Step 4 in the Method statement in subsection (1), the maximum basic rate for age service pension applicable to the person is:
(a) if the person was a member of a couple at any time during the 3 years immediately before the operative day—the sum of:
   (i) an amount equal to twice the amount that was, on the operative day, the maximum basic rate for a partnered person under point SCH6-B1; and
   (ii) an amount equal to twice the pension supplement under Module BA in Schedule 6; or
(b) otherwise—the sum of:
   (i) the amount that was, on the operative day, the maximum basic rate for a person who is not a member of a couple under point SCH6-B1; and
   (ii) the pension supplement under Module BA in Schedule 6.

Definitions

(5) In this section:

applicable completion day, in relation to a transfer, means the earlier of:
(a) the day on which the transfer was completed; and
(b) 30 June 2001.

income, in relation to a person, has the same meaning as in subsection 5H(1), except that, in addition to any amount that is not income of the person because of subsection 5H(4), (5) or (8), any payment to the person under:
(a) the AUSTUDY scheme; or
(b) the Social Security Act; or
(c) the *Farm Household Support Act 1992*;
is not income of the person for the purposes of this section.

operative day means:
(a) if the transfer of the person’s qualifying interest in the farm or farms was completed before 15 September 1997—that day; or
(b) otherwise—the applicable completion day in relation to the transfer of the person’s qualifying interest in the farm or farms.
ordinary income from farming, in relation to a person who has a qualifying interest in a farm or farms, means the ordinary income of the person from the farm or farms and any relevant farm assets.

Subdivision 6—Transitional: ex gratia payments

49K Ex gratia payments

(1) If:
   (a) apart from this subsection, an amount would have become payable under this Act to a person in respect of a period; and
   (b) the amount would not have become payable if Subdivisions 1 to 5 of this Division had not been amended by the Social Security and Veterans’ Entitlements Legislation Amendment (Retirement Assistance for Farmers) Act 2001; and
   (c) the person has been paid an ex gratia payment from the Commonwealth in respect of that period;

the amount mentioned in paragraph (a) is not payable to the person.

(2) If:
   (a) apart from this subsection, an amount would have become payable under this Act to a person in respect of a period; and
   (b) the amount exceeds the amount that would have been payable if Subdivisions 1 to 5 of this Division had not been amended by the Social Security and Veterans’ Entitlements Legislation Amendment (Retirement Assistance for Farmers) Act 2001; and
   (c) the person has been paid an ex gratia payment from the Commonwealth in respect of that period;

the amount mentioned in paragraph (a) is reduced by the amount of the excess.
Division 8A—Retirement assistance for sugarcane farmers

Subdivision A—General

49L Purpose of Division

This Division deals with the transfer of sugarcane farming interests to family members of a younger generation. The purpose of the Division is to provide that, if the conditions set out in the Division are met, the value of any such interests transferred by a qualifying sugarcane farmer, his or her partner, or an eligible former partner of a qualifying sugarcane farmer, will be disregarded in determining:

(a) whether a service pension or an income support supplement is payable; or

(b) at what rate a service pension or an income support supplement is payable.

49M RASF commencement and closing days

(1) For the purposes of this Division:
   (a) the RASF commencement day is the day on which this Division commences; and
   (b) the RASF closing day is (subject to any determination under subsection (2)) the day that is 3 years after the RASF commencement day.

(2) The Minister may, by written determination, specify a day that is later than the day mentioned in paragraph (1)(b) as the RASF closing day.

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

49N Applicable cut-off date

In this Division:

applicable cut-off date means:

(a) in relation to a transfer, where:
(i) the transfer was not completed before the RASF closing day; and
(ii) a pre-assessment request in relation to the transfer was lodged with the Department within the period of 28 days immediately after the RASF closing day; and
(iii) the Department responded affirmatively to the request; the first day after the end of the period of 13 weeks beginning on the day on which the Department responded to the request; and
(b) in relation to any other transfer—the RASF closing day.

49P Pre-assessment request

Pre-assessment request

(1) For the purposes of this Division, a pre-assessment request is a written request by a person:
   (a) for advice about whether this Division would apply to the person, or to the person’s partner, in the event that a proposed transfer were to take place; and
   (b) that sets out sufficient information to enable the advice to be given.

(2) For the purposes of subsection (1), a written request does not include a request made by e-mail.

Contact by telephone etc.—timing of request

(3) For the purposes of this Division, if:
   (a) a person contacted the Department:
      (i) by telephone; or
      (ii) by fax; or
      (iii) by e-mail; or
      (iv) in person;
      for advice about whether this Division would apply to the person, or to the person’s partner, in the event that a proposed transfer were to take place; and
   (b) the person followed up that contact by lodging a pre-assessment request with the Department within 21 days after the day on which the person contacted the Department;
the person is taken to have lodged the pre-assessment request on the day on which the person contacted the Department.

Affirmative response to pre-assessment request

(4) For the purposes of this Division, if a person lodges a pre-assessment request, the Department is taken to have responded affirmatively to that request if, and only if, the Secretary, or an officer of the Department, gives the person a written notice:

(a) that contains advice to the effect that this Division would apply to the person, or to the person’s partner, in the event that the proposed transfer were to take place; and

(b) that specifies the date on which the notice was issued.

Timing of response

(5) The Department is taken to have responded to a pre-assessment request on the date specified in the notice as the date on which the notice was issued.

49Q Division to apply to certain transfers of estates in sugarcane farms etc.

(1) Subject to subsections (3) and (4), this Division applies to a person if:

(a) at any time after the RASF commencement day but before the applicable cut-off date, the person, being then a qualifying sugarcane farmer, transferred by way of gift to one, or more than one, eligible descendant (either solely to the eligible descendant or jointly to him or her and his or her partner):

(i) his or her eligible interest in the sugarcane farm or sugarcane farms in which he or she had such an interest; and

(ii) all the eligible interests that he or she had in relevant sugarcane farm assets; and

(b) the person, or (if the person is a member of a couple) the person or his or her partner:

(i) has reached retirement age; or

(ii) will reach retirement age before the RASF closing day; and
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(c) the total net value (calculated in accordance with section 49R) of the sugarcane farm or sugarcane farms, and the relevant sugarcane farm assets, in which the person had eligible interests does not exceed $500,000; and

(d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
   (i) had been actively involved with the sugarcane farm or any of the sugarcane farms; or
   (ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and

(e) if the person is a member of a couple—the person’s partner does not have an eligible interest in any sugarcane farm or relevant sugarcane farm asset; and

(f) the person satisfies the sugarcane farmers’ income test for the purposes of this Division.

Note 1: For eligible descendant see subsection 5P(1).
Note 2: For eligible interest, qualifying sugarcane farmer, relevant sugarcane farm asset, sugarcane farm and transfer, see subsection 5PAA(1).
Note 3: For retirement age see subsection 5Q(1).
Note 4: For actively involved with a sugarcane farm see subsection (5).
Note 5: For the total net value of a sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets see section 49R.
Note 6: For the sugarcane farmers’ income test see section 49Y.

(2) Subject to subsections (3) and (4), this Division also applies to a person if:

(a) at any time after the RASF commencement day but before the applicable cut-off date, the person, being then an eligible former partner of a qualifying sugarcane farmer, transferred by way of gift to one, or more than one, eligible descendant of the farmer (either solely to the eligible descendant or jointly to him or her and his or her partner):
   (i) his or her eligible interest in the sugarcane farm or sugarcane farms in which he or she had such an interest; and
   (ii) all the eligible interests that he or she had in relevant sugarcane farm assets; and
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(b) the person has reached retirement age or will reach retirement age before the RASF closing day; and

(c) the total net value (calculated in accordance with section 49R) of the sugarcane farm or sugarcane farms, and the relevant sugarcane farm assets, in which the person had eligible interests does not exceed $500,000; and

(d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
   (i) had been actively involved with the sugarcane farm or any of the sugarcane farms; or
   (ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and

(e) the person satisfies the sugarcane farmers’ income test for the purposes of this Division.

Note 1: For eligible descendant see subsection 5P(1).

Note 2: For eligible former partner of a qualifying sugarcane farmer, eligible interest, relevant sugarcane farm asset, sugarcane farm and transfer see subsection 5PAA(1).

Note 3: For retirement age see subsection 5Q(1).

Note 4: For actively involved with a sugarcane farm see subsection (5).

Note 5: For the total net value of a sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets see section 49R.

Note 6: For the sugarcane farmers’ income test see section 49Y.

(3) This Division does not apply to the person if:

(a) immediately before the transfer, the eligible descendant, or one of the eligible descendants, referred to in paragraph (1)(a) or (2)(a) (as the case may be) had an eligible interest in:
   (i) the sugarcane farm or one of the sugarcane farms referred to in subparagraph (1)(a)(i) or (2)(a)(i); or
   (ii) any relevant sugarcane farm asset; and

(b) the eligible descendant had acquired the eligible interest in the farm, or in the relevant farm asset, after 29 April 2004; and

(c) the consideration, or part of the consideration, for the interest so acquired was the wages forgone by the eligible descendant while he or she was working as an employee on the farm or any of the farms.
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(4) This Division does not apply to the person (the transferor) if:
   (a) the eligible interest, or any part of the eligible interest, that was transferred is an interest that the transferor had in a sugarcane farm, or sugarcane farms, or any relevant sugarcane farm asset because the value of the transferor’s assets included an amount calculated by reference to the value of the farm, or farms, or relevant farm asset (see paragraphs 5PAA(5)(e) and (6)(c)); and
   (b) immediately after the transfer to the eligible descendant, or eligible descendants, referred to in paragraph (1)(a) or (2)(a) (as the case may be), the eligible interest, or any part of the eligible interest, transferred was held by a trust that was a concessional primary production trust in relation to the transferor.

(5) For the purposes of paragraphs (1)(d) and (2)(d), a person is taken to have been actively involved with a sugarcane farm during a particular period if, during that period, the person:
   (a) has contributed a significant part of his or her labour to the development of the sugarcane farm; or
   (b) has undertaken educational studies or training in a field that, in the opinion of the Commission, is relevant to the development or management of the sugarcane farm enterprise.

49R  How to assess the total net value of sugarcane farms etc. subject to a transfer

Meaning of total net value

(1) For the purposes of subsections 49Q(1) and (2), the total net value of a sugarcane farm, or sugarcane farms, and relevant sugarcane

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farm assets, the eligible interests in which have been transferred, is to be calculated as follows:

\[
\text{Market value of sugarcane farm assets} - \text{Sugarcane farm debts}
\]

where:

- **market value of sugarcane farm assets** means the total of the market values of the sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets immediately before the transfer of the eligible interests.

- **sugarcane farm debts** means the total of any amounts of money that:
  1. had been borrowed for the purposes of undertaking one or more sugarcane farm enterprises on the sugarcane farm or sugarcane farms; and
  2. had not been repaid before the transfer of the eligible interests.

Note: The total net value of a sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets is not affected by the number of persons who have interests in them.

(2) Subsection (1) has effect subject to subsections (3), (4) and (5).

**Value of farm reduced by value of transferee’s interest**

(3) If:

(a) a person transfers eligible interests that the person has in a sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets; and

(b) immediately before the transfer by the person of his or her eligible interests in the farm, or farms, and relevant farm assets, the transferee had an eligible interest in the farm, or one of those farms, or a relevant farm asset;

then, the **total net value** of the farm, or farms, and relevant farm assets is the amount worked out under subsection (1) reduced by the value of the transferee’s eligible interest in the farm or relevant farm asset at that time.
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Value of farm affected by previous transaction

(4) If:

(a) a person transfers his or her eligible interests in a sugarcane farm, or sugarcane farms, and relevant sugarcane farm assets; and

(b) at any time after 29 April 2004 the person making the transfer entered into a transaction or transactions; and

(c) the result of the transaction or transactions was that the total net value (worked out in accordance with subsection (1)) of the farm, or farms, and relevant farm assets immediately before the transfer is less than the total net value that that farm, or those farms, and relevant farm assets would have had immediately before the transfer if the person had not entered into the transaction or transactions (the unreduced value);

then, the total net value of the farm, or farms, and relevant farm assets is taken to be an amount equal to the unreduced value.

Life interest retained in principal home on farm

(5) If:

(a) a person transfers eligible interests that the person has in a farm by way of gift; and

(b) the person retains a freehold estate, a leasehold interest or a life interest in the dwelling-house on the farm, and the adjacent private land, that constitute the person’s principal home;

then:

(c) for the purposes of subsections 49Q(1) and (2), the person is taken to have transferred the whole of his or her eligible interest in the farm by way of gift; and

(d) in assessing the market value of the farm for the purposes of subsection (1), the value of the dwelling-house and the adjacent private land is not to be included.

Note: For eligible interest, relevant sugarcane farm asset, sugarcane farm and transfer see subsection 5PAA(1).
Subdivision B—Modification of provisions relating to assets test

49S  Transfer of estate in sugarcane farm etc. not disposal of an asset

(1) If this Division applies to a person because of subsection 49Q(1), then, subject to subsections (4) and (6):
   (a) the transfer by the person of his or her eligible interest in a sugarcane farm or in a relevant sugarcane farm asset is taken not to be a disposal of an asset (within the meaning of section 52E); and
   (b) if the person’s partner has also transferred by way of gift to an eligible descendant of the person any eligible interest in a sugarcane farm or in a relevant sugarcane farm asset, that transfer is taken not to be a disposal of an asset (within the meaning of section 52E).

(2) If this Division applies to a person because of subsection 49Q(2), then, subject to subsections (5) and (6), the transfer by the person of his or her eligible interest in a sugarcane farm or in a relevant sugarcane farm asset is taken not to be a disposal of an asset (within the meaning of section 52E).

(3) To avoid doubt, subsections (1) and (2) have effect despite sections 52ZZX and 52ZZY.

(4) If:
   (a) the applicable cut-off date in relation to the transfer referred to in paragraph (1)(a) was the RASF closing day; and
   (b) when the transfer was completed neither the person making the transfer nor his or her partner had reached retirement age;

subsection (1) only applies after one of them reaches that age.

(5) If:
   (a) the applicable cut-off date in relation to the transfer referred to in subsection (2) was the RASF closing day; and
   (b) when the transfer was completed the person making the transfer had not reached retirement age;

subsection (2) only applies after the person reaches that age.
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Note 1: For eligible descendant see subsection 5P(1).
Note 2: For eligible interest, RASF closing day, relevant sugarcane farm asset, sugarcane farm and transfer see subsection 5PAA(1).
Note 3: For retirement age see subsection 5Q(1).

(6) Disregard subsections (1) and (2) when working out a rate for the purposes of Division 6 of Part IIIAB.

Note: Part IIIAB provides for the payment of a pension bonus to a person who qualifies for an age service pension if the person has deferred claiming that pension for a period of at least one year and the person, or the person’s partner, has worked gainfully during that period.

Subdivision C—Claims for service pension or income support supplement

49T  Provisional commencement day

If:
(a) a person, or a person’s partner, has reached retirement age; and
(b) this Division applies because of a transfer of eligible interests by the person or the person’s partner; and
(c) the person makes a claim under this Act for a service pension or an income support supplement within the period of 13 weeks starting on the day on which the transfer was completed;
then, despite any other provision of this Act, the claimant’s provisional commencement day is:
(d) the day on which the transfer was completed; or
(e) the day on which the person becomes qualified for the pension or supplement;
whichever is later.

Subdivision D—Requests for increase in rate of service pension or income support supplement

49U  Application

This Subdivision applies if:
(a) a person, or a person’s partner, has reached retirement age; and
(b) this Division applies because of a transfer of eligible interests by the person or the person’s partner; and
(c) the person is receiving a service pension or income support supplement under this Act; and
(d) the value of the eligible interests has been included in the value of the person’s assets, or the partner’s assets, when calculating the rate of the person’s pension or supplement.

49V Request for increase

If:

(a) the rate at which a service pension or income support supplement is being, or has been, paid to a person is less than the rate (the increased rate) at which it would be, or would have been, paid if the value of the eligible interests transferred by the person or the person’s partner had not been included in the value of the person’s assets, or of the partner’s assets, in calculating the rate of the person’s pension or supplement; and
(b) the person wants the pension or supplement to be paid at the increased rate;

the person must make a request to that effect.

49W Making a request

(1) A request under section 49V:

(a) must be made in writing; and
(b) must be in accordance with a form approved by the Commission; and
(c) must be lodged at an office of the Department in Australia in accordance with section 5T.

(2) A request made by lodging a document in accordance with section 5T is taken to have been made on a day determined under that section.

49X Determination of request

(1) If:

(a) a person makes a request under section 49V in respect of a service pension or income support supplement; and
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(b) the Commission is satisfied that the rate at which the pension or supplement is being, or has been, paid to the person is less than the rate at which it would be, or would have been, paid if the value of the eligible interests transferred by the person or the person’s partner had not been included in the value of the person’s assets, or the partner’s assets, when calculating the rate of the person’s pension or supplement;

the Commission must determine that the request is to be granted.

(2) The determination takes effect:

(a) if the person makes the request during the period of 13 weeks that starts on the day on which the transfer was completed—on the day on which the transfer was completed; or

(b) in any other case—on the day on which the request is made.

Subdivision E—Sugarcane farmers’ income test

49Y Does a person satisfy the sugarcane farmers’ income test?

How to work out whether the sugarcane farmers’ income test is satisfied

(1) This is how to work out whether a person who has transferred his or her eligible interest in a sugarcane farm or sugarcane farms satisfies the sugarcane farmers’ income test for the purposes of this Division:

Method statement

Step 1. Work out under subsection (2) the amount of the person’s ordinary income (other than ordinary income from farming) for each of the last 3 financial years before the applicable completion day (the income test years).

If the person was a member of a couple on the applicable completion day, work out also under subsection (2) the amount of his or her partner’s ordinary income (other than ordinary income from farming) for the 3 income test years.
Add up all the amounts so obtained. The result is called the person’s *total non-farm income*.

**Step 2.** Work out under subsection (3) the amount of the person’s ordinary income from farming for each of the 3 income test years.

If the person was a member of a couple on the applicable completion day, work out also under subsection (3) the amount of his or her partner’s ordinary income from farming for the 3 income test years.

Add up all the amounts of positive income for both the person and the person’s partner and deduct from that total the amounts of negative income (if any) for both the person and the person’s partner. The result is called the person’s *total farm income* (which may be either positive or negative).

**Step 3.** Work out the person’s *total income for the 3 income test years*:

(a) if the person’s total farm income is a positive amount—by adding that amount to the amount of the person’s total non-farm income; or

(b) if the person’s total farm income is a negative amount—by deducting that amount from the amount of the person’s total non-farm income.

**Step 4.** Work out under subsection (4) the maximum basic rate for age service pension applicable to the person. Multiply that rate by 3. The result is called the person’s *maximum basic entitlement*.

**Step 5.** If the person’s total income for the 3 income test years is less than the person’s maximum basic entitlement, the person satisfies the sugarcane farmers’ income test for the purposes of this Division.
If the person’s total income for the 3 income test years equals or exceeds the person’s maximum basic entitlement, the person does not satisfy the sugarcane farmers’ income test for the purposes of this Division.

**Person’s ordinary income from all sources other than farming**

(2) For the purpose of working out a person’s ordinary income from all sources other than farming during a financial year, the following provisions have effect:

(a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
(b) Division 2 of this Part applies to the person as if any reference in that Division to a tax year were a reference to that financial year;
(c) Division 3 of this Part does not apply to the person;
(d) any return on a financial asset that the person has actually received during the financial year is taken to be ordinary income of the person.

**Person’s ordinary income from farming**

(3) For the purpose of working out a person’s ordinary income from farming during a financial year, the following provisions have effect:

(a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
(b) Division 2 of this Part applies to the person as if:
   (i) any reference in subsection 46B(1) to a tax year were a reference to that financial year; and
   (ii) subsection 46B(2) and section 46C were omitted;
(c) Division 3 of this Part does not apply to the person;
(d) any return on a financial asset that the person has actually received during the financial year and that relates to a farm or a relevant farm asset is taken to be ordinary income of the person from farming;
(e) if, at the end of the financial year, the value of all trading stock on hand that relates to a farm is less than the value of all such trading stock on hand at the beginning of that financial year—the amount of the difference is to be deducted from that part of the person’s ordinary income from farming.
farming for that financial year that is income in the form of profits;

(f) there is also to be deducted from the person’s ordinary income from farming:

(i) losses and outgoings that relate to a business of primary production and are allowable deductions under section 8-1 of the *Income Tax Assessment Act 1997*; and

(ii) deductions for the cost of depreciating assets that are used in a business of primary production and are allowable deductions under Subdivisions 40-A to 40-E (inclusive), or Division 328, of the *Income Tax Assessment Act 1997*; and

(iii) contributions that are allowable deductions under sections 82AAC, 82AAD, 82AADA and 82AAF of the *Income Tax Assessment Act 1936*;

(g) if a negative result is obtained after applying paragraphs (e) and (f)—the person’s ordinary income from farming for the financial year is a negative income;

(h) if paragraph (g) does not apply—the person’s ordinary income from farming for the financial year is a positive income.

**Person’s maximum basic rate for age service pension**

(4) For the purposes of Step 4 in the Method statement in subsection (1), the maximum basic rate for age service pension applicable to the person is:

(a) if the person was a member of a couple at any time during the 3 years immediately before the applicable completion day—the sum of:

(i) an amount equal to twice the amount that was, on the applicable completion day, the maximum basic rate for a partnered person under point SCH6-B1; and

(ii) an amount equal to twice the pension supplement under Module BA in Schedule 6; or

(b) otherwise—the sum of:

(i) the amount that was, on the applicable completion day, the maximum basic rate for a person who is not a member of a couple under point SCH6-B1; and
(ii) the pension supplement under Module BA in Schedule 6.

Definitions

(5) In this section:

applicable completion day, in relation to a transfer, means the earlier of:
   (a) the day on which the transfer was completed; and
   (b) the RASF closing day.

income, in relation to a person, has the same meaning as in subsection 5H(1), except that, in addition to any amount that is not income of the person because of subsection 5H(4), (5) or (8), any payment to the person under:
   (a) the AUSTUDY scheme; or
   (b) the Social Security Act; or
   (c) the Farm Household Support Act 1992;

is not income of the person for the purposes of this section.

ordinary income from farming, in relation to a person who has an eligible interest in a sugarcane farm or sugarcane farms, means the ordinary income of the person from:
   (a) the sugarcane farm, or sugarcane farms, and any relevant sugarcane farm assets; and
   (b) any other farm, or farms, or relevant farm assets in which the person has an interest.
Division 9—New Enterprise Incentive Scheme

50  General effect of Division

This Division adjusts the service pension rate or income support supplement rate of a person who is receiving, or whose partner is receiving, payments under the scheme known as the New Enterprise Incentive Scheme (NEIS).

Note: payments under the NEIS do not count as ordinary income for the purposes of the ordinary income test: see paragraph 5H(8)(x).

50A  Reduction in rate of payments under this Part if recipient or partner also receiving payments under NEIS

(1) If:
   (a) an instalment of service pension or income support supplement is payable to a person during a pension period; and
   (b) NEIS is payable to the person during that pension period;
the rate of the payment referred to in paragraph (a) is to be reduced under this Division.

(2) If:
   (a) an instalment of age or invalidity service pension is payable to a person during a pension period; and
   (b) NEIS is payable to the person during that pension period; and
   (c) an instalment of partner service pension in respect of the person is payable to the person’s partner during a pension period;
the rate of the partner’s payment is also to be reduced under this Division.

(3) If:
   (a) an instalment of income support supplement is payable to a person during a pension period; and
   (b) NEIS is payable to the person during that pension period; and
   (c) an instalment of:
      (i) age service pension; or
      (ii) invalidity service pension; or
      (iii) disability service pension;
Section 50B

(ii) invalidity service pension;

is payable to the person’s partner during a pension period;

the rate of the partner’s payment is also to be reduced under this Division.

50B Rate reduction under this Division

(1) Subject to subsection (2), if a person’s rate of payment under Part III or IIIA is to be reduced under this Division because of a NEIS payment, the amount of rate reduction is to be equal to the amount of the NEIS payment.

(2) If:

(a) a person’s rate of payment under Part III or IIIA is to be reduced under this Division because of a NEIS payment; and

(b) the person’s partner’s rate of payment under Part III or IIIA is also to be reduced under this Division (see subsection 50A(2) or (3)) because of the NEIS payment;

the amount of rate reduction for both the person and the person’s partner is to be equal to 50% of the amount of the NEIS payment.

(3) A person’s rate of payment under Part III or IIIA is not to be reduced below nil under subsection (1) or (2).
Division 10—General provisions relating to maintenance income

51 Apportionment of capitalised maintenance income

(1) The object of this section is to spread capitalised maintenance income so that it is taken into account over the whole of the period in respect of which it is received.

(2) If a person receives capitalised maintenance income, the maintenance income of the person that is attributable to the capitalised maintenance income during any period (in this subsection called the relevant period) in the capitalisation period is the amount calculated in accordance with the formula:

\[
\text{Capitalised maintenance income} \times \frac{\text{Relevant period}}{\text{Capitalisation period}}
\]

Capitalisation period—court order or registered or approved maintenance agreement

(3) If:

(a) the capitalised maintenance income is received under or as a result of:

(i) the order of a court; or

(ia) a financial agreement under the *Family Law Act 1975*;

or

(ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory; and

(b) the order or agreement specified the period in relation to which the capitalised maintenance income was to be provided; and

(c) the length of the period could be ascertained with reasonable certainty when the order was made or the agreement was so registered or approved;

the capitalisation period is, subject to subsection (6), the period specified in the order or agreement.
Part IIIB Provisions applicable to service pensions and income support supplement
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Capitalisation period—maintained child under 18

(4) If:

(a) the capitalised maintenance income relates to the maintenance of a maintained child of the person; and
(b) the child has not turned 18 on the day on which the income is received; and
(c) subsection (3) does not apply to the capitalised maintenance income;

the capitalisation period is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the child turns 18.

Note: for maintained child see subsection 5K(1).

Capitalisation period—partner under 65

(5) If:

(a) the capitalised maintenance income relates to the maintenance of the person by the person’s partner or former partner; and
(b) the person has not turned 65 on the day on which the income is received; and
(c) subsection (3) does not apply to the capitalised maintenance income;

the capitalisation period is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the person turns 65.

Capitalisation period—other cases

(6) If:

(a) the Commission considers:

(i) in a case falling within subsection (3) where the period referred to in that subsection was specified in an order of a court that was made by consent or in a maintenance agreement—that the period is not appropriate in the circumstances of the case; or
(ii) in a case falling within subsection (4) or (5)—that the period referred to in that subsection is not appropriate in the circumstances of the case; or
(b) no capitalisation period is applicable in relation to the capitalised maintenance income under subsection (3), (4) or (5);

the capitalisation period is such period as the Commission considers appropriate in the circumstances of the case.

### 51A In-kind housing maintenance—value of substitute for family home

(1) If:

(a) a person is not a member of a couple; and

(b) a person has separated from the person’s partner or former partner; and

(c) immediately before the separation a residence (in this section called the former family home) was the principal home of both the person and the person’s partner or former partner; and

(d) the person is receiving in-kind housing maintenance in relation to the provision of a residence other than the former family home; and

(e) the value of the other residence exceeds the value, at the time the maintenance is received, of the former family home;

only so much of the maintenance as does not exceed the maintenance that would be assessed if it were based on the value of the former family home is to be treated as special maintenance income for the purposes of this Act.

(2) For the purposes of subsection (1), the Commission may:

(a) determine that a time specified in the determination is to be substituted for the time at which the in-kind housing maintenance is received; or

(b) determine that a specified part of in-kind housing maintenance is to be deducted from the amount that would otherwise be the amount of that maintenance.

Note: paragraph (a) is intended to cover situations where, for instance, there is not enough information about the current market rate of the former family home or where market values are fluctuating dramatically.

(3) If a person has more than one former partner, a reference in subsection (1) to the person’s former partner is a reference to the person’s last former partner.
Division 11—General provisions relating to the assets test

Subdivision A—Value of person’s assets

52 Certain assets to be disregarded in calculating the value of a person’s assets

(1) In calculating the value of a person’s assets for the purposes of this Act (other than sections 52G, 52H, 52JA, 52JB, 52JC, 52JD, 52ZA and 52ZCA), disregard the following:

(a) if the person is not a member of a couple—the value of any right or interest of the person in the person’s principal home that is a right or interest that gives the person reasonable security of tenure in the home;

(b) if the person is a member of a couple—the value of any right or interest of the person in one residence that is the principal home of the person, or of the person’s partner or of both of them that is a right or interest that gives the person or the person’s partner reasonable security of tenure in the home;

(c) the value of any life interest of the person other than:

(i) a life interest in the principal home of the person, or of the person’s partner or of both of them; or

(ii) a life interest created by the person, by the person’s partner or by both of them; or

(iii) a life interest created on the death of the person’s partner;

Note: The exclusion from paragraph (1)(c) of the value of a person’s life interest mentioned in subparagraph (i), (ii) or (iii) does not result in the value of the interest being included in the person’s assets if the interest falls within paragraph (1)(a) or (b).

(d) the value of any asset-test exempt income stream of the person, other than a partially asset-test exempt income stream;

(da) half of the value of any partially asset-test exempt income stream of the person;

Note: For partially asset-test exempt income stream, see subsection (1AA).

(da) the value of any foreign superannuation pension of the person;
(e) any amount that is:
   (i) received by the person within the immediately preceding period of 90 days; and
   (ii) is excluded from the definition of *income* in subsection 5H(1) by subsection 5H(4) or (5);
(f) the value of the person’s investment in:
   (i) a superannuation fund; or
   (ii) an approved deposit fund; or
   (iii) a deferred annuity; or
   (iiia) an ATO small superannuation account;
   until the person:
   (iv) reaches pension age; or
   (v) commences to receive a pension or annuity out of the fund;

Note: Some investments in superannuation funds, approved deposit funds, deferred annuities and ATO small superannuation accounts may be disregarded—see section 52AA.

(fa) if:
   (i) the person has a granny flat interest in the person’s principal home; and
   (ii) the granny flat interest gives the person reasonable security of tenure in the home; and
   (iii) the person acquired or retained the granny flat interest before 22 August 1990;
   the value of the granny flat interest;

Note: a person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 52KA).

(fb) if:
   (i) the person has a granny flat interest in the person’s principal home; and
   (ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies;
   the value of the granny flat interest;

Note: a person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 52KA).

(fc) if:
   (i) the person is a sale leaseback resident; and
Part IIIB  Provisions applicable to service pensions and income support supplement
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(ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies;
the value of any right or interest of the person in the sale leaseback home;
(g) the value of any contingent, remainder or reversionary interest of the person (other than an interest created by the person, by the person’s partner or by both of them);
(h) the value of any assets (other than a contingent, remainder or reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;
(i) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;
(j) the value of:
   (i) any cemetery plot acquired by the person for the burial of the person or the person’s partner; and
   (ii) any funeral expenses paid in advance by the person in respect of the funeral of the person or the person’s partner;

(ja) an amount invested in an exempt funeral investment and any return on the investment;
(k) if:
   (i) personal property of the person is designed for use by a disabled person; and
   (ii) the person, the person’s partner or a child who is dependent on the person or the person’s partner is disabled;
the value of the property;
(l) if:
   (i) personal property of the person is modified so that it can be used by a disabled person; and
   (ii) the person, the person’s partner or a child who is dependent on the person or the person’s partner is disabled;
the part of the value of the property that is attributable to the modifications;
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Section 52

Veterans’ Entitlements Act 1986

(m) if the person is provided with a motor vehicle under the scheme administered by the Commonwealth known as the Vehicle Assistance Scheme—the value of that motor vehicle;

(ma) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—the value of that motor vehicle;

(n) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the sale as will be applied by the person in respect of the purchase of the other residence;

Note: For principal home and other assets test definitions, see section 5L.

(o) the amount of any insurance or compensation payments received by the person because of the loss of, or damage to, buildings, plant or personal effects within the immediately preceding 12 months, or such longer period as the Commission determines for any special reason for a particular payment;

Note: The payments in paragraph (o) are not income for the purposes of this Act (see paragraph 5H(8)(q)).

(p) the amount of any accommodation bond balance in respect of an accommodation bond paid by the person.

(1AA) For the purposes of paragraphs (1)(d) and (daa):

**partially asset-test exempt income stream** means an asset-test exempt income stream that:

(a) is:

(i) an income stream covered by subsection 5JA(1) or (1A), or 5JB(1), that is not a defined benefit income stream; or

(ii) an income stream covered by subsection 5JBA(1); and

Note: For defined benefit income stream, see section 5J.

(b) has a commencement day happening on or after 20 September 2004; and

Note: For commencement day, see section 5J.

(c) is not covered by principles (if any) determined in writing by the Commission.
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(1AB) A determination under paragraph (c) of the definition of partially asset-test exempt income stream in subsection (1AA) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(1A) For the purposes of the application of this section in relation to income support supplement, the reference in subparagraph (1)(f)(iv) to pension age is taken to be a reference to the qualifying age referred to in subsection 45A(2).

(2) Where:
   (a) a person sells the person’s principal home; and
   (b) the person is likely, within 12 months, to apply the whole or part of the proceeds of the sale in acquiring another residence that is to be the person’s principal home;

so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of this Part (other than Subdivision B of this Division).

(3) For the purposes of this section, where:
   (a) the value of any assets of a person or, if the person is a member of a couple, of the person and the person’s partner, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home does not exceed $10,000; and
   (b) the assets are used primarily for private or domestic purposes;

the value of the assets is to be taken to be $10,000 unless the person satisfies the Commission that the value of the assets is less than $10,000.

(4) This section has effect subject to sections 52KA to 52X (special residences).

Note: The total value of the person’s assets may be reduced in some circumstances if the person has an exempt bond amount (see clause 15 of Schedule 5) or a refunded amount (see clause 17D of Schedule 5).
52AA Value of superannuation investments determined by Minister to be disregarded

(1) The value of a person’s investment in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is to be disregarded in calculating the value of the person’s assets for the purposes of this Act (other than section 52FA, 52G, 52GA, 52H, 52ZA or 52ZCA) if the investment is specified in a determination made under subsection (2).

(2) The Minister may specify:
   (a) a specified investment in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account; or
   (b) a specified class of investments in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account;

in a determination.

(3) A determination must be in writing.

(4) A determination takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

52A Value of asset-tested income streams that are not defined benefit income streams

(1) This section applies to a person’s asset-tested income stream if it is not a defined benefit income stream and it is not a family law affected income stream.

Note: For defined benefit income streams see section 52B.

(2) The value of the income stream is, for the purposes of the assets test, worked out:
   (a) if the person receives payments from the income stream 2 or more times a year—in relation to each 6 month period of the income stream’s term; and
   (b) if the person receives a payment from the income stream only once a year—in relation to each 12 month period of the income stream’s term.
## Section 52A

(3) If the income stream has an account balance, the value of the income stream, for the purposes of the assets test, is the value of the account balance at the beginning of the 6 month or 12 month period (as the case requires) referred to in subsection (2).

(4) If the income stream does not have an account balance, the value of the income stream is, for the purposes of the assets test, worked out as follows:

\[
\text{Purchase price} = \left( \frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}} \right) \times \text{Term elapsed}
\]

where:

- **purchase price** has the meaning given by subsection 5J(1).
- **relevant number** has the meaning given by subsection 5J(1).
- **residual capital value** has the meaning given by subsection 5J(1).
- **term elapsed** is the number of years of the term that have elapsed since the commencement day of the income stream, rounded down:
  - (a) in the case of an income stream referred to in paragraph (2)(a)—to the nearest half-year; and
  - (b) in the case of an income stream referred to in paragraph (2)(b)—to the nearest whole year.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000 with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Monthly payments commence on 1 January. Her assessable asset for the first six months will be:

\[
\begin{align*}
\$150,000 & - \left( \frac{\$150,000 - \$20,000}{10 \text{ years}} \right) \times 0 \text{ year} = \$150,000 \\
\end{align*}
\]

Her assessable asset after 30 June in that year will be:

\[
\begin{align*}
\$150,000 & - \left( \frac{\$150,000 - \$20,000}{10 \text{ years}} \right) \times 0.5 \text{ year} = \$143,500 \\
\end{align*}
\]
52B Value of asset-tested income streams that are defined benefit income streams

(1) This section applies to a person’s asset-tested income stream if it is a defined benefit income stream and it is not a family law affected income stream.

(2) The value of the income stream is, for the purposes of the assets test, worked out in relation to each 12 month period of the income stream’s term.

(3) The value of the income stream is, for the purposes of the assets test, worked out as follows:

\[ \text{Annual payment} \times \text{Pension valuation factor} \]

where:

- **annual payment** means the amount payable to the person for the relevant 12 month period under the income stream.
- **pension valuation factor** means the pension valuation factor that applies to the person in accordance with the determination made by the Minister for the purposes of this section.

(4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

52BA Value of asset-tested FLA income streams

(1) This section applies to family law affected income streams.

(2) The value of an income stream that is not a defined benefit income stream is, for the purposes of the assets test, worked out in accordance with guidelines determined by the Commission for the purposes of this subsection.

(3) The value of an income stream that is a defined benefit income stream is, for the purposes of the assets test, worked out in accordance with guidelines determined by the Commission for the purposes of this subsection.

(4) A determination of guidelines under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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Division 11  General provisions relating to the assets test

Section 52BB

52BB  Value of partially asset-test exempt income streams

(1) This section applies to income streams covered by paragraph 52(1)(daa).

(2) The value of such an income stream is, for the purposes of paragraph 52(1)(daa), worked out as follows:
   (a) if the income stream is a family law affected income stream—under section 52BA;
   (b) otherwise—under section 52A;
   as if the income stream were an asset-tested income stream to which that section applied.

52C  Effect of charge or encumbrance on value of assets

(1) Where there is a charge or encumbrance over particular assets of the person, the value of the assets, for the purposes of calculating the value of the person’s assets for the purposes of this Act (other than Division 3 and sections 52G, 52H, 52JA, 52JB, 52JC and 52JD), is to be reduced by the value of that charge or encumbrance.  
   Note: this section does not apply to an asset to which section 52CA (primary production assets) applies.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that:
   (a) the charge or encumbrance is a collateral security; or
   (b) the charge or encumbrance was given for the benefit of a person other than the person or the person’s partner.

(3) Subsection (1) does not apply to a charge or encumbrance over assets that are to be disregarded under section 52.

Exception for an asset-tested income stream (long-term)

(3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

(4) Where:
   (a) there is a charge or encumbrance over assets; and
   (b) the charge does not arise under section 52ZF; and
Section 52CA

(c) the assets consist of assets whose value is to be disregarded under section 52 and other assets;
the amount to be deducted under subsection (1) is:

\[
\frac{\text{Value of the charge or encumbrance} \times \text{Value of the other assets}}{\text{Value of all the assets}}
\]

(6) This section has effect subject to sections 52KA to 52X (special residences).

52CA Effect of certain liabilities on value of assets used in primary production

(1) For the purposes of working out the value of a person’s assets under this Act, if:
(a) the person is:
   (i) a primary producer; or
   (ii) a family member of a primary producer; and
(b) the person has assets (including real property) that are, in the Commission’s opinion, used for the purposes of carrying on that primary production; and
(c) the person also has liabilities that are, in the Commission’s opinion, related to the carrying on of the primary production; then:
(d) section 52C does not apply in relation to the assets referred to in paragraph (b); and
(e) those assets are taken to be a single asset (the primary production asset); and
(f) the value of that single asset is worked out under subsection (2).

Note: for family member see subsection 5L(1).

(2) The value of a person’s primary production asset is worked out in the following way:
Part III B Provisions applicable to service pensions and income support supplement

Division 11 General provisions relating to the assets test

Section 52D

Method statement

Step 1. Add together the value of the assets referred to in paragraph (1)(b): the result is called the **unencumbered value**.

Step 2. Add together the value of the liabilities referred to in paragraph (1)(c): the result is called the **total liability**.

Step 3. Take the total liability away from the unencumbered value: the result is the value of the person’s primary production asset.

(3) If the result under Step 3 of the Method statement is less than nil, the value of the primary production asset is taken to be nil.

52D Loans

If a person lends an amount after 22 May 1986, the value of the assets of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.

Subdivision B—Dispositions of assets (general provisions)

52E Disposal of assets

For the purposes of this Act, a person **disposes of assets** of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the value of the person’s assets and:

(a) the person receives no consideration in money or money’s worth for the diminution in the value of the person’s assets; or

(b) the person receives inadequate consideration in money or money’s worth for the diminution in the value of the person’s assets; or
(c) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person’s partner to obtain a service pension, income support supplement or a social security pension or benefit; or

(ii) to obtain or enable the person’s partner to obtain a service pension, income support supplement or a social security pension or benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person’s partner would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Note 1: If Division 8 or 8A applies in relation to the transfer by a person of a qualifying interest or an eligible interest in a farm or relevant farm asset, that transfer and certain transfers by the person’s partner are taken not to be disposal of assets (see sections 49C and 49S).

Note 2: Under Subdivision B of Division 11A of Part IIIB, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets (but this can be subject to a limit on the aggregate value of the transfers).

52F Amount of disposition

Where a person disposes of assets, the amount of the disposition is:

(a) if the person receives no consideration for the diminution in the value of the assets—an amount equal to the amount of the diminution in the value of the assets; or

(b) if the person receives consideration for the diminution in the value of the assets—an amount equal to the amount of the diminution in the value of the assets less the amount of the consideration received by the person in respect of the diminution.

Note: If subsection 52ZZZWM(2) applies in relation to the transfer of an asset to a special disability trust, that subsection has the effect of reducing the amount of the disposal or disposition.
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Subdivision BA—Dispositions of assets before 1 July 2002

52FAA  Application

This Subdivision applies only to dispositions of assets that took place before 1 July 2002.

52FA  Disposal of assets in pre-pension years—not a member of a couple

(1) If:

(a) a person is not a member of a couple when the person claims a service pension, an income support supplement or a social security pension; and

(b) the person disposes of an asset of the person during a pre-pension year of the person; and

(c) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year, exceeds $10,000;

then, for the purposes of determining whether the pension is payable to the person, there is to be included in the value of the person’s assets for the period of 5 years that starts on the day on which the disposition took place:

(d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year exceeds $10,000; or

(e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1:  For disposes of assets see section 52E.

Note 2:  For amount of disposition see section 52F.

Note 3:  If a pension is payable to the person, section 52G operates to determine the rate of payment and section 52FA ceases to apply to the person.

52G  Disposal of assets in pension years—not a member of a couple

(1) If, on or after 1 March 1986 and before 1 July 2002:
(a) a person who is not a member of a couple has, during a pension year of the person, disposed of assets of the person; and

(b) the amount of that disposition of assets, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $10,000;

then, for the purposes of this Act, there is to be included in the value of the person’s assets for the period of 5 years that starts on the day on which the disposition takes place:

(c) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $10,000; or

(d) the amount of the first-mentioned disposition of assets; whichever is the lesser amount.

52GA Disposal of assets in pre-pension years—members of couples

(1) Subject to subsections (3), (4) and (5), if:

(a) a person disposes of an asset; and

(b) the person is a member of a couple when the person or the person’s partner claims a service pension, an income support supplement or a social security pension; and

(c) the person disposes of the asset:

(i) during a pre-pension year of the person; or

(ii) if the person does not claim a service pension, an income support supplement or a social security pension but the person’s partner claims such a pension—during a pre-pension year of the person’s partner; and

(d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during that pre-pension year, exceeds $10,000;

then, for the purposes of determining whether the pension is payable to the person:

(e) there is to be included in the value of the person’s assets for the period of 5 years that starts on the day on which the disposition took place:
(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during that pre-pension year exceeds $10,000; or
(ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount; and

(f) there is to be included in the value of the assets of the person’s partner for the period of 5 years that starts on the day on which the disposition took place:
   (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during that pre-pension year exceeds $10,000; or
   (ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount.

Note 1: For disposes of assets see section 52E.
Note 2: For amount of disposition see section 52F.
Note 3: If a pension is payable to the person, section 52H operates to determine the rate of payment and section 52GA ceases to apply to the person.

(3) If:
   (a) amounts are included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person’s partner because of a disposition of an asset by the person; and
   (b) the person and the person’s partner cease to be members of the same couple;
any amount that was included in the value of the person’s former partner’s assets because of that disposition is to be included in the value of the person’s assets.

(4) If:
   (a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person’s partner because of a disposition of an asset by the person; and
   (b) the person dies;
an amount is not to be included in the value of the assets of the person’s partner because of that disposition.

(5) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person’s partner because of a disposition of an asset by the person; and

(b) the partner dies;

any amount that would, if the partner had not died, be included in the value of the partner’s assets because of the disposition is to be included in the value of the person’s assets.

52H Disposal of assets in pension years—members of couples

(1) Subject to subsections (3) and (4), where, on or after 1 March 1986 and before 1 July 2002:

(a) a person who is a member of a couple has disposed of assets of the person:

(i) during a pension year of the person; or

(ii) if the person is not receiving a service pension, income support supplement or a social security pension but the person’s partner is receiving such a pension—during a pension year of the person’s partner; and

(b) the amount of that disposition of assets, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during that pension year, exceeds $10,000;

then, for the purposes of this Act:

(c) there is to be included in the value of the person’s assets for the period of 5 years that starts on the day on which the disposition takes effect:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition of the assets and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during the pension year exceeds $10,000; or

(ii) 50% of the amount of the first-mentioned disposition of assets;

whichever is the lesser amount; and
(d) there is to be included in the value of the assets of the person’s partner for the period of 5 years that starts on the day on which the disposition takes place:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition of the assets and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during the pension year exceeds $10,000; or

(ii) 50% of the amount of the first-mentioned disposition of assets;

whichever is the lesser amount.

(3) Where:

(a) amounts are included under subsection (1) in the value of a person’s assets who is a member of a couple and in the assets of the person’s partner because of a disposition of assets by the person; and

(b) the person and the person’s partner cease to be members of the same couple;

any amount that was included in the value of the person’s former partner’s assets because of that disposition is to be included in the value of the person’s assets.

(4) Where:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person’s partner because the person has disposed of an asset; and

(b) the person dies;

no amount is to be included in the value of the assets of the person’s partner because of that disposition.

(5) Where:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person’s partner because the person has disposed of an asset; and

(b) the person’s partner dies;

any amount that would, if the person’s partner had not died, be included in the value of the assets of the person’s partner because

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of the disposition is to be included in the value of the person’s assets.

52J Dispositions more than 5 years old to be disregarded

This Subdivision does not apply to a disposition of assets that took place:

(a) more than 5 years before the time when:
   (i) the person who disposed of those assets; or
   (ii) if that person was, at the time when that disposition took place, a member of a couple—that person’s partner;
   became eligible to receive a service pension or income support supplement; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of those assets could reasonably have expected that the person or the person’s partner would become eligible to receive a service pension or income support supplement.

Subdivision BB—Dispositions of assets on or after 1 July 2002

52JA Disposition of assets in tax year—individuals

Dispositions to which section applies

(1) This section applies to a disposition (the relevant disposition) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposition.

Increase in value of assets

(2) If the amount of the relevant disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person during the tax year in which the relevant disposition took place, exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person’s assets for the period of 5 years starting on the day on which the relevant disposition took place:

(a) the amount of the relevant disposition;
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(b) the amount by which the sum of the amount of the relevant disposition and the amounts (if any) of other dispositions of assets previously made by the person during the tax year in which the relevant disposition took place, exceeds $10,000.

Previous joint dispositions

(3) If, during the tax year in which the relevant disposition took place but before the time of the relevant disposition, the person was a member of a couple who jointly disposed of an asset, a reference in subsection (2) to the amounts (if any) of other dispositions of assets previously made by the person during that tax year includes a reference to one-half of the amount of the joint disposition.

52JB Dispositions of assets in 5 year period—individuals

Disposition to which section applies

(1) This section also applies to a disposition (the relevant disposition) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposition.

Increase in value of assets

(2) If:

(a) the sum of the amount of the relevant disposition and the amounts of any previous dispositions of assets made during the rolling period by the person;

less

(b) the sum of any amounts included in the value of the person’s assets during the rolling period under section 52JA, 52JC or 52JD or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person’s assets for the period of 5 years starting on the day on which the relevant disposition took place:

(c) an amount equal to the excess;

(d) the amount of the relevant disposition.
Previous joint dispositions

(3) If, during the rolling period but before the time of the relevant disposition, the person was a member of a couple who jointly disposed of an asset, the reference in paragraph (2)(a) to the amounts of any previous dispositions during the rolling period of assets by the person includes a reference to one-half of the amount of the joint disposition.

Rolling period

(4) For the purposes of this section, the rolling period is the period comprising the tax year in which the relevant disposition took place and such (if any) of the 4 previous tax years as occurred after 30 June 2002.

52JC Disposition of assets in tax year—members of couples

Dispositions to which section applies

(1) If there is a disposition (the relevant disposition) on or after 1 July 2002 of an asset by:
   (a) a person who, at the time of the relevant disposition, is a member of a couple; or
   (b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;
subsection (2) has effect.

Increase in value of assets

(2) Subject to this section, if the amount of the relevant disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person, the person’s partner, or the person and the person’s partner, during the tax year in which the relevant disposition took place (whether before or after they became members of the couple), exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposition took place:
   (a) one-half of the amount of the relevant disposition;
(b) one-half of the amount by which the sum of the amount of the relevant disposition, and the amounts (if any) of other dispositions of assets previously made by the person, the partner, or the person and the partner, during the tax year in which the relevant disposition took place, exceeds $10,000.

**Effect of ceasing to be member of couple**

(3) If, after the disposition referred to in paragraph (1)(a), the person and the person’s partner cease to be members of the same couple:

(a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposition; and

(b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

**Effect of death of person**

(4) If, after the disposition referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person’s partner because of that disposition.

**Effect of death of partner**

(5) If, after the disposition referred to in paragraph (1)(a), the person’s partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposition is to be included in the value of the assets of the person.

**52JD Disposition of assets in 5 year period—members of couples**

**Dispositions to which section applies**

(1) If there is a disposition (the relevant disposition) on or after 1 July 2002 of an asset by:

(a) a person who, at the time of the relevant disposition, is a member of a couple; or

(b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;
subsection (2) has effect.

Increase in value of assets

(2) Subject to this section, if:

(a) the sum of the amount of the relevant disposition and the amounts of any previous dispositions of assets made during the rolling period by the person, the person’s partner or the person and the person’s partner;

less

(b) the sum of any amounts included in the value of the assets of the person or of the partner during the rolling period under section 52JA, 52JB or 52JC or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposition took place:

(c) an amount equal to one-half of the excess;

(d) one-half of the amount of the relevant disposition.

Effect of ceasing to be member of couple

(3) If, after the disposition referred to in paragraph (1)(a), the person and the person’s partner cease to be members of the same couple:

(a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposition;

and

(b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

Effect of death of person

(4) If, after the disposition referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person’s partner because of that disposition.
Effect of death of partner

(5) If, after the disposition referred to in paragraph (1)(a), the person’s partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposition is to be included in the value of the assets of the person.

Rolling period

(6) For the purposes of this section, the rolling period is the period comprising the tax year in which the relevant disposition took place and such (if any) of the 4 previous tax years as occurred after 30 June 2002.

Subdivision C—Provisions relating to special residences and special residents

52KA Application of Subdivision to granny flat residents

This Subdivision applies to a granny flat resident only if the resident acquired or retained the person’s granny flat interest in the person’s principal home on or after 22 August 1990.

52L Basis for different treatment

This Subdivision’s operation on a special resident depends on:

(a) whether the resident is:
   (i) not a member of a couple; or
   (ii) a member of an ordinary couple; or
   (iii) a member of an illness separated couple; or
   (iv) a member of an ordinary couple with different principal homes; and

(b) the resident’s entry contribution; and

(c) the resident’s extra allowable amount.
52M Entry contribution

(1) A special resident’s entry contribution is:

(a) if the resident is not a member of a couple—the resident’s individual residence contribution; or

(b) if the resident is a member of a couple, shares the resident’s principal home with the resident’s partner and is not a member of an illness separated couple—an amount equal to 50% of the resident’s individual residence contribution and of the partner’s individual residence contribution; or

(c) if the resident is a member of an illness separated couple—the resident’s individual residence contribution; or

(d) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident’s partner is not a special residence;
the resident’s individual residence contribution; or

(e) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident’s partner is also a special residence;
an amount equal to 50% of the resident’s individual residence contribution and of the partner’s individual residence contribution.

(1A) A special resident’s entry contribution is the resident’s individual residence contribution plus the amount paid, or agreed to be paid, for the resident’s current right (if any) to share the resident’s principal home with a partner if:

(a) the resident was a member of a couple at the time when the resident took up residence in the retirement village or granny flat; and

(b) the resident has ceased to be a member of a couple.

(1B) A special resident’s entry contribution is the resident’s individual residence contribution if:

(a) the resident was a member of a couple at the time when the sale leaseback agreement was entered into; and
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(b) the resident has ceased to be a member of a couple.

(1C) For the purposes of this Division, the individual residence contribution is:

(a) for a retirement village resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; and

(b) for a granny flat resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the granny flat; and

(c) for a sale leaseback resident—the deferred payment amount.

Note: for deferred payment amount see section 5MB.

(1D) For the purposes of paragraph (1C)(b):

(a) the total amount paid to obtain a person’s current right to live in a granny flat is the amount equal to the value of the person’s granny flat interest; and

(b) the value of a person’s granny flat interest is:

(i) unless subparagraph (ii) applies—the amount paid, or agreed to be paid, for the interest; or

(ii) if the Commission considers that, for any special reason in any particular case, that value should be another amount—that other amount.

(2) An amount that is rent or a residential care charge for the purposes of this Act is to be disregarded in applying subsections (1), (1A) and (1B).

Note: For residential care charge, see subsection 5N(1).

52N Extra allowable amount

Retirement village residence taken up before 12 June 1989

(1) If a retirement village resident became entitled to take up residence in the retirement village before 12 June 1989, the resident’s extra allowable amount is:

(a) if the resident is not a member of a couple—$64,000; or

(b) if the resident is a member of an illness separated couple—$64,000; or

(c) in any other case—$32,000.
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Retirement village residence taken up on or after 12 June 1989

(2) If a retirement village resident became entitled to take up residence in the retirement village on or after 12 June 1989, the resident’s extra allowable amount is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the person becomes entitled to take up that residence, is the difference between the single property owner AVL and the single non-property owner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the person becomes entitled to take up that residence, is the difference between the single AVL and the single non-property owner AVL; or

(c) in any other case—the amount that, as at the time when the person becomes entitled to take up that residence, is the difference between the partnered property owner AVL and the partnered non-property owner AVL.

Granny flat residence

(2A) A granny flat resident’s extra allowable amount is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension single property owner AVL and the pension single non-property owner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension single property owner AVL and the pension single non-property owner AVL; or

(c) in any other case—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension partnered property owner AVL and the pension partnered non-property owner AVL.

Sale leaseback home

(2B) A sale leaseback resident’s extra allowable amount is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property
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owner AVL and the pension (single) non-property owner AVL; or
(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property owner AVL and the pension (single) non-property owner AVL; or
(c) in any other case—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (partnered) property owner AVL and the pension (partnered) non-property owner AVL.

(3) For the purposes of this section, a person becomes entitled to take up residence in a retirement village when the person becomes entitled to take up residence in a retirement village pursuant to the agreement under which the person’s current right to live in the retirement village arises.

(4) In this section, pension “single” property owner AVL, pension “single” non-property owner AVL, pension “partnered” property owner AVL and pension “partnered” non-property owner AVL have the same meaning as in Division 18.

52P  Renegotiation of retirement village agreement

If a person who has a right to live in a retirement village under an agreement enters into a new agreement under which the person obtains a right to live in the retirement village, then, for the purposes of this Division, the total amount paid, or agreed to be paid, for the person’s current right to live in the retirement village is the sum of the following amounts:
(a) the total amount paid under the new agreement for that right;
(b) so much (if any) of:
(i) any amount paid under an earlier agreement to obtain a right for the person to live in the retirement village; and
(ii) any amount that was, or would have been, payable to the person upon the termination of an earlier agreement; as ought, in the Commission’s opinion, to be attributed to the cost of the person’s current right to live in the retirement village.
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52Q Residents who are not members of a couple

(1) This section applies to a special resident who is not a member of a couple.

Entry contribution more than extra allowable amount

(2) Where:
   (a) this section applies to a special resident; and
   (b) the person’s entry contribution was more than the extra allowable amount;
the person is to be taken, for the purposes of this Act, to be a property owner.

Entry contribution equal to or below extra allowable amount

(3) Where:
   (a) this section applies to a special resident; and
   (b) the person’s entry contribution was equal to or less than the extra allowable amount;
then, for the purposes of this Act:
   (c) the person is to be taken not to have a right or interest in relation to the person’s principal home; and
   (d) the person’s assets are to be taken to include an asset the value of which is equal to the amount of the person’s entry contribution; and
   (e) subsection 52(1) and sections 52G, 52JA and 52JB do not apply to an asset that the person is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:
   (a) whether or not the person actually has any right or interest in the person’s principal home; and
   (b) whatever the value of any right or interest that the person does have in the person’s principal home.

52R Members of couples

(1) This section applies to a special resident if:
   (a) the resident is a member of a couple; and
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(b) the resident shares the person’s principal home with the resident’s partner.

Entry contribution more than extra allowable amount

(2) Where:
(a) this section applies to a special resident; and
(b) the person’s entry contribution was more than the extra allowable amount;
the person is to be taken, for the purposes of this Act, to be a property owner.

Entry contribution equal to or below extra allowable amount

(3) Where:
(a) this section applies to a special resident; and
(b) the person’s entry contribution was equal to or less than the extra allowable amount;
then, for the purposes of this Act:
(c) the person is to be taken not to have a right or interest in relation to the person’s principal home; and
(d) the person’s assets are to be taken to include an asset the value of which is equal to the amount of the person’s entry contribution; and
(e) subsection 52(1) and section 52H do not apply to an asset that the person is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:
(a) whether or not the person actually has any right or interest in the person’s principal home; and
(b) whatever the value of any right or interest that the person does have in the person’s principal home.

52S  Members of illness separated couple (both in special residences)

(1) This section applies to a special resident if:
(a) the resident is a member of an illness separated couple; and
(b) the principal home of the resident’s partner is also a special residence.

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Both entry contributions above extra allowable amount

(2) Where:
   (a) this section applies to a special resident; and
   (b) the person’s entry contribution, and the entry contribution of
       the person’s partner, were each more than the extra allowable
       amount concerned;

then, for the purposes of this Act:
   (c) the person is to be taken to be a property owner; and
   (d) any right or interest of the person in the principal home of the
       person’s partner is to be disregarded in calculating the actual
       value of the person’s assets; and
   (e) any right or interest of the person’s partner in his or her
       principal home, or in the person’s principal home, is to be
       disregarded in calculating the actual value of the partner’s
       assets.

Both entry contributions equal to or below extra allowable amount

(3) Where:
   (a) this section applies to a special resident; and
   (b) the person’s entry contribution, and the entry contribution of
       the person’s partner, were each equal to or less than the extra
       allowable amount concerned;

then, for the purposes of this Act:
   (c) the person is to be taken not to have a right or interest in
       relation to the person’s principal home; and
   (d) the person’s assets are to be taken to include an asset the
       value of which is equal to the amount of the person’s entry
       contribution; and
   (e) subsection 52(1) and section 52H do not apply to the asset
       that the person is, because of paragraph (d) of this subsection,
       taken to have.

(4) Subsection (3) applies:
   (a) whether or not the person actually has any right or interest in
       the person’s principal home; and
   (b) whatever the value of any right or interest that the person
       does have in the person’s principal home.
Section 52T

Person’s entry contribution above extra allowable amount/partner’s entry contribution equal to or below extra allowable amount

(5) Where:
(a) this section applies to a special resident; and
(b) the person’s entry contribution was more than the extra allowable amount; and
(c) the person’s partner’s entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person’s partner:
(d) the person is to be taken to be a property owner;
(e) both the person, and the person’s partner, are taken not to have a right or interest in relation to the partner’s principal home;
(ea) the assets of the person’s partner are taken to include an asset whose value is equal to the amount of the partner’s entry contribution;
(eb) subsection 52(1) and section 52H do not apply to the asset that the person’s partner is, because of paragraph (ea), taken to have;
(f) any right or interest of the person’s partner in the person’s principal home is to be disregarded in calculating the actual value of the partner’s assets;
(g) the assets value limit for the person and the person’s partner is to be taken to be $98,625.

Note: the amount in paragraph (g) is adjusted annually (see section 59J).

(6) Subsection (5) applies:
(a) whether or not the person’s partner actually has any right or interest in the partner’s principal home; and
(b) whatever the value of any right or interest that the partner does have in the partner’s principal home.

52T Members of illness separated couple (partner not in special residence and partner property owner)

(1) This section applies to a special resident if:
(a) the resident is a member of an illness separated couple; and
(b) the principal home of the resident’s partner is not a special residence; and

(c) the right or interest of the resident’s partner in the partner’s principal home is to be disregarded because of paragraph 52(1)(b).

Entry contribution more than extra allowable amount

(2) Where:

(a) this section applies to a special resident; and

(b) the person’s entry contribution was more than the extra allowable amount;

then:

(c) for the purposes of this Act, the person is to be taken to be a property owner; and

(d) any right or interest of the person in the principal home of the person’s partner referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the person’s assets for the purposes of this Act; and

(e) any right or interest of the person’s partner in the person’s principal home is also to be disregarded in calculating the actual value of the assets of the person’s partner for the purposes of this Act.

Entry contribution equal to or below extra allowable amount

(3) Where:

(a) this section applies to a special resident; and

(b) the person’s entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person’s partner:

(c) both the person, and the person’s partner, are taken not to have a right or interest in relation to the person’s principal home;

(ca) the person’s assets are taken to include an asset whose value is equal to the amount of the person’s entry contribution;

(cb) subsection 52(1) and section 52H do not apply to the asset that the person is, because of paragraph (ca), taken to have;
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(d) any right or interest of the person in the principal home of the person’s partner referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the person’s assets;

(e) the assets value limit of the person and the person’s partner is to be taken to be $98,625.

Note: the amount in paragraph (e) is adjusted annually (see section 59J).

(4) Subsection (3) applies:

(a) whether or not the person actually has any right or interest in the person’s principal home; and

(b) whatever the value of any right to interest that the person does have in the person’s principal home.

52U  Members of illness separated couple (partner not in special residence and partner not property owner)

(1) This section applies to a special resident if:

(a) the resident is a member of an illness separated couple; and

(b) the principal home of the resident’s partner is not a special residence; and

(c) the resident’s partner does not have a right or interest in the partner’s principal home that is to be disregarded because of paragraph 52(1)(b).

Entry contribution more than extra allowable amount

(2) Where:

(a) this section applies to a special resident; and

(b) the person’s entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person’s partner:

(c) the person is to be taken to be a property owner;

(d) any right or interest of the person’s partner in the person’s principal home is to be disregarded in calculating the actual value of the partner’s assets;

(e) the assets value limit of the person and the person’s partner is to be taken to be $98,625.

Note: the amount in paragraph (e) is adjusted annually (see section 59J).
(3) Subsection (2) applies:
   (a) whether or not the person actually has any right or interest in the person’s principal home; and
   (b) whatever the value of any right or interest that the person does have in the person’s principal home.

*Entry contribution equal to or below extra allowable amount*

(4) Where:
   (a) this section applies to a special resident; and
   (b) the person’s entry contribution was equal to or less than the extra allowable amount;
then, the following provisions apply for the purposes of the application of this Act to the person and to the person’s partner:
   (c) both the person, and the person’s partner, are to be taken not to have a right or interest in relation to the person’s principal home;
   (d) the person’s assets are to be taken to include an asset the value of which is equal to the amount of the person’s entry contribution;
   (e) subsection 52(1) and sections 52G, 52H, 52JA, 52JB, 52JC and 52JD do not apply to the asset that the person is, because of paragraph (d) of this subsection, taken to have.

52V Members of ordinary couple with different principal homes (both in special residences)

(1) This section applies to a special resident if:
   (a) the resident is a member of an ordinary couple with different principal homes; and
   (b) the principal home of the resident’s partner is also a special residence.

*Both entry contributions above extra allowable amount*

(2) If:
   (a) this section applies to a special resident; and
   (b) the resident’s entry contribution, and the partner’s entry contribution, were each more than the extra allowable amount concerned;
then, for the purposes of this Act:
Section 52V

(c) the resident and the partner are each to be taken to be property owners; and
(d) the value of the resident’s principal home is taken to be the resident’s individual residence contribution; and
(e) the value of the partner’s principal home is taken to be the partner’s individual residence contribution; and
(f) any right or interest of the resident in:
   (i) the more valuable of the two principal homes; or
   (ii) where the value of the two principal homes is the same—the principal home of the younger person;
   (the more valuable principal home) is to be disregarded in calculating the actual value of the resident’s assets; and
(g) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner’s assets; and
(h) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset the value of which is equivalent to the amount of that person’s entry contribution.

Both entry contributions equal to or below extra allowable amount

(3) If:
   (a) this section applies to a special resident; and
   (b) the resident’s entry contribution, and the partner’s entry contribution, were each less than or equal to the extra allowable amount concerned;
then, for the purposes of this Act:
   (c) the resident and the partner are each to be taken not to have a right or interest in relation to the resident’s principal home or the partner’s principal home; and
   (d) the resident’s assets are taken to include an amount equal to the resident’s individual residence contribution; and
   (e) the partner’s assets are taken to include an amount equal to the partner’s individual residence contribution.

(4) Subsection (2) applies:
   (a) whether or not the resident actually has any right or interest in the resident’s principal home; and

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(b) whatever the value of any right or interest that the resident does have in the resident’s principal home; and
(c) whether or not the partner actually has any right or interest in the partner’s principal home; and
(d) whatever the value of any right or interest that the partner does have in the partner’s principal home.

52W Members of ordinary couple with different principal homes
(partner not in special residence and partner property owner)

(1) This section applies to a special resident if:
(a) the resident is a member of an ordinary couple with different principal homes; and
(b) the principal home of the resident’s partner is not a special residence; and
(c) the right or interest of the resident’s partner in the partner’s principal home would, but for this section, be disregarded because of paragraph 52(1)(b).

(2) If this section applies to a special resident, then, for the purposes of this Act:
(a) the resident and the resident’s partner are each to be taken to have a right or interest in a principal home to which paragraph 52(1)(b) applies; and
(b) the value of the resident’s principal home is to be taken to be the amount of the resident’s entry contribution; and
(c) any right or interest of the resident in:
(i) the more valuable of the two principal homes; or
(ii) where the value of the two principal homes is the same—the principal home that is not a special residence;
(the more valuable principal home) is to be disregarded in calculating the actual value of the resident’s assets; and
(d) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner’s assets; and
(e) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset.
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whose value is equivalent to the value of the less valuable principal home.

52X Members of ordinary couple with different principal homes (partner not in special residence and partner not property owner)

(1) This section applies to a special resident if:
(a) the resident is a member of an ordinary couple with different principal homes; and
(b) the principal home of the resident’s partner is not a special residence; and
(c) the partner does not have a right or interest in the partner’s principal home that is to be disregarded because of paragraph 52(1)(b).

Entry contribution above extra allowable amount

(2) If:
(a) this section applies to a special resident; and
(b) the resident’s entry contribution was more than the amount that would be the extra allowable amount if the resident were not a member of a couple;
then, for the purposes of this Act, the resident and the partner are each to be taken to have a right or interest in a principal home to which paragraph 52(1)(b) applies.

Entry contribution equal to or below extra allowable amount

(3) If:
(a) this section applies to a special resident; and
(b) the resident’s entry contribution was equal to or less than the amount that would be the extra allowable amount if the resident were not a member of a couple;
then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident’s partner:
(c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident’s principal home; and
(d) the resident’s assets are to be taken to include an asset whose
value is equal to the amount of the resident’s entry
contribution.

(4) Subsection (3) applies:
(a) whether or not the resident actually has any right or interest
in the resident’s principal home; and
(b) whatever the value of any right or interest that the resident
does have in the resident’s principal home; and
(c) whether or not the partner actually has any right or interest in
the resident’s principal home; and
(d) whatever the value of any right or interest that the partner
does have in the resident’s principal home.

Subdivision D—Financial hardship

52Y Access to financial hardship rules

(1) Where:
(a) either:
(i) a service pension or income support supplement is not
payable to a person because of the application of an
assets test; or
(ii) a person’s service pension rate or income support
supplement rate is determined by the application of an
assets test; and
(b) either:
(i) sections 48B and 48C (disposal of income) and 52G,
52H, 52JA, 52JB, 52JC and 52JD (disposal of assets) do
not apply to the person; or
(ii) the Commission determines in writing that the
application of those sections to the person should, for
the purposes of this section, be disregarded; and
(c) the person, or the person’s partner, has an unrealisable asset;
and
(d) the person lodges, at an office of the Department in Australia
in accordance with section 5T, a written request that this
section apply to the person; and
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(e) the Commission is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;
the Commission must determine in writing that this section applies to the person.

Note: for unrealisable asset see subsections 5L(11) and (12).

(2) If a request is lodged under paragraph (1)(d), the Secretary:
(a) must investigate the matters that the request relates to; and
(b) must, when the investigation is complete, submit to the Commission for its consideration:
(i) the request; and
(ii) the evidence that the person who made the request provided in support of the request; and
(iii) any documents that are relevant to the request and are under the Department’s control (including any evidence or documents relevant to the request that are obtained in the course of the investigation).

(3) A determination under subsection (1) takes effect:
(a) on the day on which the request under paragraph (1)(d) was lodged; or
(b) if the Commission so determines in the special circumstances of the case—on a day not more than 6 months before the day referred to in paragraph (a).

52Z  Application of financial hardship rules

Value of unrealisable asset to be disregarded

(1) If section 52Y applies to a person, the value of:
(a) any unrealisable asset of the person; and
(b) any unrealisable asset of the person’s partner;
is to be disregarded in working out the person’s service pension rate or income support supplement rate.

Deduction from service pension maximum payment rate

(2) If section 52Y applies to a person, there is to be deducted from the person’s service pension maximum payment rate or income
support supplement maximum payment rate an amount equal to the person’s adjusted annual rate of ordinary income.

*Adjusted annual rate of ordinary income*

(3) A person’s *adjusted annual rate of ordinary income* is an amount per year equal to the sum of:

(a) the person’s annual rate of ordinary income (other than income from assets); and

(b) the person’s annual rate of ordinary income from assets that are not assets tested; and

(c) either:

(i) the person’s annual rate of ordinary income from unrealisable assets; or

(ii) the person’s notional annual rate of ordinary income from unrealisable assets;

whichever is the greater; and

(d) an amount per year equal to $19.50 for each $250 of the value of the person’s assets (other than disregarded assets).

(3A) In working out the ordinary income of a person for the purposes of subsection (3), the following payments and amounts are to be counted:

(a) a payment of an instalment of pension under Part II or IV;

(b) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable because of subsection 4(6) or (8B) of the *Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

(d) a payment (other than a payment referred to in paragraph (a) or (b)) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged;

(e) a payment by way of allowance (other than loss of earnings allowance) under Part VI of this Act;

(g) a payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment);

(h) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;

(i) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight worked out under section 51 of this Act;
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(j) a payment of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the MRCA (wholly dependent partner payment).

Note: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

Note: the payments and amounts referred to in this subsection would not be considered ordinary income elsewhere in this Act (see subsections 5H(1) and (8)).

Assets tested asset

(4) For the purposes of subsection (3), an asset is not assets tested if the asset’s value is disregarded under subsection 52(1).

Notional annual rate of ordinary income from unrealisable assets

(5) A person’s notional annual rate of ordinary income from unrealisable assets is:

(a) the amount per year equal to 2.5% of the value of the person’s and the person’s partner’s unrealisable assets; or

(b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person’s and the person’s partner’s unrealisable assets; whichever is the less.

(6) Subsection (2) applies:

(a) subject to subsection (8); and

(b) despite the Rate Calculator and section 45S (calculation of rate of income support supplement).

(7) Where:

(a) a person has disposed of assets and section 52G, 52H, 52JA, 52JB, 52JC or 52JD applies to the disposition; and

(b) the Commission has made a determination under subparagraph 52Y(1)(b)(ii) in relation to the disposition; this section applies to the person as if the person had not disposed of the assets.

(8) Where the sum of the rate of pension that would, apart from this subsection, be payable to a person and the annual rate of income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per year of the excess.
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Section 52ZAAA

Subdivision E—Pension loans scheme

52ZAAA  Pension loans scheme definitions

(1) In this Subdivision, unless the contrary intention appears:

*adjusted income reduced rate*, in relation to an income support supplement, means the rate worked out in relation to that supplement at Step 6 of Method statement 5 in Module A of the Rate Calculator.

*assets reduced rate*, in relation to a service pension or an income support supplement, means the rate worked out in relation to that pension or supplement at Step 8 of Method statement 1 or Step 8 of Method statement 5, as the case may be, in Module A of the Rate Calculator.

*dispose of real assets* has its ordinary meaning.

*guaranteed amount* means the amount (if any) specified under paragraph 52ZD(1A)(b) or subsection 52ZE(1) (as the case may be).

*income reduced rate*, in relation to a service pension, means the rate worked out in relation to that pension at Step 6 of Method statement 1 in Module A of the Rate Calculator.

*maximum payment rate*, in relation to a service pension or an income support supplement, means the rate worked out in relation to that pension or supplement at Step 4 of Method statement 1, Step 4 of Method statement 2 or Step 4 of Method statement 5, as the case may be, in Module A of the Rate Calculator.

*real assets*, in relation to a person or couple, means the real property (including the principal home) of the person or couple in Australia, but does not include any real property specified under paragraph 52ZD(1A)(a).

(2) For the purposes of this Subdivision, a reference to a charge under section 52ZF includes a reference to a charge continued in force by subsection 52ZF(3) or paragraph 52ZG(2A)(b).

(3) For the purposes of this Subdivision, a person is **participating in the pension loans scheme** if:
Section 52ZA

(a) the person has made a request to participate in the scheme under section 52ZD; and
(b) because of the request, the rate of the pension payable to the person is:
   (i) the maximum payment rate; or
   (ii) some other rate nominated by the person; whichever is the lower; and
(c) the person owes a debt to the Commonwealth under section 52ZC.

52ZA Eligibility for participation in pension loans scheme

Person not member of a couple

(1) A person who is not a member of a couple is eligible to participate in the pension loans scheme if:
   (a) the person is receiving or is eligible for a service pension or income support supplement; and
   (c) the pension or income support supplement rate is, or is to be:
      (i) an income reduced rate or an adjusted income reduced rate (as the case may be); or
      (ii) an assets reduced rate;
      and at least one of those reduced rates is not a nil rate; and
   (d) the person has reached:
      (i) if the person is receiving or is eligible for service pension—pension age; or
      (ii) if the person is receiving or is eligible for income support supplement—qualifying age; and
   (e) either:
      (i) the value of the person’s real assets (after deduction of any guaranteed amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Subdivision; or
      (ii) subsection (3) applies to the person.

Note 1: For income reduced rate or adjusted income reduced rate and assets reduced rate see subsection 52ZAAA(1).
Note 2: For real assets see subsection 52ZAAA(1).
Note 3: For guaranteed amount see subsection 52ZAAA(1).
Note 4: For pension age see section 5QA.
Person member of a couple

(2) A person who is a member of a couple is eligible to participate in the pension loans scheme if:

(a) the person is receiving or is eligible for a service pension or income support supplement; and
(b) the pension or income support supplement rate is, or is to be:
   (i) an income reduced rate or an adjusted income reduced rate (as the case may be); or
   (ii) an assets reduced rate;

and at least one of those reduced rates is not a nil rate; and

(d) the person:
   (i) is a veteran and has reached pension age; or
   (ii) is the partner of a veteran referred to in subparagraph (i); or
   (iii) is receiving or is eligible for an income support supplement and has reached qualifying age; and

(e) either:
   (i) the value of the couple’s real assets (after deduction of any guaranteed amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Subdivision; or
   (ii) subsection (3) applies to both of the members of the couple.

Note 1: For income reduced rate or adjusted income reduced rate and assets reduced rate see subsection 52ZAAA(1).

Note 2: For real assets see subsection 52ZAAA(1).

Note 3: For guaranteed amount see subsection 52ZAAA(1).

Note 4: For pension age see section 5QA.

Attributable stakeholder of a company or trust

(3) This subsection applies to a person if:

(a) either:
   (i) the person is an attributable stakeholder of a company or trust (within the meaning of Division 11A); or
   (ii) the person is a member of a couple and the other member of the couple is an attributable stakeholder of a
company or trust (within the meaning of Division 11A); and

(b) the company or trustee has given the Commonwealth a guarantee that the company or trustee will pay any debt that may become payable to the Commonwealth by the person under this Subdivision; and

(c) the company’s or trustee’s liability under the guarantee is secured by a charge against real property of the company or trust in Australia; and

(d) the Commission is satisfied that the value of that real property is sufficient to secure the payment of any amount that may become payable by the company or trustee under the guarantee; and

(e) the Commission has, by writing, approved the guarantee and the charge.

(4) In this section:

*qualifying age* has the meaning given by subsection 45A(2).

### 52ZB Effect of participation in pension loans scheme—pension rate

(1) If:

(a) a person is eligible to participate in the pension loans scheme; and

(b) the person makes a request to participate under section 52ZD; and

(d) the Commission is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Subdivision is readily recoverable;

then:

(e) the rate of the pension payable to the person by operation of the scheme is to be:

   (i) the maximum payment rate; or
   (ii) some other rate nominated by the person; whichever is the lower.

*Note:* For *maximum payment rate* see subsection 52ZAAA(1).

(2) The pension at the rate payable by operation of the scheme is payable on and from the day on which the request is lodged.
Section 52ZC

(3) For the purposes of section 53A (fringe benefits), if but for the operation of the scheme the person would not have received a service pension or income support supplement, the person is to be taken to be a person who is not receiving a service pension or income support supplement.

(4) For the purposes of Subdivision C of Division 12 (treatment benefits), if but for the operation of the scheme the person would not have received a service pension or income support supplement, the person is to be taken to be a person who is not receiving an age or invalidity service pension.

52ZC Effect of participation in pension loans scheme—creation of debt

(1) If the rate of the pension payable by operation of the pension loans scheme is more than the rate that would have been received by the person but for the operation of the scheme, the person owes a debt to the Commonwealth.

(3) This is how to work out the amount of the debt owed by the person from time to time:

<table>
<thead>
<tr>
<th>Method statement</th>
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<tbody>
<tr>
<td><strong>Step 1.</strong> Work out the sum of the amount of pension received by the person from time to time under the pension loans scheme: the result is the <strong>primary loan amount.</strong></td>
</tr>
<tr>
<td><strong>Step 2.</strong> Take away from the primary loan amount the sum of the amount of pension (if any) that would have been received by the person but for the operation of the scheme: the result is the <strong>basic amount of debt.</strong></td>
</tr>
<tr>
<td><strong>Step 3.</strong> Add to the basic amount of debt the amount of interest payable. The interest payable is compound interest at the rate fixed under subsection (4) and compounding fortnightly: the result is the <strong>amount of debt including interest.</strong></td>
</tr>
</tbody>
</table>
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 11  General provisions relating to the assets test

Section 52ZCA

Step 4. Add to the amount of debt including interest the amount of any registration costs payable by the person under subsection 52ZL(4): the result is the total amount of debt.

Step 5. From the total amount of debt take away any amount of the debt already paid to the Commonwealth: the result is the current amount of debt owed by the person.

(4) The rate at which compound interest is payable under subsection (3) is the rate fixed from time to time by the Minister for Social Security by determination in writing.

(5) A determination made under subsection (4) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

52ZCA  Effect of participation in pension loans scheme—maximum loan available

(1) The maximum loan available to a person under the pension loans scheme is the amount worked out using the formula:

\[
\text{Age component amount} \times \frac{\text{Value of real assets}}{10,000}
\]

where:

age component amount means the amount specified in column 2 of the Table in subsection (3), in relation to:

(a) if the person is not a member of a couple—the age the person turned on his or her last birthday; or

(b) if the person is a member of a couple—the age the younger member of the couple turned on his or her last birthday.

value of real assets means:

(a) if neither subparagraph 52ZA(1)(e)(ii) nor subparagraph 52ZA(2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the real assets (after deduction of any guaranteed amount); or

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(b) if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the charge referred to in paragraph 52ZA(3)(c).

Note 1: For real assets see subsection 52ZAAA(1).

Note 2: For guaranteed amount see subsection 52ZAAA(1).

(2) For the purposes of subsection (1), the following provisions have effect:

(a) if, but for this paragraph, the value of real assets would be an amount that exceeds $10,000 but is not a multiple of $10,000, the value is to be taken to be the next lower amount that is a multiple of $10,000;

(b) if, but for this paragraph, the value of real assets would be less than $10,000, the value is to be taken to be nil.

(3) The following is the Table referred to in subsection (1):

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<thead>
<tr>
<th>Age component amount table</th>
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<tr>
<td><strong>Column 1</strong></td>
</tr>
<tr>
<td>Age</td>
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<td>55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67</td>
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Section 52ZD

<table>
<thead>
<tr>
<th>Column 1 Age</th>
<th>Column 2 Age component amount</th>
<th>Column 1 Age</th>
<th>Column 2 Age component amount</th>
</tr>
</thead>
<tbody>
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<td>$6,490.00</td>
</tr>
<tr>
<td>69</td>
<td>$2,960.00</td>
<td>90, and each later year</td>
<td>$6,750.00</td>
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<td>70</td>
<td>$3,080.00</td>
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<tr>
<td>74</td>
<td>$3,600.00</td>
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</table>

52ZD Need for a request to participate

(1) A person who wants to participate in the pension loans scheme must make a request to participate in accordance with this section.

(1A) A request under subsection (1) must:

(a) specify any real property that is not to be included in working out the value of real assets for the purposes of sections 52ZA and 52ZCA, or that is not to be subject to a charge under section 52ZF; and

(b) specify the minimum amount (if any) that the person is to be entitled to retain out of the proceeds of the enforcement of a charge under section 52ZF; and

(c) specify the rate of the pension (if any) nominated by the person for the purposes of subparagraph 52ZB(1)(e)(ii).

(1B) Paragraphs (1A)(a) and (b) do not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) The request must be signed:

(a) if the person is not a member of a couple—by the person; or

(b) if the person is a member of a couple—by both members of the couple.

(3) The request must be:

(a) in writing; and
Section 52ZE

(b) in a form approved by the Commission; and
(c) lodged at an office of the Department in Australia in accordance with section 5T.

52ZE Need for a request to later nominate or change guaranteed amount or rate of pension

(1) A person who is participating in the pension loans scheme and who wants to:
   (a) nominate a minimum amount that the person is to be entitled to retain out of the proceeds of the enforcement of the charge under section 52ZF; or
   (b) nominate a rate of pension for the purposes of subparagraph 52ZB(1)(e)(ii); or
   (c) change the guaranteed amount earlier specified; or
   (d) change the rate of the pension earlier specified;
must make a request that specifies the nomination or change (as the case may be).

(1A) Paragraphs (1)(a) and (c) do not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) A request under subsection (1) must be signed:
   (a) if the person is not a member of a couple—by the person; or
   (b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
   (a) be in writing; and
   (b) be lodged at an office of the Department in Australia in accordance with section 5T.

52ZF Existence of debt results in charge over real assets

Person not member of a couple

(1) If a person who is not a member of a couple owes a debt to the Commonwealth under section 52ZC, the person’s real assets are subject to a charge in favour of the Commonwealth to secure the payment of the debt to the Commonwealth.
Part IIIB  Provisions applicable to service pensions and income support supplement

Division 11  General provisions relating to the assets test

Section 52ZG

Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 52ZM(2)).

Person member of a couple

(2) If:
   (a) a person who is a member of a couple owes a debt to the Commonwealth under section 52ZC; and
   (b) the person’s partner has signed the person’s request under subsection 52ZD(2);

   the couple’s real assets are subject to a charge in favour of the Commonwealth to secure the payment of a debt to the Commonwealth.

Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 52ZM(2)).

(3) If:
   (a) the pension loans scheme ceases to operate in relation to a person because of the effect of section 52ZJ or 52ZK; and
   (b) at the time the scheme ceases to operate, the person owes a debt to the Commonwealth because of the person’s participation in the scheme;

   any charge in favour of the Commonwealth under subsection (1) or (2) of this section continues in relation to the real assets until the debt is repaid or recovered.

Note 1: Section 52ZJ provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 2: Section 52ZK provides for a person to withdraw from the scheme.

Note 3: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 52ZM(2)).

(4) This section does not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

52ZG  Debt not to be recovered until after death

(1) The Commonwealth is not entitled to recover a debt under section 52ZC from a person until after the person’s death.
(2) In the following circumstances, the Commonwealth is not entitled to recover the debt until after the person’s death and after:

(a) if:
   (i) the person was a member of a couple at the time of death; and
   (ii) the person’s partner survives the person; and
   (iii) an amount of bereavement payment is payable to the partner because of the person’s death;
   the end of the bereavement period; or

(b) if:
   (i) the person was a member of a couple at the time of death; and
   (ii) the person’s partner survives the person; and
   (iii) the person’s partner has the use of the assets or part of the assets that are subject to a charge; and
   (iv) the partner has reached:
       (A) if the partner is a veteran—pension age; or
       (B) if the partner is not a veteran—the age that would be his or her pension age if he or she were a veteran;
   the death of the partner.

Note: For pension age see section 5QA.

(2A) In relation to the period between the person’s death and the time of recovery of the debt by the Commonwealth:

(a) compound interest continues to accrue, and forms part of the debt, in accordance with Step 3 of the Method statement in subsection 52ZC(3); and

(b) the charge in favour of the Commonwealth under section 52ZF continues in relation to the real assets until the debt is recovered.

Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 52ZM(2)).

(3) This section is subject to section 52ZH (enforcement of charge if assets change hands).
Part IIIB  Provisions applicable to service pensions and income support supplement

Division 11  General provisions relating to the assets test

Section 52ZH

(4) If the Commission determines in writing that the debt is to be recovered before the events referred to in subsection (1) or (2), the debt may be so recovered in spite of those subsections.

52ZH  Enforcement of charge

(1) If:
   (a) real assets of a person are subject to a charge under section 52ZF; and
   (b) any of those real assets cease to be real assets of the person; and
   (c) the person receives proceeds from the sale or other disposal of the real assets;
the Commonwealth may recover from the person, out of those proceeds but after deduction of any guaranteed amount, the whole or part of the debt secured by the charge.

(2) If:
   (a) real assets of a person are subject to a charge under section 52ZF; and
   (b) any of those real assets are disposed of to another person (in this section called the new owner);
the Commonwealth may, subject to subsection (3), enforce the charge against those real assets.

(3) The Commonwealth may not enforce the charge against the real assets if the new owner is a genuine purchaser for value without notice of the charge.

52ZJ  Person ceases to participate in pension loans scheme if debt exceeds maximum loan available

If:
   (a) a person is participating in the pension loans scheme; and
   (b) the debt owed by the person under section 52ZC exceeds the maximum loan available to the person under the scheme;
the scheme ceases to operate in relation to the person on the first day on which the debt exceeds the maximum loan available.

Note 1: The maximum loan available is worked out by using the formula set out in subsection 52ZCA(1).
Section 52ZK

52ZK  Person withdraws from pension loans scheme

(1) If a person who is participating in the pension loans scheme makes a request to withdraw from the scheme, the scheme ceases to operate in relation to the person on the day on which the request is lodged.

(2) A request under subsection (1) must be signed:
   (a) if the person is not a member of a couple—by the person; or
   (b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
   (a) be in writing; and
   (b) be lodged at an office of the Department in Australia in accordance with section 5T.

(4) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

52ZKA  Repayment or recovery of debt after pension loans scheme ceases to operate because debt exceeds maximum loan available or person withdraws

(1) The debt owed by a person under section 52ZC, at the time the pension loans scheme ceases to operate in relation to the person by operation of section 52ZJ or 52ZK, may be repaid by the person at any time.

Note 1: Section 52ZJ provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 2: Section 52ZK provides for a person to withdraw from the scheme.

(2) If the debt owed by the person is not repaid by the person at the time the scheme ceases to operate in relation to the person, compound interest continues to accrue, and forms part of the debt, in accordance with Step 3 of the Method statement in subsection 52ZC(3), until the debt is repaid or recovered.
Part IIIIB  Provisions applicable to service pensions and income support supplement
Division 11  General provisions relating to the assets test

Section 52ZL

(3) If the debt is not repaid under subsection (1) of this section, subject to section 52ZG the Commonwealth is entitled to recover the debt.

Note: Section 52ZG provides that a debt cannot be recovered from a person until after the person’s death.

52ZL  Registration of charge

(1) If real assets are subject to a charge under section 52ZF, the Commission may lodge a notice in writing of the charge with the appropriate officer of the State or Territory in which the real assets are situated.

(2) The appropriate officer may register the charge as if the Commission’s notice were an instrument of charge or encumbrance duly executed under the laws in force in the State or Territory.

(3) The Secretary may require the person whose real assets are subject to the charge to execute an instrument relating to the registration of the charge.

(4) If the Commonwealth incurs costs associated with:
   (a) the registration of the charge; or
   (b) the registration of the discharge of the charge;
those costs are payable by the person whose real assets are subject to the charge.

52ZM  Manner of enforcement of charge

(1) If a charge against real assets is enforceable under this Subdivision, the Commission may, subject to subsection (2), enforce the charge against those real assets or against part of those real assets in any manner that the Commission determines in writing.

(2) If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount.
Subdivision F—Commutation of asset-test exempt income stream

52ZMA Debt resulting from commutation of asset-test exempt income stream contrary to subsection 5JA(2), 5JB(2) or 5JBA(2)

(1) If:

(a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and

(b) during the whole or any part of that period an amount of service pension or income support supplement has been paid to the person; and

(c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and

(d) the amount of service pension or income support supplement that has been paid to the person for that period is more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;

an amount worked out under subsection (2) is a debt due to the Commonwealth.

(2) That amount is an amount equal to the difference between the amount of service pension or income support supplement that has been paid to the person during the period worked out under subsection (3) and the amount that would have been so paid to the person had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.

(3) The period for the purposes of subsection (2) is the period that:

(a) began on:

(i) the day 5 years before the day the income stream was commuted; or

(ii) the commencement day of the income stream; or
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 11  General provisions relating to the assets test

Section 52ZMA

(iii) 20 September 2001;
whichever is the latest; and
(b) ended when the income stream was commuted.

(4) In working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), assume that the income stream was asset tested from the commencement day and that the asset value of the income stream is depleted in accordance with the formula in subsection 52A(4).

(5) Subject to subsection (6), if:
(a) an asset-test exempt income stream (the old income stream) is commuted, in whole or in part; and
(b) part, but not the whole, of the payment resulting from the commutation of the old income stream (the commutation payment) is transferred directly to the purchase of another asset-test exempt income stream (the new income stream);
the following paragraphs have effect for the purposes of this section:
(c) the new income stream is taken to have the same commencement day as:
   (i) the old income stream; or
   (ii) if the old income stream was one of a succession of asset-test exempt income streams—the first income stream in that succession;
(d) if the old income stream was not one of a succession of asset-test exempt income streams—income stream payments made under the old income stream are taken to have been made under the new income stream;
(e) if the old income stream was one of a succession of asset-test exempt income streams—income stream payments made under any of the income streams in that succession are taken to have been made under the new income stream.

(6) Subsection (5) does not apply if the amount used in the purchase of the new income stream represents the whole of the commutation payment remaining after the use of part of the commutation payment in the payment of:
(a) a hardship amount; or

114  Veterans’ Entitlements Act 1986
(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(7) Subject to subsection (8), if:
(a) the whole of an asset-test exempt income stream is commuted; and
(b) no part of the payment resulting from the commutation of the income stream is transferred directly to the purchase of another asset-test exempt income stream; and
(c) the commuted income stream was one of a succession of asset-test exempt income streams;
the following paragraphs have effect for the purposes of this section:
(d) the commuted income stream is taken to have had the same commencement day as the first income stream in that succession;
(e) income stream payments made under any of the income streams in that succession (other than the commuted income stream) are taken to have been, at the time when they were made, payments under the commuted income stream.

(8) Subsection (7) does not apply if the whole of the payment resulting from the commutation of the old income stream is used in the payment of:
(a) a hardship amount; or
(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(9) For the purposes of this section:
(a) 2 or more asset-test exempt income streams constitute a succession of asset-test exempt income streams if each income stream (other than the first of those income streams to be provided) has been funded by means of the payment, or part of the payment, resulting from the commutation of another of those income streams; and
(b) an income stream is the first income stream in a succession of income streams if it is the first of those income streams to be provided.

(10) In this section:  

**Veterans’ Entitlements Act 1986**
Section 52ZMA

*hardship amount* has the same meaning as in subsection 5JA(7).

(11) This section does not apply to an income stream in relation to which a determination under subsection 5JA(5), 5JB(4) or 5JBA(11) is in force.
Division 11A—Means test treatment of private companies and private trusts

Subdivision A—Introduction

52ZN Simplified outline

The following is a simplified outline of this Division:

- This Division sets up a system for the attribution to individuals of the assets and income of private companies and private trusts (sections 52ZZK and 52ZZR).

- Attribution starts on 1 January 2002.

- For an asset or income to be attributed to an individual:

  (a) the company must be a designated private company or the trust must be a designated private trust (sections 52ZZA and 52ZZB); and

  (b) the company must be a controlled private company in relation to the individual or the trust must be a controlled private trust in relation to the individual (sections 52ZZC and 52ZZH); and

  (c) the individual must be an attributable stakeholder of the company or trust (section 52ZZJ).

- A company or trust will be a controlled private trust or a controlled private company if the individual passes a control test or a source test.

- An individual will not be an attributable stakeholder of a trust if the trust is a concessional primary production trust in relation to the individual.

- The asset deprivation rules and the income deprivation rules are modified if attribution happens.
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 11A  Means test treatment of private companies and private trusts

Section 52ZO

52ZO  Definitions

In this Division, unless the contrary intention appears:

actively involved with a primary production enterprise has the meaning given by section 52ZW.

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 52ZV(1), (3) or (4).

adjusted net primary production income (in Subdivision K) has the meaning given by section 52ZZZL.

adjusted net value (in Subdivision K) has the meaning given by section 52ZZZK.

arm’s length amount, in relation to an actual transfer of property or services to a company or a trust, means the amount that the company or trust could reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm’s length in relation to the transaction.

asset attribution percentage has the meaning given by section 52ZZJ.

associate has the meaning given by section 52ZQ.

attributable stakeholder has the meaning given by section 52ZZJ.

attribution period has the meaning given by section 52ZZQ.


child, in relation to a person, includes an adopted child, a step-child or a foster-child.

company has the same meaning as in the Income Tax Assessment Act 1997.

concessional primary production trust has the meaning given by section 52ZZZF.
constituent document, in relation to a company, means:
   (a) the memorandum and articles of association of the company; or
   (b) any rules or other documents constituting the company or governing its activities.

control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

controlled private company has the meaning given by section 52ZZC.

controlled private trust has the meaning given by section 52ZZH.

decision-making principles means decision-making principles under section 52ZZQ.

derivation period has the meaning given by section 52ZZP.

designated private company has the meaning given by section 52ZZA.

designated private trust has the meaning given by section 52ZZB.

director includes any person (by whatever name called) occupying the position of a director of a company.

entity means any of the following:
   (a) an individual;
   (b) a company;
   (c) a trust;
   (d) a business partnership;
   (e) a corporation sole;
   (f) a body politic.

group includes:
   (a) one entity alone; or
   (b) a number of entities, even if they are not in any way associated with each other or acting together.

income attribution percentage has the meaning given by section 52ZZJ.
Section 52ZO

**interest in a share** has the meaning given by section 52ZZG.

**majority voting interest,** in relation to a company, has the meaning given by section 52ZS.

**primary production enterprise** means a business in Australia that consists of primary production.

**property** includes money.

**relative,** in relation to a person, has the meaning given by section 52ZP.

**scheme** means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

**services** includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a benefit, right, privilege, service or facility that is, or is to be, provided under:

(a) an arrangement for or in relation to:

(i) the performance of work (including work of a professional nature), whether with or without the provision of property; or

(ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or

(iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or

(b) a contract of insurance; or

(c) an arrangement for or in relation to the lending of money.

**share** includes stock.

**spouse** includes, in relation to a person who is a member of a couple (as defined by section 5E), the other member of the couple.
subsidiary has the same meaning as in the Corporations Act 2001.

sufficiently influenced, in relation to a company, has the meaning given by section 52ZR.

transfer:
(a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
(b) in relation to services—includes allow, confer, give, grant, perform or provide.

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

trustee has the same meaning as in the Income Tax Assessment Act 1997.

underlying transfer, in relation to a transfer of property or services to an entity, means:
(a) if that transfer was an actual transfer—the actual transfer; or
(b) if that transfer was taken to have been made because of subsection 52ZV(1)—the actual transfer referred to in that subsection; or
(c) if that transfer was taken to have been made because of subsection 52ZV(3)—the actual transfer referred to in paragraph 52ZV(3)(b); or
(d) if that transfer was taken to have been made because of subsection 52ZV(4)—the actual transfer referred to in paragraph 52ZV(4)(c).

voting power has the meaning given by section 52ZZE.

52ZP Relatives

(1) For the purposes of this Division, a relative, in relation to a person (the first person), means any of the following:
(a) the spouse of the first person;
(b) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the first person;
(c) the spouse of a person covered by paragraph (b);
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 11A  Means test treatment of private companies and private trusts

Section 52ZQ

(d) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the spouse of the first person;
(e) the spouse of a person covered by paragraph (d);
(f) a child of a person covered by any of the preceding paragraphs.

(2) For the purposes of this section, in determining who is a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of a person, treat each of the following relationships as if they were biological child-parent relationships:
(a) the relationship between an adopted child and his or her adoptive parent;
(b) the relationship between a step-child and his or her step-parent;
(c) the relationship between a foster-child and his or her foster-parent.

52ZQ  Associates

(1) For the purposes of this Division, in determining:
(a) whether a trust is a designated private trust; or
(b) whether a company is a controlled private company in relation to an individual; or
(c) whether a trust is a controlled private trust in relation to an individual; or
(d) whether a trust is a concessional primary production trust in relation to an individual;
the following are associates of an individual:
(e) a relative of the individual;
(f) an entity who, in matters relating to the trust or company:
   (i) acts, or is accustomed to act; or
   (ii) under a contract or an arrangement or understanding (whether formal or informal), is intended or expected to act;
   in accordance with the directions, instructions or wishes of:
   (iii) the individual; or
Section 52ZQ

(iv) the individual and another entity who is an associate of the individual because of another paragraph of this subsection;

(g) an entity that is a declared associate of the individual (see subsection (2));

(h) a business partner of the individual or a business partnership in which the individual is a business partner;

(i) if a business partner of the individual is an individual—the spouse or a child of that business partner;

(j) a trustee of a trust, where:
   (i) the individual; or
   (ii) another entity that is an associate of the individual because of another paragraph of this subsection;

benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts;

(k) a company, where the company is sufficiently influenced by:
   (i) the individual; or
   (ii) another entity that is an associate of the individual because of another paragraph of this subsection; or
   (iii) another company that is an associate of the individual because of another application of this paragraph; or
   (iv) 2 or more entities covered by the preceding subparagraphs;

(l) a company, where a majority voting interest in the company is held by:
   (i) the individual; or
   (ii) the entities that are associates of the individual because of any of the preceding paragraphs of this subsection; or
   (iii) the individual and the entities that are associates of the individual because of any of the preceding paragraphs of this subsection.

Declared associate

(2) The Commission may, by writing, determine that each entity included in a specified class of entities is taken to be a declared associate of an individual for the purposes of this section.
Part IIIIB  Provisions applicable to service pensions and income support supplement
Division 11A  Means test treatment of private companies and private trusts

Section 52ZR

(3) A determination under subsection (2) has effect accordingly.

(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

52ZR  When a company is sufficiently influenced by an entity

For the purposes of this Division, a company is **sufficiently influenced** by an entity or entities if the company, or its directors:

(a) are accustomed or under an obligation (whether formal or informal); or

(b) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of the entity or entities.

52ZS  Majority voting interest in a company

For the purposes of this Division, an entity or entities hold a **majority voting interest** in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

52ZT  Entitled to acquire

For the purposes of this Division, an entity is **entitled to acquire** anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

52ZU  Transfer of property or services

(1) A reference in this Division to the transfer of property or services to a trust includes a reference to the transfer of such property or services by way of the creation of the trust.

(2) For the purposes of this Division, if an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.
(3) For the purposes of this Division, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

(4) Without limiting the generality of subsection (3), a reference in that subsection to the application of property or services for the benefit of an entity includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.

52ZV Constructive transfers of property or services to an entity

(1) For the purposes of this Division, if an entity (the prime entity) causes another entity to actually transfer property or services to a third entity, the prime entity is taken to have transferred the property or services (instead of the other entity).

(2) Subsection (1) does not limit the operation of subsection (3).

(3) If, under a scheme:

(a) an entity (the scheme entity) actually transfers property or services to another entity; and
(b) property or services are actually transferred to a third entity at a particular time otherwise than by the scheme entity;

the Commission may, for the purposes of this Division, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the third entity (instead of by any other entity) at that time to such extent as the Commission considers reasonable.

(4) If:

(a) an individual transfers property or services to an entity (the interposed entity), being a company, a business partnership or a trust; and
(b) a winding-up event occurs in relation to the interposed entity; and
(c) an actual transfer of property or services is made to another entity (the ultimate transferee) at a particular time as a consequence of the interposed entity being wound-up or ceasing to exist;
the Commission may, for the purposes of this Division, treat the property or services mentioned in paragraph (c) as having been transferred by the individual to the ultimate transferee (instead of by any other entity) at that time to such extent as the Commission considers reasonable.

(5) For the purposes of this section, each of the following events is a *winding-up event* in relation to a company:
   (a) the company passes a resolution for its winding-up;
   (b) an order is made for the winding-up of the company;
   (c) any similar event.

(6) For the purposes of this section, a *winding-up event* occurs in relation to a business partnership if the business partnership ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

(7) For the purposes of this section, a *winding-up event* occurs in relation to a trust if:
   (a) the trust commences to be wound-up; or
   (b) the trust ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

**52ZW  Active involvement with a primary production enterprise**

For the purposes of this Division, an individual is taken to have been *actively involved with a primary production enterprise* if, and only if, the individual:
   (a) has contributed a significant part of his or her labour to the development of the enterprise; or
   (b) has undertaken educational studies or training in a field that, in the opinion of the Commission, is relevant to the development or management of the enterprise.

**52ZX  Power to veto decisions of a trustee**

For the purposes of this Division, if the decisions of a trustee are subject to the consent of an entity, the entity is taken to be able to veto the decisions of the trustee.
52ZY Extra-territorial operation

(1) This Division extends to acts, omissions, matters and things outside Australia.

(2) Disregard subsection (1) in determining whether a provision of this Act (other than this Division) extends to acts, omissions, matters and things outside Australia.

52ZZ Application to things happening before commencement

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Division.

Subdivision B—Designated private companies

52ZZA Designated private companies

(1) For the purposes of this Division, a company is a designated private company at a particular time if:

(a) the company satisfies at least 2 of the following conditions in relation to the last financial year that ended before that time:

(i) the consolidated gross operating revenue for the financial year of the company and its subsidiaries is less than $10 million;

(ii) the value of the consolidated gross assets at the end of the financial year of the company and its subsidiaries is less than $5 million;

(iii) the company and its subsidiaries have fewer than 50 employees at the end of the financial year; or

(b) the company came into existence after the end of the last financial year that ended before that time; or

(c) the company is a declared private company (see subsection (2));

and the company is not an excluded company (see subsection (5)).

Declared private company

(2) The Commission may, by writing, determine that each company included in a specified class of companies is a declared private company for the purposes of this section.
(3) A determination under subsection (2) has effect accordingly.

(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Excluded companies

(5) The Commission may, by writing, declare that each company included in a specified class of companies is an excluded company for the purposes of this section.

(6) A declaration under subsection (5) has effect accordingly.

(7) An instrument under subsection (5) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Definitions

(8) In this section:

consolidated gross operating revenue has the same meaning as in section 45A of the Corporations Act 2001.

financial year, in relation to a company, means:

(a) a period of 12 months beginning on 1 July; or

(b) if some other period is the company’s tax year—that other period.

value of consolidated gross assets has the same meaning as in section 45A of the Corporations Act 2001.

Subdivision C—Designated private trusts

52ZZB Designated private trusts

(1) For the purposes of this Division, a trust is a designated private trust unless:

(a) all of the following conditions are satisfied:

(i) the trust is a fixed trust;

(ii) the units in the trust are held by 50 or more persons;

(iii) the trust was not created, continued in existence or operated under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any

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individual or individuals to avoid the application of this Division and/or Part 3.18 of the Social Security Act; or
(b) the trust is a complying superannuation fund (see subsection (3)); or
(c) the trust is an excluded trust (see subsection (4)).

(2) For the purposes of subparagraph (1)(a)(ii), an individual and his or her associates are taken to be one person.

Complying superannuation funds

(3) For the purposes of this section, a fund is a complying superannuation fund at a particular time if:
(a) that time occurs during a particular tax year of the fund; and
(b) under section 45 of the Superannuation Industry (Supervision) Act 1993, the fund is a complying superannuation fund for the purposes of Part IX of the Income Tax Assessment Act 1936 in relation to that tax year.

Excluded trusts

(4) The Commission may, by writing, declare that each trust included in a specified class of trusts is an excluded trust for the purposes of this section.

(5) The declaration has effect accordingly.

(6) An instrument under subsection (4) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Definitions

(7) In this section:

fixed trust means a trust where persons have fixed entitlements to all of the income and corpus of the trust.

income means income within the ordinary meaning of that expression.

unit, in relation to a trust, includes a beneficial interest, however described, in the property or income of the trust.
Subdivision D—Controlled private companies

52ZZC Controlled private companies

(1) For the purposes of this Division, a company is a controlled private company in relation to an individual if the company is a designated private company and:

(a) the individual passes the control test set out in subsection (2); or

(b) the individual passes the source test set out in subsection (3).

Control test

(2) For the purposes of this section, an individual passes the control test in relation to a company if:

(a) the aggregate of:

(i) the direct voting interests in the company that the individual holds; and

(ii) the direct voting interests in the company held by associates of the individual;

is 50% or more; or

(b) the aggregate of:

(i) the direct control interests in the company that the individual holds; and

(ii) the direct control interests in the company held by associates of the individual;

is 15% or more; or

(c) the company is sufficiently influenced by:

(i) the individual; or

(ii) an associate of the individual; or

(iii) 2 or more entities covered by the preceding subparagraphs; or

(d) the individual (either alone or together with associates) is in a position to exercise control over the company.

Source test

(3) For the purposes of this section, an individual passes the source test in relation to a company if:
(a) the individual has transferred property or services to the company after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
(b) the underlying transfer was made for no consideration or for a consideration less than the arm’s length amount in relation to the underlying transfer.

No double counting

(4) In calculating the aggregate referred to in paragraph (2)(a), a direct voting interest held because of subsection 52ZZD(2) is not to be counted under subparagraph (2)(a)(i) to the extent to which it is calculated by reference to a direct voting interest in the company that is taken into account under subparagraph (2)(a)(ii).

(5) In calculating the aggregate referred to in paragraph (2)(b), a direct control interest held because of subsection 52ZZF(4) is not to be counted under subparagraph (2)(b)(i) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subparagraph (2)(b)(ii).

52ZZD  Direct voting interest in a company

(1) An entity holds a direct voting interest in a company at a particular time equal to the percentage of the voting power in the company that the entity is in a position to control at that time.

(2) If:

(a) an entity holds a direct voting interest (including a direct voting interest that is taken to be held because of one or more previous applications of this subsection) in a company (the first level company); and
(b) the first level company holds a direct voting interest in another company (the second level company);

the entity is taken to hold a direct voting interest in the second level company equal to the percentage worked out using the formula:

First level percentage \times \text{Second level percentage}

where:

\text{first level percentage} means the percentage of the direct voting interest held by the entity in the first level company.
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second level percentage means the percentage of the direct voting interest held by the first level company in the second level company.

52ZZE  Voting power

(1) A reference in this Subdivision to the voting power in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
   (a) the making of distributions of capital or profits of the company to its shareholders;
   (b) the constituent document of the company;
   (c) any variation of the share capital of the company;
   (d) any appointment of a director of the company.

(2) A reference in this Subdivision to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
   (a) whether or not having legal or equitable force; and
   (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.

(4) If a company:
   (a) is limited both by shares and by guarantee; or
   (b) does not have a share capital;
this section has effect as if the members or policy holders of the company were shareholders in the company.

52ZZF  Direct control interest in a company

(1) An entity holds a direct control interest in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the entity holds an interest at that time.

(2) An entity also holds a direct control interest in a company at a particular time equal to the percentage that the entity holds, or is

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entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(3) An entity also holds a **direct control interest** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(4) If:

   (a) an entity holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (the **first level company**); and

   (b) the first level company holds the same type of direct control interest in another company (the **second level company**);

the entity is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

\[
\text{First level percentage} \times \text{Second level percentage}
\]

where:

- **first level percentage** means the percentage of the direct control interest held by the entity in the first level company.
- **second level percentage** means the percentage of the direct control interest held by the first level company in the second level company.

### 52ZZG Interest in a share

(1) This section applies for the purpose of working out the percentage of a company’s total paid-up share capital in which an entity holds an interest.

(2) Subject to this section, for the purposes of this Subdivision, an entity holds an **interest in a share** if the entity has any legal or equitable interest in the share.

(3) For the purposes of this Subdivision, an entity is taken to hold an **interest in a share** if:

   (a) the entity has entered into a contract to purchase the share; or
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(b) the entity has a right (otherwise than because of having an interest under a trust) to have the share transferred to the entity or to the entity’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

c) the entity has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(d) the entity is otherwise entitled to acquire the share or an interest in the share; or

e) the entity is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.

(4) Subsection (3) does not, by implication, limit subsection (2).

(5) An entity is taken to hold an interest in a share even if the entity holds the interest in the share jointly with another entity.

(6) For the purpose of determining whether an entity holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(7) An interest in a share is not to be disregarded only because of:

(a) its remoteness; or

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

Subdivision E—Controlled private trusts

52ZZH Controlled private trusts

(1) For the purposes of this Division, a trust is a controlled private trust in relation to an individual if the trust is a designated private trust and:

(a) the individual passes the control test set out in subsection (2); or
(b) the individual passes the **source test** set out in subsection (3).

**Control test**

(2) For the purposes of this section, the individual **passes the control test** in relation to a trust if:

(a) the individual, or an associate of the individual (other than an associate covered by paragraph 52ZQ(1)(j)), is the trustee, or any of the trustees, of the trust; or

(b) a group in relation to the individual was able to remove or appoint the trustee, or any of the trustees, of the trust; or

(c) a group in relation to the individual was able to vary the trust deed or to veto the decisions of the trustee; or

(d) the aggregate of:

(i) the beneficial interests in the corpus or income of the trust held by the individual (whether directly or indirectly); and

(ii) the beneficial interests in the corpus or income of the trust held by associates of the individual (whether directly or indirectly);

is 50% or more; or

(e) a group in relation to the individual had the power (by means of the exercise by the group of any power of appointment or revocation or otherwise) to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or

(f) a group in relation to the individual was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or

(g) a group in relation to the individual was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (e) or (f); or

(h) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the individual.

**Source test**

(3) For the purposes of this section, an individual **passes the source test** in relation to a trust if:
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(a) the individual has transferred property or services to the trust after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
(b) the underlying transfer was made for no consideration or for a consideration less than the arm’s length amount in relation to the underlying transfer.

Group

(4) A reference in this section to a group in relation to an individual is a reference to:
(a) the individual acting alone; or
(b) an associate of the individual acting alone; or
(c) the individual and one or more associates of the individual acting together; or
(d) 2 or more associates of the individual acting together.

Income

(5) In this section:

income means income within the ordinary meaning of that expression.

52ZZI  Interest in a trust

(1) For the purposes of this Subdivision, if an entity:
(a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust; or
(b) has a right, otherwise than by reason of holding an interest in a trust, to have such an interest transferred to the entity or to the entity’s order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
(c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
(d) is otherwise entitled to acquire such an interest; the entity is taken to hold that interest in the trust.

(2) An entity is taken to hold an interest in the corpus or income of a trust even if the entity holds the interest jointly with another entity.
(3) An interest in the corpus or income of a trust is not to be disregarded only because of:
   (a) its remoteness; or
   (b) the manner in which it arose; or
   (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

(4) In this section:

income means income within the ordinary meaning of that expression.

Subdivision F—Attributable stakeholders and attribution percentages

52ZZJ Attributable stakeholder, asset attribution percentage and income attribution percentage

Company

(1) For the purposes of this Division, if a company is a controlled private company in relation to an individual:
   (a) the individual is an attributable stakeholder of the company unless the Commission otherwise determines; and
   (b) if the individual is an attributable stakeholder of the company—the individual’s asset attribution percentage in relation to the company is:
      (i) 100%; or
      (ii) if the Commission determines a lower percentage in relation to the individual and the company—that lower percentage; and
   (c) if the individual is an attributable stakeholder of the company—the individual’s income attribution percentage in relation to the company is:
      (i) 100%; or
      (ii) if the Commission determines a lower percentage in relation to the individual and the company—that lower percentage.
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Trust

(2) For the purposes of this Division, if:
(a) a trust is a controlled private trust in relation to an individual; and
(b) the trust is not a concessional primary production trust in relation to the individual (see section 52ZZZF);
then:
(c) the individual is an attributable stakeholder of the trust unless the Commission otherwise determines; and
(d) if the individual is an attributable stakeholder of the trust—
the individual’s asset attribution percentage in relation to the trust is:
(i) 100%; or
(ii) if the Commission determines a lower percentage in relation to the individual and the trust—that lower percentage; and
(e) if the individual is an attributable stakeholder of the trust—
the individual’s income attribution percentage in relation to the trust is:
(i) 100%; or
(ii) if the Commission determines a lower percentage in relation to the individual and the trust—that lower percentage.

(2A) The only attributable stakeholder of a special disability trust is the principal beneficiary of the trust.

Note 1: For special disability trust, see section 52ZZZW.

Note 2: For principal beneficiary of a special disability trust, see subsection 52ZZZWA(1).

Determinations

(3) A determination under this section is to be in writing.

(4) A determination under this section has effect accordingly.

(5) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

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Subdivision G—Attribution of income of controlled private companies and controlled private trusts

52ZZK Attribution of income

(1) For the purposes of this Act, if:
(a) during a particular derivation period of a company or trust, the company or trust derives an amount that is ordinary income; and
(b) an individual is an attributable stakeholder of the company or a trust throughout the attribution period that relates to the derivation period of the company or trust; and
(c) the attribution period begins on or after 1 January 2002; and
(d) if that amount:
   (i) had been derived by the individual instead of by the company or trust; and
   (ii) in the case of income accounted for on an accrual basis as mentioned in subsection (5)—had been so derived by the individual on a cash basis;
   that amount would have been ordinary income of the individual; and
(e) that amount is not excluded income (see subsection (2));
then, in addition to any other ordinary income of the individual, the individual is taken to receive, during that attribution period, ordinary income at an annual rate equal to the individual’s income attribution percentage of the amount worked out using the formula:

\[
\frac{\text{Amount referred to in paragraph (a)}}{\text{Number of days in the derivation period}} \times 365
\]

Note: For attribution of the income of a special disability trust, see section 52ZZZW1.

Excluded income

(2) The Commission may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a specified company or trust, a specified amount is excluded income.

(3) A determination under subsection (2) has effect accordingly.
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(4) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

*Accrual v. cash accounting*

(5) If the income of a company or trust is accounted for on an accrual basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on an accrual basis for the purposes of this section.

(6) If the income of a company or trust is accounted for on a cash basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on a cash basis for the purposes of this section.

52ZZL  No double counting of attributed income

(1) If:

(a) a company makes a distribution of capital or profits of the company to a particular shareholder of the company; and
(b) the shareholder is an individual; and
(c) the individual is an attributable stakeholder of the company;

the Commission may, by writing:

(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount or value distributed to the individual; or

(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount or value distributed to the individual as is specified in the determination.

(2) If:

(a) a trust:

(i) makes a distribution (whether in money or in other property) to a particular beneficiary of the trust; or

(ii) credits an amount to a particular beneficiary of the trust; and

(b) the beneficiary is an individual; and

(c) the individual is an attributable stakeholder of the trust;

the Commission may, by writing:
(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount distributed or credited to the individual; or
(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount distributed or credited to the individual as is specified in the determination.

(3) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

(4) This section is to be disregarded for the purposes of paragraph 52ZZK(1)(d).

52ZZM  Ordinary income of a company or trust

(1) For the purposes of this Subdivision, the ordinary income of a company or trust is to be worked out as if:
   (a) exempt lump sums were not excluded from the definition of ordinary income in subsection 5H(1); and
   (b) each reference in section 5H to a person included a reference to a company or trust; and
   (c) the following provisions had not been enacted:
      (i) section 46Q;
      (ii) subsection 5H(8);
      (iii) subsection 5H(12);
      (iv) Divisions 1, 2, 3, 4, 6 and 7.

(2) Paragraphs (1)(a) and (c) have effect subject to paragraph 52ZZK(1)(d).

(3) A reference in this Subdivision to the ordinary income of a company or trust is a reference to the company’s or trust’s gross ordinary income from all sources calculated without any reduction, other than a reduction under section 52ZZN or 52ZZO.

52ZZN  Ordinary income from a business—treatment of trading stock

(1) For the purposes of this Subdivision, if:
   (a) a company or trust carries on a business; and
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(b) the value of all the trading stock on hand at the end of a
derivation period is greater than the value of all the trading
stock on hand at the beginning of that derivation period;
the company’s or trust’s ordinary income for that derivation period
in the form of profits from the business is to include the amount of
the difference in values.

(2) For the purposes of this Subdivision, if:
(a) a company or trust carries on a business; and
(b) the value of all the trading stock on hand at the end of a
derivation period is less than the value of all the trading stock
on hand at the beginning of that derivation period;
the company’s or trust’s ordinary income for that derivation period
in the form of profits from the business is to be reduced by the
amount of the difference in values.

52ZZO  Permissible reductions of business and investment income

(1) For the purposes of this Subdivision, if a company or trust carries
on a business or holds an investment, the company’s or trust’s
ordinary income from the business or investment is to be reduced
by:
(a) losses and outgoings that relate to the business or investment
and are allowable deductions for the purposes of section 8-1
of the Income Tax Assessment Act 1997; and
(ba) amounts that relate to the business or investment and can be
deducted for the decline in value of depreciating assets under
Subdivision 40-B of the Income Tax Assessment Act 1997;
and
(c) amounts that relate to the business or investment and are
allowable deductions under any other provision of the
Income Tax Assessment Act 1936 or the Income Tax
Assessment Act 1997.

(2) However, the rule in subsection (1) does not apply to:
(a) an ineligible deduction (see subsection (3)); or
(b) an ineligible amount (see subsection (4)); or
(c) an ineligible part of a deduction (see subsection (5)).
(3) The Commission may, by writing, determine that a specified deduction is an *ineligible deduction* for the purposes of this section.

(4) The Commission may, by writing, determine that a specified amount is an *ineligible amount* for the purposes of this section.

(5) The Commission may, by writing, determine that a specified part of a specified deduction is an *ineligible part* of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

(7) A determination under subsection (3), (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

52ZZP Derivation periods

(1) For the purposes of this Division:

(a) if a company or trust was in existence throughout a tax year of the company or trust—the tax year is a *derivation period* of the company or trust; and

(b) if a company or trust was in existence during a part of a tax year of the company or trust—that part of the tax year is a *derivation period* of the company or trust.

(2) Subsection (1) has effect subject to subsection (3).

(3) The Commission may, by writing, determine that, for the purposes of the application of this Subdivision to a specified individual and a specified company or trust, a specified period is a *derivation period* of the company or trust.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

(6) To avoid doubt, for the purposes of the application of this Subdivision to a particular individual and a particular company or trust, it is not necessary that the individual be an attributable
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stakeholder of the company or trust throughout a derivation period of the company or trust.

(7) A derivation period may begin or end before the commencement of this Division.

52ZZQ  Attribution periods

(1) The Commission may, by writing, determine that, in the event that a specified individual is an attributable stakeholder of a specified company or trust at a specified time (the start time):

(a) a period beginning at the start time and ending at whichever is the earlier of the following times:

(i) the later time specified in the determination;

(ii) the time when the individual ceases to be an attributable stakeholder of the company or trust;

is an attribution period for the purposes of the application of this Division to the individual and the company or trust; and

(b) that attribution period relates to a specified derivation period of the company or trust.

(2) A determination under subsection (1) has effect accordingly.

(3) The Commission must ensure that, if an individual is an attributable stakeholder of a company or of a trust at a particular time on or after 1 January 2002, that time is included in an attribution period.

(4) An attribution period may, but is not required to, overlap (in whole or in part) the derivation period to which it relates.

(5) An attribution period does not have to be of the same length as the derivation period to which it relates.

(6) Attribution periods do not have to be of the same length.

(7) In making a determination under this section, the Commission must comply with any relevant decision-making principles.
Subdivision H—Attribution of assets of controlled private companies and controlled private trusts

52ZZR  Attribution of assets

(1) For the purposes of this Act, if:
   (a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and
   (b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and
   (c) if, at that time, that asset had been owned by the individual instead of by the company or trust, the value of the asset would not be required to be disregarded by any express provision of this Act; and
   (d) at that time, the asset is not an excluded asset (see subsection (2));

there is to be included in the value of the individual’s assets an amount equal to the individual’s asset attribution percentage of the value of the asset referred to in paragraph (b).

Note: For attribution of the assets of a special disability trust, see section 52ZZZWK.

Excluded assets

(2) The Commission may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a particular company or trust, a specified asset is an excluded asset.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

52ZZS  When attributed asset is unrealisable

(1) For the purposes of this Act, if:
   (a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and
   (b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and
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(c) under section 52ZZR, there is included in the value of the individual’s assets an amount equal to the individual’s asset attribution percentage of the value of the asset held by the company or trust;

the amount referred to in paragraph (c) is taken not to be an unrealisable asset of the individual unless the asset referred to in paragraph (b) is an unrealisable asset of the company or trust.

(2) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, ignore any limitation or restriction:

(a) in the constituent document of the company or the trust deed of the trust, as the case requires; or

(b) under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this section and/or section 1208F of the Social Security Act.

(3) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, subsections 5L(11) and (12) have effect as if each reference in those subsections to a person included a reference to a company or trust.

52ZZT  Effect of charge or encumbrance on value of assets

Charge or encumbrance relating to a single asset

(1) For the purposes of the application of this Subdivision (other than this section) to a particular individual and a particular company or trust, if:

(a) there is a charge or encumbrance over a particular asset of the company or trust; and

(b) the charge or encumbrance relates exclusively to that asset;

the value of the asset is to be reduced by the value of the charge or encumbrance.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a company or trust to the extent that:

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or
(c) the value of the charge or encumbrance is excluded under subsection (6).

**Charge or encumbrance relating to 2 or more assets**

(3) For the purposes of the application of this Subdivision (other than this section) to a particular individual and a particular company or trust, if:

(a) there is a charge or encumbrance over a particular asset (the *first asset*) of the company or trust; and  
(b) the charge or encumbrance relates to the first asset and one or more other assets of the company or trust;  

the value of the first asset is to be reduced by the amount worked out using the formula:

\[
\text{Value of the charge or encumbrance} \times \frac{\text{Value of the first asset}}{\text{Total value of the first asset and the other assets}} \times \frac{\text{Total value of attributable assets subject to the charge or encumbrance}}{\text{Total value of assets subject to the charge or encumbrance}}
\]

(4) Subsection (3) does not apply to a charge or encumbrance over an asset of the company or trust to the extent that:

(a) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or  
(b) the value of the charge or encumbrance is excluded under subsection (6).

(5) If (apart from this section), under section 52ZZR, there is included in the value of the individual’s assets an amount equal to the individual’s asset attribution percentage of the value of an asset held by the company or trust, the asset held by the company or trust is an *attributable asset* for the purposes of subsection (3).
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Exclusion

(6) The Commission may, by writing, determine that, for the purposes of the application of this section to a specified individual and a specified company or trust, the whole or a specified part of a specified charge or encumbrance over one or more of the assets of the company or trust is excluded for the purposes of paragraphs (2)(c) and (4)(b).

(7) A determination under subsection (6) has effect accordingly.

(8) In making a determination under subsection (6), the Commission must comply with any relevant decision-making principles.

52ZZU  Effect of unsecured loan on value of assets

(1) For the purposes of the application of this Subdivision to a particular individual and a particular company or trust, if:
   (a) the company or trust is the borrower under a loan; and
   (b) the loan is not secured by a charge or encumbrance over one or more of the assets of the company or trust;
the Commission may, by writing, determine that the value of a specified asset of the company or trust is to be reduced by the whole, or a specified part, of the amount of the loan.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

52ZZV  Value of company’s or trust’s assets etc.

(1) For the purposes of this Subdivision, the value of a company’s or trust’s assets, or of a charge or encumbrance on such assets, is to be worked out as if:
   (a) each reference in section 5L to a person included a reference to a company or trust; and
   (b) Subdivision A of Division 11 (other than section 52D) had not been enacted.

(2) Paragraph (1)(b) has effect subject to paragraph 52ZZR(1)(c).
Subdivision I—Modification of asset deprivation rules

52ZZW Individual disposes of asset to company or trust

(1) If:
(a) an individual transfers property to a company or trust on or after 1 January 2002; and
(b) either:
(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or
(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and
(c) the transfer amounts to a disposal by the individual of an asset of the individual;
the Commission may, by writing, determine that Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA apply to that disposal as if:
(d) the amount of the disposition were nil; or
(e) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Commission must comply with any relevant decision-making principles.

52ZZX Disposal of asset by company or trust

(1) If:
(a) an individual is an attributable stakeholder of a company or trust; and
(b) the company or trust disposes of an asset of the company or trust;
Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA apply, and are taken to have applied, as if:
(c) the individual had disposed of an asset of the individual; and
(d) the amount of the disposition referred to in paragraph (c) were equal to the individual’s asset attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).
Commission determinations

(3) The Commission may, by writing:
   (a) determine that the disposal of a specified asset is exempt from subsection (1); or
   (b) determine that subsection (1) has effect, in relation to the disposal of a specified asset, as if the reference in paragraph (1)(d) to the individual’s asset attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust disposes of assets of the company or trust if:
   (a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:
      (i) destroys all or some of the company’s or trust’s assets; or
      (ii) disposes of all or some of the company’s or trust’s assets; or
      (iii) diminishes the value of all or some of the company’s or trust’s assets; and
   (b) one of the following subparagraphs is satisfied:
      (i) the company or trust receives no consideration in money or money’s worth for the destruction, disposal or diminution;
      (ii) the company or trust receives inadequate consideration in money or money’s worth for the destruction, disposal or diminution;
      (iii) the Commission is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain an income support advantage for an attributable stakeholder of the company or trust (who may be the...
first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

d) in the case of a trust—the disposal is not by way of:
   (i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or
   (ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of assets as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—an amount equal to:
    (i) the value of the assets that are destroyed; or
    (ii) the value of the assets that are disposed of; or
    (iii) the amount of the diminution in the value of the assets whose value is diminished; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—an amount equal to:
    (i) the value of the assets that are destroyed; or
    (ii) the value of the assets that are disposed of; or
    (iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the company or trust in respect of the destruction, disposal or diminution.

Disposal by way of distribution

(8) For the purposes of subsection (1), if a company makes a distribution of capital or profits of the company to a shareholder of the company on or after 1 July 2000:

(a) the company is taken to have disposed of an asset of the company; and

(b) the amount of the disposition is equal to the amount or value distributed to the shareholder.

(9) For the purposes of subsection (1), if a trust:

(a) makes a distribution (whether in money or in other property) to a beneficiary of the trust on or after 1 July 2000; or
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(b) credits an amount to a beneficiary of the trust on or after 1 July 2000;
then:
(c) the trust is taken to have disposed of an asset of the trust; and
(d) the amount of the disposition is equal to the amount or value distributed or credited to the beneficiary.

Obtaining an income support advantage
(10) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:
(a) enabling the individual to obtain any of the following:
   (i) a service pension;
   (ii) income support supplement;
   (iii) a social security pension;
   (iv) a social security benefit; or
(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
   (i) a service pension;
   (ii) income support supplement;
   (iii) a social security pension;
   (iv) a social security benefit; or
(c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

52ZZY Individual ceases to be an attributable stakeholder of a company or trust
If:
(a) an individual ceases to be an attributable stakeholder of a company or trust on or after 1 January 2002; and
(b) immediately before the cessation, the company or trust owned a particular asset (whether alone or jointly or in common with another entity or entities);
Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect as if:
(c) the individual had disposed of an asset of the individual; and
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(d) the amount of the disposition referred to in paragraph (c) were equal to the individual’s asset attribution percentage of the value of the asset referred to in paragraph (b), worked out immediately before the cessation.

52ZZZ  Individual disposes of asset to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

(c) apart from this section:

(i) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual’s assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the individual’s asset attribution percentage is 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect, in relation to the disposal of the asset referred to in paragraph (b), as if references in those Subdivisions and sections to the period of 5 years starting on the day on which the disposition took place were references to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the individual’s asset attribution percentage is less than 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by:
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(i) the individual’s asset attribution percentage as at 1 January 2002; or  
(ii) if a higher percentage is specified in the determination—that higher percentage.  

(2) A determination under subsection (1) has effect accordingly.  

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.  

52ZZZA  Individual disposes of asset to company or trust before 1 January 2002—individual’s spouse is attributable stakeholder  

(1) If:  
(a) an individual has transferred property to a company or trust before 1 January 2002; and  
(b) the transfer amounts to a disposal by the individual of an asset of the individual; and  
(c) apart from this section:  
(i) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual’s assets for the period of 5 years that starts on the day on which the disposition took place; and  
(ii) that 5-year period ends after 1 January 2002; and  
(d) the individual’s spouse is an attributable stakeholder of the company or trust on 1 January 2002.  

the Commission may, by writing, determine that:  
(e) in a case where the spouse’s asset attribution percentage is 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect, in relation to the disposal of the asset referred to in paragraph (b), as if references in those Subdivisions and sections to the period of 5 years starting on the day on which the disposition took place were references to the period:  
(i) beginning on the day on which the disposition took place; and  
(ii) ending immediately before 1 January 2002; or  
(f) in a case where the spouse’s asset attribution percentage is less than 100%—Subdivisions BA and BB of Division 11
and sections 45UT and 45UTA have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse’s asset attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

Subdivision J—Modification of income deprivation rules

52ZZZB Individual disposes of ordinary income to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and
(b) either:
   (i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or
   (ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and
(c) the transfer amounts to a disposal by the individual of ordinary income of the individual; and
(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

the Commission may, by writing, determine that Division 7 applies, and is taken to have applied, to the disposal referred to in paragraph (c) as if:

(e) the amount of the disposition were nil; or
(f) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Commission must comply with any relevant decision-making principles.
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52ZZZC  Disposal of income by company or trust

(1) If:
   (a) an individual is an attributable stakeholder of a company or trust; and
   (b) the company or trust disposes of ordinary income of the company or trust; and
   (c) if that income had been income of the individual instead of the company or trust, the income would have been ordinary income of the individual; and
   (d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;
Division 7 applies, and is taken to have applied, as if:
   (e) the individual had disposed of ordinary income of the individual; and
   (f) the amount of the disposition referred to in paragraph (e) were equal to the individual’s income attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Commission determinations

(3) The Commission may, by writing:
   (a) determine that the disposal of specified ordinary income is exempt from subsection (1); or
   (b) determine that subsection (1) has effect, in relation to the disposal of specified ordinary income, as if the reference in paragraph (1)(f) to the individual’s income attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust disposes of ordinary income of the company or trust if:
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(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:
   (i) destroys the source of the income; or
   (ii) disposes of the income or the source of the income; or
   (iii) diminishes the income; and

(b) one of the following subparagraphs is satisfied:
   (i) the company or trust receives no consideration in money or money’s worth for the destruction, disposal or diminution;
   (ii) the company or trust receives inadequate consideration in money or money’s worth for the destruction, disposal or diminution;
   (iii) the Commission is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain an income support advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:
   (i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or
   (ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of ordinary income as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that the Commission considers to be fair and reasonable in all the circumstances of the case.
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Obtaining an income support advantage

(8) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:
   (i) a service pension;
   (ii) income support supplement;
   (iii) a social security pension;
   (iv) a social security benefit; or
(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
   (i) a service pension;
   (ii) income support supplement;
   (iii) a social security pension;
   (iv) a social security benefit; or
(c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Ordinary income

(9) In this section:

ordinary income, in relation to a company or trust, has the same meaning as in Subdivision G.

52ZZZD  Individual disposes of income to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and
(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and
(c) apart from this section, under Division 7, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual’s ordinary income; and
(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;
the Commission may, by writing, determine that:

(e) in a case where the individual’s income attribution percentage is 100%—Division 7 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the individual’s income attribution percentage is less than 100%—Division 7 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by:

   (i) the individual’s income attribution percentage as at 1 January 2002; or

   (ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

52ZZZE Individual disposes of income to company or trust before 1 January 2002—individual’s spouse is attributable stakeholder

(1) If:

    (a) an individual has transferred property to a company or trust before 1 January 2002; and
    (b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and
    (c) apart from this section, under Division 7, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual’s ordinary income; and
    (d) the individual’s spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the spouse’s income attribution percentage is 100%—Division 7 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or
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(f) in a case where the spouse’s income attribution percentage is less than 100%—Division 7 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse’s income attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

Subdivision K—Concessional primary production trusts

52ZZZF Concessional primary production trusts

(1) For the purposes of this Division, a trust is a concessional primary production trust in relation to an individual at a particular time (the test time), if:

(a) at the test time, the trust is a controlled private trust in relation to the individual; and

(b) at the test time, either:

(i) the trust carries on a primary production enterprise (the first primary production enterprise); or

(ii) the trust makes an asset available to another entity, the other entity carries on a primary production enterprise (the first primary production enterprise), and the asset is used by the other entity wholly or principally for the purposes of carrying on the first primary production enterprise; and

(c) at the test time, more than 70% of the net value of the assets of the trust (excluding the net value of the principal home of the individual if that principal home is owned by the trust) relates to assets used wholly or principally for the purposes of carrying on a primary production enterprise; and

(d) at the test time, the sum of:

(i) the total adjusted net value of assets that are owned or controlled by the individual and used wholly or principally for the purposes of carrying on a primary production enterprise; and
(ii) the total adjusted net value of assets that are owned or
controlled by the individual’s spouse and used wholly or
principally for the purposes of carrying on a primary
production enterprise;

is less than the primary production attribution threshold (as
defined by subsection (6)); and

(e) if:

(i) the individual or the individual’s spouse had adjusted
net primary production income for the last tax year that
ended before the test time; and

(ii) the individual or the individual’s spouse had adjusted
net primary production income for the tax year that
preceded the tax year first referred to in
subparagraph (i); and

(iii) the individual or the individual’s spouse had adjusted
net primary production income for the tax year that
preceded the tax year first referred to in
subparagraph (ii);

the average of the following amounts is less than the amount
specified in clause 19 of Schedule 1 to the *A New Tax System*
(Family Assistance) *Act 1999* (subject to any indexation
under Schedule 4 to that Act):

(iv) the total adjusted net primary production income of the
individual and the individual’s spouse for the tax year
referred to in subparagraph (i);

(v) the total adjusted net primary production income of the
individual and the individual’s spouse for the tax year
first referred to in subparagraph (ii);

(vi) the total adjusted net primary production income of the
individual and the individual’s spouse for the tax year
first referred to in subparagraph (iii); and

(f) if:

(i) neither the individual nor the individual’s spouse had
adjusted net primary production income for the last tax
year that ended before the test time; or

(ii) neither the individual nor the individual’s spouse had
adjusted net primary production income for the tax year
that preceded the tax year referred to in
subparagraph (i); or
(iii) neither the individual nor the individual’s spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (ii);

the Commission, by writing, determines that this paragraph applies to the individual and the trust; and

(g) at the test time, the individual is not actively involved with the first primary production enterprise; and

(h) at the test time, an eligible descendant of the individual (as defined by section 5P) is actively involved with the first primary production enterprise; and

(i) if, at the test time, the individual is able to appoint the trustee, or any of the trustees, of the trust—there is a provision of the trust deed to the effect that that ability may only be exercised:

   (i) if the trustee concerned dies, resigns or becomes subject to a legal disability; or

   (ii) in accordance with a statutory law relating to the appointment of trustees; and

(j) if, at the test time, the individual is able to veto or direct the decisions of the trustee—there is a provision of the trust deed to the effect that that ability may only be exercised:

   (i) in relation to the sale of land used for the purposes of carrying on the first primary production enterprise; or

   (ii) in relation to the sale of fishing rights or timber rights used for the purposes of carrying on the first primary production enterprise; or

   (iii) in accordance with a statutory law relating to the appointment of trustees; and

(k) at the test time, there is a provision of the trust deed to the effect that neither the individual, nor the individual’s spouse, is, or is capable of becoming, the trustee, or any of the trustees, of the trust; and

(l) at the test time, a group in relation to the individual is not able to vary a provision covered by paragraph (i), (j) or (k); and

(m) at the test time, neither the individual, nor the individual’s spouse, is able to vary the trust deed; and

(n) at the test time, neither the individual, nor the individual’s spouse:
i) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts; or  

ii) receives any remuneration or other benefits from the trust otherwise than in the capacity of beneficiary of the trust.

(2) For the purposes of the application of paragraphs (1)(e) and (f) to a particular tax year, a person is the individual’s spouse if, and only if:

   a) the person was the spouse of the individual at any time during the tax year; and

   b) the person is the spouse of the individual at the test time.

(3) In making a determination under paragraph (1)(f), the Commission must comply with any relevant decision-making principles.

(4) Paragraph (1)(n) does not apply to any of the following benefits:

   a) food that:

      i) is derived from the first primary production enterprise; and

      ii) is for the personal consumption of the individual or the individual’s spouse;

   b) residential accommodation for the individual or the individual’s spouse, where that accommodation is the principal home of the individual;

   c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

   d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(5) Subparagraph (1)(n)(ii) has effect subject to section 52ZZZG.

(6) For the purposes of this section, the primary production attribution threshold is $750,000.

(7) A reference in this section to a group in relation to an individual is a reference to:

   a) the individual acting alone; or

   b) an associate of the individual acting alone; or
(c) the individual and one or more associates of the individual acting together; or
(d) 2 or more associates of the individual acting together.

52ZZZG Individual ceases to be an attributable stakeholder of a trust—receipt of remuneration or other benefits from trust during asset deprivation period

(1) For the purposes of this section, if:
(a) an individual ceases to be an attributable stakeholder of a trust on or after 1 January 2002; and
(b) immediately after the cessation, the trust was a concessional primary production trust in relation to the individual; and
(c) under section 52ZZY, as a result of the cessation, Subdivision BA or BB of Division 11 has effect as if the individual had disposed of an asset of the individual; and
(d) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual’s assets for the period of 5 years that starts on the day on which the disposition took place;
then:
(e) the period referred to in paragraph (d) is the asset deprivation period in relation to the individual and the trust; and
(f) throughout the asset deprivation period, the trust is a special primary production trust of the individual; and
(g) each one of the 5 years that constitutes the asset deprivation period is an asset deprivation year in relation to the individual and the trust.

(2) If:
(a) a trust (the first trust) is a special primary production trust in relation to an individual; and
(b) the individual and/or the individual’s spouse received one or more benefits (the first benefits) from the trust during a period that is an asset deprivation year (the first asset deprivation year) in relation to the individual and the trust;
subparagraph 52ZZZF(1)(n)(ii) does not apply to the first benefits, so long as the sum of the following amounts is less than the amount specified in clause 19 of Schedule 1 to the A New Tax

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System (Family Assistance) Act 1999 (subject to any indexation under Schedule 4 to that Act):

(c) the total of the amount or value of the first benefits;

(d) if:

(i) another trust is a special primary production trust in relation to the individual; and

(ii) the asset deprivation period in relation to the individual and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual and/or the individual’s spouse received one or more benefits (the second benefits) from that other trust during the period of the overlap;

the total of the amount or value of the second benefits;

(e) if:

(i) another trust is a special primary production trust in relation to the individual’s spouse; and

(ii) the asset deprivation period in relation to the individual’s spouse and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual’s spouse and/or the individual received one or more benefits (the third benefits) from that other trust during the period of the overlap;

the total of the amount or value of the third benefits.

(3) Subsection (2) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise referred to in section 52ZZZF; and

(ii) is for the personal consumption of the individual or the individual’s spouse;

(b) residential accommodation for the individual or the individual’s spouse, where that accommodation is the principal home of the individual;

(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(4) In this section:
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*benefit*, in relation to a trust, means any remuneration or other benefit received from the trust otherwise than in the capacity of beneficiary of the trust.

**52ZZZH Net value of asset**

(1) For the purposes of this Subdivision, the *net value* of an asset is the value of the asset, without any reduction other than a reduction under subsection (2).

(2) The Commission may, by writing, determine that the value of a specified asset is to be reduced by the whole or a specified part of a specified liability.

(3) A determination under this section has effect accordingly.

(4) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

**52ZZZI Value of entity’s assets**

For the purposes of this Subdivision, the value of an entity’s assets is to be worked out as if:

(a) each reference in section 5L to a person included a reference to an entity; and

(b) Subdivision A of Division 11 (other than section 52D) had not been enacted.

**52ZZJ When asset is controlled by an individual**

(1) For the purposes of this Subdivision, an asset is *controlled* by an individual if, and only if:

(a) all of the following conditions are satisfied:
   (i) the asset is owned by a company;
   (ii) the company is a controlled private company in relation to the individual;
   (iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(b) all of the following conditions are satisfied:
   (i) the asset is owned by a trust;
   (ii) the trust is a controlled private trust in relation to the individual;


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(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(c) both:
   (i) the asset is owned by a business partnership; and
   (ii) the individual is a partner in the partnership.

(2) If the asset is owned by a company or trust, the Commission may, by writing, determine that, for the purposes of this Subdivision, the asset is taken not to be controlled by the individual.

(3) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

52ZZZK Adjusted net value of asset

(1) For the purposes of this Subdivision, the adjusted net value of an asset owned by an individual is 100% of the net value of the asset.

(2) For the purposes of this Subdivision, the adjusted net value of an asset controlled by an individual is:
   (a) if the entity that owns the asset is a company and the company is a controlled private company in relation to the individual:
      (i) 100% of the net value of the asset; or
      (ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or
   (b) if the entity that owns the asset is a trust and the trust is a controlled private trust in relation to the individual:
      (i) 100% of the net value of the asset; or
      (ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or
   (c) if the entity that owns the asset is a business partnership—the individual’s share of the net value of the asset.

(3) In making a determination under this section, the Commission must comply with any relevant decision-making principles.
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52ZZZL Adjusted net primary production income

(1) For the purposes of this Subdivision, the *adjusted net primary production income* of an individual for a particular tax year is the sum of:

(a) if the individual carried on a primary production enterprise throughout that tax year—100% of the net income of that primary production enterprise for that tax year; and

(b) if a company carried on a primary production enterprise throughout that tax year and the company was a controlled private company in relation to the individual throughout that tax year:
   (i) 100% of the net income of that primary production enterprise for that tax year; or
   (ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(c) if a trust carried on a primary production enterprise throughout that tax year and the trust was a controlled private trust in relation to the individual throughout that tax year:
   (i) 100% of the net income of that primary production enterprise for that tax year; or
   (ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(d) if:
   (i) a business partnership carried on a primary production enterprise throughout that tax year; and
   (ii) the individual was a partner in the partnership throughout that tax year;


the individual’s share of the net income of that primary production enterprise for that tax year.

(2) In making a determination under this section, the Commission must comply with any relevant decision-making principles.
52ZZZM  Net income of a primary production enterprise

(1) For the purposes of this Subdivision, if an entity carries on a primary production enterprise during a tax year of the entity, the net income of that primary production enterprise for that tax year is the entity’s gross ordinary income from the carrying on of that enterprise calculated without any reduction, other than a reduction under section 52ZZZN or 52ZZZO.

(2) For the purposes of this Subdivision, the net income of a primary production enterprise is to be worked out as if:
   (a) exempt lump sums were not excluded from the definition of ordinary income in subsection 5H(1); and
   (b) each reference in section 5H to a person included a reference to an entity; and
   (c) the following provisions had not been enacted:
      (i) section 46Q;
      (ii) subsection 5H(8);
      (iii) subsection 5H(12);
      (iv) Divisions 1, 2, 3, 4, 6 and 7.

52ZZZN  Net income from a primary production enterprise—treatment of trading stock

(1) For the purposes of this Subdivision, if:
   (a) an entity carries on a primary production enterprise; and
   (b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the entity’s income for that tax year in the form of profits from the enterprise is to include the amount of the difference in values.

(2) For the purposes of this Subdivision, if:
   (a) an entity carries on a primary production enterprise; and
   (b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the entity’s income for that tax year in the form of profits from the enterprise is to be reduced by the amount of the difference in values.
52ZZZO Permissible reductions of income from carrying on a primary production enterprise

(1) For the purposes of this Subdivision, if an entity carries on a primary production enterprise, the entity’s income from the primary production enterprise is to be reduced by:
   (a) losses and outgoings that relate to the primary production enterprise and are allowable deductions for the purposes of section 8-1 of the Income Tax Assessment Act 1997; and
   (ba) amounts that relate to the primary production enterprise and can be deducted for the decline in value of depreciating assets under Subdivision 40-B of the Income Tax Assessment Act 1997; and
   (c) amounts that relate to the primary production enterprise and are allowable deductions under any other provision of the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997.

(2) However, the rule in subsection (1) does not apply to:
   (a) an ineligible deduction (see subsection (3)); or
   (b) an ineligible amount (see subsection (4)); or
   (c) an ineligible part of a deduction (see subsection (5)).

(3) The Commission may, by writing, determine a specified deduction is an ineligible deduction for the purposes of this section.

(4) The Commission may, by writing, determine that a specified amount is an ineligible amount for the purposes of this section.

(5) The Commission may, by writing, determine that a specified part of a specified deduction is an ineligible part of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

(7) A determination under subsection (3), (4) or (5) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
Subdivision L—Anti-avoidance

52ZZZP Anti-avoidance

(1) If:

(a) one or more entities enter into, commence to carry out, or carry out, a scheme; and

(b) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of obtaining an income support advantage for an individual (who may be the entity or one of the entities);

the Commission may, by writing, make any or all of the following determinations:

(c) a determination that this Division has, and is taken to have had, effect as if the individual were an attributable stakeholder of a specified company or trust at a specified time or during a specified period;

(d) a determination that this Division has, and is taken to have had, effect as if a specified asset were owned by a specified company or trust at a specified time or during a specified period;

(e) a determination that this Division has, and is taken to have had, effect as if specified income had been derived by a specified company or trust at a specified time or during a specified period.

(2) A determination under subsection (1) has effect accordingly.

Obtaining an income support advantage

(3) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a service pension;

(ii) income support supplement;

(iii) a social security pension;

(iv) a social security benefit; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
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(i) a service pension;
(ii) income support supplement;
(iii) a social security pension;
(iv) a social security benefit; or
(c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Subdivision M—Decision-making principles

52ZZQ Decision-making principles

(1) The Commission may, by writing, formulate principles (decision-making principles) to be complied with by it in making decisions under:
   (a) section 52ZZJ; or
   (b) subsection 52ZZK(2); or
   (c) section 52ZZL, 52ZZP or 52ZZQ; or
   (d) subsection 52ZZR(2); or
   (e) subsection 52ZZT(6) or 52ZZU(1); or
   (f) section 52ZZW; or
   (g) subsection 52ZZX(3), 52ZZZ(1) or 52ZZZA(1); or
   (h) section 52ZZZB; or
   (i) subsection 52ZZZC(3), 52ZZZD(1) or 52ZZZE(1); or
   (j) paragraph 52ZZZF(1)(f); or
   (k) section 52ZZZH; or
   (l) subsection 52ZZZI(2); or
   (m) section 52ZZJK or 52ZZZL.

(2) Decision-making principles are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

Subdivision N—Information management

52ZZZR Transitional period

For the purposes of this Subdivision, the transitional period is the period:
   (a) beginning on the commencement of this Division; and

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52ZZZS Information-gathering powers

In determining the scope of the power conferred on the Secretary during the transitional period by section 128 to require the provision of information, or the production of a document, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:
   (i) a tax year of the company or trust, being a tax year specified in the notice imposing the requirement, were a derivation period of the company or trust; and
   (ii) a period specified in the notice imposing the requirement were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and
   (iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and
   (iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

52ZZZT Commission may obtain tax information

(1) If the Commission has reason to believe that the Commissioner of Taxation has information (other than a tax file number) that may be relevant to the operation of this Division, the Commission may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Commission any such information.

(2) If the Commission has reason to believe that the relationship (whether direct or indirect) between:
   (a) a particular trust; and
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(b) a particular individual or an associate of a particular individual;

may be relevant to the operation of this Division, the Commission may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Commission the tax file number of the trust.

(3) The Commissioner of Taxation must comply with a requirement under subsection (1) or (2).

(4) Subsections (1) and (2) do not, by implication, limit a power conferred by:

(a) paragraph 16(4)(d) of the Income Tax Assessment Act 1936;

or

(b) section 128 of this Act.

(5) A tax file number provided to the Commission under subsection (2) may only be used for the following purposes:

(a) to detect cases in which amounts of service pension or income support supplement have been paid when they should not have been paid;

(b) to verify, in respect of persons who have made claims for service pension or income support supplement, the qualification of those persons for those payments;

(c) to establish whether the rates at which service pension or income support supplement are being, or have been, paid are, or were, correct.

(6) In determining the scope of a power conferred during the transitional period by subsection (1), (2) or (5), it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Commission, were a derivation period of the company or trust; and

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(ii) a period specified in a written notice given to the Commissioner of Taxation by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

52ZZZU Disclosure of tax information

In determining the scope of the power conferred on a person (the tax official) during the transitional period by paragraph 16(4)(d) of the Income Tax Assessment Act 1936 to communicate information for the purpose of the administration of any law of the Commonwealth relating to pensions, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the tax official by the Commission, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the tax official by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and
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(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

52ZZZV Disclosure of tax file number information

In determining the scope of paragraph 202(hc) of the Income Tax Assessment Act 1936, and sections 8WA and 8WB of the Taxation Administration Act 1953, during the transitional period, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Commission, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the Commissioner of Taxation by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.
Division 11B—Private financial provision for certain people with disabilities

Subdivision A—Special disability trusts

52ZZZW What is a special disability trust?

A trust is a special disability trust if the following requirements of this Subdivision are complied with:
(a) the beneficiary requirements (see section 52ZZZWA);
(b) the trust purpose requirements (see section 52ZZZWB);
(c) the trust deed requirements (see section 52ZZZWC);
(d) the trustee requirements (see section 52ZZZWD);
(e) the trust property requirements (see section 52ZZZWE);
(f) the reporting requirements (see section 52ZZZWF);
(g) the audit requirements (see section 52ZZZWG).

Note: The Commission may waive one or more requirements in certain circumstances (see section 52ZZZWH).

52ZZZWA Beneficiary requirements

Single beneficiary rule

(1) The trust must have no more than one beneficiary (the principal beneficiary), not including any residuary beneficiary.

Impairment or disability conditions

(2) If the principal beneficiary has reached 16 years of age:
(a) the beneficiary must:
   (i) be eligible for invalidity service pension; or
   (ii) be eligible for income support supplement on the ground set out in subparagraph 45A(1)(b)(iii); or
   (iii) have an impairment that would qualify the person for disability support pension under the Social Security Act; and
(b) the beneficiary must:
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(i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment, or carer allowance, under the Social Security Act; or

(ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Commission under subsection (3); and

(c) the beneficiary must have a disability as a result of which he or she is not working, and has no likelihood of working, for a wage that is at or above the relevant minimum wage within the meaning of subsection 23(1) of the Social Security Act.

(3) The Commission may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).

(4) If the principal beneficiary is under 16 years of age, he or she must be a profoundly disabled child within the meaning of section 197 of the Social Security Act.

Living beneficiary rule

(5) A trust stops being a special disability trust when the principal beneficiary dies.

Single trust rule

(6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:

(a) a special disability trust; or

(b) a special disability trust within the meaning of the Social Security Act.

52ZZZWB Trust purpose requirements

Sole purpose—care and accommodation for principal beneficiary

(1) Subject to this section, the sole purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.
Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 52ZZZWE.

(2) The trust may have purposes, ancillary to the purpose mentioned in subsection (1), that are necessary or desirable to facilitate the achievement of that purpose.

Reasonable care and accommodation needs

(3) If guidelines are made under subsection (4), for the purposes of this section the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines.

(4) The Commission may, by legislative instrument, make guidelines for deciding what are, and what are not, reasonable care and accommodation needs for principal beneficiaries of special disability trusts.

52ZZZWC Trust deed requirements

Compliance with determination

(1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.

(2) The Commission may, by legislative instrument, determine one or more of the following:
   (a) the form of the trust deed required for a special disability trust;
   (b) provisions which must be included in the trust deed;
   (c) the form of those provisions;
   (d) provisions which cannot be included in the trust deed.

Contravention of trust deed

(3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).
52ZZZWD  Trustee requirements

(1) A trustee of the trust who is an individual must:
   (a) be an Australian resident; and
   (b) not have been convicted at any time (including a time before
       the commencement of this section) of any of the following
       offences:
       (i) an offence of dishonest conduct against, or arising out
           of, a law of the Commonwealth, a State, a Territory or a
           foreign country;
       (ii) an offence against, or arising out of, this Act, the Social
           Security Act or the Social Security (Administration) Act
           1999; and
       (c) not have been disqualified at any time (including a time
           before the commencement of this section) from managing

(2) In addition, if a trustee of the trust is a corporation, subsection (1)
    applies to each director of the trustee.

52ZZZWE  Trust property requirements

(1) The assets of the trust must not include any asset transferred to the
    trust by the principal beneficiary of the trust, or the principal
    beneficiary’s partner, unless:
    (a) the transferred asset is all or part of a bequest, or of a
        superannuation death benefit; and
    (b) the transferor received the bequest or superannuation death
        benefit not more than 3 years before transferring the
        transferred asset.

(2) The assets of the trust must not include any compensation received
    by or on behalf of the principal beneficiary.

(3) The trust must not be used to pay an immediate family member, or
    a child, of the principal beneficiary for the provision to the
    beneficiary of:
    (a) care services; or
    (b) services for the repair or maintenance of the beneficiary’s
        accommodation.

Note: For immediate family member, see subsection 5Q(1).
(4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary’s accommodation.

Note: For immediate family member, see subsection 5Q(1).

(5) In this section:

child, of a principal beneficiary, means the natural child, adopted child or step-child of the beneficiary (no matter how old the child or step-child is).

property includes:
(a) a right to accommodation for life in a residence; and
(b) a life interest in a residence.

52ZZWF Reporting requirements

(1) The trustees of the trust must, on or before 31 March each year, give the Commission written financial statements about the trust in relation to the financial year ending on 30 June in the previous year.

(2) The financial statements must be prepared by:
(a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
(b) whether or not such a determination is made—a person approved by the Commission for the purpose.

(3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.

(4) The Commission may, by legislative instrument, make determinations for the purposes of this section.

52ZZWG Audit requirements

Trustee duties

(1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
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(a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or

(b) if, at the time of the request for the audit, an audit (the earlier requested audit) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

Audit period

(2) The audit must relate to:

(a) the financial year ending on the 30 June last preceding the request; or

(b) if a determination is made under subsection (7) that provides for a different period—that period.

Who may request audit

(3) The following persons may request an audit of the trust for the purposes of this section:

(a) the principal beneficiary;

(b) an immediate family member of the principal beneficiary;

(c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;

(d) a person who is otherwise acting as the principal beneficiary’s guardian on a long-term basis;

(e) the Commission.

Note: For immediate family member, see subsection 5Q(1).

Copies of audit report

(4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:

(a) the person requesting the audit; and

(b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and

(c) if the Commission did not request the audit—the Commission.
Auditor qualifications and required information

(5) The audit must be prepared by:
   (a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or
   (b) whether or not such a determination is made—a person approved by the Commission for the purpose.

(6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.

(7) The Commission may, by legislative instrument, make determinations for the purposes of this section.

52ZZW WH Waiver of contravention of this Division

(1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:
   (a) the Commission, by written notice (a waiver notice) to the trustees, waives the requirement as it concerns that matter; and
   (b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.

(2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):
   (a) from:
      (i) the time of the contravention; or
      (ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and
   (b) if the waiver notice states a time for the end of its period of effect—until the stated time.
(3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.

(4) The Commission may, by legislative instrument, make guidelines for deciding any or all of the following:
   (a) whether or not to give waiver notices to trustees of trusts;
   (b) what conditions to include in waiver notices;
   (c) the periods during which waiver notices are to have effect.

Subdivision B—Income of special disability trusts

52ZZZWJ Income amounts from special disability trusts

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For income amount, see section 5H.
Note 2: For special disability trust, see section 52ZZZW.

Subdivision C—Assets of special disability trusts

52ZZZWK Attribution of assets

(1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For special disability trust, see section 52ZZZW.
(2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust’s asset value limit.

(3) The asset value limit of a special disability trust is $500,000.

Note: This amount is indexed annually on 1 July (see sections 59B to 59E).

(4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For principal home, see subsections 5L(5) to (7).

(5) This section has effect despite Subdivision H of Division 11A of Part IIIB and any other provisions of this Act.

Subdivision D—Transfers to special disability trusts

52ZZZW. Effect of certain transfers to special disability trusts

(1) If a person transfers an asset (the transferred asset) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:

(a) the person is an immediate family member of the principal beneficiary of the trust; and

(b) the person, or the person’s partner:

(i) is receiving a service pension and has reached pension age; or

(ii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2); or

(iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act; and

(c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(d) the transfer is unconditional; and

(e) the value of the transferred asset does not exceed $500,000; and

(f) in a case where there has already been a transfer to which this section has applied (an exempt transfer), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:
Section 52ZZZWM

(i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

does not exceed $500,000.

Note 1: For special disability trust, see section 52ZZZW.
Note 2: For immediate family member, see subsection 5Q(1).
Note 3: For pension age (except for the purposes of subparagraph (1)(b)(iii) of this section), see subsection 5Q(1).
Note 4: For service pension and social security pension, see subsection 5Q(1).
Note 5: Part IIIA deals with income support supplement.

(2) This section has effect subject to sections 52ZZZWM and 52ZZZWP.

(3) In this section:

other special disability trust includes a special disability trust within the meaning of the Social Security Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

52ZZZWM The effect of exceeding the $500,000 limit

(1) If section 52ZZZWL would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds $500,000, that section does not prevent the transfer from being a disposal of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.

(2) If:

(a) section 52ZZZWL would apply to a transfer of an asset but for the fact that the sum of:

(i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

 exceeds $500,000; and

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(b) that sum would not exceed $500,000 if the value of the transferred asset were disregarded;
that section does not prevent the transfer from being a disposal or disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).

(3) This section has effect subject to section 52ZZZWP.

(4) In this section:

\textit{other special disability trust} includes a special disability trust within the meaning of the Social Security Act.

\textit{value}, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

\textbf{52ZZW}N Transfers by the immediate family members prior to reaching pension age etc.

(1) If:

(a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and
(b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:
   (i) is receiving a service pension and has reached pension age; or
   (ii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2); or
   (iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii) or (iii) applies to the immediate family member or partner.

Note 1: For \textit{special disability trust}, see section 52ZZZW.

Note 2: For \textit{immediate family member}, see subsection 5Q(1).
Note 3: For pension age (except for the purposes of subparagraph (1)(b)(iii) of this section), see subsection 5Q(1).

Note 4: For service pension and social security pension, see subsection 5Q(1).

Note 5: Part IIIA deals with income support supplement.

(2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

Note: For immediate family member, see subsection 5Q(1).

(3) This section does not affect the operation of Division 11 of Part IIIB or any other provision of this Act outside of this Division.

52ZZZWO Transfers by principal beneficiaries or partners

(1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:
   (a) the person is the principal beneficiary of the trust, or the principal beneficiary’s partner; and
   (b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and
   (c) the transfer is unconditional.

Note 1: For special disability trust, see section 52ZZZW.

Note 2: Section 52ZZZWE limits the circumstances in which the principal beneficiary or the principal beneficiary’s partner can transfer assets to the trust.

(2) This section has effect subject to section 52ZZZWP.

52ZZZWP Cessation of special disability trusts

(1) If:
   (a) a special disability trust ceases to exist or ceases to be a special disability trust; and
   (b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and
   (c) section 52ZZZWL, 52ZZZWM or 52ZZZWO applied to the transfer;
then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.

(2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

\[
\text{Asset value} \times \left( \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 52ZZZWM(2) amount}
\]

where:

\textit{asset value} means:

(a) if section 52ZZZWL or 52ZZZWO applied to the transfer—
the value of the asset at the time of the transfer; or

(b) if subsection 52ZZZWM(1) applied to the transfer—
$500,000; or

(c) if subsection 52ZZZWM(2) applied to the transfer—the difference between the value of the asset at the time of the transfer and the amount that was taken under that subsection to be the amount of the disposal or disposition of the asset.

\textit{final value of trust assets} means the value of all of the assets of the trust at the time of the cessation.

\textit{initial value of trust assets} means the value of all of the assets of the trust at the time of the transfer.

\textit{subsection 52ZZZWM(2) amount} means the amount (if any) that was taken under subsection 52ZZZWM(2) to be the amount of the disposal or disposition of the asset.

(3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the asset as has not been returned to the person who had transferred the asset to the trust.

(4) This section does not affect the application of section 52ZZZWL, 52ZZZWM or 52ZZZWO to the transfer prior to the cessation.
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 11B  Private financial provision for certain people with disabilities

Section 52ZZZWQ

52ZZZWQ  Effect of this Subdivision

This Subdivision (other than section 52ZZZWN) has effect despite Subdivision B of Division 11 of Part IIIB and any other provisions of this Act.
Division 12—Service pensioner and income support supplement recipient benefits

Subdivision A—Introduction

53 Fringe benefits and treatment at Departmental expense for certain service pensioners

(1) If a person is eligible for fringe benefits, benefits and concessions of various kinds may be made available to the person by the Commonwealth, State and Territory governments and authorities and local authorities.

Note: if a person is eligible for fringe benefits in accordance with this Division, benefits and concessions under the National Health Act 1953 may be made available to the person.

(2) If:

(a) a veteran is receiving an age or invalidity service pension; and

(b) the veteran satisfies the conditions in section 53D;

the veteran may be entitled to certain medical treatment at Departmental expense.

(3) Section 85 provides further treatment entitlements for veterans.

Subdivision B—Fringe benefits

53A Fringe benefits

(1) A person who is receiving a service pension or income support supplement is eligible for fringe benefits.

(2) If:

(a) a person is receiving an invalidity service pension; and

(b) the person ceases to be eligible for that pension because the person ceases to be permanently incapacitated for work; and

(c) the circumstances in which the person ceases to be permanently incapacitated for work are continued fringe benefits eligibility circumstances in accordance with a determination under section 53B;
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 12  Service pensioner and income support supplement recipient benefits

Section 53B

the person remains eligible for fringe benefits for the shorter of the following periods:

(d) the period those continued fringe benefits eligibility circumstances continue to exist;

(e) the period of 12 months beginning on the day the person ceased to be eligible for that pension.

53B  Commission must determine continued fringe benefits eligibility circumstances

(1) The Commission must, by written determination, state that specified circumstances in which persons cease to be permanently incapacitated for work are continued fringe benefits eligibility circumstances for the purposes of subsection 53A(2).

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

(3) A determination under this section is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Subdivision C—Treatment at Departmental expense

53D  Eligibility for treatment at Departmental expense

(1) A veteran who is receiving an age or invalidity service pension is eligible to be provided with treatment under Part V for any injury suffered, or disease contracted, by the veteran if:

(a) the veteran is a veteran to whom section 53E applies; and

(ab) the veteran is a veteran within the meaning of paragraph (a) of the definition of veteran in subsection 5C(1); and

(b) the veteran is not a veteran only because the veteran has rendered service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2).

Note 2: a partner service pensioner may be eligible to be provided with treatment under Part V if he or she is receiving a pension under Part II at 50% of the general rate or higher (see subsection 85(7)).
Note 3: some veterans who are not receiving an age or invalidity service pension because of Division 8A of Part III are treated as continuing to be eligible under section 53D to be provided with treatment under Part V (see section 83 of the Veterans’ Affairs Legislation Amendment Act 1992).

Note 4: a veteran who was taken to be eligible for fringe benefits because of subsection 17(1) or (2) of the Veterans’ Entitlements (Rewrite) Transition Act 1991 as in force immediately before the commencement of Schedule 5 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 and who is receiving an age or invalidity service pension is eligible under section 53D to be provided with treatment under Part V if paragraph 53D(1)(b) applies to the veteran.

(2) Paragraph (1)(b) does not make a veteran ineligible to be provided with treatment under Part V if the veteran satisfies the Commission that the veteran was domiciled in Australia or an external Territory immediately before the veteran’s appointment or enlistment for service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2).

(3) If a veteran’s service pension is suspended, the Commission may determine that the veteran is to be treated, for the purposes of this section, as if the veteran were continuing to receive the service pension during the whole or a specified part of the period of suspension.

(4) A determination under subsection (3) must be in writing.

(5) This section applies to an injury suffered, or a disease contracted, by a veteran whether before or after the commencement of this section.

53E Veterans to satisfy certain conditions

(1) This section applies to a veteran if:
   (a) the veteran is permanently blind; or
   (b) the veteran’s rate of service pension is neither income reduced nor assets reduced; or
   (c) the veteran’s rate of service pension is either income reduced or assets reduced, but the reduction does not exceed the income/assets reduction limit applicable to the veteran.

Note: For income/assets reduction limit see subsection (2).
(2) The *income/assets reduction limit* applicable to a veteran is worked out by using Table 53E. Work out which item in the table applies to the veteran by identifying his or her family situation. The applicable income/assets reduction limit is the amount in column 3 of that item plus (if the veteran has a dependent child or dependent children) the amount in column 5 of that item for each dependent child.

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Family situation</th>
<th>Column 3 Basic reduction per year</th>
<th>Column 4 Basic reduction per fortnight</th>
<th>Column 5 Additional reduction per year</th>
<th>Column 6 Additional reduction per fortnight</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Not a member of a couple</td>
<td>$1,924</td>
<td>$74</td>
<td>$364</td>
<td>$14</td>
</tr>
<tr>
<td>2</td>
<td>Partnered</td>
<td>$1,664</td>
<td>$64</td>
<td>$182</td>
<td>$7</td>
</tr>
</tbody>
</table>

Note 1: For *member of a couple* and *partnered* see section 5E.

Note 2: For *dependent child* see section 5F.

Note 3: Members of illness separated and respite care couples are covered by item 2 of the table.

Note 4: The basic reduction and additional reduction are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

(2A) If a veteran has a child who is receiving youth allowance, subsection 53E(2) applies to the veteran as if the child were a dependent child.

(3) If, on a particular day:

(a) the annual rate of a veteran’s ordinary income increases; and

(b) as a result of the increase, the veteran’s rate of service pension is income reduced by an amount that is not more than 150% of the income/assets reduction limit applicable to the veteran;

this section continues to apply to the veteran until:

(c) the end of the period of 13 weeks starting on that day; or

(d) the reduction exceeds 150% of the income/assets reduction limit applicable to the veteran;

whichever happens first.
Division 12A—Payments after bereavement

Subdivision A—Bereavement period

53H  Definition

In this Division:

bereavement period, in relation to a person’s death, means the period of 98 days starting on the day on which the person died.

Note: Payments under this Division are not affected by unrepaid advance payments of pension.

Subdivision B—Death of pensioner’s partner (where partner was receiving a pension or a social security pension)

53J  Application

This Subdivision applies if:
(a) a person (the pensioner) is receiving a pension; and
(b) the pensioner is a member of a couple; and
(c) the other member of the couple (the partner) dies; and
(d) immediately before the partner died, the partner was receiving a pension or a social security pension.

Note: Even though the partner may not actually have been receiving an amount of social security pension because the rate of the pension was nil, in some cases the partner will have been taken to be receiving the pension if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the partner: see subsection 23(1D) of the Social Security Act.

53K  What happens if pensioner’s reassessed rate equals or exceeds combined pensioner couple rate

(1) This section applies during the bereavement period if the rate of pension applicable to the pensioner as a result of the partner’s death is equal to or greater than the sum of the rates of pension or social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the partner died.
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 12A  Payments after bereavement

Section 53L

(2) The rate of pension that becomes applicable in respect of the pensioner as a result of the partner’s death applies with effect from the day of the partner’s death.

(3) Part of the rate of pension payable to the pensioner is taken to be bereavement payment. The part concerned is equal to the rate of pension or social security pension payable to the partner on the last day of the last pension period that ended before the partner died.

(4) This section has effect subject to section 53M.

53L  What happens if pensioner’s reassessed rate is less than combined pensioner couple rate

(1) This section applies during the bereavement period if the rate of pension applicable to the pensioner as a result of the partner’s death is less than the sum of the rates of pension or social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the partner died.

(2) Pension continues to be payable to the pensioner during the bereavement period at the rate at which it was payable immediately before the partner’s death.

(3) The rate of pension that, apart from subsection (2), would be applicable in respect of the pensioner as a result of the partner’s death applies with effect from the day after the end of the bereavement period.

(4) There is payable to the pensioner, for each day in the bereavement period, a bereavement payment calculated at the rate of the pension or social security pension that was payable to the partner on the last day of the last pension period that ended before the partner died.

(5) All or any of the bereavement payments payable to the pensioner under subsection (4) may be paid in advance in a lump sum.

(6) This section has effect despite subsection 38C(2) but is subject to section 53M.
53M Determination of amount of pension and social security pension

(1) This section applies in determining for the purposes of section 53K or 53L the rates of pension or social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the day of the partner’s death.

(2) If the pensioner and partner were an illness separated couple or a respite care couple on the last day of the last pension period that ended before the day of the partner’s death, the rates of pension or social security pension referred to in subsection (1) are to be worked out as if the pensioner and partner were not members of an illness separated couple or respite care couple but remained members of a couple.

(3) If the partner was a war widow or war widower who was receiving a service pension, the rate of that pension that was payable to the partner on the last day of the last pension period that ended before the day of the partner’s death is taken to be the rate that would have been payable if Method statement 1 or Method statement 2 (whichever is appropriate) in Module A of the Rate Calculator had applied in working out the rate of the pension and Method statement 3 or Method statement 4, as the case may be, in that Module had not applied.

(4) If the partner was a war widow or war widower who was receiving an income support supplement, the rate of that supplement that was payable to the partner on the last day of the last pension period that ended before the day of the partner’s death is taken to be:
   (a) in respect of a partner who was not permanently blind—the rate that would have been payable if the ceiling rate were greater than the adjusted income reduced rate and the assets reduced rate; or
   (b) in respect of a partner who was permanently blind—the sum of:
      (i) the maximum basic rate under point SCH6-B1; and
      (ii) the pension supplement under Module BA in Schedule 6.

(5) In determining under subsection (4) the rate of the income support supplement that was payable to the partner on the last day of the last pension period that ended before the day of the partner’s death,
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 12A  Payments after bereavement

Section 53N

it is to be assumed that the adjusted income of the partner did not include the income referred to in paragraph (c), (ca) or (cb) of the definition of adjusted income in subsection 5H(1).

(6) If the partner was a war widow or war widower who was receiving a social security pension, the rate of that pension that was payable to the partner on the last day of the last pension period that ended before the day of the partner’s death is taken to be the rate that would have been payable if:
   (a) subsections 1064(5) and (6) and 1065(4) and (5) of the Social Security Act had not been enacted; and
   (b) the ordinary income of the partner did not include any instalment of pension that was payable to the partner under subsection 30(1).

(7) If DFISA was payable to the partner in relation to a social security pension the partner was receiving, then the rate of that pension on the last day of the last pension period that ended before the day of the partner’s death is increased by the rate of DFISA that was payable to the partner on that day.

53N  Transfer to another pension

(1) This section applies if, on a day during the bereavement period, the pensioner:
   (a) ceases to receive the pension; and
   (b) begins to receive another pension or to receive a social security pension.

(2) If the pensioner receives, for a day occurring during the remainder of the bereavement period, a payment of the other pension or of the social security pension, part of the payment is taken to be a bereavement payment. The part concerned is the amount representing the rate of pension or social security pension payable to the partner on the last day of the last pension period that ended before the day of the partner’s death.
53NA No liability of financial institution for certain payments to pensioner

(1) This section applies if:
   (a) after the partner died, an amount (the *partner’s amount*) of pension, DFISA or social security pension to which the partner would have been entitled if the partner had not died is paid into an account with a financial institution; and
   (b) the institution pays to the pensioner, out of that account, an amount that is not more than the partner’s amount.

(2) The financial institution is not liable to any action, claim or demand in respect of the payment to the pensioner.

(3) Subsection (2) has effect despite any other law.

Subdivision C—Death of pensioner

53P Application

This Subdivision applies if:
   (a) a person (the *pensioner*) is receiving a pension; and
   (b) either:
      (i) the pensioner is not a member of a couple; or
      (ii) the pensioner is a member of a couple and the pensioner’s partner is not receiving a service pension or income support supplement, is not receiving a social security pension and is not receiving a social security benefit; and
   (c) the pensioner dies.

53Q Payment of one instalment

(1) Sections 123 to 123E do not apply as a result of the pensioner’s death, but there is payable to any person whom the Commission thinks appropriate an amount equal to the amount of pension that would have been payable to the pensioner for the period of 14 days after the day on which the pensioner died calculated at the rate at which pension would have been payable to the pensioner (including, to remove any doubt, any amount of pension payable under this Division) on those days if the pensioner had not died.
Section 53R

(2) If the amount is paid under subsection (1) in respect of the pensioner, the Commonwealth is not liable to any action, claim or demand for further payment under that subsection in respect of the pension.

(3) If a lump sum bereavement payment made to the pensioner under this Division before the pensioner’s death included an amount for a pension period that occurred after the day of the pensioner’s death, the amount is not recoverable from the pensioner’s estate.

Subdivision D—Death of dependent child

53R Application

This Subdivision applies if:
(a) a person (the pensioner) is receiving a pension; and
(b) a dependent child dies.

53S When reassessed pension rate in respect of pensioner comes into effect

(1) Pension continues to be payable to the pensioner during the bereavement period as if the child had not died.

(2) The rate of pension that becomes applicable to the pensioner as a result of the child’s death applies with effect from the day after the end of the bereavement period.

53T Bereavement payment

(1) Part of each instalment of pension that is paid to the pensioner for a pension payday that occurs during the bereavement period is taken to be a bereavement payment. The part concerned is so much of the instalment as related to the child.

(2) All or any of the bereavement payments payable to the pensioner under subsection (1) may be paid in advance in a lump sum.
Division 13—Recipient obligations

54 Secretary may require notification of an event or change of circumstances

(1) The Secretary may give a person:
   (a) to whom a service pension or income support supplement is being paid; or
   (b) whose claim or application for a service pension or income support supplement is under consideration by the Commission or the Administrative Appeals Tribunal; or
   (c) who is receiving benefits under Division 12;
   a notice that requires the person to inform the Department, or an officer specified in the notice, if:
   (d) a specified event or change of circumstances occurs; or
   (e) the person becomes aware that a specified event or change of circumstances is likely to occur.

(2) A person referred to in paragraph (1)(a) includes a person to whom the whole or a part of a pension is being paid for the purpose of being applied for the benefit of a pensioner.

(3) An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of that event or change of circumstances might affect:
   (a) the payment to the person of the pension; or
   (b) the provision of benefits under Division 12.

(4) A notice under subsection (1):
   (a) must be in writing; and
   (b) may be given personally or by post; and
   (c) must specify the period within which, and, subject to subsection (4A), the manner in which the person is to give the information to the Department or specified officer.

(4A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to inform the Department of the occurrence, or likely occurrence, of a specified event or change of circumstances:
Part IIIIB  Provisions applicable to service pensions and income support supplement
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(a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
(b) is taken to have been lodged on a day determined under that section.

(5) The period specified under paragraph (4)(c) must end not later than 14 days after:
(a) the day on which the event or change of circumstances occurs; or
(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

(5A) If the Secretary is satisfied that there are special circumstances related to the person to whom the notice under subsection (1) is to be given, the period to be specified under paragraph (4)(c) is such period as the Secretary directs in writing, being a period that ends not less than 15 days, and not more than 28 days, after:
(a) the day on which the event or change of circumstances occurs; or
(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

(5AA) In spite of subsection (5), if a notice under subsection (1) specifies an event that consists of the death of a person, the person to whom the notice is given is taken, for the purposes of this Act, to have informed the Department or the officer specified in the notice, as the case may be, of the death within the bereavement period.

(6) A person must not fail to comply with a notice under subsection (1).

Penalty: $1,000 or imprisonment for 6 months, or both.

(7) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the Criminal Code.
54A Secretary may require recipient to give particular information relevant to the payment of pension

(1) The Secretary may give a person:
   (a) to whom a service pension or income support supplement is being paid; or
   (b) whose claim or application for a service pension or income support supplement is under consideration by the Commission or the Administrative Appeals Tribunal; or
   (c) who is receiving benefits under Division 12;
   a notice that requires the person to give the Department, or an officer specified in the notice, a statement in writing about a matter that might affect:
   (d) the payment to the person of the service pension or income support supplement; or
   (e) the provision of benefits under Division 12.

(2) A person referred to in paragraph (1)(a) includes a person to whom the whole or a part of a pension is being paid for the purpose of being applied for the benefit of a pensioner.

(3) A notice under subsection (1):
   (a) must be in writing; and
   (b) may be given personally or by post; and
   (c) must specify the period within which, and, subject to subsection (3A), the manner in which the person is to give the information to the Department or specified officer.

(3A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to inform the Department about a matter of a kind specified in that subsection:
   (a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
   (b) is taken to have been lodged on a day determined under that section.

(4) The period specified under paragraph (3)(c) must end at least 14 days after the day on which the notice is given.

(5) A statement given in response to a notice under subsection (1) must be in accordance with a form approved by the Commission.
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Section 54AA

(6) A person must not fail to comply with a notice under subsection (1).
Penalty: $1,000 or imprisonment for 6 months, or both.

(7) An offence under subsection (6) is an offence of strict liability.
Note: For strict liability, see section 6.1 of the Criminal Code.

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.
Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the Criminal Code.

54AA Secretary may require recipient to give information, produce documents or appear before an officer

(1) The Secretary may give to a person who is receiving a service pension, income support supplement, or benefits under Division 12 a notice requiring the person:
(a) to provide the Department, or an officer specified in the notice, with information; or
(b) to produce to the Department, or an officer specified in the notice, documents in the custody or under the control of the person; or
(c) to appear before an officer of the Department specified in the notice to answer questions;
relating to a matter that may affect the payment of the pension, supplement or the provision of the benefits.

(2) A reference in subsection (1) to a person receiving a service pension or income support supplement includes a person to whom the whole or a part of the pension or supplement is being paid for the purpose of being applied for the benefit of the pensioner.

(3) The Secretary may give to a person whose claim or application for a service pension or income support supplement is under consideration by the Commission or the Administrative Appeals Tribunal a notice requiring the person:
(a) to provide the Department, or an officer specified in the notice, with information; or
(b) to produce to the Department, or an officer specified in the
notice, documents in the custody or under the control of the
person; or
(c) to appear before an officer of the Department specified in the
notice to answer questions;
relating to the claim or application.

(4) Subject to subsections (4A) and (5), the notice:
(a) must be in writing; and
(b) may be given personally or by post; and
(c) must specify:
(i) when and how the person is to provide the information
or produce the documents; or
(ii) when and where the person is to appear before the
officer.

(4A) A document lodged as a consequence of a notice under
subsection (1) or (3) that requires a person to provide the
Department with information of a kind to which paragraph (a) of
that subsection applies:
(a) is to be lodged at an office of the Department in Australia in
accordance with section 5T; and
(b) is taken to have been lodged on a day determined under that
section.

(5) The person must not be required to provide the information,
produce the documents or appear to answer questions within a
period of less than 14 days after the notice is given.

(6) The Secretary may require the person to give or verify the
information or answers:
(a) on oath or affirmation; and
(b) either orally or in writing.
The Secretary or specified officer may administer an oath or
affirmation to the person.

(7) A person must not fail to comply with a notice under subsection (1)
or (3).
Penalty: Imprisonment for 6 months.

(8) An offence under subsection (7) is an offence of strict liability.
Section 54B

Note: For strict liability, see section 6.1 of the Criminal Code.

(9) A person does not commit an offence under subsection (7) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3) of the Criminal Code.

54B Document served with a section 54 notice

(1) A notice under subsection 54(1) is taken to specify an event or change of circumstances if:
   (a) the notice refers to a document that sets out the event or change of circumstances; and
   (b) a copy of the document is given to the person with the notice.

(2) If a notice specifies an event or change of circumstances by reference to a document under subsection (1), the notice may specify the period within which a person is to give the information to the Department or specified officer by reference to the period set out in the document for notification of the event or change of circumstances.

54BA Secretary may require a person to whom a service pension or income support supplement is being paid to take action to obtain a comparable foreign pension

(1) If:
   (a) a person is receiving a service pension or income support supplement; and
   (b) the Secretary is satisfied that the person may be entitled to a comparable foreign pension if the person applied for that pension;

the Secretary may give the person a notice that requires the person to take reasonable action to obtain the comparable foreign pension.

Note: For the consequences of a failure to comply with the notice see section 56EB.

(2) The notice:
   (a) must be in writing; and
   (b) must be given personally or by post; and
   (c) must specify the period within which the reasonable action is to be taken.
(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

54C Interpretation

In this Division:

*officer* means a person performing duties, or exercising powers or functions, under or in relation to this Act.

*person* includes an unincorporated body.
Section 55

Division 14—Pensioners in certain institutions

Subdivision A—Imprisonment

55 Pension may be suspended or forfeited when pensioner in gaol

(1) Subject to subsections (2) and (3), if a person who is receiving a service pension or income support supplement goes to gaol, the Commission may direct that a pension instalment or instalments that would otherwise be payable while the person is in gaol are to be forfeited or suspended.

Note 1: although the person is not receiving the pension while the instalments are suspended or forfeited, the person may be able to receive treatment at Departmental expense if a determination is in force under subsection 53D(3), 55(1) or 85(8).

Note 2: while the instalments are suspended or forfeited, the person is not entitled to benefits under Division 12 because the person is not receiving a service pension or income support supplement unless a determination is in force under subsection 53D(3), 55(1) or 85(8).

(2) A direction under subsection (1) can only be given in relation to an instalment that is payable on a day that occurs:

(a) after the day on which the person goes to gaol; and

(b) before the day on which the person is released from gaol.

Note: this subsection has the effect of putting short-term imprisonments (e.g. 14 days) outside the scope of this section.

(3) Subsection (1) does not apply to so much of an instalment as has been redirected under a direction given under section 55A.

(4) For the purposes of this section, a person is in gaol if the person is imprisoned in connection with the person’s conviction for an offence.

Note: this section is not intended to apply to a pensioner who is in custody pending trial or sentencing.
55A Instalments may be redirected to partner or child

(1) If:

(a) an instalment of a person's service pension or income support supplement would, but for this section, be suspended or forfeited under section 55; and

(b) the person has a partner or a child;

the Commission may direct that the whole, or a specified part, of the instalment is to be paid to:

(c) the partner; or

(d) the child; or

(e) someone else approved by the Commission.

(2) A payment made under paragraph (1)(e) is to be applied for the benefit of the partner or the child.

(3) If a payment is made under subsection (1) to the partner or a child of the person who is in gaol, the payment is to be taken, for all the purposes of this Act, to be a payment made to the person in gaol.

Note: this subsection has the effect that the person is receiving the service pension or income support supplement on a payday if the instalment for that payday has been wholly or partly redirected under this section: for instance, the person would be eligible for fringe benefits and may be eligible for treatment at Departmental expense. This person is not eligible for another income support payment.

Subdivision B—Benevolent homes

55B Application of Subdivision

(1) This Subdivision applies to a person if:

(a) the person is receiving a service pension or income support supplement; and

(b) the person is an inmate of a benevolent home; and

(c) the person is not undergoing treatment in the home for pulmonary tuberculosis.

(2) While a person to whom this Subdivision applies is an inmate of the benevolent home, the person’s pension is to be dealt with under section 55D.
55D Inmate of benevolent home

(1) While a person is an inmate of a benevolent home:
   (a) so much of the person’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home: the balance (if any) is called the contribution reduced balance;
   (b) the contribution reduced balance (if any) is to be paid to the pensioner.

(2) Amounts paid under paragraph (1)(a) are to be used for the maintenance of the person in the benevolent home.

55E Pensioner contribution

(1) For the purposes of this Subdivision, the pensioner contribution is, subject to subsection (2), 364 times the amount in force from time to time for the purposes of subparagraph 47(2)(b)(iii) of the National Health Act 1953.

(2) If the amount worked out under subsection (1) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.
Division 15—Variation and termination

56 Automatic termination or rate reduction—recipient complying with section 54 notification obligations

(1) Where:
(a) a person who is receiving a service pension or income support supplement is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the notification period); and
(c) the event or change in circumstances occurs; and
(d) the person informs the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or change in circumstances:
   (i) the person ceases to be eligible for the pension or income support supplement; or
   (ii) the pension or income support supplement would, but for this section, cease to be payable to the person;

the pension or income support supplement continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

(2) If the person ceases to be eligible for a pension under subsection (1), the pension is cancelled.

Note 2: if a pension ceases to be payable to a person under this section, the person’s eligibility for benefits under Division 12 also ceases.

(3) If:
(a) a person who is receiving a service pension or income support supplement is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (the notification period); and
(c) the event or change in circumstances occurs; and
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Section 56A

(d) the person informs the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or change in circumstances, the person’s rate of pension or income support supplement is to be reduced;

then, except as otherwise provided by this Act, the pension or income support supplement becomes payable to the person at the reduced rate immediately after the end of the notification period.

56A  Automatic termination—recipient not complying with section 54 notification obligations

(1) Where:

(a) a person who is receiving a service pension or income support supplement is given a notice under section 54; and

(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the notification period); and

(c) the event or change in circumstances occurs; and

(d) the person does not inform the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or the change in circumstances:

   (i) the person ceases to be eligible for the pension or income support supplement; or

   (ii) the pension or income support supplement ceases to be payable to the person;

the pension or income support supplement ceases to be payable to the person on the day on which the event or change in circumstances occurs.

(2) If the person ceases to be eligible for a pension under subsection (1), the pension is cancelled.

Note: if a pension ceases to be payable to a person under this section, the person’s eligibility for benefits under Division 12 also ceases.

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56B Automatic rate reduction—recipient not complying with section 54 notification obligations

Where:
(a) a person who is receiving a service pension or income support supplement is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the notification period); and
(c) the event or change in circumstances occurs; and
(d) the person does not inform the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or change in circumstances, the person’s rate of pension or income support supplement is to be reduced;

then, except where otherwise provided for by this Act, the pension or income support supplement becomes payable to the person at the reduced rate on the day on which the event or change in circumstances occurs.

56C Rate increase determination

(1) If the Commission is satisfied that the rate at which a service pension or income support supplement is being, or has been, paid is less than the rate provided for by this Act, the Commission must, subject to section 56DA, determine that the rate is to be increased to the rate specified in the determination.

(2) If:
(a) either:
   (i) a service pension or income support supplement has not been, or is not being, paid to a person because the rate of the pension or supplement was determined to be nil; or
   (ii) a service pension or income support supplement has not been, or is not being, paid to a person because the rate of the pension or supplement was reduced to nil under section 56 or 56A; and
(b) the Commission is satisfied that the rate of the person’s pension or supplement as provided for by this Act is no longer nil;
the Commission must, subject to section 56DA, determine that the rate at which the pension or supplement is payable to the person is the rate specified in the determination.

(3) A determination:
(a) must be in writing; and
(b) must specify a rate assessed as provided for by this Act; and
(c) may be made by the Commission on its own initiative or following a request by the pensioner for an increase in the rate of the pension or supplement.

Note: For the date of effect of a determination under this section, see sections 56G and 56GA.

(4) If the Commission makes a determination under this section in respect of a person’s service pension or income support supplement, the service pension or income support supplement is payable to the person at the rate specified in the determination.

56D Rate reduction determination

(1) If the Commission is satisfied that the rate at which service pension or income support supplement is being, or has been, paid is more than the rate provided for by this Act, the Commission must, subject to section 56DA, determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 56B.

Note 2: for the date of effect of a determination under this section, see section 56H.

(2) A determination under subsection (1):
(a) must be in writing; and
(b) must specify a rate assessed as provided for by this Act; and
(c) may be made by the Commission on its own initiative or following a request by the pensioner for a decrease in the rate of the pension or supplement.
(3) If the Commission makes a determination under this section in respect of a person’s service pension or income support supplement, the service pension or income support supplement is payable to the person at the rate specified in the determination.

56DA No rate increase or reduction for small amounts

(1) The Commission must not make a determination under section 56C or 56D if the amount by which the rate of the service pension or income support supplement would be increased or reduced (as the case may be) under the determination would be less than $26 per annum.

(2) Subsection (1) does not apply if the increase or reduction in the rate of the pension or supplement is necessary as a result of a matter, or change in circumstances, affecting the payment of the pension or supplement that the Commission has declared, by notice published in the *Gazette*, to be a matter, or change in circumstances, whose effects on the payment of a service pension or income support supplement is to be disregarded for the purposes of this subsection.

56E Cancellation or suspension determination—general

(1) If the Commission is satisfied that a service pension or income support supplement is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Commission may determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 56 or 56A.

Note 2: for the date of effect of a determination under this section, see section 56H.

Note 3: when a person’s pension is suspended under section 56E, the provision of benefits under Division 12 to the person is generally suspended too. However, the Commission may decide that the person can continue to receive medical treatment under section 53D or Part V (see subsection 85(8)).

Note 4: when a person’s pension is cancelled under section 56E, the person’s benefits under Division 12 are also cancelled.

(2) A determination under subsection (1) must be in writing.
56EA Cancellation or suspension determination for failure to comply with section 54A notice

(1) If:
   (a) a person who is receiving a service pension or income support supplement is given a notice under section 54A or 54AA; and
   (b) the person does not comply with the requirements set out in the notice;

the Commission may determine that the pension or income support supplement is to be cancelled or suspended.

(2) A determination under subsection (1) must be in writing.

Note 1: for the date of effect of a determination under this section see section 56H.

Note 2: when a person’s pension is suspended under section 56EA, the provision of benefits under Division 12 to the person is generally suspended too. However, the Commission may decide that the person can continue to receive medical treatment under section 53D or Part V (see subsection 85(8)).

Note 3: when a person’s pension is cancelled under section 56EA, the person’s benefits under Division 12 are also cancelled.

56EB Cancellation or suspension for failure to take action to obtain a comparable foreign pension

(1) If:
   (a) a person who is receiving a service pension or income support supplement has been given a notice under section 54BA; and
   (b) the Commission is satisfied that the person has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice;

the Commission may determine in writing that the service pension or income support supplement is to be cancelled or suspended.

(2) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes
reasonable action to obtain the pension at the highest rate
applicable to the person.

Note: For the date of effect of a determination under this section see
section 56H.

56EC Cancellation determination where pension not payable

(1) If a service pension or income support supplement is not payable to
a person because the rate of the pension or supplement:
(a) has been determined to be nil; or
(b) has been reduced to nil under section 56 or 56A;
the Commission may determine that the pension or supplement is
to be cancelled.

(2) The determination must be in writing.

Note: For the date of effect of a determination under this section, see
section 56H.

56F Resumption of a payment after suspension

If the Commission:
(a) suspends a person’s service pension or income support
supplement under section 56E, 56EA or 56EB; and
(b) later becomes satisfied that the pension or income support
supplement is payable to the person;
the Commission may end the suspension, by determination in
writing.

Note: for the date of effect of a determination under this section, see
section 56G.

56G Date of effect of favourable determination

(1) The day on which a determination under section 56C or 56F (in
this section called the favourable determination) takes effect is
worked out in accordance with this section.

Notified change of circumstances

(2) If:
(a) the favourable determination is made following a person
having advised the Department of a change in circumstances; and
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(b) the change is not a decrease in the rate of the person’s maintenance income;
the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

Other determinations

(3) In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day as is specified in the determination.

56GA  Date of effect of determination under section 56C—dependent child

If a determination under section 56C is made after a person tells the Department that the person has a child, or an additional child, that is a dependent child, the determination takes effect on the day on which the child is taken to have become a dependent child.

Note: The day is determined by reference to the Social Security Act (see subsection 5F(2)).

56H  Date of effect of adverse determination

General

(1) The day on which a determination under section 56D, 56E, 56EA, 56EB or 56EC (in this section called the adverse determination) takes effect is worked out in accordance with this section.

(2) The adverse determination takes effect on:
   (a) the day on which the determination is made; or
   (b) if another day is specified in the determination—on that day.

(3) Subject to subsections (4), (5), (6), (7), (8) or (9), the day specified under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act

(4) If the adverse determination is made because a person has contravened a provision of this Act (other than subsection 54(6), 54A(6), 54AA(7) or 128(4)) the day specified under
paragraph (2)(b) may be earlier than the day on which the determination is made.

**False statement or misrepresentation—suspension or cancellation**

(5) If:
   (a) a person has made a false statement or misrepresentation; and
   (b) because of the false statement or misrepresentation, any amount of a service pension or income support supplement has been paid to a person which should not have been paid; the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

**False statement or misrepresentation—rate reduction**

(6) If:
   (a) a person has made a false statement or misrepresentation; and
   (b) because of the false statement or misrepresentation, the rate at which a service pension or income support supplement was paid to a person was more than it should have been; the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

**Payment of arrears of periodic compensation payments—suspension or cancellation**

(7) If:
   (a) an adverse determination is made in relation to a person because of point SCH6-E4 (payment of arrears of periodic compensation payments); and
   (b) a service pension or income support supplement has been paid to the person or to the person’s partner when, because of the payment of arrears of periodic compensation, the pension or income support supplement should have been cancelled or suspended; the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.
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Payment of arrears of compensation payments—rate reduction

(8) If:

(a) an adverse determination is made in relation to a person because of point SCH6-E4 (payment of arrears of periodic compensation payments); and

(b) an amount of service pension or income support supplement was paid to the person or to the person’s partner that, because of the payment of arrears of periodic compensation, was more than the amount that should have been paid;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

Duplicate payments of rent assistance

(9) If:

(a) a decision (the veterans’ entitlements decision) was made that rent assistance (the veterans’ entitlements rent assistance) was to be included when calculating a person’s rate of service pension or income support supplement for each day in a period; and

(b) the condition in subsection (10) is met for each day in that period (which is about rent assistance also being included in family tax benefit); and

(c) because the inclusion of the veterans’ entitlements rent assistance was contrary to Module C of the Rate Calculator, an adverse determination is made to reduce the rate of, or cancel, the person’s service pension or income support supplement for each day in that period;

the day specified under paragraph (2)(b) must be the first day of that period and may be earlier than the day on which the determination is made.

(10) The condition in this subsection is met for each day in a period if:

(a) both of the following apply:

(i) the person was a member of a couple (other than an illness separated couple or a respite care couple) on each day in the period;

(ii) when the veterans’ entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the

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person’s, or the person’s partner’s, Part A rate of family tax benefit for each day in that period; or
(b) both of the following apply:
   (i) the person was not a member of a couple, or was a member of an illness separated couple, or a respite care couple, on each day in the period;
   (ii) when the veterans’ entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person’s Part A rate of family tax benefit for each day in that period; or
(c) all of the following apply:
   (i) when the veterans’ entitlements decision was made, no determination of a kind mentioned in subparagraph (a)(ii) or (b)(ii) (as the case requires) was in force;
   (ii) after the veterans’ entitlements decision was made, such a determination was made;
   (iii) each day in the period either is, or comes after, the day on which the determination was made.

56J Pension may be cancelled at pensioner’s request

(1) The Commission may cancel a person’s age service pension, invalidity service pension, partner service pension or income support supplement if the person requests the Commission to do so.

(2) A request under subsection (1) must be in writing.

Note 1: if the Commission cancels a veteran’s age service pension or invalidity service pension and the veteran’s partner receives a partner service pension, the partner service pension will also be terminated (under section 56E).

Note 2: Cancellation of a veteran’s service pension may result in the veteran being ineligible for treatment under Part V.

56K Pension may be suspended if instalments not drawn

If a pensioner has not drawn instalments of his or her age service pension, invalidity service pension, partner service pension or income support supplement for a continuous period of 6 months,
the Commission may cancel or suspend the pension or income support supplement.

Note 1: an example of a situation where this section is intended to apply is where a person has closed his or her bank account and cannot be contacted to make new banking or other arrangements for payment of the person’s service pension. It is not intended to apply where a pensioner is accumulating pension instalments in a bank account.

Note 2: if the Commission cancels or suspends a veteran’s age service pension or invalidity service pension and the veteran’s partner receives a partner service pension, the partner service pension will also be terminated (under section 56E).

56L Commission may end suspension

(1) If the Commission suspends a pension under section 56K, it may end the suspension at any time.

(2) The Commission may determine that the end of the suspension takes effect:
(a) from the date the suspension occurred; or
(b) such later date as the Commission thinks proper.

56M Effect of cancellation or suspension

(1) If the Commission determines under this Division that a service pension, or the income support supplement, payable to a person is to be cancelled, the pension or supplement ceases to be payable to the person from and including the day on which the determination takes effect.

(2) If the Commission determines under this Division that a service pension, or the income support supplement, payable to a person is to be suspended, the pension or supplement is not payable to the person during the period:
(a) commencing on the day on which the determination takes effect; and
(b) ending when the suspension ends under a determination of the Commission (under section 56F or 56L).
56N Changes to payments by computer

If:

(a) payment to a person of a service pension or income support supplement is based upon data in a computer; and
(b) the rate of the pension or supplement is increased or reduced, or the pension or supplement is cancelled or suspended, because of the operation of a computer program approved by the Commission; and
(c) the program causes the change for a reason for which the Commission could determine the change;

the change is taken to have been made because of a determination by the Commission for that reason.

Note 1: This section does not apply where:

(a) an automatic termination is produced by section 56 or 56A; or
(b) an automatic rate reduction is produced by section 56B.
Division 16—Review of decisions

57 Claimants and service pensioners may seek review of certain decisions

(1) A claimant who is dissatisfied with a decision of the Commission:
   (a) in relation to a claim for a qualifying service determination under section 35B; or
   (b) in relation to a claim for a service pension or income support supplement; or
   (c) in relation to a request under section 52Y (financial hardship);
   may request the Commission to review the decision.

(2) A pensioner who is dissatisfied with a decision of the Commission:
   (a) cancelling or suspending a service pension or income support supplement; or
   (b) terminating the suspension of a service pension or income support supplement; or
   (c) reducing or increasing the rate of a service pension or income support supplement; or
   (d) refusing a request for an increase in the rate of a service pension or income support supplement; or
   (e) in relation to a request under section 52Y (financial hardship);
   may request the Commission to review the decision.

(3) A person who is dissatisfied with a decision of the Commission under Part IIIAB (pension bonus) may request the Commission to review the decision. However, this rule does not apply to a decision of the Commission under:
   (a) section 45TE (approval of form); or
   (b) section 45TG (approval of places and persons); or
   (c) section 45TO (declaration of non-accruing membership); or
   (d) paragraph 45UK(1)(b) (approval of form).
57A Application for review

(1) A request for review of a decision under section 57 must:
   (a) be made within 3 months after the person seeking review was
       notified of the decision; and
   (b) set out the grounds on which the request is made; and
   (c) be in writing; and
   (d) be lodged at an office of the Department in Australia in
       accordance with section 5T.

(1A) A request lodged in accordance with section 5T is taken to have
      been made on a day determined under that section.

(2) If a request for review of a decision is made in accordance with
    subsection (1) the Commission must review the decision.

(3) If the Commission has delegated its powers under this section to
    the person who made the decision under review, that person must
    not review the decision.

57B Commission’s powers where request for review

(1) If the Commission reviews a decision under this Division, the
    Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must, subject to
    subsection (3), substitute a new decision in accordance with this
    Act.

(3) If the decision set aside is:
   (a) a decision to cancel, suspend or reduce the rate of a service
       pension or income support supplement under section 56D or
       56E; or
   (b) a decision to increase the rate of a service pension or income
       support supplement under section 56C;
   the Commission need not substitute another decision.

Note: for the Commission’s evidence-gathering powers see section 57F.

57C Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a
    decision:
(a) granting a claim for service pension or income support supplement; or
(b) increasing the rate of a service pension or income support supplement;
the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission under subsection (1) must not be earlier than the date from which the Commission could have granted the claim, or increased the rate, when the original decision was made.

(3) If the Commission sets aside a decision to suspend a service pension or income support supplement, the Commission may end the suspension from a date specified by the Commission, which may be a date earlier than the date of the Commission’s decision to set aside the suspension.

57D  Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division it must make a written record of its decision upon review.

(2) The written record must include a statement that:
(a) sets out the Commission’s findings on material questions of fact; and
(b) refers to the evidence or other material on which those findings are based; and
(c) provides reasons for the Commission’s decision.

57E  Person who requested review to be notified of decision

(1) When the Commission affirms or sets aside a decision under this Division it must give the person who requested the review of the decision:
(a) a copy of the Commission’s decision; and
(b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 57D(2); and
(c) if the person has a right to apply to the Administrative Appeals Tribunal for a review of the Commission’s decision—a statement giving the person particulars of that right.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:
   (a) is of a confidential nature; or
   (b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

57F Powers of Commission to gather evidence

(1) The Commission or the Commission’s delegate may, in reviewing a decision under this Division:
   (a) take evidence on oath or affirmation for the purposes of the review; and
   (b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission’s delegate may, for the purposes of the review:
   (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
   (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
   (c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The Commission’s power under paragraph (1)(a) to take evidence on oath or affirmation:
   (a) may be exercised on behalf of the Commission by:
      (i) the presiding member or the Commission’s delegate; or
(ii) by another person (whether a member or not) authorised by the presiding member or the Commission’s delegate; and

(b) may be exercised within or outside Australia; and

(c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:

(a) all the powers of the Commission under subsection (1); and

(b) all the powers of the presiding member under subsection (2); for the purposes of taking that evidence.

(7) In this section:

Commission’s delegate means a person to whom the Commission has delegated its powers under section 57A and who is conducting the review in question.

57G Withdrawal of request for review

(1) A person who requests a review under section 57 may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

(3) Subject to section 57A, a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: section 57A provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

57H Commission may reimburse certain expenses

(1) When the Commission, upon review of a decision under this Division:

(a) grants a claim for a qualifying service determination, a service pension or income support supplement; or
(b) sets aside a decision to cancel or suspend a service pension or income support supplement;
the Commission may pay to the person who requested the review an amount in respect of expenses incurred by the person in providing for the production of certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which he or she had received medical treatment.

(2) Subsection (1) applies only in relation to certificates, reports or documents reasonably used for the purposes of the review.

(3) The amount that may be paid under subsection (1) is to be calculated in accordance with the scale approved by the Commission for the purposes of subsection 19(8).
Part IIB  Provisions applicable to service pensions and income support supplement
Division 17  Administration of pension payments

Section 58

Division 17—Administration of pension payments

Subdivision A—General administration of pension payments

58  Application of Subdivision

This Subdivision applies to pensions payable under Part III (Service Pensions) or Part IIIA (Income Support Supplement).

58A  Payment by instalments

(1) Pension is payable:
   (a) in arrears; and
   (b) by instalments relating to each pension period.

(2) The amount payable to a person as an instalment of pension in relation to a pension period is the total amount of pension payable to the person for the days in that period on which pension was payable to the person.

(3) An instalment of pension is payable on the next payday after the end of the pension period to which the instalment relates.

(4) For the purpose of the calculation of the amount of an instalment of pension, the rate of pension payable to a person for a day is calculated by dividing the annual rate of pension by 364.

(5) The amount worked out under subsection (4) is to be rounded to the nearest cent (rounding half a cent upwards).

(7) If:
   (a) an amount of pharmaceutical allowance is added to a person’s maximum basic rate in working out the amount of an instalment of service pension; and
   (b) apart from this subsection, the amount of the instalment would be less than the person’s fortnightly pharmaceutical allowance rate;
then the amount of the instalment is to be increased to the person’s fortnightly pharmaceutical allowance rate.
(8) For the purposes of subsection (7), the person’s fortnightly pharmaceutical allowance rate is:

<table>
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<tr>
<th>Pharmaceutical allowance rate</th>
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where:

*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance added to the person’s maximum basic rate in working out the amount of the instalment.

(9) If, apart from this subsection, the amount of a fortnightly instalment of pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

### 58C Manner of payment

A person’s pension is, subject to sections 58D and 58L and sections 202 to 202B, to be paid:

(a) to that person; and

(b) in the manner determined by the Commission.

Note: for the procedure to be followed if the Commission determines that a person’s pension is to be paid into an account with a bank see section 58F.

### 58D Agents

(1) The Commission may approve payment of a pensioner’s pension to another person if:

(a) the pensioner, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission to pay the pension to that person; and

(b) the Commission is satisfied that that person has agreed to receive payment as agent of the pensioner.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) An approval under subsection (1):

(a) must be in writing; and
Section 58E

(b) must specify the person to whom the pension is to be paid; and
(c) must specify the period for which the pension is to be paid to that person.

(3) If a payment of pension is made to a person in accordance with an approval under subsection (1):
(a) the payment is, for all purposes, to be taken to be a payment of the pension to the pensioner; and
(b) neither the Commonwealth nor the Commission is bound to oversee the application of the payment by the person; and
(c) the person is to be taken to receive the payment as agent for the pensioner.

58E Pension payday falling on public holiday etc.

If an amount of pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the amount may be paid on an earlier day.

58F Payment into bank account etc.

(1) The Commission may direct that the whole or a part of the amount of a person’s pension is to be paid, at the intervals that the Commission specifies, to the credit of an account with a bank.

(2) The account must be an account nominated and maintained by the person to whom the pension is payable.

(3) The account may be an account that is maintained by a person to whom the pension is payable jointly or in common with another person.

(3A) If the person has not nominated an account for the purposes of subsection (2) the amount is not to be paid.

(3B) If:
(a) an amount has not been paid because of subsection (3A); and
(b) the person nominates an account for the purposes of subsection (2);
the amount is to be paid under subsection (1).
(4) If the Commission gives a direction under subsection (1), the pension is to be payable in accordance with the direction.

58J Payments to Commissioner of Taxation

(1) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension:
   (a) make deductions from instalments of the pension payable to the recipient; and
   (b) pay the amount deducted to the Commissioner of Taxation.

(2) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension bonus:
   (a) make a deduction from the bonus payable to the recipient; and
   (b) pay the amount deducted to the Commissioner of Taxation.

Subdivision B—Payment of pension outside Australia

58K Age, invalidity and partner service pensions and income support supplement generally portable

(1) A person’s right to commence, or to continue, to be paid:
   (a) an age service pension; or
   (b) an invalidity service pension; or
   (c) a partner service pension; or
   (d) income support supplement;

granted to the person is not affected by the fact that the person leaves Australia.

Note 1: Rent assistance is not payable to a person who is absent from Australia otherwise than temporarily. If a person is absent from Australia temporarily, rent assistance is not payable for any part of the absence in excess of 26 weeks.

Note 2: A person who is absent from Australia may not be eligible for a pharmaceutical allowance (see section 118A and point SCH6-D2 for a person leaving Australia on or after 20 September 2000 or see that section and point as previously in force for a person who left Australia before that date).
Section 58L

(3) Subsection (1) has effect subject to section 58M (claim based on short-term residence).

58L Payment of pension outside Australia

If a pension is payable to a person who is physically outside Australia, the pension may be paid:
(a) in the manner determined by the Commission; and
(b) in the instalments determined by the Commission.

58M No portability if claim based on short-term residence

(1) If:
(a) a person is an Australian resident; and
(b) the person ceases to be an Australian resident; and
(c) the person again becomes an Australian resident; and
(d) the person makes a claim for:
   (i) an age service pension; or
   (ii) an invalidity service pension; or
   (iii) a partner service pension; or
   (iv) income support supplement; and
(e) the claim is made within the period of 12 months after the person again became an Australian resident; and
(f) the person leaves Australia before the end of that period of 12 months; and
(g) there is no determination in respect of the person under subsection (2);
   a pension granted on the basis of that claim is not payable to the person while the person is outside Australia.

(2) The Commission may determine that subsection (1) is not to apply to a person if the Commission considers that the person’s reasons for leaving Australia before the end of the 12 month period arose from circumstances that could not be reasonably foreseen when the person returned to Australia.

(3) A determination under subsection (2) must be by instrument in writing.
58N Transfer to portable pension

If:

(a) a person who is outside Australia is receiving:
   (i) an age service pension; or
   (ii) an invalidity service pension; or
   (iii) a partner service pension; or
   (iiia) income support supplement; or
   (iv) a social security pension (other than a rehabilitation allowance); and
(b) the pension is cancelled or ceases to be payable automatically; and
(c) immediately after the cancellation or cessation, the person is eligible for:
   (i) an age service pension; or
   (ii) an invalidity service pension; or
   (iii) a partner service pension; or
   (iv) income support supplement;

the pension referred to in paragraph (c) may be granted to the person as if the person were an Australian resident and in Australia.
Division 18—Indexation

Subdivision A—Preliminary

59 Analysis of Division

This Division provides for:
(a) the indexation, in line with CPI (Consumer Price Index) increase, of the amounts in column 2 of the CPI Indexation Table at the end of section 59B; and
(b) the adjustment of other amounts in line with the increase in the amounts indexed.

59A Indexed and adjusted amounts

The following Table sets out:
(a) each amount that is to be indexed or adjusted under this Division; and
(b) the abbreviation used in this Division for referring to that amount; and
(c) the provision or provisions in which that amount is to be found.

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<tr>
<th>Column 1</th>
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<tr>
<td>Item</td>
<td>Description of amount</td>
<td>Abbreviation</td>
<td>Provisions in which amount specified</td>
</tr>
<tr>
<td>1.</td>
<td>Maximum basic rates for service pension or income support supplement</td>
<td>pension MBR</td>
<td>*Rate Calculator—point SCH6-B1—Table B—column 3—all amounts</td>
</tr>
<tr>
<td>2.</td>
<td>Pension supplement</td>
<td>pension supplement</td>
<td>*Rate Calculator—point SCH6-BA2—all amounts</td>
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### Indexed and Adjusted Amounts Table

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<td>Item</td>
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<tr>
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<tr>
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<td>Ceiling rate for war widow/war widower—pensioner</td>
<td>ceiling rate</td>
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<td><strong>Rent assistance</strong></td>
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<tr>
<td>6.</td>
<td>Maximum rent assistance for service pension or income support supplement</td>
<td>pension MRA</td>
<td>&quot;Rate Calculator—point SCH6-C8—Table C-2—column 4—<em>all amounts</em></td>
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<tr>
<td>6A.</td>
<td>rent threshold rate for service pension or income support supplement</td>
<td>pension rent threshold</td>
<td>&quot;Rate Calculator—point SCH6-C6—Table C-1—column 3—<em>all amounts</em></td>
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<tr>
<td><strong>Income free area</strong></td>
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<td>7.</td>
<td>Ordinary/adjusted income free area</td>
<td>Pension free area</td>
<td>&quot;Rate Calculator—point SCH6-E6—Table E-1—column 3—<em>all amounts</em></td>
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<td>Rent assistance free area</td>
<td>rent free area</td>
<td>&quot;Rate Calculator—point SCH6-C15—Table C-3—column 3—<em>all amounts</em></td>
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<td><strong>Assets value limit</strong></td>
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<tr>
<td>9.</td>
<td>Assets value limit for service pension or income support supplement for property owner who is not a member of a couple</td>
<td>pension <em>single</em> property owner AVL</td>
<td>&quot;Rate Calculator—point SCH6-F3—Table F-1—column 3A—<em>item 1</em></td>
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<tr>
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<th>Column 3 Abbreviation</th>
<th>Column 4 Provisions in which amount specified</th>
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<tbody>
<tr>
<td>10.</td>
<td>Assets value limit for service pension or income support supplement for non-property owner who is not a member of a couple</td>
<td>pension <em>single</em> non-property owner AVL</td>
<td>*Rate Calculator—point SCH6-F3—Table F-1—column 3B—item 1</td>
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<td>11.</td>
<td>Assets value limit for service pension or income support supplement for property owner who is a member of a couple</td>
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<td>Assets value limit for service pension or income support supplement for non-property owner who is a member of a couple</td>
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<td>13.</td>
<td>Assets value limit for some illness separated special residents</td>
<td>special illness separated special resident AVL</td>
<td>*paragraph 52S(5)(g), paragraph 52T(3)(e), paragraph 52U(2)(e)</td>
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<td>Assets value limit of special disability trust</td>
<td>special disability trust AVL</td>
<td>subsection 52ZZZWK(3)</td>
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<td>Income/assets reduction limit</td>
<td>IARL basic reduction</td>
<td>section 53E—Table 53E—column 3</td>
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<td>15.</td>
<td>Income/assets reduction limit applicable when determining the eligibility for treatment benefits for a veteran—basic reduction</td>
<td>IARL dependent child add-on</td>
<td>section 53E—Table 53E—column 5</td>
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<tr>
<td>18.</td>
<td>Pharmaceutical allowance included in service pension rate</td>
<td>PA (service pension) rate</td>
<td>&quot;Rate Calculator—point SCH6-D7—Table D—column 3—all amounts&quot;</td>
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<td>19.</td>
<td>Pharmaceutical allowance under Part VIIA</td>
<td>PA (Part VIIA) rate</td>
<td>&quot;section 118C&quot;</td>
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Section 59B

Indexed and Adjusted Amounts Table

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<tr>
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<td>Abbreviation</td>
<td>Provisions in which amount</td>
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<td>Subsection 46H(1)</td>
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<td>Subsection 46H(2)</td>
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<td>Deeming threshold couple</td>
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<td>threshold</td>
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</table>

Subdivision B—CPI indexation

59B CPI Indexation Table

(1) Subject to subsection (1A), an amount referred to in the following CPI Indexation Table is to be indexed under this Division on each indexation day for the amount, using the reference quarter and base quarter for the amount and indexation day and rounding off to the nearest multiple of the rounding amount:
## CPI Indexation Table

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<tr>
<th>Column 1 Item</th>
<th>Column 2 Amount</th>
<th>Column 3 Indexation day(s)</th>
<th>Column 4 Reference quarter (most recent before indexation day)</th>
<th>Column 5 Base quarter</th>
<th>Column 6 Rounding base</th>
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<tbody>
<tr>
<td>Maximum basic rates pension MBR</td>
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</tr>
<tr>
<td>1.</td>
<td>pension MBR</td>
<td>(a) 20 March (b) 20 September</td>
<td>(a) December (b) June</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1979)</td>
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<td>1A. pension supplement</td>
<td>(a) 20 March (b) 20 September</td>
<td>(a) December (b) June</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1979)</td>
<td>$2.60</td>
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Part IIIB  Provisions applicable to service pensions and income support supplement
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<td>Item</td>
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<tr>
<td><strong>Rent assistance</strong></td>
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<tr>
<td>3.</td>
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<td>3A.</td>
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<tr>
<td><strong>Income free areas</strong></td>
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<td>4.</td>
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<tr>
<th>Column 1 Item</th>
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<th>Column 3 Indexation day(s)</th>
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<th>Column 5 Base quarter</th>
<th>Column 6 Rounding base</th>
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<tbody>
<tr>
<td>Assets value limits</td>
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</tr>
<tr>
<td>6. pension single property owner AVL</td>
<td>1 July</td>
<td>December</td>
<td>most recent December quarter before reference quarter</td>
<td></td>
<td>$250.00</td>
</tr>
<tr>
<td>7. pension partnered property owner AVL</td>
<td>1 July</td>
<td>December</td>
<td>most recent December quarter before reference quarter</td>
<td></td>
<td>$250.00</td>
</tr>
<tr>
<td>8. pension partnered non-property owner AVL</td>
<td>1 July</td>
<td>December</td>
<td>most recent December quarter before reference quarter</td>
<td></td>
<td>$250.00</td>
</tr>
<tr>
<td>8A special disability trust AVL</td>
<td>1 July</td>
<td>December</td>
<td>most recent December quarter before reference quarter</td>
<td></td>
<td>$250.00</td>
</tr>
</tbody>
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Part IIIB  Provisions applicable to service pensions and income support supplement

Division 18  Indexation

Section 59B

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<th>Column 4</th>
<th>Column 5</th>
<th>Column 6</th>
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<td>Item</td>
<td>Amount</td>
<td>Indexation day(s)</td>
<td>Reference quarter (most recent before indexation day)</td>
<td>Base quarter</td>
<td>Rounding base</td>
</tr>
<tr>
<td>Income/assets reduction limit</td>
<td></td>
<td></td>
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<tr>
<td>IARL basic reduction</td>
<td>(a) 20 March</td>
<td>(a) December</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1979)</td>
<td>$2.60</td>
<td></td>
</tr>
<tr>
<td>(b) 20 September</td>
<td>(b) June</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IARL dependent child add-on</td>
<td>(a) 20 March</td>
<td>(a) December</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1979)</td>
<td>$2.60</td>
<td></td>
</tr>
<tr>
<td>(b) 20 September</td>
<td>(b) June</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</table>
CPI Indexation Table

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Amount</th>
<th>Column 3 Indexation day(s)</th>
<th>Column 4 Reference quarter (most recent before indexation day)</th>
<th>Column 5 Base quarter</th>
<th>Column 6 Rounding base</th>
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<tbody>
<tr>
<td>Deeming thresholds</td>
<td></td>
<td></td>
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<tr>
<td>11. Deeming threshold individual</td>
<td>1 July</td>
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<td>highest March quarter before reference quarter (but not earlier than March 1994 quarter)</td>
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<tr>
<td>12. Deeming threshold couple</td>
<td>1 July</td>
<td>March</td>
<td>highest March quarter before reference quarter (but not earlier than March 1994 quarter)</td>
<td></td>
<td>$200.00</td>
</tr>
<tr>
<td>Primary production attribution threshold</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>13. Primary production attribution threshold</td>
<td>1 July</td>
<td>December</td>
<td>Most recent December quarter before reference quarter</td>
<td></td>
<td>$250.00</td>
</tr>
</tbody>
</table>

(1A) The pension MBR amount (item 1 of table) is not to be indexed on 20 March 1993.
Part IIIIB  Provisions applicable to service pensions and income support supplement
Division 18  Indexation

Section 59C

Highest quarter

(2) A reference in the CPI Indexation Table to the highest of a group of quarters is a reference to the quarter in that group that has the highest index number.

59C  Indexation of amounts

(1) If an amount is to be indexed under this Subdivision on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.

(2) This is how to work out the indexed amount for an amount that is to be indexed under this Subdivision on an indexation day:

<table>
<thead>
<tr>
<th>Method statement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1.</strong> Use section 59D to work out the indexation factor for the amount on the indexation day.</td>
</tr>
<tr>
<td><strong>Step 2.</strong> Work out the current figure for the amount immediately before the indexation day.</td>
</tr>
<tr>
<td><strong>Step 3.</strong> Multiply the current figure by the indexation factor: the result is the <em>provisional indexed amount</em>.</td>
</tr>
<tr>
<td><strong>Step 4.</strong> Use section 59E to round off the provisional indexed amount: the result is the <em>rounded-off amount</em>.</td>
</tr>
<tr>
<td><strong>Step 5.</strong> The <em>indexed amount</em> is:</td>
</tr>
<tr>
<td>(a) if paragraph (b) does not apply—the rounded-off amount; or</td>
</tr>
<tr>
<td>(b) if the amount to be indexed is the amount under item 10 of the CPI Indexation Table in subsection 59B(1)—the rounded-off amount multiplied by $\frac{13}{7}$.</td>
</tr>
</tbody>
</table>

The indexed amount may be increased under section 59EA in certain cases.
Section 59D

Note 1: for *current figure* see subsection 5NA(1).

Note 2: On the indexation days following 19 March 2001, the indexation of amounts that were increased by 4% or 10% on 1 July 2000 may be affected by section 198H.

(2A) The first indexation of an amount under item 8A of the CPI Indexation Table in subsection 59B(1) is to take place on 1 July 2007.

(3) The first indexation of amounts under items 11 and 12 of the CPI Indexation Table in subsection 59B(1) is to take place on 1 July 1997.

59D Indexation factor

(1) Subject to subsections (2) and (3), the indexation factor for an amount that is to be indexed under this Subdivision on an indexation day is:

\[
\frac{\text{Index number for most recent reference quarter}}{\text{Index number for base quarter}}\text{ worked out to 3 decimal places.}
\]

Note: for *reference quarter* and *base quarter* see the CPI Indexation Table in section 59B.

(2) If an indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

(3) If an indexation factor worked out under subsections (1) and (2) would be less than 1, the indexation factor is to be increased to 1.

59E Rounding off indexed amounts

(1) If a provisional indexed amount is a multiple of the rounding base, the provisional indexed amount becomes the indexed amount.

Note 1: for provisional indexed amount see Step 3 in subsection 59C(2).

Note 2: for rounding base see the CPI Indexation Table in section 59B.

(2) If a provisional indexed amount is not a multiple of the rounding base, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of the rounding base.
Part IIIIB  Provisions applicable to service pensions and income support supplement

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Section 59EA

(3) If a provisional indexed amount is not a multiple of the rounding base but is a multiple of half the rounding base, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of the rounding base.

59EA  Certain indexed amounts to be increased in line with increases in Male Total Average Weekly Earnings

(1) In this section:

category A amount means an amount set out in column 3 of item 1 of Table B in point SCH6-B1.

category B amount means an amount set out in column 3 of item 2 of Table B in point SCH6-B1.

(2) If:

(a) a category A amount or a category B amount is to be indexed under this Subdivision on an indexation day that occurs after 19 September 1997; and

(b) 25% of the annualised MTAWE figure for whichever of the following quarters is applicable:

(i) if the indexation day is a 20 March—the most recent December quarter;

(ii) if the indexation day is a 20 September—the most recent June quarter;

exceeds the indexed amount for the category A amount;

then:

(c) the indexed amount for the category A amount is to be increased by an amount (the category A top-up amount) equal to the excess; and

(d) if the indexed amount for the category A amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60; and

(e) the indexed amount for the category B amount is to be increased by an amount equal to 83% of the category A top-up amount; and

(f) if the indexed amount for the category B amount (as increased under paragraph (e)) is not a multiple of $2.60, the
indexed amount (as increased under paragraph (e)) is to be further increased by rounding up to the next highest multiple of $2.60.

(3) For the purposes of this section, the annualised MTAWE figure for a quarter is 52 times the amount set out for the reference period in the quarter under the headings “Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL” in a document published by the Australian Statistician entitled “Average Weekly Earnings, States and Australia”.

(4) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes the amount referred to in subsection (3):
   (a) under differently described headings (the new headings); or
   (b) in a document entitled otherwise than as described in subsection (3) (the new document);
then the annualised MTAWE figure is to be calculated in accordance with subsection (3) as if the references to:
   (c) “Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL”; or
   (d) “Average Weekly Earnings, States and Australia”;
were references to the new headings and/or the new document, as the case requires.

(5) For the purposes of this section, the reference period in a particular quarter is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

(6) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes an amount in substitution for a particular amount previously published by the Australian Statistician, the publication of the later amount is to be disregarded for the purposes of this section.

(7) In this section:

   December quarter means a quarter ending on 31 December.

   June quarter means a quarter ending on 30 June.
Subdivision C—Adjustment of other rates

59GA Adjustment of rent free area

(1) This Act has effect as if, on 1 July each year, the rent free area applicable to a person who is not a member of a couple were replaced with the amount that is, on that day, the pension free area applicable to a person who is not a member of a couple.

(2) This Act has effect as if, on 1 July each year, the rent free area applicable to a person who is partnered were replaced with the amount that is, on that day, the pension free area applicable to a person who is partnered.

59GB Adjustment of adjusted income free area

This Act has effect as if, on 1 July each year, the adjusted income free area applicable to a person were replaced with the amount that is, on that day, the ordinary income free area applicable to the person.

59H Adjustment of pension “single” non-property owner AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the pension “single” non-property owner AVL:

\[
\text{Pension "single" property owner AVL} + 2 \times \left[ \begin{array}{c}
\text{Pension "partnered" property owner AVL} \\
\text{Pension "partnered" property owner AVL} \\
\end{array} \right]
\]

where:

- \( \text{pension “single” property owner AVL} \) is the current figure, as at that 1 July, for the pension “single” property owner AVL.

- \( \text{pension “partnered” non-property owner AVL} \) is the current figure, as at that 1 July, for the pension “partnered” non-property owner AVL.

- \( \text{pension “partnered” property owner AVL} \) is the current figure, as at that 1 July, for the pension “partnered” property owner AVL.
59J Adjustment of special illness separated special resident AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for each special illness separated special resident AVL:

\[
\text{Pension “partnered” property owner AVL} + \frac{\text{Pension “partnered” non-property owner AVL}}{2}
\]

where:

- \(\text{pension “partnered” property owner AVL}\) is the current figure, as at that 1 July, for the pension “partnered” property owner AVL.
- \(\text{pension “partnered” non-property owner AVL}\) is the current figure, as at that 1 July, for the pension “partnered” non-property owner AVL.

59L Adjustment of pharmaceutical allowance

(1) This Act has effect as if, on each 1 January, the amount worked out in accordance with the following formula were substituted for the PA (service pension) rate:

\[
\text{Benefit PA “partnered” (item 2) rate} \times 26
\]

where:

- \(\text{benefit PA “partnered” (item 2) rate}\) is the current figure for the benefit “partnered” (item 2) rate within the meaning of the Social Security Act.

Note: see the following provisions of the Social Security Act 1991:
- section 1190 (item 46 of the Indexed and Adjusted Amounts Table);
- section 1191 (item 31 of the CPI Indexation Table).

(2) This Act has effect as if, on each 1 January, the amount worked out in accordance with the following formula were substituted for the PA (Part VIIA) rate:

\[
\text{Benefit PA “partnered” (item 2) rate} \times 2
\]

where:
Part IIIB  Provisions applicable to service pensions and income support supplement
Division 18  Indexation

Section 59LA

**benefit PA “partnered” (item 2) rate** is the current figure for the benefit “partnered” (item 2) rate within the meaning of the Social Security Act.

Note: see the following provisions of the *Social Security Act 1991*:
- section 1190 (item 46 of the Indexed and Adjusted Amounts Table);
- section 1191 (item 31 of the CPI Indexation Table).

(3) This Act has effect as if, on 1 July 2000, the amount worked out in accordance with the following formula were substituted for the PA (service pension) rate:

\[
\text{Benefit PA “partnered” (item 2) rate} \times 26
\]

where:

**benefit PA “partnered” (item 2) rate** is the current figure for the benefit “partnered” (item 2) rate within the meaning of the Social Security Act.

(4) This Act has effect as if, on 1 July 2000, the amount worked out in accordance with the following formula were substituted for the PA (Part VIIA) rate:

\[
\text{Benefit PA “partnered” (item 2) rate} \times 2
\]

where:

**benefit PA “partnered” (item 2) rate** is the current figure for the benefit “partnered” (item 2) rate within the meaning of the Social Security Act.

### 59LA Adjustment of ceiling rate

(1) This Act has effect as if, on each adjustment day, the amount worked out in accordance with the following formula, and rounded up to the nearest multiple of $2.60, were substituted for the ceiling rate:

\[
\text{Previous ceiling rate} \times \text{Pension MBR factor}
\]

where:
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**pension MBR factor** is:

\[
\text{Current single pension MBR amount} \\
\text{Previous single pension MBR amount}
\]

worked out to 3 decimal places.

**previous ceiling rate** is the ceiling rate applicable on the day before the adjustment day.

(2) In subsection (1):

*current single pension MBR amount* means the pension MBR amount applicable, on the adjustment day, to a person who is not a member of a couple.

*previous single pension MBR amount* means the pension MBR amount applicable, on the day before the adjustment day, to a person who is not a member of a couple.

(3) In this section:

*adjustment day* means the following:

(a) 20 March;

(b) 20 September.
Part IIIC—Compensation recovery

Division 1—General

59M General effect of Part

(1) If:

(a) a person is or may be entitled to, or receives, compensation; and
(b) the person has not reached pension age;
any of the following pensions payable to the person or the person’s partner might be affected under this Part:
(c) invalidity service pension;
(d) partner service pension;
(f) income support supplement.

Note 1: For pension age see sections 5QA and 5QB.
Note 2: These pensions are defined in section 5NB as compensation affected pensions.

(2) If the person is or may be entitled to compensation and does not take reasonable action to claim or obtain the compensation, the pension may not be payable to the person.

(3) If the compensation is in the form of a lump sum, the pension may cease to be payable for a period (based on the amount of the lump sum) and some or all of that part may be repayable.

Note 1: Under section 59N, certain lump sum payments may be treated as though they were received as periodic payments.
Note 2: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.

(4) If the compensation is in the form of periodic payments, the pension may be reduced for the periodic payments period.

Note 1: Under section 59N, certain lump sum payments may be treated as though they were received as periodic payments.
Note 2: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.
(5) An invalidity service pension or a partner service pension will only be affected under this Part if:
   (a) the compensation is received on or after 1 January 1995; and
   (b) the claim for the pension was made on or after 1 May 1987.

(6A) Income support supplement will only be affected under this Part if the compensation is received on or after 1 January 1995.

(7) This Part operates in certain specified circumstances to affect a person’s compensation affected pension because of compensation received by the person or the person’s partner. This Part is not intended to contain any implication that, in addition to those specified circumstances, there needs to be some connection between the circumstances that give rise to the person’s eligibility for the pension and the circumstances that give rise to the person’s or the partner’s compensation.

59N Certain lump sums to be treated as though they were received as periodic payments

If:
   (a) a person is entitled to periodic payments under a law of a State or Territory; and
   (b) the person’s entitlement to the periodic payments is converted under the law of the State or Territory into an entitlement to a lump sum; and
   (c) the lump sum is calculated by reference to a period;
this Part applies to the person as if:
   (e) the person had not received:
       (i) the lump sum; or
       (ii) if the lump sum was to be paid in instalments—any of the instalments; and
   (f) the person had received, in each fortnight during the period, a periodic compensation payment equal to:

\[
\text{Lump sum amount} = \frac{\text{Number of fortnights in the period}}{
\text{Lump sum amount}}
\]

where:

\textit{lump sum amount} is the amount of the lump sum referred to in paragraph (b).
number of fortnights in the period is the number of whole fortnights in the period referred to in paragraph (c).

59O Effect of certain State and Territory laws

If:

(a) a law of a State or Territory provides for the payment of compensation; and

(b) that law includes a provision to the effect that a person’s compensation under the law is to be or may be reduced or cancelled if the person is eligible for or receives payments under this Act;

this Part applies as if the person had received under that law the compensation that the person would have received if the provision referred to in paragraph (b) had not been enacted.
Division 2—Enforcement of compensation rights

59P Commission may require person to take action to obtain compensation

(1) If:
(a) a person is receiving a compensation affected pension; and
(b) the person or the person’s partner is entitled or may, in the Commission’s opinion, be entitled to compensation; and
(c) the person or the partner has not taken:
   (i) any action to claim or obtain the compensation; or
   (ii) any action that the Commission considers reasonable to claim or obtain the compensation;

the Commission may require the person or the partner to take the action specified by the Commission.

(2) If:
(a) a person is eligible for a compensation affected pension; and
(b) the person or the person’s partner is entitled or may, in the Commission’s opinion, be entitled to compensation; and
(c) the person or the partner has not taken:
   (i) any action to claim or obtain the compensation; or
   (ii) any action that the Commission considers reasonable to claim or obtain the compensation;

the Commission may require the person or the partner to take the action specified by the Commission.

(3) Even though a person has entered into an agreement to give up the person’s right to compensation, the Commission may form the opinion that the person may be entitled to compensation if the Commission is satisfied that the agreement is void, ineffective or unenforceable.

(4) For the purposes of subsection (3), a person enters into an agreement to give up the person’s right to compensation if the person:
(a) enters into an agreement to waive the person’s right to compensation; or
(b) enters into an agreement to withdraw the person’s claim for compensation.

(5) The action specified by the Commission is to be the action that the Commission considers reasonable to enable the person to claim or obtain the compensation.

(6) If, under subsection (1), the Commission requires a person who has been granted a pension to take action to claim or obtain compensation, the pension is not payable to the person unless the person complies with the requirement.

(7) If, under subsection (1), the Commission requires the partner of a person who has been granted a pension to take action to obtain or claim compensation, the pension is not payable to the person unless the partner complies with the requirement.
Division 3—Receipt of compensation

59Q  Pension etc. not payable during lump sum preclusion period

Person not member of a couple

(1) If:
   (a) a person is eligible for a compensation affected pension; and
   (b) the person is not a member of a couple; and
   (c) the person receives compensation in the form of a lump sum
       (whether before or after the person became eligible for the
       pension);
   the pension is not payable to the person for any day or days in the
   lump sum preclusion period.

Note 1: For compensation affected pension see subsection 5NB(1).
Note 2: For lump sum preclusion period see subsections (3) to (7).

Person member of a couple (lump sum received before 20 March 1997)

(2) If:
   (a) a person is eligible for a compensation affected pension; and
   (b) the person is a member of a couple; and
   (c) before 20 March 1997, the person, or the person’s partner,
       receives compensation in the form of a lump sum (whether
       before or after the person became eligible for the pension);
   the following provisions have effect:
   (d) the pension is not payable to the person for any day or days
       in the lump sum preclusion period;
   (e) if the person’s partner is eligible for a compensation affected
       pension—that pension is not payable to the partner for any
       day or days in the lump sum preclusion period.

Note 1: For compensation affected pension see subsection 5NB(1).
Note 2: For lump sum preclusion period see subsections (3) to (7).
Part III C  Compensation recovery
Division 3  Receipt of compensation

Section 59Q

Person member of a couple (lump sum received on or after 20 March 1997)

(2A) If:
(a) a person is eligible for a compensation affected pension; and
(b) the person is a member of a couple; and
(c) on or after 20 March 1997, the person receives compensation in the form of a lump sum (whether before or after the person became eligible for the pension);
the pension is not payable to the person for any day or days in the lump sum preclusion period.

Note 1: For compensation affected pension see subsection 5NB(1).
Note 2: For lump sum preclusion period see subsections (3) to (7).

Lump sum preclusion period

(3) If a person receives both periodic compensation payments and compensation in the form of a lump sum in respect of lost earnings or lost earning capacity, the lump sum preclusion period is the period that:
(a) begins on the day following the last day of the periodic payments period or, if there is more than one periodic payments period, the day after the last day of the last periodic payments period; and
(b) ends after the number of weeks specified in subsection (7).

Note: For periodic payments period see subsection 5NB(1).

(4) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the lump sum preclusion period is the period that:
(a) begins on the first day on which the person’s periodic compensation payment is a reduced payment because of that choice; and
(b) ends after the number of weeks specified in subsection (7).

(6) If none of subsections (3), (4) and (5) applies, the lump sum preclusion period is the period that:
(a) begins on the day on which the loss of earnings or loss of earning capacity began; and
(b) ends after the number of weeks specified in subsection (7).

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(7) The number of weeks in the lump sum preclusion period in relation to a person is:

(a) if the person or the person’s partner receives the lump sum compensation payment before 20 March 1997—the number worked out by using the formula:

\[
\frac{\text{Compensation part of lump sum}}{\text{Average weekly earnings}}
\]

or

(b) if the person receives the lump sum compensation payment on or after 20 March 1997—the number worked out by using the formula:

\[
\frac{52 \times \text{Compensation part of lump sum}}{\text{OIFA} + 2.5(MBR + RPA)}
\]

where:

**OIFA (ordinary income free area)** means the amount specified in column 3 of item 1 in Table E-1 in point SCH6-E6.

**MBR (maximum basic rate)** means the sum of:

(a) the amount specified in column 3 of item 1 in Table B in point SCH6-B1; and

(b) the pension supplement calculated in accordance with Module BA of Schedule 6.

**RPA (rate of pharmaceutical allowance)** means the rate of pharmaceutical allowance set out in column 3 of item 1 in Table D in SCH6-D7.

Note: For compensation part of lump sum and average weekly earnings see section 5NB.

(8) If the number worked out under subsection (7) is not a whole number, the number is to be rounded down to the nearest whole number.

Note: The following example is based on amounts and rates as at 1 January 1998.
59QA Deemed lump sum payments arising from separate payments

(1) If:
   (a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to the entitlement of the person to compensation (the multiple payments); and
   (b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;
the following paragraphs have effect for the purposes of this Act:
   (c) the person is taken to have received one lump sum compensation payment (the single payment) of an amount equal to the sum of the multiple payments;
   (d) the single payment is taken to have been received by the person:
      (i) on the day on which he or she received the last of the multiple payments; or
      (ii) if the multiple payments were all received on the same day—on that day.

(2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

59R Person may have to repay amount where both lump sum and pension have been received

(1) If:
   (a) a person receives compensation in the form of a lump sum; and
   (b) the person receives payments of a compensation affected pension for any day or days in the lump sum preclusion period;
the Commission may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

Note: For lump sum preclusion period see subsections 59Q(3) to (7).
Section 59R

(2) The amount specified in the notice is the **recoverable amount** and is worked out:

(a) if the person receives compensation in the form of a lump sum before 20 March 1997—under subsections (3) and (4); or

(b) if the person receives compensation in the form of a lump sum on or after 20 March 1997—under subsection (5).

(3) If the person receives compensation in the form of a lump sum before 20 March 1997 and:

(a) the person is not a member of a couple; or

(b) the person is a member of a couple and the person’s partner:

(i) is not eligible for a compensation affected pension; or

(ii) is not qualified for a compensation affected payment under the Social Security Act;

the **recoverable amount** is equal to the smaller of:

(c) the compensation part of the lump sum; and

(d) the sum of the pension payments made to the person for the lump sum preclusion period.

(4) If:

(aa) the person receives compensation in the form of a lump sum before 20 March 1997; and

(a) the person is a member of a couple; and

(b) the person’s partner:

(i) is eligible for a compensation affected pension; or

(ii) is qualified for a compensation affected payment under the Social Security Act;

the **recoverable amount** is equal to the smaller of:

(c) the compensation part of the lump sum; and

(d) the amount obtained by adding the pension payments made to the person for the lump sum preclusion period to:

(i) the pension payments made to the person’s partner for the lump sum preclusion period; or

(ii) the compensation affected payments made under the Social Security Act to the person’s partner for the lump sum preclusion period.
(5) If the person receives compensation in the form of a lump sum on or after 20 March 1997, the recoverable amount is equal to the smaller of:
(a) the compensation part of the lump sum; and
(b) the sum of the payments of the compensation affected pension made to the person for a day or days in the lump sum preclusion period.

59S Lump sum compensation not counted as ordinary income

If an amount of compensation affected pension is not payable to a person under section 59Q because of compensation in the form of a lump sum, that lump sum is not to be regarded as ordinary income of either the person or the person’s partner for the purposes of this Act.

59T Effect of periodic compensation payments on rate of person’s compensation affected pension

(1) If:
(a) a person receives periodic compensation payments; and
(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and
(c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;
the rate of the person’s compensation affected pension for that day or those days is reduced in accordance with subsection (2).

Note: For periodic compensation payments, compensation affected pension and periodic payments period, see subsection 5NB(1).

(2) The person’s daily rate of compensation affected pension is reduced by the amount of the person’s daily rate of periodic compensation.

(3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.
(4) If:
(a) a person receives periodic compensation payments; and
(b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was receiving a compensation affected pension; and
(c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;
the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

Note: For ordinary income, see subsection 5H(1).

59TA Effect of periodic compensation payments on rate of partner’s compensation affected pension

(1) If:
(a) a person receives periodic compensation payments; and
(b) the person is a member of a couple; and
(c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and
(d) the person is eligible for a compensation affected pension for a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the pension; and
(e) the person’s partner is eligible for a compensation affected pension, or is qualified for a compensation affected payment under the Social Security Act, for a day or days in the periodic payments period;
then, in working out the amount of the pension or payment referred to in paragraph (c), the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected pension for which the person is eligible for a day or days in the periodic payments period is to be treated as ordinary income of the person’s partner.

Note 1: See also point SCH6-E3A for the effect of that excess on the application of the ordinary/adjusted income test.

Note 2: For periodic compensation payments, compensation affected pension and periodic payments period, see subsection 5NB(1).

Note 3: For ordinary income, see subsection 5H(1).
Part IIC  Compensation recovery
Division 3  Receipt of compensation

Section 59U

(2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

59U  Claim for compensation affected pension granted to person qualified for compensation affected payment under Social Security Act

(1) If:
   (a) a person’s claim for a compensation affected pension is granted; and
   (b) immediately before the claim is granted, a compensation affected payment for which the person was qualified under the Social Security Act was not payable to the person under section 1165 of that Act because of a lump sum compensation payment made to the person or to the person’s partner;

the person’s pension is not payable to the person for the remainder of the period that was the person’s lump sum preclusion period for the purposes of the Social Security Act.

(2) If:
   (a) a person’s claim for a compensation affected pension is granted; and
   (b) immediately before the claim is granted, the person was receiving a compensation affected payment under the Social Security Act at a rate that was reduced under section 1168 of that Act because of periodic compensation payments made to the person or to the person’s partner;

then, for the remainder of the period that was the person’s periodic payments period for the purposes of the Social Security Act, the person’s pension is to be reduced:
   (c) by the amount *(reduction amount)* by which the person’s compensation affected payment under the Social Security Act would be reduced under section 1168 of that Act if the person were still qualified for it; or
   (d) if the reduction amount is greater than the amount of the person’s pension—to nil.

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(3) If:
   (a) a person’s claim for a compensation affected payment is granted; and
   (b) immediately before the claim is granted, a compensation affected payment for which the person was qualified under the Social Security Act was not payable to the person because the rate of the person’s pension was reduced to nil under section 1168 of that Act because of periodic compensation payments made to the person or to the person’s partner;

then, for the purposes of subsection (2), the person is taken to have been receiving the compensation affected payment at a reduced rate immediately before the claim was granted.

59V Rate reduction under both income/assets test and this Part

If:
   (a) the rate of a person’s compensation affected pension is to be reduced under this Part; and
   (b) the rate of the person’s pension is reduced under the ordinary/adjusted income test Module or the assets test Module of the Rate Calculator;

the reduction under this Part is to apply to the person’s pension as reduced under the ordinary/adjusted income test Module or the assets test Module of the Rate Calculator.

59W Person may have to repay amount where both periodic compensation payments and pension have been received

(1) If:
   (a) a person receives periodic compensation payments; and
   (b) the person receives payments of a compensation affected pension for the periodic payments period; and
   (c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and
   (d) the payments referred to in paragraph (b) have not been reduced to nil as a result of the operation of section 59T;
the Commission may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

Note: If a person was, at the time of the event that gave rise to the entitlement of the person to compensation, receiving a compensation affected pension, the compensation is treated as ordinary income. In cases where arrears of periodic compensation payments are treated as ordinary income, see point SCH6-E4.

(2) The amount specified in the notice is the **recoverable amount** and is worked out under subsections (3) and (4).

(3) If:

(a) the person is not a member of a couple; or
(b) the person is a member of a couple and the person’s partner:
   (i) is not eligible for a compensation affected pension; or
   (ii) is not qualified for a compensation affected payment under the Social Security Act;

the recoverable amount is equal to the smaller of:

(c) the sum of the periodic compensation payments; and
(d) the difference between:
   (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period; and
   (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 59T.

(4) If:

(a) the person is a member of a couple; and
(b) the person’s partner:
   (i) is eligible for a compensation affected pension; or
   (ii) is qualified for a compensation affected payment under the Social Security Act;

the **recoverable amount** is equal to the smaller of:

(c) the sum of the periodic compensation payments; and
(d) the difference between:
   (i) the sum of the payments of compensation affected pension, and of compensation affected payments under
the Social Security Act, made to the person and the person’s partner for a day or days in the periodic payments period; and
(ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person’s partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of sections 59T and 59TA.

59X Periodic compensation payments not counted as ordinary income

If the rate of a person’s compensation affected pension is reduced under section 59T because of the receipt of periodic compensation payments, those payments are not regarded as ordinary income of the person for the purposes of this Act.
Division 4—Compensation payers

59Y Commission may send preliminary notice to potential compensation payer

(1) If:
   (a) a person seeks compensation in respect of the person’s lost earnings or lost capacity to earn; and
   (b) the person receives or claims a compensation affected pension for a day or days in the period to which the compensation relates;

   the Commission may give written notice to the person’s potential compensation payer that the Commission may wish to recover an amount from the potential compensation payer.

Note: For potential compensation payer see section 5NB.

(2) The notice must contain:
   (a) a statement of the potential compensation payer’s obligation under section 59Z; and
   (b) a statement of the effect of section 59ZD so far as it relates to a preliminary notice.

59Z Potential compensation payer must notify Department of liability

(1) If a potential compensation payer:
   (a) is given notice under section 59Y in relation to a person; and
   (b) either before or after receiving the notice, becomes liable to pay compensation to the person;

   the potential compensation payer must give written notice of the liability to the Department within 7 days after:
   (c) becoming liable; or
   (d) receiving the notice;

   whichever happens later.

Penalty: Imprisonment for 12 months.
Compensation recovery  Part IIIC
Compensation payers Division 4

Section 59ZA

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) The notice to the Department referred to in subsection (1) must be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been given on a day determined under that section.

59ZA Commission may send recovery notice to compensation payer

(1) If:

(a) a compensation payer:
   (i) is liable to pay compensation to a person for a disease, injury or condition of the person; or
   (ii) has determined that a payment by way of compensation is to be made to a person in respect of a disease, injury or condition of the person; and

(b) the person receives or claims a compensation affected pension for any day or days in the periodic payments period or the lump sum preclusion period;

the Commission may give written notice to the compensation payer that the Commission proposes to recover the amount specified in the notice from the compensation payer.

Note: For compensation payer see section 5NB.

(2) If a compensation payer is given notice under subsection (1), the compensation payer is liable to pay to the Commonwealth the amount specified in the notice.

(3) The amount specified in the notice is the recoverable amount and is worked out under subsections (4), (5) and (5AA), unless subsection (5A) applies in which case it is worked out under subsection (5A) instead.

(4) If:

(a) the person claiming compensation is not a member of a couple; or

(b) the person claiming compensation is a member of a couple and the person’s partner neither receives nor claims:
Part III

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Section 59ZA

(i) a compensation affected pension; or
(ii) a compensation affected payment (under the Social Security Act);

for any day or days in the periodic payments period or the lump sum preclusion period;

the recoverable amount is equal to the smallest of the following amounts:

(c) the difference between:
   (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and
   (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

(d) the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;

(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:
   (i) a preliminary notice under section 59Y in relation to the matter; or
   (ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person’s partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in:
   (i) unless subparagraph (ii) applies—the periodic payments period in respect of the compensation; or
   (ii) if the compensation is lump sum compensation for which payment is received by the person or the person’s partner before 20 March 1997—the lump sum preclusion period;
the **recoverable amount** is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person’s partner for a day or days in the periodic payments period or the lump sum preclusion period; and

(ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person’s partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

(d) the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;

(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59Y in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5AA) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person’s partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in the lump sum preclusion period in respect of lump sum compensation received by the person on or after 20 March 1997;

the **recoverable amount** is equal to the smallest of the following amounts:

(c) the sum of all the payments of compensation affected pension made to the person for the lump sum preclusion period;

(d) the compensation part of the lump sum payment;
Part III   Compensation recovery
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(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:
   (i) a preliminary notice under section 59Y in relation to the matter; or
   (ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5A) If:
   (a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and
   (b) the person or the person’s partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the recoverable amount is the amount determined by the Commission to be the total amount by which the person’s, or the person’s partner’s, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

(6) A notice under this section must contain a statement of the effect of section 59ZD so far as it relates to a recovery notice.

(7) This section applies to an amount payable by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

59ZB Preliminary notice or recovery notice suspends liability to pay compensation

If a compensation payer has been given a preliminary notice under section 59Y or a recovery notice under section 59ZA in relation to the compensation payer’s liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.
Compensation recovery Part IIC
Compensation payers Division 4

Section 59ZC

59ZC Compensation payer’s payment to Commonwealth discharges liability to compensation recipient

If the Commonwealth is paid an amount that a compensation payer is liable to pay under section 59ZA in relation to a person, the compensation payer’s liability to pay compensation to the person is discharged to the extent of that amount.

59ZD Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If a compensation payer has been given a preliminary notice under section 59Y or a recovery notice under section 59ZA in relation to the payment of compensation to a person, the compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:

(a) in the case of a preliminary notice—the Commission has given the compensation payer written notice that the preliminary notice is revoked; or

(b) in the case of a recovery notice—the compensation payer has paid to the Commonwealth the amount specified in the notice; or

(c) the Commission has given the compensation payer written permission to pay the compensation.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the Criminal Code.

(2) A compensation payer who contravenes subsection (1) is, in addition to being liable to prosecution for an offence under subsection (1), liable to pay to the Commonwealth:

(a) if the contravention relates to a preliminary notice—an amount determined by the Commission; and

(b) if the contravention relates to a recovery notice—the recoverable amount specified in the notice.

(3) The amount determined by the Commission under paragraph (2)(a) may not be more than the smallest of the amounts worked out under:

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(a) if the person is not a member of a couple—subsection 59ZA(4); or
(b) if the person is a member of a couple—subsection 59ZA(5).

(4) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.
Division 5—Insurers

59ZE Commission may send preliminary notice to insurer

(1) If:
   (a) a person makes a claim against a potential compensation payer for compensation in respect of the person’s lost earnings or lost capacity to earn; and
   (b) the person receives or claims a compensation affected pension for a day or days to which the compensation relates; and
   (c) the potential compensation payer’s insurer, under a contract of insurance, may be liable to indemnify the potential compensation payer against any liability arising from the claim for compensation;

the Commission may give written notice to the insurer that the Commission may wish to recover an amount from the insurer.

(2) The notice must contain:
   (a) a statement of the insurer’s obligation under section 59ZF; and
   (b) a statement of the effect of section 59ZJ so far as it relates to a preliminary notice.

59ZF Insurer must notify Department of liability

(1) If an insurer:
   (a) is given notice under section 59ZE in relation to a claim; and
   (b) either before or after receiving the notice, becomes liable to indemnify the compensation payer, either wholly or partly, in relation to the claim;

the insurer must give written notice of the liability to the Department within 7 days after:
   (c) becoming liable; or
   (d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.
Section 59ZG

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) The notice referred to in subsection (1) must be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been given on a day determined under that section.

59ZG Commission may send recovery notice to insurer

(1) If:
   (a) an insurer is liable, under a contract of insurance, to indemnify a compensation payer against any liability arising from a person’s claim for compensation in respect of the person’s lost earnings or lost capacity to earn; and
   (b) the person receives or claims a compensation affected pension for a day or days in the periodic payments period or the lump sum preclusion period; and
the Commission may give written notice to the insurer that the Commission proposes to recover the amount specified in the notice from the insurer.

(2) If an insurer is given notice under subsection (1), the insurer is liable to pay to the Commonwealth the amount specified in the notice.

(3) The amount specified in the notice is the recoverable amount and is worked out under subsections (4), (5) and (5AA), unless subsection (5A) applies in which case it is worked out under subsection (5A) instead.

(4) If:
   (a) the person claiming compensation is not a member of a couple; or
   (b) the person claiming compensation is a member of a couple and the person’s partner neither receives nor claims:
      (i) a compensation affected pension; or
(ii) a compensation affected payment (under the Social Security Act);  
for any day or days in the periodic payments period or the lump sum preclusion period;

the recoverable amount is equal to the smallest of the following amounts:

(c) the difference between:
   (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and
   (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

(d) the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;

(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
   (i) a preliminary notice under section 59ZE in relation to the matter; or
   (ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5) If:
(a) the person claiming compensation is a member of a couple; and
(b) the person’s partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in:
   (i) unless subparagraph (ii) applies—the periodic payments period in respect of the compensation; or
   (ii) if the compensation is lump sum compensation for which payment is received by the person or the person’s partner before 20 March 1997—the lump sum preclusion period;
the recoverable amount is equal to the smallest of the following amounts:

(c) the difference between:
   
   (i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person’s partner for a day or days in the periodic payments period or the lump sum preclusion period; and
   
   (ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person’s partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

(d) the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;

(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
   
   (i) a preliminary notice under section 59ZE in relation to the matter; or
   
   (ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5AA) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person’s partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in the lump sum preclusion period in respect of lump sum compensation received by the person on or after 20 March 1997;

the recoverable amount is equal to the smallest of the following amounts:

(c) the sum of all the payments of compensation affected pension made to the person for the lump sum preclusion period;

(d) the compensation part of the lump sum payment;
(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
   (i) a preliminary notice under section 59ZE in relation to the matter; or
   (ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5A) If:
   (a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and
   (b) the person or the person’s partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the recoverable amount is the amount determined by the Commission to be the total amount by which the person’s, or the person’s partner’s, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

(6) A notice under this section must contain a statement of the effect of section 59ZJ so far as it relates to a recovery notice.

59ZH Preliminary notice or recovery notice to insurer suspends both insurer’s and compensation payer’s liability

If an insurer has been given a preliminary notice under section 59ZE or a recovery notice under section 59ZG in relation to the insurer’s liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:
   (a) the insurer is not liable to indemnify the compensation payer against that liability; and
   (b) the compensation payer is not liable to pay that compensation;

while the notice has effect.
Part III C Compensation recovery
Division 5 Insurers

Section 59ZI

59ZI Insurer’s payment to Commonwealth discharges liability

Payment of an amount that an insurer is liable to pay to the Commonwealth under section 59ZG in relation to a person claiming compensation operates, to the extent of the payment, as a discharge of:
(a) the insurer’s liability to the compensation payer; and
(b) the compensation payer’s liability to pay compensation to the person.

59ZJ Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If an insurer has been given a preliminary notice under section 59ZE or a recovery notice under section 59ZG in relation to the insurer’s liability to make a payment indemnifying a compensation payer, the insurer must not make the payment to the compensation payer.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:
(a) in the case of a preliminary notice—the Commission has given the insurer written notice that the preliminary notice is revoked; or
(b) in the case of a recovery notice—the insurer has paid to the Commonwealth the amount specified in the notice; or
(c) the Commission has given the insurer written permission to make the payment to the compensation payer.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the Criminal Code.

(2) An insurer who contravenes subsection (1) is, in addition to being liable to prosecution for an offence under subsection (1), liable to pay to the Commonwealth:
(a) if the contravention relates to a preliminary notice—an amount determined by the Commission; and
(b) if the contravention relates to a recovery notice—the recoverable amount specified in the notice.
(3) The amount determined by the Commission under paragraph (2)(a) may not be more than the smallest of the amounts worked out under:
   (a) if the person claiming compensation is not a member of a couple—subsection 59ZG(4); or
   (b) if the person claiming compensation is a member of a couple—subsection 59ZG(5).
Division 6—Miscellaneous

59ZK Commission may give recovery notice either to compensation payer or to insurer but not to both

(1) The Commission is not to give a recovery notice to an insurer (under section 59ZG) about a matter if there is a recovery notice to a compensation payer (under section 59ZA) in force in relation to the same matter.

(2) The Commission is not to give a recovery notice to a compensation payer (under section 59ZA) about a matter if there is a recovery notice to an insurer (under section 59ZG) in force in relation to the same matter.

59ZL Commission may disregard some payments

(1) For the purposes of this Part, the Commission may treat the whole or part of a compensation payment as:
   (a) not having been made; or
   (b) not liable to be made;
if the Commission thinks it is appropriate to do so in the special circumstances of the case.

(2) If:
   (a) a person is eligible for a compensation affected pension; and
   (b) the person’s partner receives compensation; and
   (c) the set of circumstances giving rise to the compensation are not related to the set of circumstances that give rise to the person’s eligibility for the compensation affected pension;
the fact that those 2 sets of circumstances are unrelated does not in itself constitute special circumstances for the purposes of subsection (1).

59ZM Part to bind Crown

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
Part IV—Pensions for members of Defence Force or Peacekeeping Force and their dependants

Division 1—Interpretation

68 Interpretation

(1) In this Part, unless the contrary intention appears:

Australian contingent, in relation to a Peacekeeping Force, means a contingent of that Force that has been authorized or approved by the Australian Government.

Australian member, in relation to a Peacekeeping Force, means a member of that Force whose membership has been authorized or approved by the Australian Government.

authorized travel, in relation to a member of a Peacekeeping Force, means travel authorized by the appropriate authority, being an authority approved by the Minister for the purpose.

defence service means:

(a) continuous full-time service rendered as a member of the Defence Force on or after 7 December 1972 and before the terminating date; and

(b) in the case of a person who:

(i) was rendering continuous full-time service as a member of the Defence Force immediately before the commencement of this Act;

(ii) continued so to render continuous full-time service until and including the day immediately before the terminating date; and

(iii) was, immediately before the terminating date, bound to render continuous full-time service as such a member for a term expiring on or after the terminating date; includes the continuous full-time service rendered by the person as a member of the Defence Force on and after the terminating date and before:
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(iv) the expiration of that term or, if that term is deemed to have been extended by subsection (4), (5) or (6), the expiration of the extension of that term; or
(v) the lawful termination of the person’s service as a member of the Defence Force otherwise than by reason of the expiration of the term for which the person is bound to serve;
whichever occurs first; and
(c) hazardous service rendered before or after the terminating date;

but does not include any period of peacekeeping service.  

**effective full-time service.** in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than:

(a) a period exceeding 21 consecutive days during which the member was:
(i) on leave of absence without pay;
(ii) absent without leave;
(iii) awaiting or undergoing trial in respect of an offence of which the member was later convicted; or
(iv) undergoing detention or imprisonment; or
(b) in the case of an officer of the Defence Force who, on appointment, was a student enrolled in a degree or diploma course at a university or other tertiary educational institution and was required by the appropriate authority of the Defence Force to continue his or her studies after appointment—the period of the officer’s service during which, by reason of the requirement to engage in those studies or in activities connected with those studies, the officer was not regarded by the appropriate authority of the Defence Force as rendering effective full-time service.

**hazardous service** has the same meaning as in subsection 120(7).

**member of a Peacekeeping Force** means a person who is serving, or has served, with a Peacekeeping Force outside Australia as an Australian member, or as a member of the Australian contingent, of that Peacekeeping Force.
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**member of the Forces** means a person to whom this Part applies by virtue of section 69 or 69A.

**Peacekeeping Force** means:
(a) a Peacekeeping Force described in an item of Schedule 3; or
(b) a force raised or organised for the purpose of:
   (i) peacekeeping in an area outside Australia; or
   (ii) observing or monitoring any activities of persons in an area outside Australia that may lead to an outbreak of hostilities;

being a force that is designated by the Minister, by notice published in the *Gazette*, as a Peacekeeping Force for the purposes of this Part.

**peacekeeping service**, in relation to a person, means service, whether before or after the commencement of this Act, with a Peacekeeping Force outside Australia, and includes:
(a) any period after the person’s appointment or allocation to the Peacekeeping Force during which the person was travelling outside Australia for the purpose of joining the Peacekeeping Force; and
(b) any period (not exceeding 28 days) of authorized travel by the person outside Australia after the person has ceased to serve with the Peacekeeping Force.

**terminating date** means the date on which the *Military Compensation Act 1994* commences.


(2) For the purposes of the definition of **peacekeeping service** in subsection (1):
(a) a person who has travelled from a place in Australia to a place outside Australia shall be deemed to have commenced to travel outside Australia when the person departed from the last port of call in Australia; and
(b) a person who has travelled to Australia from a place outside Australia shall be deemed to have been travelling outside Australia until the person arrived at the first port of call in Australia.
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(3) The Peacekeeping Force described in an item of Schedule 3 is taken to have become a Peacekeeping Force for the purposes of this Part on the day specified in column 3 of that item.

(3A) A force designated by notice published in the Gazette, in accordance with paragraph (b) of the definition of Peacekeeping Force in subsection 68(1), as a Peacekeeping Force is taken to have become a Peacekeeping Force for the purposes of this Part on the date specified in the notice as the date on which it is to become, or is taken to have become, a Peacekeeping Force for the purposes of this Part.

(4) For the purposes of the definition of defence service in subsection (1), where:

(a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this subsection referred to as the relevant term) expiring on or after the terminating date; and

(b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of this subsection, the person becomes bound to serve as a member of the Defence Force for a further term commencing immediately after the expiration of the relevant term, or of the extension of the relevant term, as the case may be;

the relevant term shall be deemed to be extended, or further extended, as the case may be, until the expiration of that further term.

(5) Where a person who, immediately before the terminating date, was bound to render continuous full-time service as a member of the Defence Force for a term expiring on or after the terminating date is, before the expiration of that term or of an extension of that term by virtue of subsection (4), discharged from the Defence Force for the purpose of being appointed an officer:

(a) that discharge shall not be taken to be the lawful termination of the person’s services as a member of the Defence Force for the purposes of the definition of defence service in subsection (1); and

(b) the relevant term, within the meaning of subsection (4), in respect of the person shall be deemed to be extended until the expiration of the period of continuous full-time service that
(6) Where:

(a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this subsection referred to as the relevant term) expiring on or after the terminating date; and

(b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of subsection (4) or (5), the person is discharged from the Army for the purpose of being appointed an officer of the Army, being an appointment that is not expressed to be for a specified period of service in a specified part of the Army or for such a period of service followed by a specified period of service in another part of the Army;

that discharge shall not be taken to be the lawful termination of the person’s services as a member of the Defence Force for the purpose of the definition of defence service in subsection (1) and the relevant term in respect of the person shall be deemed to be extended or further extended, as the case requires, until the lawful termination of that person’s service in pursuance of that appointment.

(7) Subsections (4), (5) and (6) do not apply to a person who was bound to render continuous full-time service as a member of the Defence Force immediately before the terminating date unless the person:

(a) was so rendering continuous full-time service immediately before the commencement of this Act; and

(b) continued so to render continuous full-time service until and including the day immediately before the terminating date.

69 Application of Part to members of the Forces

(1) Subject to this section, where a person:

(a) has served in the Defence Force for a continuous period that commenced on or after 7 December 1972 and before the terminating date; or
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(b) is serving in the Defence Force on or after the terminating date and has so served continuously since a date before that date;  
this Part applies to the person:  
(c) if the person:  
(i) has served on continuous full-time service as a member of the Defence Force after 6 December 1972; and  
(ii) has, whether before or after that date, completed 3 years’ effective full-time service as such a member; or  
(d) if:  
(i) the person has served as a member of the Defence Force under an engagement to serve for a period of continuous full-time service of not less than 3 years; and  
(ii) the person’s service as such a member was terminated before the person had completed 3 years’ effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person’s death or the person’s discharge on the ground of invalidity or physical or mental incapacity to perform duties; or  
(e) if:  
(i) the person has served as an officer of the Defence Force otherwise than under an appointment to serve for a period of continuous full-time service of less than 3 years; and  
(ii) the person’s service as such an officer was terminated before the person had completed 3 years’ effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person’s death or the termination of the person’s appointment on the ground of invalidity or physical or mental incapacity to perform duties; or  
(f) if the person:  
(i) was, immediately before 7 December 1972, a national serviceman or a national service officer, for the purposes of the National Service Act 1951, serving in the Regular Army Supplement; and  
(ii) on or after that date:  
(A) completed the period of service in the Regular Army Supplement for which the person was to
be deemed to have been engaged to serve or for which the person was appointed, as the case may be; or
(B) the person’s service in the Regular Army Supplement was terminated by reason of the person’s death, or of the person’s discharge or the termination of the person’s appointment, on the ground of invalidity or physical or mental incapacity to perform duties.

(2) Where:
(a) a person has served in the Defence Force as set out in subsection (1); and
(b) after, but not immediately after, the termination of the period of service referred to in that subsection, the person commenced or commences to render a further period of service in the Defence Force;
the person is not a person to whom this Part applies in respect of that further period of service unless, under subsection (1), this Part would apply to the person by reason only of his or her having rendered that further period of service.

(3) Where a person renders continuous full-time service as a member of the Defence Force at some time after the commencement of this Act and before the terminating date but has not so rendered continuous full-time service continuously from and including the day immediately before the date of commencement of this Act to that time, subsection (1) does not apply in respect of the person unless:
(a) the person completes 3 years’ effective full-time service as such a member before the terminating date; or
(b) the person’s service as a member or officer of the Defence Force is terminated as provided by paragraph (1)(d) or (e), whichever is applicable, before the terminating date.

(4) For the purposes of paragraph (1)(c):
(a) the service of a person as an officer of the Navy on the General List while the person was undertaking pre-employment training shall be disregarded unless the person has subsequently been promoted to the rank of sub-lieutenant or a higher rank;
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(b) the service of a person:
   (i) as an enlisted member of the Corps of Staff Cadets of the Army; or
   (ii) as an officer cadet of the Army while undertaking a four-year course of training;
   shall be disregarded unless the person has subsequently been appointed or promoted to the rank of second lieutenant or a higher rank; and
(c) the service of a person as an Air Cadet, or as an Officer Cadet of the Air Force, shall be disregarded unless the person has subsequently been appointed or promoted to the rank of pilot officer or a higher rank.

(5) Paragraph (1)(d) or (e) does not apply in respect of a person if the person’s service as a member of the Defence Force was terminated by reason of the person’s discharge, or the termination of the person’s appointment:
   (a) before the person had completed 12 months’ effective full-time service; and
   (b) on the ground of invalidity or physical or mental incapacity to perform duties, being invalidity or incapacity caused, or substantially contributed to, by a physical or mental condition that:
      (i) existed at the time the person commenced continuous full-time service as a member of the Defence Force; and
      (ii) had not been aggravated, or materially aggravated, by that service.

(6) Paragraph (1)(e) does not apply in respect of a person if the person’s service as a member of the Defence Force was terminated by reason of the person’s death, or the termination of the person’s appointment, during a period of service of the person of a kind referred to in paragraph (b) of the definition of effective full-time service in subsection 68(1).

(7) Where a member of the Defence Force who has rendered continuous full-time service in pursuance of a voluntary undertaking given by the member and accepted by the appropriate authority of the Defence Force was not serving on continuous full-time service immediately before the member commenced to render that service:

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(a) if the member was an officer on the day on which the member so commenced—the member shall be deemed, for the purposes of paragraph (1)(e), to have been appointed as an officer of the Defence Force on that day for service for the period for which the member was bound to serve on continuous full-time service by virtue of that undertaking; or

(b) in any other case—the member shall be deemed, for the purpose of paragraph (1)(d), to have been engaged to serve as a member of the Defence Force on that day for service for the period for which the member was bound to serve on continuous full-time service by virtue of that undertaking.

69A Application of Part to members of the Forces who render hazardous service

(1) This Part applies to a person who has rendered or is rendering hazardous service as a member of the Defence Force.

(2) This Part so applies whether the hazardous service is rendered before or after the terminating date.
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70 Eligibility for pension under this Part

(1) Where:

(a) the death of a member of the Forces or member of a Peacekeeping Force was defence-caused; or

(b) a member of the Forces or member of a Peacekeeping Force is incapacitated from a defence-caused injury or a defence-caused disease;

the Commonwealth is, subject to this Act, liable to pay:

(c) in the case of the death of the member—pension by way of compensation to the dependants of the member; or

(d) in the case of the incapacity of the member—pension by way of compensation to the member;

in accordance with this Act.

(2) Where:

(a) a member of the Forces or a member of a Peacekeeping Force has died;

(b) the death of the member was not defence-caused; and

(c) the member was, immediately before the member’s death:

(i) a member to whom subsection 22(4) or section 24 applied by virtue of section 73; or

(ii) a member to whom section 22, 23 or 25 so applied who was in receipt of a pension the rate of which had been increased by reason that the pension was in respect of an incapacity described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in section 27;

the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the member.

(3) Where a pension in respect of the incapacity of a member of the Forces or of a member of a Peacekeeping Force from defence-caused injury or defence-caused disease, or both, is granted, after the death of the member, as from a date before the death of the member, subsection (2) applies as if the member had been in receipt of that pension immediately before the member died.
(4) For the purposes of this Act, the death of a member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if the death, injury or disease, as the case may be, resulted from an occurrence that happened while the member was rendering peacekeeping service.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5) For the purposes of this Act, the death of a member of the Forces (other than a member to whom this Part applies solely because of section 69A) or member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if:

(a) the death, injury or disease, as the case may be, arose out of, or was attributable to, any defence service, or peacekeeping service, as the case may be, of the member;

(b) subject to subsection (8), the death, injury or disease, as the case may be, resulted from an accident that occurred while the member was travelling, during any defence service or peacekeeping service of the member but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place upon having ceased to perform duty; or

(c) the death is to be deemed by subsection (6) to be defence-caused, the injury is to be deemed by subsection (7) to be a defence-caused injury or the disease is to be deemed by subsection (7) to be a defence-caused disease, as the case may be; or

(d) the injury or disease from which the member died, or is incapacitated:

(i) was suffered or contracted during any defence service or peacekeeping service of the member, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or the last period, of defence service or peacekeeping service of the member, but not during such a period of service;
and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service or peacekeeping service rendered by the member, being service rendered after the member suffered that injury or contracted that disease; or

(e) the injury or disease from which the member died is an injury or disease that has been determined in accordance with this section other than this paragraph to have been a defence-caused injury or defence-caused disease, as the case may be;

Note: The effect of paragraph (e) is that, if the member has died from an injury or disease that has already been determined by the Commission to be defence-caused, the death is to be taken to have been defence-caused. Accordingly the Commission is not required to relate the death to defence service or peacekeeping service rendered by the member and sections 120A and 120B do not apply. but not otherwise.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5A) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in section 69A, the death of the member is taken to be defence-caused, an injury suffered by such a member is taken to be a defence-caused injury or a disease contracted by such a member is taken to be a defence-caused disease if:

(a) the death, injury or disease, as the case may be, arose out of, or was attributable to, the hazardous service of the member; or

(b) subject to subsection (8), the death, injury or disease, as the case may be, resulted from an accident that occurred while the member was travelling, during any hazardous service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place upon having ceased to perform duty; or

(c) the death is to be deemed by subsection (6) to be defence-caused, the injury is to be deemed by subsection (7) to be a defence-caused injury or the disease is to be deemed by subsection (7) to be a defence-caused disease, as the case may be; or
(d) the injury or disease from which the member died or is incapacitated:
   (i) was suffered or contracted during any hazardous service of the member but did not arise out of that service; or
   (ii) was suffered or contracted before the commencement of the hazardous service of the member but not during such a period of service;
   and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, the hazardous service rendered by the member, being service rendered after the member suffered that injury or contracted that disease; or

(e) the injury or disease from which the member died is an injury or disease that has been determined in accordance with this section other than this paragraph to have been a defence-caused injury or defence-caused disease, as the case may be;

Note: The effect of paragraph (e) is that, if the member has died from an injury or disease that has already been determined by the Commission to be defence-caused, the death is to be taken to have been defence-caused. Accordingly the Commission is not required to relate the death to hazardous service rendered by the member and section 120A does not apply. but not otherwise.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5B) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in section 69A, subsections (6) and (7) apply to the person as if references in those subsections to defence service or peacekeeping service, as the case may be, were references to hazardous service.

(6) Where, in the opinion of the Commission, the death of a member of the Forces or member of a Peacekeeping Force was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered defence service or peacekeeping service, as the case may be, or but for changes in the member’s environment consequent upon his or her having rendered any such service:
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(a) the death of the member shall be deemed to have resulted from that defence service or peacekeeping service, as the case may be; and
(b) the death of the member shall be deemed to be defence-caused, for the purposes of this Act.

(7) Where, in the opinion of the Commission, the incapacity of a member of the Forces or member of a Peacekeeping Force was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered defence service or peacekeeping service, as the case may be, or but for changes in the member’s environment consequent upon his or her having rendered any such service:

(a) if the incapacity of the member was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the member as a result of the accident and the injury so suffered shall be deemed to be a defence-caused injury suffered by the member; or

(b) if the incapacity was due to a disease—the incapacity shall be deemed to have arisen out of that disease and that disease shall be deemed to be a defence-caused disease contracted by the member, for the purposes of this Act.

(8) Neither paragraph (5)(b) nor (5A)(b) applies:

(a) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a journey from the member’s place of duty in a case where the member had delayed commencing the journey for a substantial period after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the member’s duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used unless:

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(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the member’s duty; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining injury, or contracting disease, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the member’s duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially changed and the extent of that risk was not substantially increased, by reason of the interruption.

(9) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease:

(a) in a case where the death occurred, or the injury was suffered, or disease was contracted, by the member in circumstances described in subsection (4) or in paragraph (5)(a), (b) or (c) or in paragraph (5A)(a), (b) or (c)—if the death, or the injury or disease, as the case may be:

(i) resulted from the member’s serious default or wilful act; or

(ii) arose from a serious breach of discipline committed by the member or from an occurrence that happened while the member was committing a serious breach of discipline; or

(b) in the case of an injury suffered, or disease contracted, by the member to which paragraph (5)(d) or (5A)(d) applies:

(i) if the aggravation of the injury or disease:

(A) resulted from the member’s serious default or wilful act; or

(B) arose from a serious breach of discipline by the member; or
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(ii) unless the member has rendered hazardous service or the period of defence service or peacekeeping service that contributed to the injury or disease in a material degree, or by which the injury or disease was aggravated, was 6 months or longer.

(9A) The Commonwealth is not liable under this section in respect of:
(a) the death; or
(b) the incapacity from injury or disease;
of a member of the Forces, or a member of a Peacekeeping Force, if the death, injury or disease is related to the relevant service of the member only because:
(a) in the case of a member who had not used tobacco products before 1 January 1998—the member used tobacco products after 31 December 1997; or
(b) in the case of a member who had used tobacco products before 1 January 1998—the member increased his or her use of tobacco products after 31 December 1997.

(10) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease, if the death or incapacity resulted from the serious default or wilful act of the member that happened after the member ceased, or last ceased, to render defence service or peacekeeping service.

(10A) The Commonwealth is not liable to pay a pension to a dependant of a member of the Forces, or of a member of a Peacekeeping Force, being a child of the member, under subsection (1) or (2) if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:
(a) by way of youth allowance; or
(b) under the scheme known as the Assistance for Isolated Children Scheme;
(c) under the scheme known as the Aboriginal Secondary Assistance Scheme or the scheme known as the Aboriginal Study Assistance Scheme;
(d) under the scheme known as the Post-Graduate Awards Scheme; or
(e) under the scheme known as the Veterans’ Children Education Scheme.

(10AB) The Commonwealth is liable to pay a pension to a reinstated pensioner.

(11) Where a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force (not being a reinstated pensioner or a child of the member) re-marries or marries after the death of the member:

(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension:
   (i) was made before the commencement of this Act; or
   (ii) was or is made after the commencement of this Act upon consideration or re-consideration of a claim for that pension that was duly made (whether before or after the commencement of this Act) before the re-marriage or marriage occurred; and

(b) a decision granting a pension to the dependant under this section made by the Commission, the Board or the Administrative Appeals Tribunal after that re-marriage or marriage occurred (including a decision granting such a pension as from a date before that re-marriage or marriage occurred) is void and of no effect unless the decision was made upon consideration or re-consideration of a claim for that pension made as described in subparagraph (a)(ii).

Note: For the meaning of reinstated pensioner see section 11AA.

(11A) If:

(a) a male dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force (not being a child of the member) has re-married or married after the death of the member; and

(b) the re-marriage or marriage occurred before 22 January 1991; the Commonwealth is not liable to pay a pension to that dependant under this section.

(12) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow or widower of a deceased member of
the Forces or member of a Peacekeeping Force, the Commonwealth is not liable to pay another pension to the person under this Part as the widow or widower of another deceased member of the Forces or member of a Peacekeeping Force or under Part II as the widow or widower of a deceased veteran.

(13) Where a person who is in receipt of, or is eligible to receive, a pension under this Part as the child of a deceased person, being a member of the Forces or a member of a Peacekeeping Force, would, but for this subsection, become eligible to receive a pension under this Part or Part II as the child of another deceased person, being a member of the Forces, a member of a Peacekeeping Force or a veteran, the Commonwealth is liable to pay a pension to the person under this Part or Part II as the child of only one of those deceased persons, and, if the rate at which that pension would be payable as the child of one of those deceased persons (in this subsection referred to as the relevant deceased person) is higher than the rate at which that pension would be payable as the child of the other of those deceased persons, then:

(a) if the relevant deceased person is a member of the Forces or a member of a Peacekeeping Force—the Commonwealth is liable to pay a pension to the person under this Part as the child of the relevant deceased person; or

(b) in any other case—the Commonwealth is not liable to pay a pension to the person under this Part.

70A Most defence-caused injuries, diseases and deaths of members of the Defence Force no longer covered by this Act

(1) An injury, disease or death of a member of the Forces, or any other member or former member of the Defence Force, is taken not to be defence-caused if:

(a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and

(b) the injury, disease or death either:

(i) relates to service rendered by the member on or after that date; or

(ii) relates to service rendered by the member before, and on or after, that date.
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(2) An injury or disease of a member of the Forces, or any other member or former member of the Defence Force, that has been aggravated, or materially contributed to, by service is taken not to be defence-caused if:

(a) the aggravation or material contribution occurs on or after the MRCA commencement date (even if the original injury is sustained, or the original disease is contracted, before that date); and

(b) the aggravation or material contribution either:
   (i) relates to service rendered by the member on or after that date; or
   (ii) relates to service rendered by the member before, and on or after, that date; and

(c) if section 12 of the CTPA applies to the member—after receiving a notice under that section, the member makes a claim under section 319 of the MRCA (or continues with a claim already made under that section) in respect of the aggravated injury or disease.

Note 1: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such aggravations and material contributions.

Note 2: The other members (or former members) of the Defence Force mentioned in subsection (1) are or were also members of a Peacekeeping Force.

(3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

71 Application of certain provisions of Part II

(1) Divisions 2A, 3, 6 and 7 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as they apply to and in relation to pensions payable in accordance with Part II.
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(2) For the purposes of the application of Divisions 2A, 3, 6 and 7 of Part II as provided in subsection (1):

(a) a reference in those divisions to a pension shall be read as a reference to a pension payable in accordance with this Part;

(b) a reference in those divisions to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces or a member of a Peacekeeping Force that was defence-caused;

(c) a reference in those divisions to a war-caused injury shall be read as a reference to a defence-caused injury;

(d) a reference in those divisions to a war-caused disease shall be read as a reference to a defence-caused disease; and

(e) a reference in those divisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force.

(3) In the application of Division 3 of Part II in accordance with subsections (1) and (2) of this section, section 19 shall be read as if the following subsection were substituted for subsection (7) of that section:

“(7) Where:

(a) the Commission, upon considering a claim for a pension in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from injury or disease determines, or is satisfied, that the member suffered the injury or contracted the disease as claimed and that the injury is a defence-caused injury or the disease is a defence-caused disease, as the case may be; and

(b) the Commission is also satisfied that a determination under this Act is in force determining that the member has suffered an injury or contracted a disease (not being the injury or disease referred to in paragraph (a)) and that:

(i) that injury is a defence-caused injury, or is a war-caused injury for the purposes of Part II; or

(ii) that disease is a defence-caused disease, or is a war-caused disease for the purposes of Part II;
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as the case may be, whether or not a pension under Part IV or Part II, as the case requires, has been granted in respect of that injury or disease;

the Commission shall not, in a case where the claimant is in receipt of a pension under Part IV or Part II in respect of incapacity resulting from the injury or disease referred to in paragraph (b), grant a separate and additional pension to the claimant in respect of incapacity resulting from the injury or disease referred to in paragraph (a), but the Commission shall, having regard to any incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such war-caused injury as defence-caused injury and any such war-caused disease as defence-caused disease:

(c) if the claimant is not in receipt of a pension under Part IV or Part II—determine whether the claimant is entitled to be granted a pension under Part IV and, if it determines that the claimant is entitled to be granted a pension, assess the rate of the pension to be granted to the claimant; or

(d) if the claimant is in receipt of a pension under Part IV or Part II—re-assess the rate of that pension.”.

(4) Notwithstanding anything in Divisions 2A, 3, 6 and 7 of Part II in their application in accordance with this section, where:

(a) a member of the Forces, or a member of a Peacekeeping Force, has, or has had, both defence service and peacekeeping service; and

(b) the Commission has determined that the death or incapacity of the member had or has reference to the member’s defence service and also to the member’s peacekeeping service;

the Commission shall not grant a pension under this Part in respect of the death or incapacity in so far as it had or has reference to the member’s defence service and a separate pension under this Part in respect of the death or incapacity of the member in so far as it had or has reference to the member’s peacekeeping service, but shall:

(c) in the case of the death of the member—assess the rate of any pension granted under this Part in respect of the death as if the member’s peacekeeping service formed part of the member’s defence service; or
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(d) in the case of the incapacity of the member—assess the degree of incapacity of the member and the rate of pension (if any) to be granted in respect of the incapacity of the member as if the member’s peacekeeping service formed part of the member’s defence service.

72 Dual entitlement to pension

(1) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran, the member is not entitled to receive, at the same time:
   (a) a pension under this Part; and
   (b) a pension under Part II of this Act;
in respect of his or her incapacity from the same injury or disease.

(2) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran, a dependant of the member is not entitled to receive, at the same time:
   (a) a pension under this Part; and
   (b) a pension under Part II of this Act;
in respect of the death of the member.
Division 3—Rates of pension

73 Application of Divisions 4 and 5 of Part II

(1) The provisions of Divisions 4 and 5 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as those provisions apply in relation to pensions payable in accordance with Part II.

(2) For the purposes of the application of the provisions of Divisions 4 and 5 of Part II as provided in subsection (1):

(a) a reference in those provisions to a war-caused injury shall be read as a reference to a defence-caused injury;

(b) a reference in those provisions to a war-caused disease shall be read as a reference to a defence-caused disease;

(c) a reference in those provisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force; and

(d) a reference in those provisions to Part II shall be read as a reference to Part IV.
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Section 73A

Division 4—Pension and other compensation

73A  This Division does not apply to certain payments

This Division does not apply to:

(a) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the Defence Act 1903; or

(b) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force where:

(i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and

(ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (a) if the death or injury had occurred on or after 10 June 1997.

74  Payments by way of compensation or damages

(1) In this section, compensation includes:

(a) any payment in the nature of compensation; and

(b) any damages recoverable at law (including any amount paid under a compromise or settlement of a claim for damages at law), whether from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person; but does not include any amount that represents expenses incurred in medical or hospital treatment.

(2) This section applies in relation to a member of the Forces, or a member of a Peacekeeping Force, in respect of the death of the member, or the incapacity of the member from a defence-caused injury or a defence-caused disease if:

(a) a person is entitled, or 2 or more persons are each entitled, to receive payments by way of compensation in respect of the
death of the member or of the incapacity of the member from that injury or disease; and

(b) subject to this section, pension under this Part is being paid or is payable to a person, or to each of 2 or more persons, in respect of the death of the member or to the member in respect of the incapacity of the member from that injury or disease.

(3) For the purposes of this section, where:

(a) a lump sum payment by way of compensation (other than a lump sum payment mentioned in paragraph (3A)(a) or (3B)(a)) is made:

(i) to a person, being a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

(ii) to a person, being a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the incapacity of that member from that injury or disease, or the death of that member from that injury or disease, as the case may be;

that person shall be deemed, by reason of that payment by way of compensation, to have been, or to be, in receipt of payments, by way of compensation, on and after:

(c) the date of commencement of the period in respect of which his or her pension is, or becomes, payable; or

(d) the date on which the lump sum payment is made; whichever is the earlier date, for the life of the person, at such rate per fortnight as is determined by, or in accordance with the instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum payment and paid to the person on that earlier date.

(3A) In this section, if:

(a) a lump sum payment is made under section 137 of the Safety, Rehabilitation and Compensation Act 1988 to a person who is:
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(i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

(ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of that incapacity or death; the person is taken to have been, or to be, in receipt of payments of compensation:

(c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and

(d) at the rate per fortnight for the person’s life determined by, or under the instructions of, the Commonwealth Actuary; and

(e) beginning:

(i) on the day that lump sum payment is made to that person; or

(ii) on the day the pension becomes payable to the person; whichever is the later day.

(3B) In this section, if:

(a) a lump sum payment is made under section 30 of the Safety, Rehabilitation and Compensation Act 1988 to a person who is:

(i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

(ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of that incapacity or death; the person is taken to have been, or to be, in receipt of payments of compensation:

(c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and
(d) at the rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary for the period until the person reaches 65; and
(e) beginning:
   (i) on the day that the lump sum payment is made to that person; or
   (ii) on the day the pension becomes payable to the person; whichever is the later day.

(4) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person shall be deemed to have been made to that person.

(5) Where:
   (a) an amount of damages payable to a member of the Forces or a member of a Peacekeeping Force, or to a dependant of such a member, is paid to the Commonwealth in pursuance of a notice under section 76; or
   (b) the liability of the Commonwealth to pay damages to a member of the Forces or a member of a Peacekeeping Force or to a dependant of such a member, is, by virtue of section 77, to be deemed to have been discharged to the extent of a particular amount;

subsection (3) of this section applies to and in relation to the member or dependant as if pension commenced to be payable, or commences to be payable, only after the member or dependant has received payments by way of instalments of pension aggregating the amount referred to in paragraph (a) or (b), whichever is applicable, of this subsection.

(6) In the application of subsections (8) and (9) in respect of the death of a member of the Forces or a member of a Peacekeeping Force:
   (a) if payments by way of compensation in respect of the death of the member are being made to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate per fortnight at which compensation is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those payments are being made; and
   (b) if pensions under this Part in respect of the death of the member are being paid, or are payable, to 2 or more persons...
(7) For the purposes of subsection (6), the dependants of a member of the Forces or a member of a Peacekeeping Force constitute the relevant class of persons.

(8) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which compensation is payable in respect of the death or incapacity equals or exceeds the rate per fortnight at which pension under this Part is payable in respect of the death or incapacity, then, pension is not payable under this Part to any person in respect of the death of the member, or the incapacity of the member from that injury or disease, or both, as the case may be.

(9) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which pension under this Part, or the aggregate of the rates per fortnight at which pensions under this Part would, but for this subsection, be payable in respect of the death or incapacity exceeds the rate per fortnight at which compensation is payable in respect of the death or incapacity, then:
   (a) if a pension under this Part is being paid, or is payable, to one person only in respect of the death or incapacity of the member—the rate per fortnight at which that pension is payable; or
   (b) if pensions under this Part are being paid, or are payable, to 2 or more persons in respect of the death of the member—the aggregate of the rates per fortnight at which those pensions are payable;

is an amount per fortnight equal to the amount of that excess.

(10) In giving effect to subsection (9) as between 2 pensions in a case where one is required by subsection (12) to be preferred to the other, the rate per fortnight of the pension that is to be so preferred...
shall not be reduced until the pension that is not to be so preferred 
has ceased to be payable by reason that its rate per fortnight has 
been reduced to nil.

(11) In giving effect to subsection (9) as between 2 or more pensions in 
a case where subsection (10) does not apply, the rate per fortnight 
of each of those pensions shall be reduced by an amount per 
fortnight that bears the same proportion to the amount per fortnight 
of the reduction required to be made to all those pensions as the 
rate per fortnight of that pension before the reduction bears to the 
aggregate rate per fortnight of all those pensions before the 
reduction.

(12) For the purposes of this section:
(a) a pension payable under this Part to the widow or widower of 
a member of the Forces or a member of a Peacekeeping 
Force who is deceased shall be preferred to such a pension 
payable to a child of the member; and 
(b) a pension payable under this Part to a child of a member of 
the Forces or a member of a Peacekeeping Force shall be 
preferred to such a pension payable to a younger child of the 
member.

75 Proceedings against third party

(1) Where:
(a) pension is, or has been, payable in respect of the incapacity 
of a member of the Forces or a member of a Peacekeeping 
Force from a defence-caused injury or a defence-caused 
disease or in respect of the death of such a member that was 
defence-caused;
(b) the incapacity from injury or disease, or the death, occurred 
in circumstances that appear to create a legal liability in a 
person other than the Commonwealth to pay damages in 
respect of the injury or disease, or the death; and 
(c) proceedings against that person for the purpose of recovering 
damages in respect of the injury or disease, or the death, have 
not been instituted by the member, or by or for the benefit of 
a dependant of the member, or have been so instituted but 
have been discontinued or have not been properly 
prosecuted;
the Commission may, by notice in writing to the member or dependant, request the member or dependant to institute proceedings or fresh proceedings against that person for that purpose, or properly to prosecute the proceedings, as the case may be.

(2) Where a member of the Forces or a member of a Peacekeeping Force or a dependant of such a member is requested, in accordance with subsection (1), to institute proceedings against a person:
(a) if the member or dependant refuses or fails within a reasonable time after the making of the request to institute the proceedings or, having instituted the proceedings, discontinues the proceedings—the Commonwealth may institute proceedings or fresh proceedings, as the case may be, against the person in the name of the member or dependant for the recovery of damages in respect of the incapacity or death; or
(b) if the member or dependant, having instituted proceedings, fails properly to prosecute the proceedings—the Commonwealth may take over the conduct of the proceedings.

(3) Where a member of the Forces or a member of a Peacekeeping Force, or a dependant of such a member, who is requested, in accordance with subsection (1), properly to prosecute proceedings instituted against a person refuses, or fails within a reasonable time after the making of the request, to do so, the Commonwealth may take over the conduct of the proceedings.

(4) The Commonwealth is liable to pay all the costs of or incidental to proceedings referred to in subsection (1), (2) or (3), being costs payable by the plaintiff in those proceedings, but not including costs unreasonably incurred by the plaintiff.

(5) Where, in accordance with this section, the Commonwealth institutes proceedings in the name of a member of the Forces or a member of a Peacekeeping Force or of a dependant of such a member, or takes over the conduct of proceedings that have been instituted in the name of such a member or of a dependant of such a member:
(a) the Commonwealth may:
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(i) settle the proceedings either with or without obtaining judgment in the proceedings; and
(ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce that judgment; and

(b) the member or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that a person acting in the proceedings on behalf of the Commonwealth requires that member or dependant to sign and, if he or she fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for the purpose.

76 Payment of damages to Commonwealth

(1) Where:

(a) a person other than the Commonwealth appears to be liable:
    (i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury or disease to the member; or
    (ii) to pay damages to a dependant of a deceased member of the Forces or a deceased member of a Peacekeeping Force in respect of the death of the member; and

(b) pension under this Part is payable or has been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the Commission may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the member in respect of the injury or disease, or to pay damages to the dependant in respect of the death, or in the event of damages against the person being awarded to the member in proceedings instituted in respect of the injury or disease, or to the dependant in proceedings instituted in respect of the death, to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease, or to the dependant in respect
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of the death of the member, and the person shall comply with the notice.

(2) Subject to subsection (3), where:

(a) a person other than the Commonwealth has agreed:

(i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or

(ii) to pay damages to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member; or

(b) damages against a person other than the Commonwealth have been awarded:

(i) to a member of the Forces or member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or

(ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the Commission may, by notice in writing to the person, require the person to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member, and the person shall comply with the notice.

(3) Where, before a notice under subsection (2) was received by a person, the person had paid to or in respect of the member or dependant the whole or any part of the damages to which the notice relates:

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(a) if the whole of the damages had been paid—the notice has no force or effect; or
(b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as has not been paid.

(4) If a person fails to pay an amount to the Commonwealth in pursuance of a notice under this section, the Commonwealth may recover that amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(5) The payment of an amount to the Commonwealth in pursuance of a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the member or dependant.

(6) In this section, damages does not include an amount that has been paid in pursuance of a notice under section 51 of the Safety, Rehabilitation and Compensation Act 1988.

77 Discharge of liability of Commonwealth to pay damages

Where:

(a) damages against the Commonwealth have been awarded:
   (i) to a member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of an injury suffered by, or a disease contracted by, the member; or
   (ii) to a dependant of a deceased member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of the death of the member; and
(b) pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the liability of the Commonwealth to pay those damages, or such part of them as does not represent expenses incurred in medical or hospital treatment, shall be deemed to have been discharged to the extent of the aggregate of the amounts of that pension that have been paid to the member or the dependant, as the case may be.
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78  Other payments of compensation

(1) If, after any pension under this Part has been paid:
   (a) to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from a defence-caused injury or a defence-caused disease; or
   (b) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member that was defence-caused;

any compensation is paid under the law of a country other than Australia, or by, or under a scheme arranged by, an international organization, to or in respect of the member in relation to the injury suffered by, or the disease contracted by, the member, or to or in respect of the dependant in relation to the death of the member, the Commonwealth may recover from the member or dependant, as the case may be, by action in a court of competent jurisdiction, an amount equal to so much of the amount of compensation so paid as does not exceed the aggregate of the amounts of pension under this Part that have been so paid to the member or dependant, as the case may be.

(2) The Commission may, by notice in writing to a person (being a claimant for pension under this Part, or a person in receipt of pension under this Part, in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or the death of such a member), require the person to furnish to the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation has been paid to or in respect of the person, or has been claimed by or in respect of the person, under a law of a country other than Australia, or under a scheme arranged by an international organization, in respect of the injury suffered, or the disease contracted, by the member, or the death of the member, as the case may be.

(3) Where a person refuses or fails to comply with a notice under subsection (2), the right of the person to pension under this Part in respect of the injury, disease or death to which the notice relates, and the right of the person to institute or take any proceedings under this Act in relation to that pension or a claim for that pension, are suspended until the statutory declaration is furnished.
(4) Where a person’s right to pension under this Part is suspended under subsection (3), the person is not entitled to be paid pension under this Part in respect of the period of the suspension.

(5) In this section:

compensation has the same meaning as it has in section 74.

international organization means:

(a) an organization:

(i) of which 2 or more countries, or the Governments of 2 or more countries, are members; or

(ii) that is constituted by persons representing 2 or more countries, or representing the Governments of 2 or more countries; or

(b) an organization that is:

(i) an organ of, or office within, an organization described in paragraph (a);

(ii) a commission, council or other body established by an organization so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organization described in paragraph (a), or of such an organ, council or body.

79 Overpayments of pension

(1) Where:

(a) an amount has been paid:

(i) to a member of the Forces or a member of a Peacekeeping Force as pension under this Part in respect of the incapacity of the member from a defence-caused injury or defence-caused disease; or

(ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force as pension under this Part in respect of the death of the member that was defence-caused; and

(b) by reason of section 25A or 74, that amount was not payable to the member or dependant;

an amount equal to the amount so paid is recoverable from the member or dependant, and may be so recovered, either in whole or in part, by deduction from any amount of pension under this Part.
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payable to the member or dependant in respect of the incapacity from that injury or disease or of the death of the member, as the case may be.

(2) Subsection (1) does not prevent the recovery of an amount referred to in that subsection otherwise than as provided in that subsection, but an amount shall not be recovered as so provided and also otherwise than as so provided.
Part IVA—Advance payments of pension and income support supplement

Division 1—General

79A Definition

In this Part:

*pension* means a pension payable under Part II, III or IV or an income support supplement.
Division 2—Eligibility for advance payment

79B Eligibility for advance payment

(1) Subject to subsection (2), a person is eligible for an advance payment of an amount of pension only if:
   (a) the pension is payable to the person; and
   (b) throughout the 3 months immediately before the person’s application for the advance payment, the person was receiving a pension, a social security pension or a social security benefit; and
   (c) the Commission is satisfied that the person will not suffer financial hardship from the reductions to be made in future instalments of the pension to recover the advance payment.

(2) A person is not eligible for an advance payment if:
   (a) the person has received an advance payment of a pension and has not fully repaid the advance payment; or
   (b) an advance payment of:
      (i) an amount of pension; or
      (ii) a social security entitlement under Part 2.22 of the Social Security Act 1991;
      was paid to the person within the period of 12 months immediately before the person’s application for the advance payment; or
   (c) the person owes a debt to the Commonwealth under section 205 or 205A.
Division 3—Applying for advance payment

79C Application

A person who wants an advance payment of an amount of pension must make a proper application for the advance payment.

79D Who can apply

(1) Subject to subsection (2), the application must be made by:
   (a) the person who wants to receive the advance payment; or
   (b) with the approval of that person—another person on the person’s behalf.

(2) If a person is unable, because of physical or mental incapacity, to approve another person to make the application on his or her behalf, the Commission may approve another person to make the application.

79E Making an application

(1) To be a proper application, the application must:
   (a) be made in writing; and
   (b) be in accordance with a form approved by the Commission; and
   (c) be lodged at an office of the Department in Australia in accordance with section 5T.

(2) An application lodged in accordance with section 5T is taken to have been made on a day determined under that section.

79G Applicant must be Australian resident and in Australia

An application is not a proper application unless the person who wants to receive the advance payment is:
   (a) an Australian resident; and
   (b) in Australia;

on the day on which the application is lodged.

Note: For Australian resident see section 5G.
Section 79H

79H Application may be withdrawn

(1) An applicant, or a person approved by the applicant, may withdraw an application that has not been determined.

(2) An application that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(4) A withdrawal by document lodged in accordance with section 5T is taken to have been made on a day determined under that section.
Division 4—Determination of application and payment of advance payment

79I Commission to determine application

If an application for an advance payment of an amount of pension is made, the Commission must grant the application if it is satisfied that the person is eligible for the advance payment.

79J Payment of advance payment

(1) Subject to subsection (3), if the application is granted, the advance payment of the pension is to be paid on the next day on which:
   (a) the person is paid an instalment of the pension; and
   (b) it is practicable to pay the advance payment.

(2) The advance payment is to be paid as a lump sum.

(3) The Commission may determine that an advance payment is to be paid on a day stated in the determination.

(4) An advance payment of a pension is not payable if the pension is cancelled or reduced to nil before the day on which the advance payment would be paid apart from this subsection.
Division 5—Maximum amount of advance payment

79K Maximum amount of advance payment

(1) The maximum amount of an advance payment is the smaller of:
   (a) the amount worked out under subsection (2) or (3) (whichever is applicable); and
   (b) $500.

(2) If the advance payment is in respect of a pension payable to a person under Part II or IV, the amount for the purposes of paragraph (1)(a) is the amount worked out by using the following formula:

\[ \text{13 \times Fortnightly rate of pension} \]

where:

\textit{fortnightly rate of pension} is the rate last determined by the Commission to be the fortnightly rate of pension payable to the person before the application for the advance payment was determined.

(3) If the advance payment is in respect of a pension payable to a person under Part III or an income support supplement, the amount for the purposes of paragraph (1)(a) is the amount worked out by using the following formula:

\[ \frac{\text{Annual payment rate}}{2} \]

where:

\textit{annual payment rate} is the rate last determined by the Commission to be the rate of pension or income support supplement payable to the person before the application for the advance payment was determined, excluding any amount payable by way of remote area allowance.

(4) The amount worked out under subsection (2) or (3) is to be rounded to the nearest cent (rounding half a cent upwards).
Division 6—Advance payment deductions

79L Advance payment deduction

(1) Subject to subsection (2) and section 79O, an advance payment deduction is to be made from an instalment of pension that is payable to a person if:
   (a) the person has received an advance payment of that pension or of another pension that was previously payable to the person; and
   (b) the person has not yet fully repaid the advance payment; and
   (c) the amount of the advance payment that has not been repaid is not a debt under subsection 205(1AB).

(2) An advance payment deduction is not to be made from a person’s instalment of pension on the payday on which the advance payment is paid.

79M Amount of advance payment deduction—basic calculation

Subject to sections 79N, 79O, 79P and 79Q, the advance payment deduction for an advance payment of a pension is the amount of the advance payment divided by 13.

79N Person may request larger advance payment deduction

(1) Subject to subsection (2) and sections 79O, 79P and 79Q, a person’s advance payment deduction may be increased to a larger amount if the person asks the Commission in writing for the advance payment deduction to be the larger amount.

(2) Subsection (1) does not apply if the Commission is satisfied that the person would suffer severe financial hardship if the advance payment deduction were the larger amount.
Part IVA  Advance payments of pension and income support supplement
Division 6  Advance payment deductions

Section 79O

79O Reduction of advance payment deduction in cases of severe financial hardship

(1) Subject to subsection (2) and sections 79P and 79Q, if:
(a) a person applies in writing to the Commission for an advance payment deduction to be decreased, or to be stopped, because of severe financial hardship; and
(b) the Commission is satisfied that:
   (i) the person’s circumstances are exceptional and could not reasonably have been foreseen at the time of the person’s application for the advance payment; and
   (ii) the person would suffer severe financial hardship if the advance payment deduction that would otherwise apply were to continue;
the Commission may determine in writing that, for the period stated in the determination, the advance payment deduction is to be the lesser amount (which may be a nil amount) stated in the determination.

(2) At any time while the determination is in force, the Commission may:
(a) vary the determination so as to require to be deducted from the person’s instalments of pension an advance payment deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately before the determination; or
(b) revoke the determination;
but only if the Commission is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

(3) A variation or revocation of a determination must be in writing.

79P The final advance payment deduction

If an advance payment deduction that would otherwise be deducted from a person’s instalment of pension exceeds the part of the advance payment that the person has not yet repaid (by previous deductions under this Division or otherwise), the amount of that advance payment deduction equals the part that the person has not yet repaid.

Veterans’ Entitlements Act 1986
Example:

Facts: Anne has been paid an advance of $450. Anne’s payment deduction is worked out under section 79M as follows:

\[ \frac{450}{13} = 34.62 \]

(The amount is rounded to the nearest cent under section 79R.).

Anne has requested that the advance payment deduction be the larger amount of $55 (see section 79N), so that the advance will be repaid sooner.

Result: If $55 is deducted from Anne’s fortnightly instalment of pension, $440 will have been repaid after 8 successive fortnights, leaving $10 unpaid. Under this section, the final advance payment deduction will be $10.

### 79Q Payment rate insufficient to cover advance payment deduction

If the instalment of pension (excluding remote area allowance in the case of a pension payable under Part III or income support supplement) is less than the amount that would be the advance payment deduction apart from this section, the advance payment deduction is taken to be equal to that instalment of pension.

### 79R Rounding of amounts

An amount worked out under this Division is to be rounded to the nearest cent (rounding half a cent upwards).

### 79S Unrepaid advance payments to deceased partner to be disregarded

(1) In calculating, for the purposes of this Act, an amount of pension that would have been paid to a deceased person if the person had not died, any advance payment of pension that has been made to the person and has not been repaid is to be disregarded.

(2) Subsection (1) does not affect the liability of the estate of the deceased person to repay to the Commonwealth so much of the advance payment as has not been repaid.
Division 7—Review by Commission

79T Request for review

(1) A pensioner who is dissatisfied with a decision of the Commission in relation to an advance payment of an amount of pension may request the Commission to review the decision.

(2) The request must:
   (a) be made within 3 months after the person seeking the review was notified of the decision; and
   (b) be in writing; and
   (c) set out the grounds on which the request is made; and
   (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(2A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) If a request for review is made in accordance with subsection (2), the Commission must review the decision.

(4) If the Commission has delegated its power under this section to the person who made the decision under review, that person must not review the decision.

79U Commission’s powers

If the Commission reviews a decision under this Division, the Commission must:
   (a) affirm the decision; or
   (b) set it aside and substitute a new decision for it.

Note: For the Commission’s evidence-gathering powers see section 79X.

79V Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division, it must make a written record of its decision upon review.

(2) The written record must include a statement that:
(a) sets out the Commission’s findings on material questions of fact; and
(b) refers to the evidence or other material on which those findings are based; and
(c) provides reasons for the Commission’s decision.

**79W Person who requested review to be notified of decision**

(1) When the Commission affirms or sets aside a decision under this Division, it must give to the person who requested the review of the decision:

(a) a copy of the Commission’s decision; and
(b) subject to subsection (2), a copy of the statement referred to in subsection 79V(2) relating to the decision; and
(c) a statement giving particulars of the person’s right to apply to the Administrative Appeals Tribunal for a review of the Commission’s decision.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or
(b) may, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

**79X Powers of Commission to gather evidence**

(1) For the purposes of a review, the Commission may:

(a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
(b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
(c) administer an oath or affirmation to a person so appearing; and
(d) adjourn a hearing of the review from time to time.

(2) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.
Part IVA  Advance payments of pension and income support supplement
Division 7  Review by Commission

Section 79Y

(3) The Commission’s power under subsection (1) to take evidence on oath or affirmation:
   (a) may be exercised on behalf of the Commission by:
      (i) the presiding member; or
      (ii) by another person (whether a member or not) authorised by the presiding member; and
   (b) may be exercised within or outside Australia; and
   (c) must be exercised subject to any limitations specified by the Commission.

(4) If a person is authorised under subparagraph (3)(a)(ii) to take evidence for the purposes of a review, the person has all the powers of the Commission under subsection (1) for the purposes of taking that evidence.

79Y Withdrawal of request for review

(1) A person who requests a review under section 79T may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

(3) Subject to subsection 79T(2), a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Subsection 79T(2) provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.
Part V—Medical and other treatment

80 Interpretation

(1) In this Part, unless the contrary intention appears, *treatment* means treatment provided, or action taken, with a view to:

(a) restoring a person to, or maintaining a person in, physical or mental health;
(b) alleviating a person’s suffering; or
(c) ensuring a person’s social well-being;
and, without limiting the generality of the foregoing, includes:

(d) the provision of accommodation, medical procedures, nursing care, social or domestic assistance or transport;
(e) the supply, renewal, maintenance and repair of artificial replacements, and surgical and other aids and appliances; and
(f) the provision of diagnostic and counselling services;
for the purposes of, or in connection with, any such treatment or action.

(2) In this Part:

(b) a reference to a country area of a State shall be read as a reference to a part of that State, outside the metropolitan area of the capital city of that State, determined by the Commission, by instrument in writing, to be a country area of that State for the purposes of this Part; and

(c) a reference to a veteran shall be read as a reference to a person who is a veteran as defined by paragraph (a) of the definition of *veteran* in subsection 5C(1) other than a person who:

(i) is a veteran as so defined by reason only that the person has rendered service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2); and

(ii) has not satisfied the Commission, whether before or after the commencement of this paragraph, that the person was domiciled in Australia or an external Territory immediately before the person’s appointment or enlistment for that service.
81 Application of Part V

(1) Without prejudice to its effect apart from this subsection, this Part has effect in relation to a person who is, or has been:
   (a) a member of the Forces as defined by subsection 68(1); or
   (b) a member of a Peacekeeping Force as defined by subsection 68(1);
and in relation to a dependant of such a person who has died, in like manner as it has effect in relation to a veteran and a dependant of a deceased veteran, respectively.

(2) For the purpose of the application of this Part in accordance with subsection (1):
   (a) a reference in this Part to a veteran shall be read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1);
   (b) a reference in this Part to a pension (other than a service pension), or to a pension under Part II shall be read as a reference to a pension under Part IV;
   (c) a reference in this Part to a war-caused injury shall be read as a reference to a defence-caused injury;
   (d) a reference in this Part to a war-caused disease shall be read as a reference to a defence-caused disease; and
   (e) a reference in this Part to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces, or member of a Peacekeeping Force, as defined by subsection 68(1), that was defence-caused.

84 Provision of treatment

(1A) If treatment could be provided for a person consistently with this Part, the Commission must take reasonable steps to ensure that the treatment is provided for the person consistently with this Part.

(1B) In subsection (1A), a reference to this Part includes a reference to the instruments made, and arrangements entered into, by the Commission under this Part.

(1) The Commission may arrange for the provision of treatment for veterans and other persons eligible to be provided with treatment under this Part:
(b) at a hospital or other institution in accordance with
arrangements referred to in paragraph 89(1)(b) or (c); or
(c) otherwise.

(2) Subject to subsection (3), the Commission is not taken to have
arranged for the provision of treatment for a person unless:
(a) the treatment was provided in accordance with arrangements
made by the Commission under this Part; or
(b) the treatment was provided in the circumstances in which,
and in accordance with the conditions subject to which, the
treatment may be provided under this Part; or
(c) the Commission approved the provision of the treatment
before the treatment was given, or began to be given, as the
case may be.

(3) Where the Commission is satisfied that treatment was provided, or
commenced to be provided, without the prior approval of the
Commission, for an injury suffered, or disease contracted by a
person:
(a) at any time during the period from and including the date as
from which the person has become eligible to be provided
with treatment for that injury or disease to and including the
date on which the determination was made by virtue of which
the person has become eligible to be provided with treatment
under this Part for that injury or disease; or
(b) in circumstances in which it would be proper for the
Commission to approve provision of the treatment after it
had been given or had commenced to be given;
the Commission may, in its absolute discretion, approve the
provision of that treatment and, if it does so, the Commission shall
be deemed to have arranged for the provision of that treatment.

(4) Nothing in this Part shall be taken to:
(a) impose a duty on the Commission to arrange for the
provision of; or
(b) confer a right on a person to be provided, under arrangements
made by the Commission, with;
treatment for a particular injury or disease, treatment of a particular
kind for an injury or disease or treatment for an injury or disease
outside Australia.
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(5) Subject to subsection (1A), nothing in this Part shall be taken to confer on a person a right to be provided with treatment for an injury or disease:
   (a) by the Commonwealth; or
   (b) by the Commission otherwise than to the extent that, and in a manner that, it may be provided under arrangements made by, or with the approval of, the Commission.

85 Veterans eligible to be provided with treatment

(1) Where a determination under this Act is in force determining that an injury suffered by a veteran is a war-caused injury or that a disease contracted by a veteran is a war-caused disease, the veteran is eligible to be provided with treatment under this Part for that injury or disease from and including:
   (a) the date as from which a pension, or increased pension, is granted to the veteran under Part II in respect of his or her incapacity from that injury or disease; or
   (b) the date as from which such a pension or increased pension would have been granted to the veteran if the extent of the incapacity of the veteran from the injury or disease had not been insufficient to justify the grant of, or increase of, a pension under Part II.

Note: A veteran might stop being eligible to be provided with treatment under this Part for an injury or disease if the veteran is entitled to treatment under the MRCA for the injury or disease (see sections 85A and 85B of this Act).

(2) A veteran is eligible to be provided with treatment under this Part for malignant neoplasia, pulmonary tuberculosis or post-traumatic stress disorder from and including the date that is 3 months before the date on which the application to be provided with that treatment is lodged at an office of the Department in Australia in accordance with section 5T.

Note: A veteran might stop being eligible to be provided with treatment under this Part for an injury or disease if the veteran is entitled to treatment under the MRCA for the injury or disease (see sections 85A and 85B of this Act).

(3) Where a veteran:
   (a) is in receipt of a pension under Part II at the general rate or at a higher rate; or
(b) is in receipt of a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the table in subsection 27(1); the veteran is eligible to be provided, from and including the date as from which a pension is so payable to the veteran, with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(4) Where:

(a) a veteran rendered, while a member of the Defence Force, continuous full-time service during World War 1;

(aa) a female veteran rendered, while a member of the Defence Force, service of the kind referred to in subparagraph 7A(1)(a)(i) during the period referred to in paragraph (b) of the definition of period of hostilities in subsection 5B(1);

(b) before the MRCA commencement date a veteran was, while a member of the Defence Force, a prisoner of war during a war to which this Act applies or while serving on operational service; or

(c) the veteran is a person who was an eligible civilian within the meaning of subsection 5C(1) and was, while he or she was such a civilian, detained by the enemy during World War 2; the veteran is eligible to be provided, from and including the date on which the veteran’s application to be provided with treatment is lodged at an office of the Department in Australia in accordance with section 5T, with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(4A) A veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act, if:

(a) the veteran is 70 or over; and

(b) the veteran has rendered qualifying service during the period covered by paragraph (b) of the definition of period of hostilities in subsection 5B(1); and

(c) either:

(i) the Department has notified the veteran in writing that he or she is or will be eligible for such treatment; or
(ii) the veteran has, by written document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department that he or she seeks eligibility for such treatment.

(4B) A veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act, if:
   (a) the veteran is 70 or over; and
   (b) the veteran has rendered qualifying service within the meaning of subparagraph 7A(1)(a)(ii), (iii) or (iv) or paragraph 7A(1)(b), (c) or (f); and
   (c) either:
      (i) the Department has notified the veteran in writing that he or she is or will be eligible for such treatment; or
      (ii) the veteran has, by written document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department that he or she seeks eligibility for such treatment.

(4C) A notification by the veteran under subparagraph (4A)(c)(ii) or (4B)(c)(ii) that is lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(5) A veteran referred to in section 53D is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(7) Where a veteran:
   (a) is in receipt of a pension under Part II at a rate not less than 50 per centum of the general rate; and
   (b) is also in receipt of a service pension under Part III; the veteran is, from and including:
      (c) the date as from which that pension under Part II became so payable to the veteran; or
      (d) the date as from which that service pension became payable to the veteran;
whichever is the later date, eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.
(7A) A veteran is eligible to be provided with treatment under this Part for any injury or disease if:
   (a) the veteran is receiving a service pension under Part III; and
   (b) an impairment suffered by the veteran from one or more service injuries or diseases constitutes at least 30 impairment points (within the meaning of the MRCA); and
   (c) the treatment is provided after both paragraphs (a) and (b) begin to apply to the veteran; and
   (d) the veteran is not already being provided with treatment for any injury or disease under Chapter 6 of the MRCA.

(8) Where a service pension is suspended, the Commission may, by instrument in writing, determine, for the purposes of the application of the provisions of this section to and in relation to the person to whom the pension was granted, that that person shall be treated as if he or she were continuing to receive that pension during the period, or a specified part of the period, of the suspension.

(9) Where:
   (a) a veteran, while a member of the Defence Force, rendered continuous full-time service outside Australia in the area described in item 4 or 8 of Schedule 2 (in column 1) while that area was an operational area, whether or not the veteran rendered that service:
      (i) as a member of a unit of the Defence Force that was allotted for duty; or
      (ii) as a person who was allotted for duty;
      in that area; and
   (b) the Commission is satisfied that the veteran requires urgent treatment for an injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act;

   the veteran is eligible to be provided with treatment under this Part for that injury or disease:
   (c) at a hospital formerly operated and maintained by the Commission, if the Commission is satisfied that provision of that treatment will not adversely affect the capacity of the person operating the hospital to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of a preceding subsection or dependants of veterans.
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eligible to be provided with treatment by virtue of subsection 86(1), (2), (3) or (4);
(d) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b); or
(e) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b).

(10) Where a veteran has been provided with treatment at a hospital under subsection (9) for an injury or disease, the Commission may provide further treatment for that injury or disease otherwise than at a hospital of a kind referred to in that subsection if it is of the opinion that that further treatment is desirable.

(11) Where a veteran would, but for the operation of section 26, 30C, 30D or 74, be in receipt of a pension under Part II:
(a) at a rate referred to in paragraph (3)(a) or (7)(a) of this section; or
(b) in respect of incapacity of a kind referred to in paragraph (3)(b) of this section;
subsection (3) or (7), as the case requires, of this section applies to the veteran as if the veteran were in receipt of that pension.

(12) Where a veteran is, under a preceding subsection of this section, eligible to be provided with treatment under this Part for an injury suffered, or disease contracted, by the veteran from and including a particular date and is also, under another preceding subsection of this section, eligible to be provided with treatment under this Part for that injury or disease from and including an earlier date, the Commission may arrange for the veteran to be provided with treatment for that injury or disease from and including that earlier date.
85A Treatment under section 279 or 280 of the MRCA for aggravated injuries or diseases

(1) This section applies if:

(a) a person is entitled to treatment for an aggravated injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and

(b) apart from this section, the person would also be eligible to be provided with treatment for the original injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

(2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for the original injury or disease during the period in which the person is provided with treatment for the aggravated injury or disease.

(3) During this period, the treatment for the original injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (compensable treatment) but not for the purposes of section 273 of that Act (compensation for those entitled to treatment).

85B Treatment under section 279 or 280 of the MRCA if a person is entitled to treatment under the VEA for a separate injury or disease

(1) This section applies if:

(a) a person is entitled to treatment for a service injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and

(b) apart from this section, the person would also be eligible to be provided with treatment for a separate war-caused or defence-caused injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

(2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for
the war-caused or defence-caused injury or disease during the period in which the person is provided with treatment for the service injury or disease.

(3) During this period, the treatment for the war-caused or defence-caused injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (compensable treatment) but not for the purposes of section 273 of that Act (compensation for those entitled to treatment).

86 Dependants eligible to be provided with treatment

(1) Where a determination under this Act is in force determining that the death of a veteran is war-caused, a dependant of the deceased veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act, from and including the date as from which a pension under Part II became payable to the dependant or would have become payable to the dependant but for the operation of subsection 13(7), 30(3), 30C(2) or (3) of this Act or the dependant being in receipt of a pension under the Social Security Act.

(2) Where:

   (a) a deceased veteran was, immediately before the veteran’s death, in receipt of a pension under Part II at the rate specified in subsection 22(4) or 24(4) or (6) or at a rate that had been increased under section 27 by reason that the veteran’s pension was in respect of incapacity of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in subsection 27(1); or

   (b) a pension has been granted under Part II, after the death of a veteran, in respect of the veteran at the rate specified in subsection 22(4) or 24(4) or (6) or at a rate that had been increased under section 27 by reason that the veteran’s pension was in respect of incapacity of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in subsection 27(1); or

   (c) a deceased veteran was, before the MRCA commencement date, a prisoner of war at a time when the veteran was on operational service;
a dependant of the deceased veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this subsection, from and including the day immediately following the day on which the veteran died.

(2A) A reinstated pensioner is eligible to be provided with treatment under this Part for any injury suffered or disease contracted by the pensioner whether before or after the commencement of this Act. The pensioner is eligible from and including the date as from which a pension under Part II:

(a) became payable to the pensioner; or

(b) would have become payable except for:

(i) the operation of subsection 30(3); or

(ii) the pensioner being in receipt of a pension under the Social Security Act.

(3) A child of a deceased veteran who is in receipt of, is eligible to receive or would, but for subsection 13(7), be eligible to receive a pension under Part II by virtue of subsection 13(4) is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the child, whether before or after the commencement of this Act.

(4) A child of a deceased veteran is eligible to be provided with treatment under subsection (3) from and including:

(a) subject to paragraph (b)—the day (in this subsection referred to as the relevant day) immediately following the day on which the veteran died; or

(b) if the Commission is satisfied that the child was then being maintained by a parent, adoptive parent or step-parent, the earliest day after the relevant day as from which the Commission is satisfied that the child was not being so maintained.

(5) Where the Commission is satisfied that a dependant of a veteran referred to in paragraph 85(9)(a) requires urgent treatment for an injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act, the dependant is eligible to be provided with treatment under this Part for that injury.
Part V  Medical and other treatment

Section 88A

(a) at a hospital formerly operated and maintained by the Commission, if the Commission is satisfied that provision of the treatment will not affect the capacity of the person operating the hospital to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of subsection 85(1), (2), (3), (4), (5), (7) or (8) or dependants of veterans eligible to be provided with treatment by virtue of a preceding subsection of this section; or

(b) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b); or

(c) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b).

(6) Where a dependant of a veteran has been provided with treatment at a hospital under subsection (5) for an injury or disease, the Commission may provide further treatment for the dependant for that injury or disease otherwise than at a hospital of a kind referred to in that subsection if it is of the opinion that that further treatment is desirable.

88A  Commission may determine specified veterans and others are eligible to be provided with specified treatment

(1) The Commission may, by written determination, state the following:

(a) that a veteran included in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(b) that a person who is the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(c) that a person who was the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part.

(1A) However, the Commission may only make a determination under subsection (1) in respect of veterans who render service before the MRCA commencement date.
Note: The Military Rehabilitation and Compensation Commission can arrange for treatment of a specified kind for veterans who render service after the MRCA commencement date, or for dependants of such veterans (see section 424 of the MRCA).

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

(3) A determination under this section is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

89 Treatment at hospitals and other institutions

(1) For the purposes of this Part, the Commission may:

(a) establish, operate and maintain hospitals or other institutions for the care and welfare of persons eligible to be provided with treatment under this Part;

(b) enter into arrangements with the appropriate authority of the Commonwealth, a State or a Territory for the provision, at a hospital or other institution operated by the Commonwealth, the State or the Government of the Territory, as the case may be, of care and welfare for persons eligible to be provided with treatment under this Part; and

(c) enter into arrangements with the body (other than an authority referred to in paragraph (b)) operating a hospital or other institution for the provision, at that hospital or institution, of care and welfare for persons eligible to be provided with treatment under this Part.

(2) In subsection (1), a reference to a hospital or other institution is to be read as including a reference to a home, a hostel, a medical centre, an out-patient clinic and a rehabilitation or training establishment.

90 Guide to the provision of treatment

(1) The Commission may, from time to time, prepare a written document, to be known as the “Treatment Principles”, setting out circumstances in which, and conditions subject to which, treatment of a particular kind, or included in a particular class of treatment,
may be provided under this Part for, or in respect of, eligible persons:
(b) at a hospital or other institution in respect of which the Commission has entered into arrangements under paragraph 89(1)(b) or (c); or
(c) otherwise under this Part.

(1A) The Treatment Principles may also include provisions dealing with the following matters in relation to treatment to be provided to an eligible person:
(a) whether approval by the Commission of the treatment is required;
(b) if approval by the Commission of the treatment is required—the exercise of the Commission’s power to approve the treatment, whether before or after the treatment is given or begins to be given;
(c) where the treatment may be provided.

(2) Without limiting the generality of subsection (1), a document referred to in that subsection may specify kinds or classes of treatment that will not be provided for, or in respect of, eligible persons under this Part, or will not be so provided at places, or in circumstances, specified or described in the document.

(3) The provisions of the approved Treatment Principles are binding on the Commission in the exercise by it of its powers and discretions under this Part.

(4) The Commission may, from time to time, by instrument in writing, vary or revoke the document prepared by it in accordance with subsection (1).

(5) A document prepared by the Commission in accordance with subsection (1), and an instrument under subsection (4), have no force or effect unless and until approved by the Minister.

(6) When a document prepared by the Commission in accordance with subsection (1), or an instrument under subsection (4) has been approved by the Minister, the Commission shall furnish copies of the document or instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives those copies.
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(7) The Commission shall make copies of the approved Treatment Principles available upon application and payment of the prescribed fee (if any).

(8) In this section eligible person means a person eligible under section 85, 86 or 88A to be provided with treatment.

90A Determination etc. of Repatriation Private Patient Principles

(1) The Commission may, in writing, determine principles setting out the circumstances in which treatment provided by the Commission to eligible persons is to be provided to them as private patients.

(2) The principles may also include provisions dealing with the following matters in relation to treatment to be provided to an eligible person as a private patient:
   (a) whether approval by the Commission of the treatment is required;
   (b) if approval by the Commission of the treatment is required—the exercise of the Commission’s power to approve the treatment, whether before or after the treatment has been given or begun;
   (c) where the treatment may be provided.

(3) The Commission may, in writing, vary or revoke the principles at any time.

(4) A determination or amendment of principles has no effect unless the Minister has, in writing, approved the instrument making the determination or amendment.

(5) An instrument determining or amending principles that has been approved by the Minister is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(6) For the purposes of sections 48, 48A, 48B and 49 of the Acts Interpretation Act 1901 as they apply to an instrument determining or amending principles:
   (a) the instrument is taken to be made on the day on which the Minister approved the instrument; and
   (b) the references in section 48 of that Act to the date of notification of the instrument are to be read as references to the date on which the Minister approved the instrument.
Section 90B

(7) The Commission must make copies of the principles, and any amendments of the principles, available upon application and payment of the prescribed fee (if any).

(8) For the purposes of this section, treatment is taken to be provided to a person as a private patient if:
   (a) the treatment is provided to the person as a person who is, for the purposes of the Health Insurance Act 1973, a private patient of a hospital; or
   (b) the treatment is provided to the person by a medical specialist to whom the person has been referred but is not provided at a hospital.

(9) In this section: eligible person means a person eligible under section 85 or 86 to be provided with treatment.

90B Application of Repatriation Private Patient Principles

(1) The Commission may, by notice published in the Gazette, declare that the Repatriation Private Patient Principles are to apply in relation to a specified State or Territory from a specified day.

(2) If the Commission publishes a notice under subsection (1) declaring that the Repatriation Private Patient Principles are to apply in relation to a specified State or Territory from a specified day, then, on and after the specified day, for so long as the notice remains in force, the Repatriation Private Patient Principles are binding on the Commission in the exercise of its powers and discretions under this Part in relation to the provision of treatment in the State or Territory.

91 Pharmaceutical benefits

(1) The Commission may, from time to time, by instrument in writing, prepare a scheme for the provision of pharmaceutical benefits to persons eligible to be provided with treatment under this Part.

(1A) Without limiting the generality of subsection (1), an instrument under that subsection may specify classes of persons eligible to be provided with treatment under this Part for whom pharmaceutical benefits, or pharmaceutical benefits of a kind specified in the
instrument or included in a class of pharmaceutical benefits so specified, will not be so provided or will not be so provided in circumstances specified or described in the instrument.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke an instrument prepared in accordance with subsection (1).

(3) A scheme prepared by the Commission under subsection (1), and an instrument under subsection (2), have no force or effect unless and until approved by the Minister.

(4) When an instrument prepared by the Commission in accordance with subsection (1), or an instrument under subsection (2), has been approved by the Minister, the Commission shall furnish copies of the instrument to the Minister and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives those copies.

(5) The Commission shall make copies of a scheme prepared in accordance with subsection (1) that has been approved by the Minister, and of any variations of such a scheme that have been so approved, available upon application and payment of the prescribed fee (if any).

(6) Where the Pharmaceutical Benefits Remuneration Tribunal established under the National Health Act 1953 is holding, or proposes to hold, an inquiry under that Act to ascertain whether the Commonwealth price of all or any pharmaceutical benefits under that Act should be varied, the Minister may request that Tribunal to extend its inquiry to include the question whether the prices payable to pharmaceutical chemists in respect of the supply by them, in accordance with an approved scheme or a determination under paragraph 286(1)(c) of the MRCA, of pharmaceutical benefits of the kinds specified by the Minister in his or her request should be varied and, where such a request is made, the Tribunal shall comply with the request.

(7) After completion of an inquiry referred to in subsection (6), the Pharmaceutical Benefits Remuneration Tribunal shall submit to the Minister:
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(a) the recommendations of the Tribunal on the question the subject of the request made by the Minister under subsection (6); and

(b) where the Tribunal has submitted to the Minister administering Part VII of the National Health Act 1953 a report in connection with that inquiry—a copy of that report.

(8) If the Pharmaceutical Benefits Remuneration Tribunal submits the recommendations and a copy of the report to the Minister:

(a) the Commission may prepare an instrument under subsection (2) varying the approved scheme; or

(b) the Military Rehabilitation and Compensation Commission may vary the determination under paragraph 286(1)(c) of the MRCA;

in any manner the relevant Commission considers desirable as a result of its consideration of the recommendations and the report.

(9) In this section:

approved scheme means a scheme prepared under subsection (1) and approved by the Minister under subsection (3) or, if the scheme so approved has been varied by the Commission and the variation has been approved by the Minister, the scheme as so varied.

pharmaceutical benefits means drugs, medicinal preparations and other pharmaceutical items (including aids to treatment and dressings) for the treatment of sicknesses or injuries suffered by human beings.

92 Counselling services and psychiatric assessment

(1) The Commission may, with the approval of the Minister, arrange for the provision of:

(a) counselling services for:

(i) veterans and dependants of veterans; and

(ii) a person in a class in respect of which a determination under paragraph 88A(1)(c) has been made; and

(b) psychiatric assessment of a person in a class in respect of which a determination under paragraph 88A(1)(b) or (c) has been made.
93 Recovery of cost of treatment

(1) In this section, compensation, in relation to a person who is being, or has been, provided with treatment by the Commission under this Part, means an amount that is by way of compensation or damages, or is, in the opinion of the Commission, in the nature of compensation or damages, in respect of the disease, disability or condition by reason of which that treatment is being, or has been, provided.

(2) Where a person (in this section referred to as the patient) who is being, or has been, provided with treatment under this Part:

(a) has made a claim against another person for compensation, or may be, or may become, entitled to be paid compensation by another person, in relation to the disease, disability or condition by reason of which that treatment is being so provided, or has been so provided;

(b) is entitled, whether by virtue of an order of a court, a settlement of a claim for compensation or otherwise, to be so paid compensation by another person; or

(c) has been so paid compensation by another person, whether by virtue of an order of a court, a settlement of a claim for compensation or otherwise;

the Commission may cause to be served on the patient a notice in writing requiring the patient to pay for the treatment that has been provided for the patient under this Part before the date of service of the notice, and for any treatment that is provided for the patient under this Part at any time on or after that date, for or in relation to that disease, disability or condition and, upon service of the notice, the patient becomes, by force of this section, liable to pay to the Commonwealth an amount equal to the cost, or amounts aggregating the sum of the costs, as determined by the Commission, of and incidental to:

(d) the treatment that has been so provided for the patient before the date of service of the notice; and

(e) any treatment that is so provided for the patient on or after that date.
(3) Where the patient is, in pursuance of subsection (2), liable to make payment to the Commonwealth for treatment provided by the Commission, the Commission may, by notice in writing served on a person (in this section referred to as the relevant person) who:
(a) may be, or may become, liable; or
(b) is liable;
to pay compensation to, or for the benefit of, the patient in respect of the disease, disability or condition by reason of which that treatment is being, or has been, provided, inform the relevant person that the patient is liable to make payment to the Commonwealth for treatment provided under this Part, whether before or after the service of the notice, for or in relation to that disease, disability or condition.

(4) Where the relevant person on whom a notice has been served under subsection (3):
(a) is, when the notice is served on him or her, liable to pay compensation to or for the benefit of the patient to whom the notice relates in respect of the disease, disability or condition to which the notice relates; or
(b) becomes, after service of the notice, so liable to pay compensation;
the relevant person becomes liable, by virtue of this subsection, to pay to the Commonwealth:
(c) an amount equal to the cost of the treatment provided for the patient in respect of that disease, disability or condition under this Part that the patient is liable, or may become liable, under subsection (2) of this section to pay; or
(d) an amount equal to the amount of the compensation that the relevant person is liable, or becomes liable, so to pay; whichever is the less.

(5) Where, before a notice is served on the relevant person under subsection (3), the relevant person has paid to, or for the benefit of, the patient the whole of the compensation that the relevant person is liable to pay in respect of the disease, disability or condition to which the notice relates, the notice has no force or effect.

(6) Where the relevant person is liable, or becomes liable, to pay an amount to the Commonwealth under subsection (4), the person shall not, without the permission of the Commission, pay the
compensation, or any part of the compensation, to, or for the benefit of, the patient.

(7) Payment to the Commonwealth of an amount that the relevant person is liable to pay to the Commonwealth under subsection (4) operates, to the extent of the payment, as a discharge to the relevant person of his or her liability to pay compensation to the person entitled to receive the compensation and as a discharge to that last-mentioned person of his or her liability under subsection (2).

(8) The Commonwealth may recover in a court of competent jurisdiction an amount that a person is liable to pay to the Commonwealth under subsection (2) or (4).

(9) Where the Commission determines, in writing, the amount of the cost of, and incidental to, treatment provided under this Part for the patient during a specified period in respect of a disease, disability or condition in relation to which a notice has been served on the patient under subsection (2), the Commission may serve a notice on the patient containing a copy of that determination, or notices on the patient and the relevant person containing copies of that determination, and, if it does so, a copy so served is, for all purposes, *prima facie* evidence:

   (a) that the copy of that determination set out in the notice is a true copy of the determination of which it purports to be a copy;

   (b) that that determination was duly made by the Commission; and

   (c) that the amount specified in the determination is the amount that the patient is liable, by force of subsection (2), to pay to the Commonwealth as the cost of and incidental to the treatment provided for the patient under this Part during the period so specified for and in relation to that disease, disability or condition.
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(10) Service of a notice, or notices, under subsection (9) on a patient, or on a patient and the relevant person, in relation to the cost of the treatment provided by the Commission under this Part does not prevent the making of a further determination, and the service by the Commission of a further notice, or of further notices, under that subsection on the patient, or on the patient and the relevant person, in relation to the cost of other treatment provided by the Commission for the patient under this Part.

(11) The reference in subsection (2) to another person shall be read as including a reference to the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

(12) The reference in subsection (3) to a person (not being the patient) shall be read as including a reference to an insurer who, under a contract of insurance, is liable to indemnify the person liable to pay compensation to, or for the benefit of, the patient against that liability.

93A Charges payable to Commonwealth

(1) In this section:

contributor has the same meaning as it has in the National Health Act 1953.

registered organisation has the same meaning as it has in the National Health Act 1953.

(2) Where:

(a) a person is provided with treatment under section 85 or 86;
(b) the person is a contributor to a fund conducted by a registered organisation; and
(c) the person will, in the opinion of the Commission, if the person pays or becomes liable to pay to the Commonwealth an amount in respect of the treatment, be entitled to receive an amount by way of benefit as such a contributor in respect of that treatment;

the Commission may, by notice in writing given to the person, request the person to pay to the Commonwealth in respect of the treatment an amount specified in the notice, being an amount ascertained in accordance with a scale of charges determined by the Commission by instrument in writing, and where the

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Commission gives such a notice to the person, the person is liable to pay to the Commonwealth the amount specified in the notice.

(3) Where:

(a) a person is liable to pay an amount to the Commonwealth under subsection (2) in respect of treatment; and

(b) a registered organisation becomes liable to pay an amount by way of benefit to that person as a contributor in respect of that treatment;

the registered organisation is liable to pay the amount referred to in paragraph (b) to the Commonwealth, and payment of that amount to the Commonwealth operates as a discharge of that person’s liability under subsection (2) in respect of the treatment and as a discharge of the liability of the registered organisation to pay that amount to that person.

(4) The Commonwealth may recover in a court of competent jurisdiction an amount that a registered organisation is liable to pay to the Commonwealth under subsection (3).

93B False statements relating to treatment

(1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is:

(a) false or misleading in a material particular; and

(b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: $2,000.

(2) Where:

(a) a person (in this subsection referred to as the principal) makes a statement (in this subsection referred to as the principal’s statement), whether oral or in writing, that is false or misleading in a material particular;

(b) the principal’s statement is capable of being used in connection with a claim for payment for treatment provided under this Part;

(c) the material particular in respect of which the principal’s statement is false or misleading is substantially based upon a statement (in this subsection referred to as the associate’s statement) made, either orally or in writing, to the principal.
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or to the agent of the principal, by another person (in this subsection referred to as the associate) who is an employee or agent of the principal; and
(d) the associate’s statement is false or misleading in a material particular;
the associate is guilty of an offence punishable on conviction by a fine not exceeding $2,000.

(3) In subsection (2), a reference to an employee of a person shall, in a case where the person is a corporation, be read as a reference to:
(a) a director, secretary, manager or employee of the corporation;
(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
(c) a liquidator of the corporation appointed in a voluntary winding up.

(4) Notwithstanding section 15B of the Crimes Act 1914, a prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.

(4A) An offence under subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was:
(a) false or misleading in a material particular; or
(b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the Criminal Code.

(6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.
93C  Knowingly making false statements relating to treatment

(1) A person shall not make, or authorise the making of, a statement, whether oral or in writing, if the person knows that the statement is:
   (a) false or misleading in a material particular; and
   (b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: $10,000 or imprisonment for 5 years, or both.

(2) Where:
   (a) a person (in this subsection referred to as the principal) makes a statement (in this subsection referred to as the principal’s statement), whether oral or in writing, that is false or misleading in a material particular;
   (b) the principal’s statement is capable of being used in connection with a claim for payment for treatment provided under this Part;
   (c) the material particular in respect of which the principal’s statement is false or misleading is substantially based upon a statement (in this subsection referred to as the associate’s statement) made, either orally or in writing, to the principal or to an agent of the principal by another person (in this subsection referred to as the associate) who is an employee or agent of the principal;
   (d) the associate knew that the associate’s statement was false or misleading in a material particular; and
   (e) the associate knew, or had reasonable grounds to suspect, that the associate’s statement would be used in the preparation of a statement of the kind referred to in paragraph (b);

the associate is guilty of an offence punishable on conviction by a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years, or both.

(3) In subsection (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to:
   (a) a director, secretary, manager or employee of the corporation;
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(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

(5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

93D Bribery etc.

(1) In this section:

dental practitioner means a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists.

eligible person means a person eligible under section 85 or 86 to be provided with treatment under this Part.

in-patient, in relation to a private hospital, means a person who occupies a bed in the hospital.

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

officer, in relation to a corporation, includes:

(a) a director, secretary, manager or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

pathology service means a procedure of a kind described in an item in the table of medical services set out in Schedule 1A to the Health Insurance Act 1973.

patient means an eligible person who is provided with treatment under this Part.

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practitioner means:
(a) a medical practitioner; or
(b) a dental practitioner.

private hospital means premises that are a private hospital for the purposes of section 3 of the Health Insurance Act 1973.

proprietor means:
(a) in relation to premises—the person, authority or body of persons having effective control of the premises, whether or not that person, authority or body is the holder of an estate or interest in the premises; and
(b) in relation to a private hospital—the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital.

(2) A person who:
(a) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered, directly or indirectly offers any inducement (whether by way of money, property or other benefit or advantage), or threatens any detriment or disadvantage:
   (i) to a practitioner as defined in subsection (1) in order to encourage the practitioner to request the rendering of a pathology service or of pathology services; or
   (ii) to a person (other than a practitioner as defined in subsection (1)) in order to encourage such a practitioner to request the rendering of a pathology service or of pathology services;
(b) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered:
   (i) directly or indirectly invites a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or
   (ii) does any act or thing that the person knows, or ought reasonably to know, is likely to have the effect of directly or indirectly encouraging a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or
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(c) being a practitioner as defined in subsection (1) who provides treatment for eligible persons under this Part, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself, or for any other person, from a person carrying on the business of rendering pathology services or from a person acting on behalf of a person carrying on such a business; is guilty of an offence against this section.

(3) In subsection (2):

(a) a reference to requesting the rendering of a pathology service shall be read as a reference to requesting the rendering of a pathology service or of pathology services for a person who is eligible to be provided with that service or those services under this Part;

(b) a reference to requesting the rendering of pathology services shall be read as a reference to requesting the rendering of pathology services for persons who are eligible to be provided with those services under this Part; and

(c) a reference to a person carrying on the business of rendering pathology services shall be read as a reference to a person who carries on a business in the course of which any pathology services are rendered.

(4) A person who, being a practitioner as defined in subsection (1), asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself or for any other person from a proprietor of a private hospital or from a person acting on behalf of such a proprietor on the understanding that the first-mentioned person will, in any manner, do any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, is guilty of an offence against this section.

(5) A person who, being a proprietor or one of the proprietors of a private hospital or a person acting on behalf of such a proprietor, in order to influence or affect a practitioner as defined in subsection (1) in the doing of any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, gives or confers, or agrees to give or
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confer, to or on the practitioner or any other person any property, benefit or advantage of any kind, is guilty of an offence against this section.

(6) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.

(7) A reference in subsection (6) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who intentionally authorises or permits the commission of the offence.

(8) A person who is convicted of an offence against this section is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years.

(9) In a prosecution of a person for an offence against this section, it is a defence if the person proves that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

(9A) Paragraph (2)(c), and subsections (4) and (5), do not apply if the person concerned has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9A). See subsection 13.3(3) of the Criminal Code.

(10) Where a person is convicted of an offence against this section by virtue of subsection (4) or (5) in relation to the admission of a person as an in-patient in a hospital, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commonwealth an amount equal to the sum of any amounts paid by the Commonwealth in respect of treatment provided under this Part for the in-patient of the private hospital concerned.

(11) For the purpose of the definition of pathology service in subsection (1), Schedule 1A of the Health Insurance Act 1973 shall be read as if the following symbols were omitted, namely, “(S.P.)” and “(O.P.)”.

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93E Prohibited practices in relation to the rendering of pathology services

(1) An approved pathology practitioner who accedes to a request from a practitioner as defined in subsection 93D(1) (in this subsection referred to as the requesting practitioner) to provide pathology services to an eligible person, being services that the person is eligible to be provided with under this Part, shall not make a payment, directly or indirectly, to the requesting practitioner for the services provided by the requesting practitioner to that eligible person in connection with the making of that request and, in particular, shall not make a payment, directly or indirectly, to the requesting practitioner in respect of any use of the staff of the requesting practitioner to achieve the result of taking pathology specimens from that eligible person.

(2) Where an approved pathology practitioner has entered into an arrangement with a practitioner as defined in subsection 93D(1) under which there are shared between the 2 practitioners the cost to them of employing staff or of buying, renting or maintaining items of equipment, whether or not the arrangement involves the payment of money or the provision of other consideration, the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from that other practitioner to provide pathology services to an eligible person, being services that the eligible person is eligible to be provided with under this Part.

(3) An approved pathology practitioner shall not provide, at the premises of a practitioner as defined in subsection 93D(1), nursing or other staff to take pathology specimens for use in rendering pathology services from eligible persons who are eligible to be provided with those services under this Part, whether the staff is stationed on those premises full-time or part-time or visits those premises from time to time.

(4) Where:

(a) there is in force between an approved pathology practitioner and another practitioner, being a practitioner as defined in subsection 93D(1), an arrangement under which:

(i) the 2 practitioners share a particular space in a building; or
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(ii) one practitioner provides space in a building for the use or occupation of the other practitioner or permits the other practitioner to use or occupy space in a building; and

(b) the charges payable under the arrangement are not charges fixed at normal commercial rates;

the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from the other practitioner to provide pathology services to an eligible person who is eligible to be provided with those services under this Part.

(5) A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence against this section.

(6) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.

(7) A reference in subsection (6) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who intentionally authorises or permits the commission of the offence.

(8) A person who is convicted of an offence against this section is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years.

(9) In this section:

approved pathology practitioner has the same meaning as it has in section 129AAA of the Health Insurance Act 1973.

eligible person, officer and pathology service have the same respective meanings as they have in section 93D.

93F Offences against 2 or more provisions

(1) Where the act or omission of a person is an offence against a provision of this Act and is also an offence against another provision of this Act, the person may be prosecuted and convicted for either of those offences, but the person is not liable to be punished more than once in respect of the same act or omission.
Part V  Medical and other treatment

Section 93G

(2) A reference in subsection (1) to an offence against a provision of this Act includes a reference to an offence against:

(a) section 6 of the Crimes Act 1914; or
(b) section 11.1, 11.4 or 11.5 of the Criminal Code;
that relates to an offence against a provision of this Act.

93G  Statements inadmissible in evidence

(1) Where a person who has provided treatment for an eligible person under this Part (in this subsection referred to as the provider of the treatment) has been counselled by an officer of the Department with respect to the provision of treatment to eligible persons under this Part, a statement made by the provider of the treatment in the course of the counselling is inadmissible as evidence against the provider of the treatment in proceedings for the prosecution of the provider of the treatment for a relevant offence unless:

(a) the provider of the treatment has consented to the admission of the statement as evidence in the proceedings; or
(b) evidence of the statement is adduced to refute evidence of another statement made by the provider of the treatment in the course of being so counselled, where evidence of that other statement has been admitted in the proceedings on behalf of the provider of the treatment.

(2) In subsection (1), relevant offence means:

(a) an offence against section 93B, 93C, 93D or 93E of this Act; or
(b) an offence against:

(i) section 6 of the Crimes Act 1914; or
(ii) section 11.1, 11.4 or 11.5 of the Criminal Code;
that relates to an offence referred to in paragraph (a) of this subsection.

93H  Recovery of amounts paid because of false statements

(1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of payment for treatment provided under this Part for an eligible person, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the
Section 93H

(2) Where:

(a) an amount (in this subsection referred to as the \textit{principal sum}) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under subsection (1);

(b) the Commission has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and

(c) either of the following conditions is satisfied:

(i) an arrangement has been entered into between the Commission and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the Commission allows (which period or longer period is in this section referred to as the \textit{relevant period}), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or

(ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid;

then, from the day after the end of the relevant period, interest, at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the \textit{Health Insurance Act 1973}, becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

(3) Notwithstanding subsection (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under subsection (2), the court may order that the interest payable under that subsection shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that subsection.

(4) Notwithstanding any other provision of this Act, where an amount paid to a person, purportedly by way of payment for treatment provided for an eligible person under this Part, exceeds the amount
Part V  Medical and other treatment

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(if any) that should have been paid to that person (which excess is referred to in this subsection as the *excess amount*), the Commission may, if the person so agrees, reduce the amount of any payment that subsequently becomes payable to that person under this Act by an amount not exceeding the amount by which the sum of the excess amount and any excess amounts previously paid to that person is greater than the sum of any amounts recovered by the Commission by one or more previous applications of this subsection or under subsection (1).

93J Prosecution of offences

(1) Subject to subsection (2), an offence against section 93C, 93D or 93E is an indictable offence.

(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is a fine not exceeding $1,000 or imprisonment for a period not exceeding 6 months.
Part VA—Extension of Repatriation
Pharmaceutical Benefits Scheme

Division 1—Definitions

93K Definitions

(1) In this Part:

*pharmaceutical benefits* has the same meaning as in subsection 91(9).

*pharmaceutical benefits scheme* means an *approved scheme* within the meaning of subsection 91(9).

(2) In this Part, a person is the *holder of a pharmaceutical benefits card under this Part* while there is in force under section 93X a determination that the person is entitled to a pharmaceutical benefits card under this Part.
Part VA  Extension of Repatriation Pharmaceutical Benefits Scheme
Division 2  Pharmaceutical benefits may be obtained

Section 93L

Division 2—Pharmaceutical benefits may be obtained

93L. Certain veterans and mariners may obtain pharmaceutical benefits

(1) If a Commonwealth veteran, allied veteran or allied mariner is the holder of a pharmaceutical benefits card under this Part, then the veteran or mariner may obtain pharmaceutical benefits under the pharmaceutical benefits scheme as if the veteran or mariner were a person who is eligible to be provided with treatment under Part V.

Note 1: For the meanings of Commonwealth veteran, allied veteran and allied mariner, see subsection 5C(1).

Note 2: Apart from enabling the obtaining of pharmaceutical benefits, subsection 93L(1) has the effect of applying provisions of Part V such as section 93 (Recovery of costs of treatment), section 93B (False statements relating to treatment) and section 93C (Knowingly making false statements relating to treatment) to the veteran or mariner in respect of pharmaceutical benefits provided to the veteran or mariner.

(2) Nothing in this section entitles a Commonwealth veteran, allied veteran or allied mariner to be provided with a form of treatment, other than pharmaceutical benefits, under Part V.
Division 3—Eligibility for, and entitlement to, pharmaceutical benefits card

Subdivision A—Eligibility

93M Who is eligible?

(1) A Commonwealth veteran, an allied veteran or an allied mariner is eligible for a pharmaceutical benefits card under this Part if the veteran or mariner:
   (a) is 70 years of age or older; and
   (b) has rendered qualifying service during a period covered by paragraph (a) or (b) of the definition of period of hostilities in subsection 5B(1); and
   (c) has been an Australian resident for a continuous period of at least 10 years.

Note 1: For qualifying service see section 7A and Division II of Part III.
Note 2: For Australian resident see section 5G.

(2) If:
   (a) a Commonwealth veteran, allied veteran or allied mariner has been an Australian resident during more than one period; and
   (b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and
   (c) the aggregate of those periods is more than 10 years;
then, in the application of paragraph (1)(c) to the veteran or mariner, the period of 10 years specified in that paragraph is to be reduced by a period equal to the period by which the aggregate is more than 10 years.
Subdivision B—Entitlement

93N Entitlement to a pharmaceutical benefits card under this Part

Even though a person is eligible for a pharmaceutical benefits card under this Part, it is only if the person is the holder of a pharmaceutical benefits card under this Part that pharmaceutical benefits under the pharmaceutical benefits scheme may be provided to the person by the Commonwealth.

Note: For holder of a pharmaceutical benefits card under this Part see subsection 93K(2).
Division 4—Claim for pharmaceutical benefits card under this Part

93P  Need for a claim

A person who wants to be granted a pharmaceutical benefits card under this Part must make a proper claim.

Note: For proper claim see section 93R (form), section 93S (manner of lodgment) and section 93T (residence/presence in Australia).

93Q  Who can claim?

(1) Subject to subsection (2), a claim must be made by:
   (a) the person who wants to be granted a pharmaceutical benefits card under this Part; or
   (b) with the approval of the person—another person on the person’s behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

93R  Making a claim

(1) To be a proper claim, the claim must be:
   (a) made in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
   (d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

93T  Claimant must be an Australian resident and in Australia

A claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and
Part VA  Extension of Repatriation Pharmaceutical Benefits Scheme

Division 4  Claim for pharmaceutical benefits card under this Part

Section 93U

(b) in Australia;

on the day on which the claim is lodged.

Note: For Australian resident see section 5G.

93U  Claim may be withdrawn

(1) A claimant for a pharmaceutical benefits card under this Part or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

Oral withdrawal of a claim

(5) An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

Acknowledgment of oral withdrawal of a claim

(6) As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

 Reactivating the withdrawn claim

(7) If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph (6)(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.
Division 5—Investigation of claim

93V Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a pharmaceutical benefits card under this Part, the Secretary must investigate the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must submit the claim to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.
Division 6—Consideration and determination of claim

93W Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission’s opinion, relevant to the claim and must then determine the claim.

(2) In considering the claim, the Commission must:
   (a) satisfy itself with respect to; or
   (b) determine;
   (as the case requires) all matters relevant to the determination of the claim.

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 93V; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

Note: A claimant may apply to the Commission for review of a determination made under this section (see section 93Z).

93X Entitlement determination

The Commission must determine that a person is entitled to a pharmaceutical benefits card under this Part if the Commission is satisfied that the person is eligible for the card.

93Y Date of effect of determination

(1) A determination under section 93X takes effect:
   (a) if the determination is made before 1 January 2002—on 1 January 2002 or on such later day as is specified in the determination; or
   (b) if the determination is made after 1 January 2002—on the day that the determination is made or on such later day or earlier day as is specified in the determination.
(2) For the purposes of paragraph (1)(b), a day before 1 January 2002 may not be specified as an earlier day.
Part VA  Extension of Repatriation Pharmaceutical Benefits Scheme
Division 7  Review of decisions

Section 93Z

Division 7—Review of decisions

93Z  Review of certain decisions

A claimant who is dissatisfied with a decision of the Commission in relation to a claim for a pharmaceutical benefits card under this Part may request the Commission to review the decision.

93ZA  Application for review

(1) A request for review of a decision under section 93Z must:
(a) be made within 3 months after the person seeking review was notified of the decision; and
(b) set out the grounds on which the request is made; and
(c) be in writing; and
(d) be lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) If a request for review of a decision is made in accordance with subsection (1), the Commission must review the decision.

93ZB  Commission’s powers where request for review

(1) If the Commission reviews a decision under this Division, the Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must substitute a new decision in accordance with this Act.

Note: For the Commission’s evidence gathering powers see section 93ZF.

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93ZC  Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a decision that a person is entitled to a pharmaceutical benefits card under this Part, the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission must not be earlier than the date from which, had the Commission determined that the person is entitled to a pharmaceutical benefits card under this Part, such a determination could have taken effect.

93ZD  Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division it must make a written record of its decision upon review.

(2) The written record must include a statement that:
   (a) sets out the Commission’s findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission’s decision.

93ZE  Person who requested review to be notified of decision

(1) If the Commission affirms or sets aside a decision under this Division, it must give the person who requested the review of the decision:
   (a) a copy of the Commission’s decision; and
   (b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 93ZD(2); and
   (c) if the person has a right to apply to the Administrative Appeals Tribunal for a review of the Commission’s decision—a statement giving the person particulars of that right.
(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:
   (a) is of a confidential nature; or
   (b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;
then the copy given to the person must not contain that matter.

93ZF Powers of Commission to gather evidence

(1) The Commission or the Commission’s delegate may, in reviewing a decision under this Division:
   (a) take evidence on oath or affirmation for the purposes of the review; and
   (b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission’s delegate may, for the purposes of the review:
   (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
   (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
   (c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The Commission’s power under paragraph (1)(a) to take evidence on oath or affirmation:
   (a) may be exercised on behalf of the Commission by:
      (i) the presiding member or the Commission’s delegate; or
      (ii) by another person (whether a member or not) authorised by the presiding member or the Commission’s delegate; and
   (b) may be exercised within or outside Australia; and

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(c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:
   (a) all the powers of the Commission under subsection (1); and
   (b) all the powers of the presiding member under subsection (2);
   for the purposes of taking that evidence.

(7) In this section:

Commission’s delegate means a person to whom the Commission has delegated its powers under section 93ZA and who is conducting the review in question.

93ZG Withdrawal of request for review

(1) A person who requests a review under section 93Z may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia.

(3) Subject to section 93ZA, a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Section 93ZA provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.
Veterans’ Entitlements Act 1986

Act No. 27 of 1986 as amended

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Volume 3 includes: Table of Contents
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The text of any of those amendments not in force
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Part VI—Allowances and other benefits

Division 1—Preliminary

94 Interpretation

In this Part, unless the contrary intention appears:

(a) a reference to a hospital or other institution shall be read as including a reference to a home, a hostel, a medical centre, an out-patient clinic and a rehabilitation or training establishment; and

(b) treatment has the same meaning as it has in Part V.

96 Application

(1) Without prejudice to its effect apart from this section, this Part has effect in relation to a person who is, or has been:

(a) a member of the Forces as defined by subsection 68(1); or

(b) a member of a Peacekeeping Force as defined by subsection 68(1);

and in relation to a dependant of such a person who has died, in like manner as it has effect in relation to a veteran and a dependant of a deceased veteran, respectively.

(2) For the purpose only of applying this Part as provided in subsection (1):

(a) a reference in this Part to a veteran shall be read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1);

(b) a reference in this Part to a war-caused injury shall be read as a reference to a defence-caused injury;

(c) a reference in this Part to a war-caused disease shall be read as a reference to a defence-caused disease;

(d) a reference in this Part to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1), that was defence-caused;

(e) a reference in this Part to a pension under Part II shall be read as a reference to a pension under Part IV;
Part VI  Allowances and other benefits
Division 1  Preliminary

Section 96

(f) the references in subparagraph 102(1)(b)(ii) and subsections 107(5) and (6) and 108(8) and (9) to section 26 shall be read as references to section 26 (in its application to pensions under Part IV) or subsection 74(8); and

(g) a reference in this Part to a claim or application under Part II shall be read as a reference to a claim or application made under section 14 or 15, in its application to pensions under Part IV.
Division 2—Eligibility for allowances and other benefits

97 Clothing allowance

(1) Where a veteran is being paid a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the following table, the Commission may grant to the veteran an allowance, called clothing allowance, at the rate specified in column 2 of that table opposite to the description of that kind of incapacity in column 1:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinds of incapacity</td>
<td>Rate per fortnight</td>
</tr>
<tr>
<td>1. One leg and one arm amputated</td>
<td>7.20</td>
</tr>
<tr>
<td>2. One leg or one arm amputated</td>
<td>3.30</td>
</tr>
<tr>
<td>3. Both legs or both arms amputated</td>
<td>4.60</td>
</tr>
<tr>
<td>4. One leg amputated, causing essential hip disarticulation</td>
<td>4.60</td>
</tr>
<tr>
<td>5. Blinded in both eyes</td>
<td>3.30</td>
</tr>
</tbody>
</table>

(2) Where the Commission is satisfied that it is necessary for a veteran who is being paid a clothing allowance under subsection (1) by reason of a kind of incapacity described in item 2, 3 or 4 (in column 1) of the table in subsection (1) to use a crutch or crutches in addition to any artificial aid, that subsection has effect as if the rate specified in that item (in column 2) were an amount per fortnight equal to the amount specified in item 1 (in column 2) of that table.

(3) Where:

(a) a veteran is being paid a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind other than a kind described in column 1 of the table in subsection (1); and
(b) exceptional wear and tear, or exceptional damage, to the clothing of the veteran occurs by reason of the kind of incapacity from which the veteran is suffering; the Commission may grant to the veteran a clothing allowance at such rate, not exceeding an amount per fortnight equal to the amount specified in item 2 (in column 2) of that table, as the Commission deems fit.

(4) Where a veteran is granted a clothing allowance under subsection (1) and is also granted a clothing allowance under subsection (3), clothing allowance shall be paid to the veteran at a rate per fortnight equal to the sum of:

(a) the rate per fortnight at which the allowance was granted under subsection (1); and

(b) the rate per fortnight at which the allowance was granted under subsection (3).

(5) For the purpose of this section:

(a) amputation of a hand of a veteran shall be treated as amputation of an arm of the veteran; and

(b) amputation of a foot of a veteran shall be treated as amputation of a leg of the veteran.

(6) Clothing allowance may be paid to a veteran by fortnightly instalments, or in such other manner as is determined by the Commission, but the amount, or sum of the amounts, of clothing allowance paid to a veteran in any period of 12 consecutive months shall not exceed an amount equal to the sum of 26 fortnightly instalments.

98 Attendant allowance

(1) Where a veteran is being paid a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the following table, the Commission may grant to the veteran an allowance, called attendant allowance, at the rate specified in column 2 of that table opposite to the description of that kind of incapacity in column 1, for or towards the cost of the services of an attendant to assist the veteran:
Eligibility for allowances and other benefits  Division 2

Section 98

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinds of incapacity</td>
<td>Rate per fortnight</td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td>1. Blinded in both eyes</td>
<td>84.30</td>
</tr>
<tr>
<td>2. Blinded in both eyes</td>
<td>168.60</td>
</tr>
<tr>
<td>together with total loss</td>
<td></td>
</tr>
<tr>
<td>of speech or total deaf-</td>
<td></td>
</tr>
<tr>
<td>ness</td>
<td></td>
</tr>
<tr>
<td>3. Both arms amputated</td>
<td>168.60</td>
</tr>
<tr>
<td>4. Both legs amputated</td>
<td>84.30</td>
</tr>
<tr>
<td>and one arm amputated</td>
<td></td>
</tr>
<tr>
<td>5. Both legs amputated</td>
<td>84.30</td>
</tr>
<tr>
<td>at the hip or one leg</td>
<td></td>
</tr>
<tr>
<td>amputated at the hip</td>
<td></td>
</tr>
<tr>
<td>and the other leg</td>
<td></td>
</tr>
<tr>
<td>amputated in the upper</td>
<td></td>
</tr>
<tr>
<td>third</td>
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</tr>
</tbody>
</table>

(2) Where:

(a) a veteran is being paid a pension under Part II in respect of incapacity:
   (i) from a war-caused injury or a war-caused disease affecting the cerebro-spinal system; or
   (ii) from a war-caused injury or a war-caused disease that has caused a condition similar in effect or severity to an injury or disease affecting the cerebro-spinal system; and

(b) the Commission is of the opinion that the veteran has a need for the services of an attendant to assist the veteran;

the Commission may grant to the veteran an allowance, called attendant allowance, at the rate of an amount per fortnight equal to the amount specified in item 1 (in column 2) of the table in subsection (1), for or towards the cost of the services of an attendant to assist the veteran.

(3) For the purposes of the application of the table in subsection (1) to and in relation to a veteran, a leg, foot, hand or arm that has been rendered permanently and wholly useless shall be treated as having been amputated.

(4) Where a veteran is cared for, at public expense, in a hospital or other institution, attendant allowance is not payable to the veteran in respect of the period commencing on the day of the first pension period occurring after the veteran commences to be so cared for.

Veterans’ Entitlements Act 1986
and ending on the day on which the veteran ceases to be so cared for.

(4B) Attendant allowance is not payable to a veteran if carer payment under Part 2.5 of the Social Security Act:

(a) is payable to a person because the person is caring for the veteran; or

(b) would be payable to a person because the person is caring for the veteran, apart from action taken in relation to that pension:

(i) under section 231 or 231A (cancellation or suspension) of that Act because the person has contravened a provision of that Act (other than section 233, 1304 or 1305); or

(ii) under section 1231 or 1234A (deductions to recover debts and overpayments) of that Act.

(5) Where the Commission makes a decision with respect to an application for attendant allowance under this section, section 34 applies to and in relation to the decision in like manner as it applies to and in relation to a decision with respect to a claim for pension in accordance with section 14.

**98A Bereavement payment in respect of disabled veterans**

(1) This section applies where a veteran dies if the veteran was, immediately before his or her death:

(a) a member of a couple; and

(b) receiving a disability pension.

(2) The widow or widower of the deceased veteran is entitled, in respect of the period of 12 weeks after the deceased veteran’s death, to payments at:

(a) if the deceased veteran was, immediately before his or her death, in receipt of the disability pension at a rate under subsection 22(4), 23(4), (5) or (6) or 24(4), (5) or (6)—the rate at which the disability pension would have been payable to him or her, if he or she had not died, on the first available pension pay day after the Commission becomes aware of the death; or

(b) in any other case—the lower of the following:
(i) the rate at which the disability pension would have been payable to the deceased veteran, if he or she had not died, on the first available pension pay day after the Commission becomes aware of the death;

(ii) the general rate in force on that pension pay day.

(3) Where:

(a) the widow or widower dies within 12 weeks after the death of the deceased veteran; and

(b) the Commission has not become aware of the death of the deceased veteran before the death of the widow or widower;

there is payable, to such person as the Commission thinks appropriate, in respect of the deceased veteran, an amount worked out using the formula:

\[ 6 \times \text{Deceased veteran’s amount} \]

where:

\textit{deceased veteran’s amount} means:

(a) if the deceased veteran was, immediately before his or her death, in receipt of the disability pension at a rate under subsection 22(4), 23(4), (5) or (6) or 24(4), (5) or (6)—the amount of the disability pension that would have been payable to him or her, if he or she had not died, on the first available pension pay day after the death of the widow or the widower; or

(b) in any other case—the lower of the following:

(i) the amount of the disability pension that would have been payable to the deceased veteran, if he or she had not died, on the first available pension pay day after the death of the widow or the widower;

(ii) the amount that would have been payable to the deceased veteran, if he or she had not died, on the first available pension pay day after the death of the widow or widower, at the general rate in force on that pension pay day.

(4) Subsection (2) does not apply:

(a) if the Commission does not become aware of the veteran’s death until after the death of the widow or widower; or
Part VI  Allowances and other benefits
Division 2  Eligibility for allowances and other benefits

Section 98B

(b) in respect of any pension pay day after the death of the widow or widower.

(5) Where:
(a) within the period of 12 weeks after the death of a veteran, an amount to which the veteran would have been entitled if he or she had not died has been paid by way of a disability pension into an account with a bank; and
(b) this section applies in relation to the death of the veteran; and
(c) the bank pays to the widow or widower of the deceased veteran, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (a);
then, in spite of anything in any other law, the bank is not liable to the Commonwealth, the personal representative of the deceased veteran, or anyone else, for any loss incurred because of the payment of that money to the widow or widower.

(6) In this section:

disability pension means a pension under Part II or IV, other than a pension payable to a person as a dependant of a deceased veteran.

first available pension pay day, in relation to the death of a veteran, means the first pension pay day after the Commission becomes aware of the death for which it is practicable to terminate or adjust the payments being made by way of disability pension in respect of the deceased veteran.

98B Funeral benefits—automatic grant to estate of certain deceased veterans

(1) The Commission is to grant a benefit (funeral benefit) to the estate of a deceased veteran if, immediately before the veteran died:
(a) he or she was being paid a pension under Part II at the rate specified in subsection 22(4); or
(b) he or she was being paid a pension under Part II as a veteran to whom section 24 applied; or
(c) he or she was being paid a pension under Part II at a rate that had been increased under section 27 because the veteran was incapacitated from a war-caused injury or a war-caused disease of a kind described in any of items 1 to 8 of the Table in subsection 27(1); or
(d) the Commission was satisfied that the veteran had, before the MRCA commencement date, been made a prisoner of war at a time when the veteran was rendering operational service.

(2) The amount of the funeral benefit is $1,000.

99 Further funeral benefits—veterans

(1) The Commission may grant a benefit, called a funeral benefit, towards the funeral expenses incurred in respect of the funeral of:
   (a) a veteran whose death was war-caused;
   (d) a veteran who has died in indigent circumstances; or
   (e) subject to subsection (3), a veteran who has died:
      (i) in an institution;
      (ii) while travelling to or from an institution;
      (iii) after having been discharged from an institution in which the veteran was being treated for a terminal illness; or
      (iv) while being treated for a terminal illness at the veteran’s home instead of at an institution.

Note: See sections 111 and 113 for the making of an application for a funeral benefit under this subsection.

(2) The Commission may grant a benefit (funeral benefit) towards the funeral expenses incurred in respect of the funeral of a veteran if, after the death of the veteran:
   (a) a pension is granted to the veteran that is determined to be payable, from a date before the veteran’s death:
      (i) at a rate that is worked out under subsection 22(4); or
      (ii) at a rate that is worked out under section 24; or
      (iii) at a rate that is worked out under section 27 because the veteran was suffering from incapacity from a war-caused injury or a war-caused disease of a kind described in any of items 1 to 8 of the Table in subsection 27(1); or
   (b) the rate of a pension that was payable to the veteran under Part II is increased, as from a date before the veteran’s death because:
      (i) subsection 22(4) or section 24 applied to the veteran as from that date; or
(ii) section 27 applied to the veteran as from that date because of incapacity from a war-caused injury or a war-caused disease of a kind described in any of items 1 to 8 of the Table in subsection 27(1); or

(c) information is received which satisfies the Commission that the veteran was, before the MRCA commencement date, made a prisoner of war at a time when the veteran was rendering operational service.

Note: See sections 111 and 113 for the making of an application for a funeral benefit under this subsection.

(3) A funeral benefit must not to be granted under paragraph (1)(e) unless:

(a) if subparagraph (1)(e)(i) or (ii) applies—treatment is or was provided in the institution; and

(b) in any case—the treatment is or was arranged:

(i) by the Commission under Part V of this Act; or

(ii) by the Military Rehabilitation and Compensation Commission under Chapter 6 of the MRCA.

(3A) A funeral benefit is not to be granted under subsection (2) in respect of a veteran if a funeral benefit has been granted to his or her estate under section 98B.

(4) A funeral benefit under this section in respect of a deceased veteran consists of:

(a) a sum of $1,000 or an amount equal to the amount paid or payable in respect of the funeral of the deceased veteran, whichever is less; and

(b) subject to subsection (5), if:

(i) the veteran died at a place other than the veteran’s ordinary place of residence; and

(ii) the veteran was absent from the veteran’s ordinary place of residence for the purpose of obtaining medical treatment; and

(iii) the Commission or the Military Rehabilitation and Compensation Commission arranged for the provision of the treatment; and

(iv) a charge was made by the funeral director expressly for transporting the body of the deceased veteran from the place where the veteran died to the place where the
veteran ordinarily resided immediately before the veteran died;

a sum equal to a reasonable charge for so transporting the body of the deceased veteran.

(5) Paragraph (4)(b) does not apply to a charge made by a funeral director for transporting the body of the deceased veteran:

(a) outside Australia; or

(b) from one place in the metropolitan area of a capital city to another place in the metropolitan area of that city.

(6) For the purposes of subparagraph (4)(b)(ii), but without limiting the generality thereof, a veteran shall be deemed to be absent from the veteran’s ordinary place of residence for the purpose of obtaining medical treatment:

(a) if the veteran is travelling from his or her ordinary place of residence for the purpose of obtaining medical treatment;

(b) if the veteran is returning to his or her ordinary place of residence after having obtained medical treatment;

(c) if the veteran is being provided with medical treatment at a place other than his or her ordinary place of residence; or

(d) if the veteran is away from his or her ordinary place of residence on the recommendation of his or her doctor by way of treatment for an injury or disease.

(7) In paragraph (4)(a), the amount paid or payable in respect of the funeral of a deceased veteran means, in a case where the deceased veteran was, immediately before his or her death, a member of a contributory funeral benefit fund, the amount by which the cost of the funeral exceeds the amount of the benefit payable from that fund in relation to the deceased veteran.

100 Funeral benefits—dependants of deceased veterans

(1) If:

(a) a dependant (other than a reinstated pensioner) of a deceased veteran, being:

(i) a veteran whose death was war-caused; or

(ii) a veteran who, immediately before his or her death, was being paid pension under Part II as a veteran to whom section 24 applied; or
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(iii) a veteran who, immediately before his or her death, was being paid pension under Part II at a rate that had been increased under section 27 by reason that the veteran was incapacitated from a war-caused injury or a war-caused disease of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in subsection 27(1); or

(b) a reinstated pensioner;

has died in indigent circumstances, the Commission may grant a benefit, called funeral benefit, towards the funeral expenses incurred in respect of the funeral of the dependant.

Note: See sections 111 and 133 for the making of an application for a funeral benefit under this subsection.

(1A) The Commission may grant a benefit towards the funeral expenses incurred in respect of a person’s funeral if:

(a) either:

(i) the person was a wholly dependent partner of a deceased member; or

(ii) the person was both an eligible young person, and a dependant of a deceased member, immediately before the member’s death; and

(b) the person died in indigent circumstances; and

(c) section 12 of the MRCA applies in respect of the member.

Note: Expressions used in this subsection have the same meanings as they have in the MRCA (see subsection (4)).

(2) A funeral benefit under this section in respect of a deceased dependant of a deceased veteran is a sum of $1,000 or an amount equal to the amount paid or payable in respect of the funeral of the deceased dependant, whichever is less.

(3) In subsection (2), the amount paid or payable in respect of the funeral of a deceased dependant means, in a case where the dependant was, immediately before his or her death, a member of a contributory funeral benefit fund, the amount by which the cost of the funeral exceeds the amount of the benefit payable from that fund in relation to the deceased dependant.

(4) Expressions used in subsection (1A) have the same meanings as they have in the MRCA.
102 Decoration allowance

(1) Subject to this section, the Commission may grant an allowance, called decoration allowance, to a veteran who has been awarded an eligible decoration or eligible decorations if the veteran:
   (a) is in receipt of a pension under Part II; or
   (b) would be in receipt of a pension under Part II but for:
       (i) the cancellation, under subsection 124(1), of a pension that had been granted to the veteran under Part II; or
       (ii) section 26, 30C or 30D.

(3) Decoration allowance is not payable to a veteran under this section in respect of any period in respect of which the veteran is entitled to be paid, by an overseas country, an allowance or annuity that is of a similar kind to decoration allowance payable under this section.

(4) Decoration allowance granted to a veteran under this section is payable at the rate of $2.10 per fortnight.

(5) In this section:

eligible decorations means:
   (a) the following decorations awarded for gallantry during a war to which this Act applies or during warlike operations:
       (i) the Victoria Cross;
       (ii) the Cross of Valour;
       (iii) the Star of Courage;
       (iv) the Distinguished Service Order;
       (v) the Distinguished Service Cross;
       (vi) the Military Cross;
       (vii) the Distinguished Flying Cross;
       (viii) the Distinguished Conduct Medal;
       (ix) the Conspicuous Gallantry Medal;
       (x) the Distinguished Service Medal;
       (xi) the Military Medal;
       (xii) the Distinguished Flying Medal;
       (xiii) the member of the Most Excellent Order of the British Empire (Military Division);
(xiv) the Medal of the Most Excellent Order of the British Empire (Military Division) (1919-1958);
(xv) the Medal of the Most Excellent Order of the British Empire (Military Division) with Gallantry Emblem (1958-1974);
(xvi) the Victoria Cross for Australia;
(xvii) the Star of Gallantry;
(xviii) the Medal for Gallantry; and
(b) the George Cross; and
(c) the George Medal; and
(d) such other decorations, awarded for gallantry during a war to which this Act applies or during warlike operations, as are prescribed.

103 Victoria Cross allowance

(1) Subject to this section, the Commission may grant an allowance, called Victoria Cross allowance, to a veteran who has been awarded the Victoria Cross or the Victoria Cross for Australia.

(2) Victoria Cross allowance granted to a veteran under this section is in addition to any decoration allowance that has been or may be granted to the veteran under section 102.

(3) Victoria Cross allowance is not payable to a veteran in respect of any period in respect of which the veteran is entitled to be paid, by an overseas country, an allowance or annuity that is of a similar kind to Victoria Cross allowance payable under this section.

(4) Victoria Cross allowance granted to a veteran under this section is payable at the rate of $3,230 per year.

Note: The amount fixed by this subsection is indexed annually in line with CPI increases. See section 198FA.

104 Recreation transport allowance

(1) Subject to this section, the Commission may grant an allowance, called recreation transport allowance, to a veteran who is suffering an incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the following table:
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<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description of incapacity</strong></td>
<td><strong>Rate per fortnight $</strong></td>
</tr>
<tr>
<td>1. Both legs amputated above the knees</td>
<td>44.80</td>
</tr>
<tr>
<td>2. Negligible powers of locomotion so as to be capable of moving, with the aid of crutches or walking sticks, for short distances only</td>
<td>44.80</td>
</tr>
<tr>
<td>3. Handicapped with regard to locomotion to a degree that, in the opinion of the Commission, is similar to the degree of handicap with regard to locomotion associated with a disability described in item 1 or 2</td>
<td>44.80</td>
</tr>
<tr>
<td>4. Both arms amputated at or above the wrists</td>
<td>22.40</td>
</tr>
<tr>
<td>5. Both legs amputated below the knees</td>
<td>22.40</td>
</tr>
<tr>
<td>6. One leg amputated above the knee and the other below the knee</td>
<td>22.40</td>
</tr>
<tr>
<td>7. One leg amputated above or below the knee and one arm amputated below the elbow</td>
<td>22.40</td>
</tr>
<tr>
<td>8. Blinded in both eyes</td>
<td>22.40</td>
</tr>
<tr>
<td>9. Incapacitated to an extent that, in the opinion of the Commission, is similar in effect or severity to the extent of incapacity associated with a disability described in item 4, 5, 6, 7 or 8</td>
<td>22.40</td>
</tr>
<tr>
<td>10. Handicapped with regard to locomotion to a degree that, in the opinion of the Commission, is similar in degree to the handicap with regard to locomotion associated with a disability described in item 5, 6, 7 or 8</td>
<td>22.40</td>
</tr>
</tbody>
</table>

(2) For the purposes of subsection (1):

(a) a leg that has been rendered permanently and wholly useless above the knee or below the knee shall be treated as if it had been amputated above the knee or below the knee, as the case may be; and

(b) an arm that has been rendered permanently and wholly useless at or above the wrist or below the elbow, shall be treated as if it had been amputated at or above the wrist, or below the elbow, as the case may be.
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(3) Recreation transport allowance is payable to a veteran, in respect of the costs incurred by the veteran in travelling for recreational purposes, at the rate specified in column 2 of the table in subsection (1) opposite to the kind of incapacity described in column 1 from which the veteran is suffering.

(4) Recreation transport allowance is not payable to a veteran under subsection (1):

    (a) in respect of any period during which the veteran is being cared for, at public expense, in a hospital or other institution; or

    (b) if the veteran has participated, or is participating, in the Vehicle Assistance Scheme:

        (i) during the period of 2 years commencing on, and including, the date on which the veteran was first provided with a vehicle under that Scheme;

        (ii) during the period of 2 years commencing on, and including, the date on which a replacement motor vehicle grant was or is made under that Scheme in respect of the veteran;

        (iii) during any period during which there is, under that Scheme, due and payable by the veteran to the Commission the whole or part of an amount equal to the cost to the Commission of providing the veteran with a motor vehicle under that Scheme; or

        (iv) during any other period during which the veteran is, under that Scheme, eligible to be paid an allowance as a contributor towards the running and maintenance of a vehicle provided for the veteran under that Scheme.

(5) For the purpose of the application of subsection (4), a vehicle provided for a veteran before 22 May 1986 under the scheme known as the “Gift Car Scheme” shall, after the commencement of this subsection, be deemed to have been provided under the Vehicle Assistance Scheme.
105 Vehicle assistance scheme

(1) The Commission may, by instrument in writing, prepare a scheme, called the Vehicle Assistance Scheme, for the provision of motor vehicles to veterans eligible under this section to participate in the scheme and for the payment of allowances towards the cost of running and maintaining vehicles so provided.

(2) The Commission may, by instrument in writing, vary or revoke a scheme prepared under subsection (1) and approved under subsection (3).

(3) A scheme prepared by the Commission under subsection (1), and an instrument varying or revoking such a scheme, have no force or effect unless approved by the Minister.

(4) Where a scheme prepared by the Commission in accordance with subsection (1), or an instrument under subsection (2), has been approved by the Minister, the Commission shall furnish copies of the scheme or instrument to the Minister, and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.

(5) A veteran is, subject to subsection (7), eligible to participate in the Vehicle Assistance Scheme if the veteran is incapacitated from war-caused injury or war-caused disease by reason of:
   (a) amputation of both legs above the knee;
   (b) amputation of one leg above the knee and, in addition:
       (i) amputation of the other leg at or above the ankle and amputation of one arm at or above the wrist; or
       (ii) amputation of both arms at or above the wrists;
   (c) complete paraplegia resulting in the total loss of voluntary power in both legs to the extent that there is insufficient power for purposeful use for stance or locomotion; or
   (d) a condition that, in the opinion of the Commission, is similar in effect or severity to a condition described in paragraph (a) or (b).

(6) The Commission may provide benefits for veterans eligible to participate in the Vehicle Assistance Scheme under and in accordance with the provisions of that Scheme.
(7) For the purposes of subsection (5):
   (a) a leg that has been rendered permanently and wholly useless above the knee shall be treated as if it had been amputated above the knee;
   (b) a veteran shall not be taken to be incapacitated by reason of the disability described in paragraph (5)(c) unless the disability is such that surgical or other therapeutic measures are not reasonably capable of restoring power for purposeful use for stance or locomotion; and
   (c) a reference to the Vehicle Assistance Scheme shall, unless the contrary intention appears, be read as a reference to:
      (i) the Vehicle Assistance Scheme prepared under subsection (1) and approved by the Minister, but not being such a Scheme that has been revoked; or
      (ii) if that Scheme has been varied under subsection (2) by an instrument approved by the Minister—that Scheme as so varied.

106 Special assistance

(1) Subject to subsection (2), the Commission may, in such circumstances, and subject to such conditions (if any), as are prescribed, in its discretion, grant to a veteran, or to a dependant of a veteran or deceased veteran, assistance or benefits of such a kind, and of such an amount or value, as it deems fit in all the circumstances of the case.

(2) The Commission must not grant assistance or benefits to a person under subsection (1):
   (a) in circumstances in which the person is eligible to be granted an allowance or assistance under another provision of this Act; or
   (b) to a veteran, or a dependant of a veteran or a deceased veteran, if the veteran is only a veteran because of service rendered after the MRCA commencement date.

Note: The Military Rehabilitation and Compensation Commission can grant assistance or benefits to veterans who render service after the MRCA commencement date, or to dependants of such veterans (see section 424 of the MRCA).
107 Temporary incapacity allowance

(1) The Commission may grant an allowance, called temporary incapacity allowance, to a veteran who is admitted to a hospital or other institution for treatment in respect of a war-caused injury or a war-caused disease if the conditions specified in subsection (2) are fulfilled in relation to the incapacity of the veteran.

(2) The conditions referred to in subsection (1) in relation to an incapacity of a veteran from a war-caused injury or a war-caused disease are:

(a) that the veteran has undergone treatment for the incapacity as an inpatient of a hospital or other institution;

(b) that, for a continuous period in excess of 4 weeks (being a period commencing on the date on which the veteran was admitted to that hospital or other institution for treatment for that incapacity), the veteran has undergone treatment for that incapacity either as an inpatient of, or after discharge from, that hospital or other institution or has undergone rest and recuperation, after the completion of that treatment, on the recommendation of a medical practitioner; and

(c) that, by reason of that treatment, or of that treatment and that rest and recuperation, the veteran was incapable, during a period (in this section referred to as the relevant period applicable to the incapacity), being the whole or part of the continuous period referred to in paragraph (b), of continuing to undertake remunerative work that the veteran would have continued to undertake but for that treatment or that treatment and that rest and recuperation, as the case may be.

(3) The condition specified in paragraph (2)(c) shall be taken not to have been fulfilled in relation to the incapacity of a veteran during any part of the relevant period applicable to the incapacity during which the veteran was capable of undertaking remunerative work for periods aggregating more than 8 hours per week, being work that the veteran would have continued to undertake but for the treatment, or the treatment and the rest and recuperation, as the case may be.
(4) Where temporary incapacity allowance is granted to a veteran in respect of a veteran’s incapacity from a war-caused injury or a war-caused disease, the allowance is payable in respect of the relevant period applicable to the incapacity.

(5) Subject to subsection (6), the rate at which temporary incapacity allowance is payable to a veteran is:
   (a) if the veteran is in receipt of a pension under Part II, or would, but for the operation of section 26, 30C or 30D, be in receipt of such a pension—an amount per fortnight equal to the amount by which the amount specified in subsection 24(4) exceeds the amount per fortnight of the pension that is, or would be, payable; or
   (b) in any other case—the rate specified in subsection 24(4).

(6) The rate at which temporary incapacity allowance is payable to a veteran who is also in receipt of loss of earnings allowance is:
   (a) if the veteran is in receipt of a pension under Part II, or would, but for the operation of section 26, 30C or 30D, be in receipt of such a pension—an amount per fortnight equal to the amount by which the amount specified in subsection 24(4) exceeds an amount equal to the sum of:
      (i) the amount per fortnight of the pension that is, or would be, payable; and
      (ii) the amount per fortnight at which loss of earnings allowance is payable to the veteran; or
   (b) in any other case—an amount per fortnight equal to the amount by which the amount specified in subsection 24(4) exceeds the amount per fortnight at which loss of earnings allowance is payable to the veteran.

(7) Temporary incapacity allowance is not payable to a veteran unless the veteran furnishes to the Commission such information (including certificates of medical practitioners or other persons) as is required by the regulations to be so furnished.
(8) Where:

(a) temporary incapacity allowance is payable to a veteran in respect of the relevant period applicable to the veteran’s incapacity from a war-caused injury or a war-caused disease; and

(b) after the commencement of that period, whether before or after the end of that period:

(i) the rate of the veteran’s pension under Part II is increased; or

(ii) a pension under Part II is granted to the veteran; payable from a date before the end of that period; and

(c) the veteran would not have been entitled to be paid the whole or part of the amount of temporary incapacity allowance that was paid to the veteran in respect of that period if that pension had been increased or granted on the day as from which it was payable;

an amount equal to the amount of temporary incapacity allowance that the veteran would not have been entitled to be paid shall be deducted from amounts of pension payable to the veteran in a lump sum or by instalments as the Commission determines.

Note: If section 25A applies to a veteran, the rate at which temporary incapacity allowance is payable to the veteran is reduced in accordance with that section.

108 Loss of earnings allowance

(1) The Commission may grant an allowance, called loss of earnings allowance, to a person in accordance with the provisions of this section.

(2) Loss of earnings allowance may be granted to a veteran, in respect of any loss of salary or wages, or loss of earnings on his or her own account from an occupation in which he or she is engaged, suffered by reason of:

(a) the veteran’s undergoing treatment for incapacity from a war-caused injury or a war-caused disease;

(b) the veteran’s having to wait for the supply of, or repairs to, an artificial replacement or other surgical aid or appliance necessitated by such an incapacity;
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(c) an investigation of a claim or application made by the veteran under Part II or of a pension granted to the veteran under that Part; or

(d) the veteran’s undergoing treatment associated with such an investigation;

for the period in respect of which the veteran suffered that loss.

(3) Where:

(a) a veteran travels for the purpose of:

(i) obtaining treatment;

(ii) restoration of his or her health;

(iii) being fitted with surgical aids or appliances or artificial replacements;

(iv) an investigation referred to in paragraph (2)(c); or

(v) any other matter related to the payment of a pension; and

(b) the Commission authorizes a person to accompany the veteran as his or her attendant;

loss of earnings allowance may be granted to the attendant, in respect of any loss of salary or wages, or loss of earnings on his or her own account, suffered by reason of having so accompanied the veteran, for the period in respect of which the attendant suffered that loss.

(4) Where a claim for pension for a veteran or a dependant of a veteran:

(a) is made by another person, as provided by section 16, on behalf of the veteran or dependant; or

(b) is prosecuted by a person who is the legal personal representative of the claimant, or by a person approved under section 126, following the death of the claimant;

loss of earnings allowance may be granted to the person, in respect of any loss of salary or wages, or loss of earnings on his or her own account, suffered by reason of an investigation under section 17 of the claim for the period in respect of which the person suffered that loss.
(5) Subject to subsection (6), where, in any year, a veteran who is an employee of another person:

(a) was granted leave of absence on account of illness for a period in respect of which the veteran was absent from his or her employment for a reason referred to in paragraph (2)(a), (b), (c) or (d);

(b) was, during a subsequent period of that year, absent from his or her employment by reason of:

(i) any illness or disease; or

(ii) undergoing treatment related to any illness or disease; other than a war-caused illness or a war-caused disease; and

(c) has incurred loss of salary or wages as a result of absence from his or her employment referred to in paragraph (b) of this subsection;

loss of earnings allowance may be granted to the veteran, in respect of that loss of salary or wages, for the period in respect of which the veteran suffered that loss.

(6) Where, in a year, the period, or aggregate of the periods, for which loss of earnings allowance is payable to a veteran by virtue of subsection (5) has equalled:

(a) the period, or aggregate of the periods, referred to in paragraph (5)(a) for which the veteran has been absent from his or her employment in that year; or

(b) a period equal to the period credited, or notionally credited, in respect of the veteran for that year, under the terms and conditions of his or her employment, by way of sick leave credit (however described);

whichever is the less, loss of earnings allowance is not payable to the veteran by virtue of subsection (5) in respect of any part of the remainder of that year.

(7) Loss of earnings allowance is not payable to a person under this section in respect of any period in respect of which the person is paid pension under Part II at the rate specified in subsection 24(4).

(8) The amount of loss of earnings allowance payable to a veteran by virtue of subsection (2) or (5) in respect of loss of salary or wages, or of earnings on his or her own account, (in this subsection referred to as the relevant loss of remuneration) suffered by the
veteran in respect of a period (in this subsection referred to as the relevant period) is:

(a) an amount equal to:

(i) unless subparagraph (ii) or (iii) applies—the amount of pension that would be payable to the veteran in respect of the relevant period if the veteran were a veteran to whom section 24 applied and the veteran’s pension were required to be calculated at the rate specified in subsection 24(4) (in this subsection that amount of pension is referred to as the maximum amount in respect of the relevant period);

(ii) if the veteran is in receipt of a pension under Part II—the amount by which the maximum amount in respect of the relevant period exceeds the amount of pension under Part II that is payable to the veteran in respect of the relevant period; or

(iii) if the veteran is not in receipt of a pension under Part II but would be in receipt of such a pension but for the provisions of section 26, 30C or 30D or is in receipt of a pension under Part II that has been reduced in accordance with the provisions of that section—the amount by which the maximum amount in respect of the relevant period exceeds the amount of pension under Part II that would be payable to the veteran in respect of the relevant period if section 26, 30C or 30D, as the case requires, were omitted from this Act; or

(b) an amount equal to the amount that the veteran would have earned, or could reasonably be expected to have earned, from the occupation referred to in subsection (2) of this section or from the employment referred to in subsection (5) of this section, as the case may be, in respect of the relevant period by way of salary or wages or of earnings on his or her own account less an amount equal to the sum of:

(i) the amount (if any) earned by the veteran from that occupation or employment, or from any other occupation or employment, in respect of the relevant period by way of salary or wages or earnings on his or her own account;

(ii) the amount (if any) that the veteran receives, or is entitled to receive, in respect of the relevant period, by way of compensation for the relevant loss of

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remuneration, under a law of the Commonwealth, a State, a Territory or a country other than Australia that makes provision for the payment of compensation or other benefits to persons in respect of incapacities arising out of, or in the course of, employment or caused by, or arising out of, the use of motor vehicles;

(iii) the amount (if any) that the veteran receives, or is entitled to receive, from his or her employer by way of gratuity or other payment in respect of the relevant loss of remuneration suffered by the veteran in respect of the relevant period; and

(iv) the amount (if any) that the veteran receives, or is entitled to receive, in respect of the relevant loss of remuneration suffered by the veteran in respect of the relevant period, under a contract, arrangement or agreement (including a contract of insurance), whether or not the veteran is a party to the contract, arrangement or agreement, but not being an amount of a kind referred to in subparagraph (ii) or (iii);

whichever is the lesser amount.

(9) The amount of loss of earnings allowance payable to a person by virtue of subsection (3) in respect of a period is:

(a) the amount that would be payable to the person in respect of the period in accordance with paragraph (8)(b) if the person were a veteran who was entitled to be paid that allowance by virtue of subsection (2); or

(b) the amount that would be payable to the person in respect of the period by way of pension under Part II if the person were eligible to be paid a pension under that Part, section 24 applied to the person and section 26, 30C or 30D did not apply to the person;

whichever is the lesser amount.

(10) The amount of loss of earnings allowance payable to a person by virtue of subsection (4) in respect of a period is such amount as the Commission considers reasonable in all the circumstances but not exceeding the amount that the person would have earned, or could reasonably be expected to have earned, in the period by way of salary and wages, or earnings on his or her own account.
(11) Loss of earnings allowance is not payable to a person under this section unless the person furnishes to the Commission such information (including certificates of medical practitioners or other persons) as is required by the regulations to be so furnished.

(12) In this section:

leave of absence on account of illness, in relation to a veteran who is an employee of another person, means leave of absence from the veteran’s employment granted to the veteran without loss of earnings by reason of any illness or incapacity or treatment provided for an illness or incapacity.

year, in relation to a veteran who is an employee of another person, means the period of 12 months that commenced on the date on which, under his or her terms and conditions of employment, the veteran was last credited, or last notionally credited, with a period by way of sick leave (however described).

Note: If section 25A applies to a veteran, the rate at which loss of earnings allowance is payable to the veteran is reduced in accordance with that section.

109 Advances on account of loss of earnings allowance

(1) Where the Commission is satisfied:

(a) that a person may reasonably be expected to become entitled to be paid loss of earnings allowance under section 108 in respect of a period (in this section called the period of entitlement); and

(b) that it is, in all the circumstances, appropriate for the person to be paid an advance on account of the loss of earnings allowance that the person is expected to become entitled to be paid in respect of a period (in this section called the period of advance), being the whole or a part of the period of entitlement;

the Commission may authorize payment to the person of an advance accordingly in respect of the period of advance.
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(2) The amount paid to a person by way of advance under subsection (1) in respect of a period of advance, or the aggregate of the amounts so paid to a person in respect of the periods of advance included in a period of entitlement, as the case may be, shall not exceed the amount estimated by the Commission to be the amount of loss of earnings allowance likely to be payable to the person in respect of that period of advance or those periods of advance, as the case may be.

(3) If the amount of the advance, or the sum of the amounts of advances, paid to a person in relation to a period of entitlement exceeds the amount of loss of earnings allowance that becomes payable to the person in respect of that period of entitlement, the person is liable to pay an amount equal to the excess to the Commonwealth.

110 Travelling expenses

(1) Where a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, for the purpose of:
   (a) obtaining treatment;
   (b) restoration of his or her health; or
   (c) being fitted with surgical aids or appliances or artificial replacements;
the veteran, or the dependant, as the case may be, is, subject to this section and to such conditions as are prescribed, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

(2) Subject to such conditions as are prescribed, where:
   (a) a veteran, or a dependant of a deceased veteran, travels, with the approval of the Commission, as described in subsection (1); and
   (b) the Commission authorizes a person to accompany the veteran or dependant as his or her attendant;
the attendant is, subject to this section, entitled to be paid such travelling expenses, in connection with that travel, as are prescribed.

(3) Travelling expenses are not payable under this section in respect of travel outside Australia.
(4) Where the Commission is satisfied:
   (a) that a person may reasonably be expected to become entitled
to be paid travelling expenses under this section; and
   (b) that it is in all the circumstances appropriate for the person to
be paid an advance on account of the travelling expenses that
the person is expected to become entitled to be paid;
the Commission may authorize payment to the person of an
advance on account of the travelling expenses that the person is
expected to become entitled to be paid.

(5) If the amount of the advance paid to a person on account of any
travelling expenses in respect of any travel of the person exceeds
the amount of travelling expenses that become payable to the
person in respect of that travel, the person is liable to repay an
amount equal to the excess to the Commonwealth.
**Division 3—Procedural**

**111 Application**

(1) Each of the following allowances or benefits is a benefit to which this section applies, namely:
   (a) clothing allowance;
   (b) attendant allowance;
   (c) funeral benefit under section 99 or 100;
   (d) Victoria Cross allowance;
   (e) recreation transport allowance;
   (f) temporary incapacity allowance;
   (g) loss of earnings allowance;
   (h) travelling expenses.

(2) An application for a benefit to which this section applies:
   (a) shall be in accordance with a form approved by the Commission;
   (b) shall be accompanied by such certificates and other evidence (relevant to the applicant’s entitlement to the benefit) as are required to be furnished by this Act, the regulations or the form of application; and
   (c) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(3) An application for a benefit to which this section applies may be made:
   (a) by the person eligible to be granted the benefit; or
   (b) with the approval of that person or of the Commission under subsection (4), by another person on behalf of that person.

(4) Where a person eligible to be granted a benefit to which this section applies is unable, by reason of physical or mental ailment, to approve a person to make an application for that benefit on his or her behalf, the Commission may approve a person to make the application on his or her behalf.
(5) Where an application for a benefit to which this section applies is made by a person on behalf of another person, the other person on whose behalf the application is made, and not the person making the application on behalf of that other person, shall be treated as the applicant.

(6) For the purposes of this Division, where:
(a) a person makes an application in writing for an allowance or benefit to which this section applies, but otherwise than in accordance with a form approved for the purposes of subsection (2); and
(b) the person subsequently makes an application for the allowance or benefit in accordance with a form so approved:
   (i) at a time when the person had not been notified by the Department, in writing, that it would be necessary to make the application in accordance with a form so approved; or
   (ii) within 3 months after the person had been so notified;
the Commission may treat the application referred to in paragraph (b) as having been received at an office of the Department in Australia on the date on which the application referred to in paragraph (a) was so received.

(7) An applicant for a benefit to which this section applies may, at any time before the application is determined by the Commission, by notice in writing forwarded to the Commission at an office of the Department in Australia, withdraw the application.

(8) The withdrawal of an application for a benefit to which this section applies does not prevent the applicant from subsequently making another application for such a benefit.

112 Time for applying for certain benefits

(1) An application for temporary incapacity allowance in respect of a veteran’s incapacity from a war-caused injury or a war-caused disease shall be made within 12 months after the commencement of the period that is the relevant period applicable to the incapacity for the purposes of section 107.

(2) An application for loss of earnings allowance for a period in respect of which a person has suffered a loss of salary or wages, or
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loss of earnings on his or her own account, as set out in subsection 108(2), (3), (4) or (5), shall be made within 12 months after the commencement of that period.

(3) An application for travelling expenses in connection with travel referred to in subsection 110(1) or (2) must be made:
   (a) within 3 months after the completion of that travel; or
   (b) if the Commission thinks that there are exceptional circumstances that justify extending that period—such further period as the Commission allows.

(4) An application made to the Commission for the grant of:
   (a) temporary incapacity allowance;
   (b) loss of earnings allowance; or
   (c) travelling expenses;
   after the expiration of the period applicable to the application by virtue of subsection (1), (2) or (3), as the case requires, is of no force or effect.

113 Time for applying for funeral benefit

(1) Subject to this section, application may be made to the Commission for the grant of a funeral benefit under section 99 or 100 in respect of the funeral of a person, being:
   (a) a deceased veteran;
   (b) a deceased dependant of a deceased veteran;
   within 12 months after the death of the person.

(2) Where, after the death of a veteran, a decision is made under this Act:
   (a) determining that the death was war-caused;
   (b) granting a pension under Part II in respect of the veteran, as from a date before the death of the veteran:
      (i) at a rate that is worked out under subsection 22(4); or
      (ii) at a rate that is worked out under section 24; or
      (iii) at a rate that is worked out under section 27 because the veteran was suffering from incapacity from a war-caused injury or a war-caused disease of a kind described in any of items 1 to 8 of the Table in subsection 27(1); or

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(c) increasing the rate of the pension granted to the veteran under Part II as from a date before the death of the veteran:
   (i) to a rate worked out under subsection 22(4) or section 24; or
   (ii) to a rate worked out under section 27 because the veteran was suffering from incapacity from a war-caused injury or a war-caused disease of a kind described in any of items 1 to 8 of the Table in subsection 27(1);

application for the grant of a funeral benefit under section 99 in respect of the funeral of the veteran may be made to the Commission within the period of 12 months after the date on which that decision was made or within the period of 3 months after the date on which the Veterans’ Affairs Legislation Amendment Act 1987 received the Royal Assent, whichever last expires.

(3) Where, after the death of a veteran, the Commission gives an approval of a kind referred to in subsection 99(3) in relation to the veteran, application may be made to the Commission for the grant of a funeral benefit under section 99 in respect of the funeral of the veteran within 12 months after the date on which that approval was given.

(5) Application made to the Commission for the grant of a funeral benefit under section 99 or 100 in respect of the funeral of a person after the expiration of the period specified in subsection (1), (2) or (3) of this section, whichever is applicable, is of no force or effect.

114 Commencement of payment of certain allowances

(1) Subsection (2) applies to:
   (a) clothing allowance;
   (b) attendant allowance; and
   (c) recreation transport allowance.

(2) An allowance to which this subsection applies payable to a veteran by reason that the veteran is suffering incapacity from a war-caused injury or a war-caused disease is payable:
   (a) if application for the allowance is made within 3 months after the date on which the determination was made under this Act determining that the injury was a war-caused injury or the
allowances and other benefits

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(1) Subject to subsection (2), a person who is dissatisfied with a decision of the Commission in respect of an application for:
   (a) clothing allowance;
   (b) funeral benefits under section 99 or 100;
   (c) decoration allowance;
   (d) Victoria Cross allowance;
   (e) recreation transport allowance;
   (f) temporary incapacity allowance; or
   (g) loss of earnings allowance;
   may request the Commission, in writing, to review the decision, and, where such a request is duly made, the Commission shall review the decision, or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

(1A) A request under subsection (1) must be lodged with the Commission at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(2) A request under subsection (1) to review a decision of the Commission shall set out particulars of the grounds on which the request is made, and may be made within 3 months after service on the person to whom the decision relates of notice of the decision, but not otherwise.

(3) Where the Commission reviews a decision under subsection (1), the Commission may affirm or set aside the decision and, if it sets aside the decision, it shall make such other decision as it considers to be in accordance with this Act.

(4) Where the Commission makes a decision, in substitution for the decision set aside, granting an application for an allowance

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specified in subsection (1), it may approve payment of the
allowance as from a date not earlier than the date as from which
the Commission could have approved payment of the allowance if
it had made the substituted decision in place of the original
decision.

(5) Sections 57D, 57E and 57F apply to a review under this section in
like manner as they apply to a review under Division 16 of Part
IIIB and, for the purpose of their application to a review under this
section:

(a) references in sections 57D, 57E and 57F to Division 16 of
Part IIIB shall be read as references to this section; and

(b) references in section 57F to a review shall be read as
references to a review under subsection (1) of this section.

(6) A reference in subsection (1) to a decision in respect of an
application for funeral benefits under section 99 shall be read as
not including a reference to a decision of the Commission to grant,
or refuse to grant, an approval of a kind referred to in paragraph
99(3)(a) or (b).
Part VIA—Rehabilitation

Division 1—Preliminary

115A Definitions

In this Part, unless the contrary intention appears:

**CPI indexation day** means:

(a) for the purposes of section 115D—the day that begins each relevant period within the meaning of that term in section 198; and

(b) for the purposes of section 115G—a day that is an indexation day for the maximum basic rate under subsection 59B(1).

**member of a Peacekeeping Force** has the same meaning as in subsection 68(1).

**member of the Forces** has the same meaning as in subsection 68(1).

**unaffected pension rate** means the rate of pension that a veteran would have received if the veteran had not undertaken a vocational rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme.

**unemployment** includes:

(a) retirement from remunerative work; and

(b) undertaking less than 16 hours of remunerative work in a pension period;

but does not include any period of paid leave.

**veteran** means:

(a) a person:

(i) who is, because of section 7, taken to have rendered eligible war service; or

(ii) in respect of whom a pension is payable under subsection 13(6); or

(iii) who satisfies subsection 37(3); or
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(b) a member of the Forces; or
(c) a member of a Peacekeeping Force.

_Veterans’ Vocational Rehabilitation Scheme_ means a scheme made under subsection 115B(1).

_work and pension income rate_ means the rate equal to the sum of:
(a) the veteran’s salary, wages or earnings per fortnight from remunerative work; and
(b) the fortnightly rate of pension paid to the veteran under Part II or IV.

115B Making of the Scheme

(1) The Commission may, from time to time, by instrument in writing, make a scheme, to be called the Veterans’ Vocational Rehabilitation Scheme, to assist specified classes of veterans who render service before the MRCA commencement date to find employment and to continue in employment.

Note: A rehabilitation program that is being provided to a veteran under the scheme might cease if the veteran is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

(2) The Commission may, from time to time, by instrument in writing, vary or revoke the scheme.

(3) A scheme made by the Commission under subsection (1), and an instrument varying or revoking such a scheme, have no force or effect unless approved by the Minister.

(4) If a scheme has been made by the Commission under subsection (1), or an instrument under subsection (2), the scheme or the instrument is a disallowable instrument for the purposes of section 46A of the _Acts Interpretation Act 1901_.

(5) Without limiting the powers of the Commission under subsection (1), the Scheme may make provision for and in relation to:
(a) the provision of rehabilitation programs, under the Scheme, to specified veterans; and
(b) the provision of vocational guidance and assistance, under the Scheme, to specified veterans; and
(c) the payment of financial assistance, under the Scheme, to specified veterans in respect of education or training that is being undertaken under the Scheme by the veterans; and

(d) the provision of services in relation to the assessment of veterans for participation in rehabilitation programs; and

(e) the payment of financial assistance, under the Scheme, to specified veterans in respect of transport costs arising from the veterans’ participation in the Scheme; and

(f) the payment of financial assistance, under the Scheme, to specified veterans in respect of aids that enable the veterans to participate in, or assist veterans to participate in, the Scheme; and

(g) the provision for review of determinations under section 115F.

(6) Before making a scheme, or varying or revoking the scheme, the Commission must consult such organisations and associations, representing the interests of the veteran community, as the Commission thinks appropriate.
Division 2—Provisions relating to the income of veterans who participate in vocational rehabilitation programs

115C Rate of pension while on program

(1) Subject to sections 115D and 115G, this section applies while a veteran is undertaking a vocational rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme.

(2) If this section applies to a veteran, the rate of pension payable to the veteran is equal to the amount the veteran would receive if the veteran were not undertaking the program.

115D Reduced daily pension amount—pensions under Parts II and IV

Application and overview of this section

(1) This section applies to a veteran who is engaged in remunerative work of more than 8 hours per week as a result of undertaking a vocational rehabilitation program under the Veterans’ Vocational Rehabilitation Program. The section sets out how to work out the veteran’s reduced daily pension amount. This amount is used to work out the rate of pension payable under sections 23 and 24.

Note: This section does not apply to certain veterans (see subsections (5) and (6)).

Reduced daily pension amount during the initial period

(2) A veteran’s reduced daily pension amount for a pension period that occurs within the initial period is worked out using the following formula:

\[
\frac{\text{Veteran's daily rate above general rate}}{2} \times \left(1 + \frac{\text{Veteran's taper amount}}{\text{Veteran's daily rate above general rate}}\right)
\]

Note 1: Expressions used in this subsection are defined in subsection (7).

Note 2: The Commission can increase a reduced daily pension amount under section 115F.
Reduced daily pension amount during the second period

(3) A veteran’s reduced daily pension amount for a pension period that occurs within the second period is worked out using the following formula:

\[
\frac{\text{Veteran’s daily above general rate}}{2} \times \left(1 + \frac{\text{Veteran’s taper amount}}{\text{Veteran’s CPI amount}}\right) \times \left(2 - \text{CPI amount}\right)
\]

Note 1: Expressions used in this subsection are defined in subsection (7).
Note 2: The Commission can increase a reduced daily pension amount under section 115F.

Reduced daily pension amount 5 years after the initial period

(4) A veteran’s reduced daily pension amount for a pension period that occurs more than 5 years after the end of the initial period is nil.

Note: The Commission can increase a reduced daily pension amount under section 115F.

Veteran who is unemployed for at least 2 weeks

(5) This section does not apply to a veteran who is unemployed for a continuous period of at least 2 weeks in respect of the pension periods within that 2 week period.

Veteran who is blinded in both eyes

(6) This section does not apply to a veteran for a pension period if the veteran is receiving a pension for the period at the special rate because of subsection 24(3).

Definitions

(7) In this section:

**CPI amount** means the amount worked out using the following formula:
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\[ 20 - \text{Number of CPI indexation days that have occurred since the beginning of the second period} \]

*daily above general rate* for a veteran means the rate worked out using the following formula:

\[
\text{Veteran’s pension rate on commencement} - \text{General rate}
\]

\[ 14 \]

*initial period* for a veteran means the period:

(a) that begins on the day after the day the veteran first commenced remunerative work as a result of undertaking a vocational rehabilitation program; and

(b) that ends immediately before the first CPI indexation day that occurs more than 2 years after that day.

*pension rate on commencement* for a veteran means the rate of pension under this Act that was payable to the veteran on the day on which the veteran commenced his or her vocational rehabilitation program.

*second period* means the period:

(a) that begins immediately after the initial period; and

(b) runs for 5 years.

*taper amount* for a veteran means:

(a) if the veteran’s average weekly hours are 40 hours or more—nil; and

(b) otherwise—the amount worked out using the following formula:

\[
\frac{40 - \text{Veteran’s average weekly hours}}{32}
\]

115E  Application for increase in reduced daily pension amount

(1) This section applies if, because of the application of section 115D in respect of the rate of pension payable to a veteran, the work and
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pension income rate of the veteran in relation to a pension period is or would be less than the unaffected pension rate for the veteran in relation to that period.

(2) A veteran to whom this section applies may apply to the Commission to have the reduced daily pension amount under section 115D increased.

(3) An application must be:
   (a) in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by any relevant documentary evidence in relation to salary, wages and other earnings from remunerative work for the period to which the application relates; and
   (d) lodged at an office of the Department in Australia in accordance with section 5T.

(4) An application lodged in accordance with section 5T is taken to have been made on a day determined under that section.

115F Determination by the Commission

(1) This section applies if, after considering an application under section 115E, the Commission is satisfied that the rate at which a pension has been, is being or is to be paid, to a veteran resulted, or would result, in a work and pension income rate for the applicant in relation to a pension period that is less or would be less than the unaffected pension rate in relation to that period.

(2) If this section applies, the Commission may increase in writing the veteran’s reduced daily pension amount under section 115D, for a past, present or future pension period, to the amount that the Commission is satisfied results in the work and pension income rate being equal to the unaffected pension rate.

(3) A determination takes effect on the day on which the determination is made.

115G Excluded income amount—invalidity service pensions

(1) The excluded income amount in respect of a veteran for a pension period that occurs within the period (the *initial period*) that begins
on the day after the veteran first commenced remunerative work as a result of undertaking the vocational rehabilitation program and ends immediately before the first CPI indexation day that is more than 2 years after the beginning of the initial period is half of the earnings of the veteran in each pension period.

(2) The excluded income reduction amount in respect of a veteran for each pension period that occurs within each consecutive 6 month period during the 5 years that begins immediately after the initial period is worked out using the following formula:

\[
\left(0.5 - 0.05 \times \text{No. of 6 month periods}\right) \times \text{Earnings}
\]

where:

- **no. of 6 month periods** means the number of consecutive 6 month periods that have begun in the 5 year period.
- **earnings** means salary, wages or earnings from remunerative work in each pension period.
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Division 3—Recovery of cost of rehabilitation

115H Recovery of cost of rehabilitation

(1) In this section, compensation, in relation to a person who is undertaking, or has undertaken, a rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme, means an amount that is by way of compensation or damages, or is, in the opinion of the Commission, in the nature of compensation or damages, in respect of the disease, disability or condition because of which the rehabilitation program is being, or has been, undertaken.

(2) This section applies if a veteran who is undertaking, or has undertaken, a rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme:

(a) has made a claim against another person for compensation, or may be, or may become, entitled to be paid compensation by another person, in relation to the disease, disability or condition because of which the rehabilitation program is being, or has been, undertaken; or

(b) is entitled, whether because of an order of a court, a settlement of a claim for compensation or otherwise, to be paid compensation by another person; or

(c) has been paid compensation by another person, whether because of an order of a court, a settlement of a claim for compensation or otherwise.

(3) A reference in subsection (2) to another person includes a reference to the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

(4) If this section applies, the Commission may give to the veteran a written notice requiring the veteran to pay for:

(a) a rehabilitation program or any part of such a program that has been undertaken by the veteran under the Veterans’ Vocational Rehabilitation Scheme before the day on which the notice was given to the veteran; and

(b) a rehabilitation program or any part of such a program undertaken at any time on or after the day on which the notice was given to the veteran;
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in relation to the disease, disability or condition.

(5) On being given the notice, the veteran becomes, by force of this section, liable to pay to the Commonwealth an amount equal to the cost, or amounts equal to the sum of the costs, as determined by the Commission, of and incidental to:

(a) a rehabilitation program or any part of such a program that has been undertaken by the veteran under the Veterans’ Vocational Rehabilitation Scheme before the day on which the notice was given to the veteran; and

(b) a rehabilitation program or any part of such a program undertaken at any time on or after the day on which the notice was given to the veteran.

(6) If the veteran is, under subsection (5), liable to make payment to the Commonwealth for a rehabilitation program provided by the Commission, the Commission may, by written notice given to a person who:

(a) may be, or may become, liable; or

(b) is liable;

to pay compensation to, or for the benefit of, the veteran in respect of the disease, disability or condition, inform the person that the veteran is liable to make payment to the Commonwealth for a rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme, whether undertaken before or after the giving of the notice.

(7) A reference in subsection (6) to a person includes a reference to an insurer who, under a contract of insurance, is liable to indemnify the person or is liable to pay compensation to, or for the benefit of, the veteran against that liability.

115J Where a person receives a notice under subsection 115H(6)

(1) This section applies to a person if the person has been given a notice under subsection 115H(6).

(2) If the person:

(a) is, on being given the notice, liable to pay compensation to, or for the benefit of, the veteran to whom the notice relates in respect of the disease, disability or condition to which the notice relates; or
(b) becomes, after receiving the notice, so liable to pay
compensation; or
the person becomes liable, because of this subsection, to pay to the
Commonwealth:
(c) an amount equal to the cost of the rehabilitation program that
the veteran is liable, or may become liable, under subsection
115H(5), to pay; or
(d) an amount equal to the amount of compensation that the
person is liable, or becomes liable, so to pay;
whichever is the less.

(3) If, before the notice was given to the person, the person paid to, or
for the benefit of, the veteran the whole of the compensation that
the person was liable to pay in respect of the disease, disability or
condition to which the notice relates, the notice has no effect.

(4) If a person is liable, or becomes liable, to pay an amount to the
Commonwealth under subsection (2), the person must not, without
the permission of the Commission, pay the compensation, or any
part of the compensation, to, or for the benefit of, the veteran.

(5) Payment to the Commonwealth of an amount under subsection (2)
operates, to the extent of the payment:
(a) as a discharge to the person of his or her liability to pay
compensation to the veteran entitled to receive the
compensation; and
(b) as a discharge of the veteran’s liability under subsection
115H(5).

115K Recovery of amount by the Commonwealth

The Commonwealth may recover in a court of competent
jurisdiction an amount that a person is liable to pay to the
Commonwealth under subsection 115H(5) or 115J(2).

115L Determination of amount of costs of rehabilitation programs

(1) This section applies if the Commission determines, in writing, the
amount of the cost of, or incidental to, a rehabilitation program
under a Veterans’ Vocational Rehabilitation Scheme for a veteran
during a specified period in respect of a disease, disability or
condition in relation to which a notice has been given under subsection 115H(4).

(2) The Commission may give a notice to the veteran containing a copy of that determination, or notices to the veteran and the person referred to in subsection 115H(6) containing copies of that determination.

(3) If the Commission gives a copy of a determination to a veteran or a person under subsection (2), the copy is, for all purposes, prima facie evidence:

(a) that the copy of the determination set out in the notice is a true copy of the determination of which it purports to be a copy; and

(b) that the determination was duly made by the Commission; and

(c) that the amount specified in the determination is the amount which the veteran is liable, by force of subsection 115H(5), to pay to the Commonwealth as the cost of and incidental to the rehabilitation program under the Veterans’ Vocational Rehabilitation Scheme during the period so specified for and in relation to that disease, disability or condition.

(4) The giving of a notice, or notices, under subsection (2) does not prevent the making of a further determination or determinations, and the giving by the Commission of a further notice or further notices under that subsection.
Part VII—Veterans’ Children Education Scheme

116 Interpretation

(1) In this Part, unless the contrary intention appears:

eligible child means:

(a) an eligible child of a member of the Forces, or of a member of a Peacekeeping Force; or
(b) an eligible child of a veteran.

eligible child of a member of the Forces, or of a member of a Peacekeeping Force means:

(a) a child of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, being a member:
   (i) whose death was defence-caused; or
   (ii) who was, immediately before his or her death, a member to whom subsection 22(4) or section 24 applied; or
   (iii) who was, immediately before his or her death, in receipt of a pension under Part IV in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1); or
(b) a child of a member of the Forces, or of a member of a Peacekeeping Force, being a member:
   (i) to whom subsection 22(4) or section 24 applies; or
   (ii) who is in receipt of a pension under Part IV in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1).

eligible child of a veteran means:

(a) a child of a deceased veteran, being a veteran:
   (i) whose death was war-caused; or
   (ii) who was, immediately before his or her death, a veteran to whom subsection 22(4) or section 24 applied; or
(iii) who was, immediately before his or her death, in receipt of a pension under Part II in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1); or

(iv) who was a prisoner of war at a time when the veteran was on operational service; or

(b) a child of a veteran, being a veteran:

(i) to whom subsection 22(4) or section 24 applies; or

(ii) who is in receipt of a pension under Part II in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1); or

(d) a child of a deceased veteran, being a child who is in receipt of, or is eligible to be granted, a pension under subsection 13(4); or

(e) a person determined under subsection 116C(2) to be included in a class that has been determined by the Commission under subsection 116A(1) for the purposes of this paragraph.

**member of the Forces** and **member of a Peacekeeping Force** have the same respective meanings as they have in Part IV.

**Scheme** means:

(a) the Veterans’ Children Education Scheme prepared by the Commission in pursuance of this Part and approved by the Minister, other than such a scheme that has been revoked; or

(b) if that Scheme has been varied and the variation has been approved by the Minister, that Scheme as so varied.

(2) If, after the death of a member of the Forces, or of a member of a Peacekeeping Force, a pension is granted in respect of the member under Part IV, or the rate of the pension granted to the member under Part IV is increased, as from a date before the death of the member in circumstances where:

(a) subsection 22(4) or section 24 applied to the member; or

(b) the member was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1);

then, the member is taken, for the purposes of the definition of **eligible child of a member of the Forces, or of a member of a Peacekeeping Force** in subsection (1), to have been:
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(c) if paragraph (a) applies—a member to whom subsection 22(4) or section 24 applied immediately before his or her death; or
(d) if paragraph (b) applies—in receipt of that pension or of pension at that increased rate, as the case may be, immediately before his or her death.

(3) If, after the death of a veteran, a pension is granted in respect of the veteran under Part II, or the rate of the pension granted to the veteran under Part II is increased, as from a date before the death of the veteran in circumstances where:
   (a) subsection 22(4) or section 24 applied to the veteran; or
   (b) the veteran was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1);
then, the veteran is taken, for the purposes of the definition of eligible child of a veteran in subsection (1), to have been:
(c) if paragraph (a) applies—a veteran to whom subsection 22(4) or section 24 applied immediately before his or her death; or
(d) if paragraph (b) applies—in receipt of that pension or of pension at that increased rate, as the case may be, immediately before his or her death.

(4) Where:
   (a) before an eligible child attains the age of 25 years, approval is given under the Veterans’ Children Education Scheme for the child to undertake a course of education or training;
   (b) the child attains the age of 25 years before completing that course; and
   (c) the child continues, after attaining the age of 25 years, to undertake that course for the purpose of completing it;
this Part applies to and in relation to the continued undertaking of that course by the child after he or she attained the age of 25 years as if he or she were under the age of 25 years.

116A Determination of class of persons for the purposes of paragraph (e) of the definition of eligible child in subsection 116(1)

(1) The Commission may, in writing, determine a class of persons for the purposes of paragraph (e) of the definition of eligible child of a veteran...
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veteran in subsection 116(1). However, the persons must be the children of veterans who render service before the MRCA commencement date.

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Disallowable instrument

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

116B  Person may apply for determination under subsection 116C(2)

(1) An application for a determination under subsection 116C(2) to be made in respect of a person who is, or was, the child of a veteran may be made, in writing, to the Commission:

(a) in the case of a person (the child) who is, or was, the child of a veteran and who is over the age of 18 years:
   (i) by the child; or
   (ii) with the approval of the child, by another person on behalf of the child; or
   (iii) if the child is unable, by reason of physical or mental incapacity, to approve a person to make the claim or application on his or her behalf—by another person, being a person approved by the Commission, on behalf of the child; or

(b) in the case of a person who is, or was, the child of a veteran and who is under the age of 18 years:
   (i) by a parent or guardian of the child; or
   (ii) by another person approved by a parent or guardian of the child; or
   (iii) if there is no parent or guardian of the child alive, or willing and able to make, or approve a person to make, such an application on behalf of the child—by another person, being a person approved by the Commission; on behalf of the child.
(2) An application under subsection (1) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

116C Commission may determine that a person is a member of a class determined under section 116A

(1) If an application has been made under section 116B in respect of a person, the Commission must decide whether the person the subject of the application falls within a class of persons determined by the Commission under subsection 116A(1).

(2) If the Commission decides that the person falls within a class of persons determined by the Commission under subsection 116A(1), the Commission must determine, in writing, that the person is included in the specified class.

(3) The Commission must give the person written notice of the Commission’s decision under subsection (1).

116D Review of Commission’s decision under subsection 116C(1)

(1) A person who is dissatisfied with a decision of the Commission under subsection 116C(1) may, in writing, request the Commission to review the decision.

(1A) A request under subsection (1) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

(2) If a written request is made, the Commission must review the decision, or cause the decision to be reviewed by a person to whom the Commission has delegated its powers under this section (not being the person who made the decision).

(3) When the Commission reviews a decision under subsection (2), it must make a written record of its decision (the review decision) upon review.

(4) The written record must include a statement that:
   (a) sets out the Commission’s findings on material questions of fact; and
Part VII  Veterans’ Children Education Scheme

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(b) refers to the evidence or other material on which those findings are based; and
(c) provides reasons for the review decision.

(5) If the review decision affirms or sets aside a decision under subsection 116C(1), it must give the person who requested the review of the decision:
(a) a copy of the Commission’s review decision; and
(b) subject to subsection (6), a copy of the statement about the review decision; and
(c) a statement that the person has a right to apply to the Administrative Appeals Tribunal for a review of the review decision.

(6) If the statement referred to in paragraph (5)(b) contains any matter that, in the opinion of the Commission:
(a) is of a confidential nature; or
(b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;
the copy given to the person is not to contain that matter.

117  Preparation of the Scheme

(1) The Commission may, from time to time, by instrument in writing, prepare a scheme, to be called the Veterans’ Children Education Scheme, for providing education and training for eligible children.

(2) The Commission may, from time to time, by instrument in writing, vary or revoke the scheme.

(3) A scheme prepared by the Commission in pursuance of subsection (1), and an instrument varying or revoking such a scheme, have no force or effect unless approved by the Minister.

(4) Where a scheme prepared by the Commission in accordance with subsection (1), or an instrument under subsection (2), has been approved by the Minister, the Commission shall furnish copies of the scheme or instrument to the Minister, and the Minister shall cause copies to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received those copies.
(5) Without limiting the powers of the Commission under subsection (1), the Scheme may make provision for and in relation to:

(a) the provision of free scholarships at schools, colleges and universities for allocation, under the Scheme, to eligible children; and

(b) the payment of maintenance allowances in respect of eligible children for whom education or training is being provided under the Scheme; and

(c) the making of applications for the provision of education or training for eligible children; and

(d) the investigation and determination of applications referred to in paragraph (c); and

(e) the establishment, membership and operation of Education Boards to perform such functions, and exercise such powers, in, and in connection with, the operation of the Scheme as are conferred on them by or under the Scheme; and

(f) guidance and counselling services.

118 Commission may provide benefits under Scheme

(1) The Commission may provide benefits for, and in respect of, eligible children under and in accordance with the Scheme.

(2) The Commission may provide guidance and counselling services under the scheme for such other people as the Minister determines in writing.

(3) A determination made under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
Part VIIAA—Education entry payment

118AA Eligibility

A person is eligible for an education entry payment under this section if:

(a) the person is receiving:
   (i) a partner service pension; or
   (ia) invalidity service pension; or
   (iii) income support supplement; and
(b) the person has not reached pension age; and
(c) the person is qualified, or if he or she were not in receipt of financial supplement under the Student Financial Supplement Scheme constituted by Part 4A of the *Student Assistance Act 1973* or established under Chapter 2B of the *Social Security Act 1991* would be qualified, to receive pensioner education supplement under the Social Security Act or the *Student Assistance Act 1973*; and
(d) either:
   (i) the Commission is satisfied that the person intends to enrol in a full-time or part-time course of education that is the subject of a determination made under section 5D of the *Student Assistance Act 1973* by the Minister administering that Act; or
   (ii) the person is enrolled in such a course; and
(e) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

118AAB Need for a claim

(1) A person who wants to be granted an education entry payment must make a claim for the payment:

(a) in writing; and

(b) in a form approved by the Commission.

(1A) A claim under subsection (1) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section.

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(2) A claim may be withdrawn at any time before it is determined, either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(2A) A withdrawal by document lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) A claim that is withdrawn is taken not to have been made.

118AAC Entitlement to and amount of payment

(1) An education entry payment is payable to the person if, after considering the claim, the Commission determines that the claim is to be granted.

(2) The amount of an education entry payment is $208.

118AAD Payment to be refunded

If:

(a) the Commission determined that a claim for education entry payment was to be granted to a person because the Commission was satisfied that the person intended to enrol in a course referred to in subparagraph 118AA(d)(i); and

(b) an amount of education entry payment was paid to the person; and

(c) subsequently the person is not enrolled in the course; the person must repay to the Commonwealth the amount of the payment.
Part VIIA—Pharmaceutical allowance and advance pharmaceutical allowance

Division 1—Pharmaceutical allowance

Subdivision A—Eligibility for and payability of pharmaceutical allowance

118A Eligibility for pharmaceutical allowance

(1) Subject to subsections (2), (2A) and (3), a person is eligible for a pharmaceutical allowance if:

(a) the person is receiving:

(i) a service pension; or

(ii) a pension whose rate is specified under subsection 30(1) or (2); or

(b) but for subsection 13(7), a pension would have been payable to the person at a rate specified under subsection 30(2); or

(c) the person is eligible for pharmaceutical benefits under the scheme known as the Repatriation Pharmaceutical Benefits Scheme.

Note: a person may be eligible for pharmaceutical allowance under either or both Part III or this Part. Only one amount of pharmaceutical allowance is payable to the person: see subsection 118B(1A).

(2) A person who leaves Australia otherwise than temporarily is not eligible for a pharmaceutical allowance after the day on which he or she left Australia.

(2A) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for a pharmaceutical allowance after the first 26 weeks of the absence.

(3) The person again becomes eligible to receive the pharmaceutical allowance on:

(a) the day on which the person returns to Australia; or

(b) the day on which the person, either orally, or by document lodged at an office of the Department in Australia in
accordance with section 5T, notifies the Department of his or her return to Australia; whichever is the later.

### 118B Pharmaceutical allowance not payable in some circumstances

(1) Even though a person is eligible for a pharmaceutical allowance, the allowance is not payable to the person on a pension payday if:

(a) the person has received an advance pharmaceutical allowance:

   (i) under Division 2 of this Part; or

   (ii) under Part 2.23 of the Social Security Act; and

(b) the person’s advance payment period has not ended.

(1A) Even though a person is eligible for a pharmaceutical allowance under this Part, the allowance is not payable to the person under this Part if the person is receiving a service pension under Part III, or an income support supplement under Part IIIA, that includes an amount of pharmaceutical allowance.

(2) Even though a person is eligible for a pharmaceutical allowance, the allowance is not payable to the person if the person is receiving pharmaceutical allowance under the Social Security Act.

(3) For the purposes of subsection (1), a person’s advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and

(b) ends after the number of paydays worked out using the following formula have passed:

\[
\text{Amount of advance} \times \frac{\text{Pharmaceutical allowance rate}}{\text{Pharmaceutical allowance rate}}
\]

where:

- **amount of advance** is the amount of the advance paid to the person.

- **pharmaceutical allowance rate** is the rate at which pharmaceutical allowance would be payable to the person on the day on which the advance is paid if the person were paid pharmaceutical allowance on that day.
Part VIIA Pharmaceutical allowance and advance pharmaceutical allowance

Division 1 Pharmaceutical allowance

Section 118C

(4) In subsection (3):

*advance pharmaceutical allowance* includes an advance pharmaceutical allowance under Part 2.23 of the Social Security Act.

*pharmaceutical allowance* includes pharmaceutical allowance under Part 2.22 of the Social Security Act.

Subdivision B—Rate of pharmaceutical allowance

118C Rate of pharmaceutical allowance

The rate of pharmaceutical allowance under this Part is $5.20 per fortnight.

Note: the amount specified in this section is adjusted annually in line with CPI increases under section 59L.

118D No pharmaceutical allowance if annual limit reached

(1) Pharmaceutical allowance is not payable to a person if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and

(ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount paid to a person by way of pharmaceutical allowance see section 5PA.

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on service pension or social security pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person’s family situation.

(2) In this section:

*advance pharmaceutical allowance* includes advance pharmaceutical allowance under the Social Security Act.
Subdivision C—Payment of pharmaceutical allowance

118E  Payment of pharmaceutical allowance

(1) Subject to subsection (2), a person’s pharmaceutical allowance is payable on each pension payday on which the person is eligible for the allowance.

(2) If:

(a) a person became eligible for pharmaceutical allowance under paragraph 118A(1)(c) on 26 December 1991; and

(b) the person was not eligible for pharmaceutical allowance on that day under paragraph 118A(1)(a) or (b) or under Part 2.22 of the Social Security Act; and

(c) the Department does not, immediately before 1 July 1992, have the information needed to enable the Commission to make a payment of pharmaceutical allowance to the person; pharmaceutical allowance is not payable to the person before the first payday on which the Department has that information.
Part VIIA Pharmaceutical allowance and advance pharmaceutical allowance
Division 2 Advance pharmaceutical allowance

Section 118F

Division 2—Advance pharmaceutical allowance

Subdivision A—Eligibility for and payability of advance pharmaceutical allowance

118F Eligibility for advance pharmaceutical allowance

(1) Subject to subsection (2), a person to whom section 118A applies is eligible for an advance pharmaceutical allowance.

(2) A person is not eligible for an advance pharmaceutical allowance if:

(a) the person is receiving a service pension; and
(b) the only reason why section 118A applies to the person is that the person is receiving that pension; and
(c) the Commission is satisfied that the person’s ordinary income exceeds $20.00 per fortnight.

Note: For ordinary income see subsection 5H(1).

(3) If the person is a member of a couple, the amount of the person’s ordinary income for the purposes of this section is worked out by adding the couple’s ordinary incomes (on a fortnightly basis) and dividing by 2.

Note: For member of a couple see subsections 5E(1), (2), (3) and (4).

Subdivision B—Claim for advance pharmaceutical allowance

118G Need for a claim

(1) A person who wants to be granted an advance pharmaceutical allowance must make a proper claim for that allowance.

(2) Subject to subsections 118K(4) and (5), if:

(a) a claim for an advance pharmaceutical allowance is made by or on behalf of a person; and
(b) at the time when the claim is made, the claim cannot be granted because the person is not eligible for the payment; the claim is taken not to have been made.

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118H Who can claim?

(1) Subject to subsection (2), the claim must be made by:
   (a) the person who wants to be granted the advance pharmaceutical allowance; or
   (b) with the approval of that person—another person on that person’s behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

118I Making a claim

(1) To be a proper claim, a claim must:
   (a) be in writing; and
   (b) be in accordance with a form approved by the Commission; and
   (c) be lodged at an office of the Department in Australia in accordance with the requirements of section 5T.

(2) A claim lodged at an office of the Department in Australia in accordance with section 5T is taken to have been made on a day determined under that section.

118K Proper claim

(1) A claim must be a proper claim under subsection (2), (3), (4), (5) or (6) to be a proper claim for the purposes of this Division.

(2) A claim by a person for an advance pharmaceutical allowance to be paid in a calendar year (current year) is a proper claim if:
   (a) a pension of the kind referred to in paragraph 118A(a) or (b) was payable to the person on the last pension payday in the previous calendar year; and
   (b) the claim is lodged before the first pension payday in the current year.
Part VIIA Pharmaceutical allowance and advance pharmaceutical allowance

Division 2 Advance pharmaceutical allowance

Section 118K

(3) A claim by a person for an advance pharmaceutical allowance to be paid in a calendar year (current year) is a proper claim if:
   (a) the person was eligible for pharmaceutical benefits of the kind referred to in paragraph 118A(c) on the last pension payday in the previous calendar year; and
   (b) the claim is lodged before the first pension payday in the current year.

(4) A claim by a person for an advance pharmaceutical allowance to be paid in a calendar year is a proper claim if:
   (a) the person claims a pension of the kind referred to in paragraph 118A(a) or (b); and
   (b) the person’s claim for the pension is determined in that year; and
   (c) the claim for the advance pharmaceutical allowance is lodged:
       (i) at the time when the claim for the pension is lodged; or
       (ii) before the claim for the pension is determined.

(5) A claim by a person for an advance pharmaceutical allowance to be paid in a calendar year is a proper claim if:
   (a) the claim is based on the person’s eligibility for pharmaceutical benefits of the kind referred in paragraph 118A(c); and
   (b) the claim is lodged before the person’s eligibility for those benefits is determined; and
   (c) the person’s eligibility for those benefits is determined in that year.

(6) A claim by a person for an advance pharmaceutical allowance to be paid in a calendar year is a proper claim if:
   (a) the person has been eligible for pharmaceutical allowance for a period (eligibility period) during the calendar year; and
   (b) the amount spent by the person during the eligibility period on the purchase of pharmaceutical benefits is equal to or greater than the total amount that has been paid to the person in the calendar year by way of:
       (i) pharmaceutical allowance; and
       (ii) advance pharmaceutical allowance.

Note: for the amount paid to a person by way of pharmaceutical allowance see section 5PA.
(7) In subsection (6):

*pharmaceutical benefit* means:

(a) a pharmaceutical benefit within the meaning of section 91; or

(b) a drug or medicinal preparation:

(i) in relation to which Part VII of the *National Health Act 1953* applies because of section 85 of that Act; or

(ii) that is a special pharmaceutical product (as defined in that Part).

Subdivision C—Amount of advance pharmaceutical allowance

### 118L Amount of advance pharmaceutical allowance

Subject to section 118M, the amount of a person’s advance pharmaceutical allowance is:

\[
\text{Pharmaceutical allowance rate} \times 7 \times 26
\]

where:

*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance that would be added to the person’s maximum basic rate if the person were receiving service pension and a pharmaceutical allowance advance were not being paid to the person.

Note: Pharmaceutical allowance rates are to be found at:

(a) point SCH6-D7 of the Rate Calculator; and

(b) section 118C.

### 118M Annual limit

(1) The amount paid to a person in a calendar year by way of:

- (a) pharmaceutical allowance; and
- (b) advance pharmaceutical allowance;

is not to exceed the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note: For the amount *paid* to a person by way of pharmaceutical allowance see section 5PA.
(2) In this section:

- **advance pharmaceutical allowance** includes advance pharmaceutical allowance under the Social Security Act.

- **pharmaceutical allowance** includes pharmaceutical allowance under the Social Security Act.
Part VIIAB—Defence Force Income Support Allowance and related payments

Division 1—Introduction

118N Simplified outline

The following is a simplified outline of this Part:

This Part is about payment of:

(a) Defence Force Income Support Allowance *(DFISA)*; and

(b) DFISA bonus; and

(c) DFISA-like payments under regulations made under this Part.

*DFISA—see Division 2*

DFISA is payable to a person if the rate of the person’s social security pension or benefit has been reduced (including to nil) because the person, or the person’s partner, has been paid adjusted disability pension (within the meaning of this Part).

Payment of DFISA is automatic: a person does not need to make a claim for it.

*DFISA bonus—see Division 3*

DFISA bonus is payable to a person if the amount of the person’s social security pension bonus has been reduced (including to nil) because the person, or the person’s partner, has been paid adjusted disability pension (within the meaning of this Part).

Payment of DFISA bonus is also automatic.
Part VIIAB Defence Force Income Support Allowance and related payments

Division 1 Introduction

Section 118NA

DFISA-like payments—see Division 4

Regulations made under this Part may provide for DFISA-like payments to be paid to a person if adjusted disability pension (within the meaning of this Part) payable to the person, or the person’s partner, reduces the amount of a payment payable to the person under a Commonwealth Act, regulations or an instrument made under such an Act, or a Commonwealth administered program.

118NA Definitions

In this Part:

adjusted disability pension means:
(a) a pension under Part II or IV (other than a pension that is payable under section 30 to a dependant of a deceased veteran); or
(b) temporary incapacity allowance under Part VI; or
(c) a pension payable because of subsection 4(6) or (8B) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 (other than a pension payable in respect of a child); or
(d) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the MRCA (permanent impairment); or
(e) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA.

amount includes a nil amount.

excluded amount means an amount that is not income for the purposes of the Social Security Act because of subsection 8(8) of that Act.

partner has the same meaning as in subsection 4(1) of the Social Security Act.

rate includes a nil rate.

social security age pension means age pension under Part 2.2 of the Social Security Act.

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*social security pension bonus* means pension bonus under Part 2.2A of the Social Security Act.
Division 2—Defence Force Income Support Allowance

Subdivision A—Payment of Defence Force Income Support Allowance

118NB Payment of Defence Force Income Support Allowance

(1) Defence Force Income Support Allowance (DFISA) is payable to a person each day on or after 20 September 2004 if:
   (a) adjusted disability pension is payable to the person, or the person’s partner, on that day; and
   (b) social security pension or social security benefit (the primary payment) is payable to the person on that day; and
   (c) the adjusted disability pension reduces (including to nil) the rate of the primary payment on that day.

Note 1: For adjusted disability pension and partner see section 118NA.
Note 2: For social security pension and social security benefit see section 5Q.
Note 3: Even though the person may not actually be paid an amount of social security pension or benefit because the rate of the pension or benefit is nil, in some cases the pension or benefit will be taken to be payable to the person if adjusted disability pension is payable to the person or the person’s partner: see subsection 23(1D) of the Social Security Act.

(2) However, DFISA is not payable to the person on that day if:
   (a) the rate of DFISA would be nil; or
   (b) section 1129, 1130B or 1131 of the Social Security Act (financial hardship) applies to the person in relation to the primary payment; or
   (c) before that day:
      (i) the person had elected not to be covered by this Division; and
      (ii) that election had not been withdrawn.

(3) An election, or a withdrawal of an election, under paragraph (2)(c):
   (a) must be by document lodged at an office of the Department in Australia in accordance with section 5T; and
   (b) is taken to have been made on a day determined under that section.
Subdivision B—Rate of Defence Force Income Support Allowance

118NC Rate of Defence Force Income Support Allowance

DFISA rate where primary payment is neither compensation affected nor prescribed

(1) The rate of DFISA on a day that is on or after 20 September 2004 is worked out using method statement 1 in this subsection, unless:

(a) Part 3.14 of the Social Security Act (compensation recovery) applies to reduce the rate of the primary payment on that day (in which case see method statement 2 in subsection (2)); or

(b) the primary payment is a social security pension or social security benefit that is prescribed for the purposes of this section (in which case, see subsection (3)).

Note: For primary payment see section 118NB.

Method Statement 1

**Step 1.** Work out the daily provisional payment rate for the primary payment on that day.

Note: For daily provisional payment rate see subsection (4).

**Step 2.** Work out what would have been the daily provisional payment rate (the notional rate) for the primary payment on that day if both of the following assumptions were made:

First assumption

The first assumption is that the adjusted disability pension payable to the person, or the person’s partner, were an excluded amount (see section 118NA).

Note: This will mean the adjusted disability pension will not be treated as income when calculating the notional rate.
Second assumption

The second assumption is that, if an amount of rent assistance was included in the primary payment, that amount were reduced (but not to less than nil) by the rent reduction amount.

Note: For rent assistance and rent reduction amount see subsection (4).

Step 3. Subtract the daily provisional payment rate under step 1 from the notional rate under step 2. The difference is the rate of DFISA on that day.

DFISA rate where primary payment is compensation affected but not prescribed

(2) The rate of DFISA on a day that is on or after 20 September 2004 is worked out using method statement 2 in this subsection if:

(a) Part 3.14 of the Social Security Act (compensation recovery) applies to reduce the rate of the primary payment on that day; and

(b) the primary payment is not a social security pension or social security benefit that is prescribed for the purposes of this section.

Note: For primary payment see section 118NB.

Method Statement 2

Step 1. Work out the daily provisional payment rate for the primary payment on that day.

Note: For daily provisional payment rate see subsection (4).

Step 2. Work out the amount by which Part 3.14 of the Social Security Act reduces the daily primary payment rate on that day.

Step 3. Subtract the amount in step 2 from the rate in step 1.
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<td>Subtract the amount in step 3 from the amount in step 6. The difference is the rate of DFISA on that day.</td>
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</table>

*Regulations may prescribe other ways of calculating rate of DFISA*

(3) The regulations may prescribe a social security pension or social security benefit for the purposes of this section. If the regulations do so, the regulations must also prescribe the method to work out the daily rate of DFISA that is payable in relation to that pension or benefit.

Note: For **social security pension** and **social security benefit** see section 5Q.

**Definitions**

(4) In this section:

*daily provisional payment rate* means the provisional payment rate, provisional annual payment rate or provisional fortnightly payment rate referred to in the Rate Calculator used under the Social Security Act to work out the rate of the primary payment, converted to a daily rate by dividing the rate by 364 (for a provisional annual payment rate) or 14 (for a provisional fortnightly payment rate).

*rent assistance* has the same meaning as in the Social Security Act.

*rent reduction amount* is the amount that would be a person’s income reduction under the Social Security Act if that income reduction were worked out by applying the same income test or ordinary income test that was used under that Act in calculating the person’s primary payment, but applying that test on the basis that
the adjusted disability pension payable to the person, or the person’s partner, were the person’s only ordinary income for the purposes of that Act.

Subdivision C—Special rules for the Social Security Act

118ND Bereavement payments under the Social Security Act

Increase of bereavement payments to take account of DFISA

(1) If, immediately before a person dies:
   (a) a social security pension or social security benefit was payable to the person; and
   (b) DFISA was payable to the person;
then, for the purposes of the bereavement payment provisions of the Social Security Act, the rate of the pension or benefit that, if the person had not died, would have been payable to the person on a day during the bereavement period is increased by the rate of DFISA that would also have been payable to the person on that day.

Note 1: For social security pension and social security benefit see section 5Q.

Note 2: For bereavement payment provision and bereavement period see subsection (4).

DFISA paid to person after the person dies

(2) If:
   (a) a person is qualified for payments under a bereavement payment provision of the Social Security Act in relation to the death of the person’s partner; and
   (b) after the person’s partner died, an amount of DFISA to which the partner would have been entitled if the partner had not died has been paid under this Part; and
   (c) the Social Security Secretary is not satisfied that the person has not had the benefit of the DFISA amount;
the following provisions have effect:
   (d) the DFISA amount is not recoverable from the person or from the personal representative of the person’s partner, except to the extent (if any) that the DFISA amount exceeds the amount payable to the person under the bereavement payment provision;
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(e) the amount payable to the person under the bereavement payment provision is to be reduced by the DFISA amount.

Note: For **bereavement payment provision** and **Social Security Secretary** see subsection (4).

**Financial institutions not liable**

(3) If:

(a) a person is qualified for payments under a bereavement payment provision of the Social Security Act in relation to the death of the person’s partner; and

(b) the amount of DFISA to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Part into an account with a financial institution within the bereavement period referred to in the bereavement payment provision; and

(c) the financial institution pays to the person, out of the account, an amount not exceeding the total of the DFISA amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

**Definitions**

(4) In this section:

**bereavement payment provisions** of the Social Security Act means the following provisions of that Act:

(a) Division 9 of Part 2.2 (age pension);

(b) Division 10 of Part 2.3 (disability support pension);

(c) Division 9 of Part 2.4 (wife pension);

(d) Division 9 of Part 2.5 (carer payment);

(e) Division 9 of Part 2.7 (bereavement allowance);

(f) Division 9 of Part 2.8 (widow B pension);

(g) Division 9 of Part 2.10 (parenting payment);

(h) Division 10 of Part 2.11 (youth allowance);

(i) Division 10 of Part 2.11A (austudy);

(j) Division 9 of Part 2.12 (newstart);

(k) Division 11 of Part 2.12B (mature age allowance);
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(l) Division 9 of Part 2.14 (sickness allowance);
(m) Division 9 of Part 2.15 (special benefit);
(n) Division 9 of Part 2.15A (partner allowance);
(o) Division 10 of Part 2.16 (special needs pension).

*bereavement period* has the meaning given by subsection 21(2) of the Social Security Act.

*Social Security Secretary* means the Secretary of the Department administered by the Minister who administers the Social Security Act.

118NE Remot Area Allowance under the Social Security Act

(1) If, on a day that is on or after 20 September 2004:
(a) adjusted disability pension is payable to a person or a person’s partner; and
(b) a social security pension or social security benefit is payable to the person; and
(c) the rate of the social security pension or social security benefit is nil; and
(d) the rate of the social security pension or social security benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) were made;

then, for the purposes of the remote area allowance provisions of the Social Security Act, the rate of the social security pension or social security benefit on that day is taken to be greater than nil.

*Definitions*

(2) In this section:

*remote area allowance provisions* of the Social Security Act means the following provisions of that Act:
(a) point 1064-H1;
(b) point 1065-E1;
(c) point 1066-H1;
(d) point 1066A-I1;
(e) point 1066B-F1;
(f) point 1067G-K1;
(g) point 1067L-F1;
(h) point 1068-J1;
(i) point 1068A-F1;
(j) point 1068B-G1.
Division 3—DFISA bonus

Subdivision A—Payment of DFISA bonus

118NF Payment of DFISA bonus

(1) DFISA bonus is payable to a person if:
   (a) on a day (the critical day) that is on or after 20 September 2004, adjusted disability pension is payable to the person or the person’s partner; and
   (b) on the critical day, social security age pension becomes payable to the person; and
   (c) on or after the critical day, social security pension bonus is granted to the person in relation to that age pension; and
   (d) the adjusted disability pension reduces (including to nil) the amount of that pension bonus.

Note: For adjusted disability pension, partner, social security age pension and social security pension bonus see section 118NA.

(2) However, DFISA bonus is not payable to the person if, on the critical day, section 1129 of the Social Security Act (financial hardship) applies to the person in relation to that age pension.

118NG When DFISA bonus is to be paid

DFISA bonus is to be paid on:
   (a) the first pension payday after the social security pension bonus was granted; or
   (b) if the Commission considers it is not practicable to pay the DFISA bonus on that payday—the next practicable day.

Note: For pension payday see section 5Q.

118NH Payment of bonus after death

(1) This section sets out the only circumstances in which DFISA bonus will be payable after the death of the person concerned.
DFISA bonus payable before person dies

(2) If:
   (a) DFISA bonus is payable to a person; and
   (b) the person dies; and
   (c) at the time of the person’s death, the person had not received the DFISA bonus;
the bonus is payable to the legal personal representative of the person.

Liability of Commonwealth

(3) If DFISA bonus is paid under subsection (2), the Commonwealth has no further liability to any person in respect of that bonus.

Subdivision B—Amount of DFISA bonus

Amount of DFISA bonus

(1) The amount of DFISA bonus for a person is worked out as follows:

Method Statement

**Step 1.** Work out the amount of social security pension bonus payable to the person.

**Step 2.** Work out the amount of social security pension bonus (the *notional pension bonus*) that would have been payable to the person if the adjusted disability pension payable to the person, or the person’s partner, were an excluded amount.

Note: For *excluded amount* see section 118NA.

**Step 3.** Subtract the amount of the pension bonus under step 1 from the amount of the notional pension bonus in step 2. The difference is the amount of the DFISA bonus.
Division 4—DFISA-like payments etc. under regulations

118NJ DFISA-like payments etc. under regulations

DFISA-like payments

(1) The regulations may make provision for and in relation to a payment (DFISA-like payment) to a person on a day that is on or after 20 September 2004 if:

(a) adjusted disability pension is payable to the person, or the person’s partner, on that day; and

(b) either:

(i) a payment (the primary payment) under a Commonwealth scheme is payable to the person on that day but, because of the adjusted disability pension, the rate of the primary payment is reduced (including to nil); or

(ii) apart from the adjusted disability pension, a payment (the primary payment) under a Commonwealth scheme would be payable to the person on that day.

Note 1: For adjusted disability pension and partner see section 118NA.

Note 2: For Commonwealth scheme see subsection (3).

Secondary benefits

(2) The regulations may also make provision for and in relation to a payment, or the provision of a non-financial benefit, to the person on a day that is on or after 20 September 2004 if:

(a) a payment (other than the primary payment) or a non-financial benefit is not payable or provided to the person on that day under the Commonwealth scheme or another Commonwealth scheme, but only because the primary payment is not payable to the person on that day; and

(b) the primary payment is not payable to the person on that day, but only because adjusted disability pension is payable to the person, or the person’s partner, on that day; and

(c) a DFISA-like payment is payable to the person on that day.

(3) In this section:
*Commonwealth scheme* means:

(a) an Act; or

(b) regulations or an instrument made under an Act; or

(c) a program administered by the Commonwealth.
Part VIIAC—Utilities allowance

Division 1—Eligibility for and payability of utilities allowance

118O Definition

In this Part:

utilities allowance test day means:
(a) 20 March; and
(b) 20 September.

118OA Eligibility for utilities allowance

(1) A person is eligible for utilities allowance if:
   (a) the person has reached qualifying age (see subsection (2); and
   (b) a service pension or an income support supplement is payable to the person; and
   (c) the person:
       (i) is in Australia; or
       (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 13 weeks.

(2) For the purposes of paragraph (1)(a), the qualifying age for a person is:
   (a) if the person is a veteran—the pension age for that person; or
   (b) if the person is not a veteran—the age that would be the pension age for that person if he or she were a veteran.

Note: For pension age see section 5QA.

118OB When utilities allowance is payable

(1) Utilities allowance is payable to a person in relation to each utilities allowance test day on which the person is eligible for the allowance.
(2) However, utilities allowance is not payable to the person in relation to that day if:
   (a) before that day, 2 instalments of any, or any combination, of the following allowances were payable to the person in the financial year in which that day occurs:
      (i) utilities allowance under this Act;
      (ii) utilities allowance under the Social Security Act;
      (iii) seniors concession allowance under this Act;
      (iv) seniors concession allowance under the Social Security Act; or
   (b) before that day:
      (i) the person had elected not to be covered by this Part; and
      (ii) that election had not been withdrawn.

(3) An election, or a withdrawal of an election, under paragraph (2)(b):
   (a) must be by document lodged at an office of the Department in Australia in accordance with section 5T; and
   (b) is taken to have been made on a day determined under that section.
Division 2—Rate of utilities allowance

118OC  Rate of utilities allowance

A person’s annual rate of utilities allowance is worked out using the following table:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Person’s situation</td>
<td>Annual rate</td>
</tr>
<tr>
<td>1</td>
<td>not a member of a couple</td>
<td>$100</td>
</tr>
<tr>
<td>2</td>
<td>member of an illness separated couple</td>
<td>$100</td>
</tr>
<tr>
<td>3</td>
<td>member of a respite care couple</td>
<td>$100</td>
</tr>
<tr>
<td>4</td>
<td>member of a couple (other than an illness separated couple or a respite care couple)</td>
<td>half the rate specified in column 3 of item 1</td>
</tr>
</tbody>
</table>

Note: The annual rates of utilities allowance are indexed twice a year in line with CPI increases (see section 198E).
Division 3—Payment of utilities allowance

118OD  Payment of utilities allowance by instalments

(1) Utilities allowance is to be paid by instalments.

(2) If utilities allowance is payable to a person in relation to a utilities allowance test day, then an instalment of the allowance is to be paid to the person on the person’s first pension payday on or after that test day.

(3) The amount of an instalment of utilities allowance is worked out by dividing the amount of the annual rate of utilities allowance by 2.

(4) If the amount of the instalment is not a multiple of 10 cents, the amount is to be increased to the nearest multiple of 10 cents.
Part VIIAD—Seniors concession allowance

Division 1—Eligibility for and payability of seniors concession allowance

118P Definition

In this Part:

**seniors concession allowance test day** means:

(a) 1 June; and

(b) 1 December.

118PA Eligibility for seniors concession allowance

(1) A person is eligible for seniors concession allowance if:

(a) the person is the holder of a seniors health card and is in Australia; or

(b) all of the following apply to the person:

(i) the person is temporarily absent from Australia;

(ii) the person has been so for a continuous period not exceeding 13 weeks;

(iii) the person was the holder of a seniors health card immediately before leaving Australia; or

(c) the person is covered by subsection (2) and is in Australia; or

(d) all of the following apply to the person:

(i) the person is temporarily absent from Australia;

(ii) the person has been so for a continuous period not exceeding 13 weeks;

(iii) the person was covered by subsection (2) immediately before leaving Australia.

(2) A person is covered by this subsection if:

(a) the person is the holder of a gold card; and

(b) the person has reached qualifying age (within the meaning of section 118OA); and

(c) all of the following conditions are satisfied in relation to the person:
###Seniors concession allowance

**Part VIIAD**

**Eligibility for and payability of seniors concession allowance**

**Division 1**

####Section 118PB

(i) the person is not eligible for seniors concession allowance under paragraph (1)(a) or (b);

(ii) the person is not qualified for seniors concession allowance under the Social Security Act;

(iii) the person is not eligible for utilities allowance under this Act;

(iv) the person is not qualified for utilities allowance under the Social Security Act.

(3) In this section:

*gold card* means a card known as the Repatriation Health Card - For All Conditions that evidences a person’s eligibility, under this Act or the Military Rehabilitation and Compensation Act 2004, to be provided with treatment for all injuries or diseases.

####118PB When seniors concession allowance is payable

(1) Seniors concession allowance is payable to a person in relation to each seniors concession allowance test day on which the person is eligible for the allowance.

(2) However, seniors concession allowance is not payable to the person in relation to that day if:

(a) before that day, 2 instalments of any, or any combination, of the following allowances were payable to the person in the financial year in which that day occurs:

(i) seniors concession allowance under this Act;

(ii) seniors concession allowance under the Social Security Act;

(iii) utilities allowance under this Act;

(iv) utilities allowance under the Social Security Act; or

(b) before that day:

(i) the person had elected not to be covered by this Part; and

(ii) that election had not been withdrawn; or

(c) subsection 122A(1C) (failing to nominate a bank account) applies to the person.

(3) An election, or a withdrawal of an election, under paragraph (2)(b):
Section 118PB

(a) must be by document lodged at an office of the Department in Australia in accordance with section 5T; and
(b) is taken to have been made on a day determined under that section.
Division 2—Rate of seniors concession allowance

118PC  Rate of seniors concession allowance

A person’s annual rate of seniors concession allowance is $200.

Note: The annual rate of seniors concession allowance is indexed twice a year in line with CPI increases (see section 198E).
Division 3—Payment of seniors concession allowance

118PD  Payment of seniors concession allowance by instalments

(1) Seniors concession allowance is to be paid by instalments.

(2) An instalment of seniors concession allowance is to be paid to a person as soon as is reasonably practicable on or after the seniors concession allowance test day in relation to which the allowance is payable to the person.

(3) The amount of an instalment of seniors concession allowance is worked out by dividing the amount of the annual rate of seniors concession allowance by 2.

(4) If the amount of the instalment is not a multiple of 10 cents, the amount is to be increased to the nearest multiple of 10 cents.
Part VIIIB—Telephone allowance

Division 1—Eligibility for and payability of telephone allowance

118Q  Eligibility for telephone allowance

Service pensioners

(1) A person is eligible for a telephone allowance if:
   (a) the person is a service pensioner; and
   (b) the person is eligible for fringe benefits under section 53A; and
   (c) the person is a telephone subscriber.

Note: for telephone subscriber see subsection (4).

Certain Part II and Part IV pensioners

(2) A person is eligible for a telephone allowance if:
   (a) the person is eligible for a pension under Part II or Part IV:
      (i) at a rate specified in subsection 22(4) (extreme disablement adjustment rate); or
      (ii) at the rate specified in section 24 (special rate); or
      (iii) the rate of which is increased under subsection 27(2) by an amount specified in any of items 1 to 8 of the Table in subsection 27(1); or
      (iv) at the rate specified in subsection 30(1) (certain war widows and war widowers rate); and
   (b) the person is a telephone subscriber.

Note 1: for telephone subscriber see subsection (4).

Note 2: the rate specified in section 24 is the rate for people to whom section 25 applies (temporary payment at special rate) as well as for people to whom section 24 applies (see subsection 25(2)).
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World War 1 veterans

(3) A person is eligible for a telephone allowance if:
   (a) the person is:
       (i) a veteran who rendered eligible war service during
           World War 1; or
       (ii) a Commonwealth veteran who rendered continuous
           full-time service during World War 1; or
       (iii) an allied veteran who rendered continuous full-time
           service during World War 1; and
   (b) the person is a telephone subscriber.

Note 1: for telephone subscriber see subsection (4).
Note 2: for World War 1 see subsections 5B(1) and (3).
Note 3: in addition to the categories of eligibility described in subsections (1) to (3), World War 1 Australian mariners may be eligible for telephone allowance under a determination made under subsection 5R(1).

(3AA) A person is eligible for a telephone allowance if:
   (a) either:
       (i) the person is the holder of a seniors health card; or
       (ii) the person is absent from Australia and was the holder
           of a seniors health card immediately before leaving
           Australia; and
   (b) the person is a telephone subscriber.

People leaving Australia otherwise than temporarily

(3A) A person who leaves Australia otherwise than temporarily is not eligible for a telephone allowance on or after the next telephone allowance payday.

Temporary absence from Australia

(3B) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for an instalment of telephone allowance that, apart from this subsection, would be payable on a telephone allowance payday occurring after the first 26 weeks of the absence.

(4) In this section:

   telephone subscriber means a person:

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(a) who is an Australian resident; and
(b) who has a telephone service connected in Australia; and
(c) the telephone service is connected:
   (i) in that person’s name; or
   (ii) if subparagraph (i) does not apply to the person and the person is a non-illness separated spouse—in the name of the person to whom the person is legally married; or
   (iii) if neither (i) nor (ii) applies to the person and the person is a member of a couple—in the name of the person’s partner.

Note: for Australian resident see section 5G.

118R Telephone allowance not payable in some circumstances

Even though a person is eligible for a telephone allowance, the allowance is not payable to the person:
(a) if the person is receiving a telephone allowance under the Social Security Act or the MRCA; or
(b) if:
   (i) the person is a service pensioner; and
   (ii) the person is a member of a couple; and
   (iii) the person’s partner is receiving a telephone allowance because of subsection 118Q(3) or a determination under subsection 5R(1).

Note 1: subsection 118Q(3) covers certain categories of World War 1 veterans.

Note 2: the relevant determination under subsection 5R(1) provides eligibility for telephone allowance to certain categories of World War 1 Australian mariners.
Division 2—Rate of telephone allowance

118S Rate of telephone allowance

(1) Subject to subsections (2), (3) and (4), the rate of telephone allowance is $51.80 per year.

Note: the amount specified in subsection (1) is indexed annually in line with CPI increases under section 198F.

(2) Subject to subsection (3), the rate of telephone allowance for a person is half the amount of the rate specified in subsection (1) if:
   (a) the person is a service pensioner; and
   (b) the person is eligible for fringe benefits under section 53A; and
   (c) the person is a member of a couple; and
   (d) the person’s partner is receiving a telephone allowance under:
       (i) this Act; or
       (ia) the MRCA; or
       (ii) the Social Security Act; and
   (e) the person is living with the person’s partner in the same home.

(3) If a person is eligible for a telephone allowance because of subsection 118Q(3) or a determination under subsection 5R(1), the person’s rate of telephone allowance per year is the amount equal to the person’s annual telephone rental charge for one telephone service.

Note 1: subsection 118Q(3) covers certain categories of World War 1 veterans.

Note 2: the relevant determination under subsection 5R(1) provides eligibility for telephone allowance to certain categories of World War 1 Australian mariners.

(4) The rate of telephone allowance for a person is half the amount of the rate specified in subsection (1) if:
   (a) the person is the holder of a seniors health card; and
   (b) the person is a member of a couple; and
Section 118S

(c) the person’s partner is receiving a telephone allowance under:
   (i) this Act; or
   (ia) the MRCA; or
   (ii) the Social Security Act; and
(d) the person is living with the person’s partner in the same home.
Division 3—Payment of telephone allowance

118T  Payment by instalments

(1) A full instalment of telephone allowance is payable to a person on each telephone allowance payday on which:
   (a) the person is eligible for the allowance; and
   (b) the allowance is payable to the person.

(2) In this section:

   telephone allowance payday means the first pension payday that falls on or after:
   (a) 1 January; and
   (b) 20 March; and
   (c) 1 July; and
   (d) 20 September.

118U  Calculation of amount of instalment

(1) The amount of an instalment of telephone allowance is the amount worked out by dividing the amount of the annual rate of telephone allowance by 4.

(2) If the amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is to be increased to the nearest multiple of 10 cents.
Part VIIC—Seniors health card

Division 1—Eligibility for and entitlement to a seniors health card

Subdivision A—Eligibility

118V Eligibility for seniors health card

(1) A person is eligible for a seniors health card if the person:
(a) is a veteran; and
(b) has rendered qualifying service; and
(c) has reached pension age; and
(d) is an Australian resident; and
(e) is in Australia; and
(f) is not receiving a service pension; and
(g) is not receiving a social security pension or benefit; and
(h) satisfies the seniors health card income test.

Note 1: For qualifying service see section 7A.
Note 2: For Australian resident see section 5G.
Note 3: For seniors health card income test see section 118ZZA.
Note 4: For pension age see section 5QA.

(1A) A person is eligible for a seniors health card if the person:
(a) is a war widow or a war widower; and
(b) has reached qualifying age; and
(c) is an Australian resident; and
(d) is in Australia; and
(e) is not receiving income support supplement; and
(f) satisfies the seniors health card income test; and
(g) is not eligible for a seniors health card under subsection (1).

Note 1: For Australian resident see section 5G.
Note 2: For seniors health card income test see section 118ZAA.
Note 3: For war widow and war widower see subsection 5E(1).
Part VIIC  Seniors health card
Division 1  Eligibility for and entitlement to a seniors health card

Section 118V

Partner of person eligible for card under subsection (1)

(2) A person is eligible for a seniors health card if:
   (a) the person is a member of a couple; and
   (b) the person’s partner is eligible for a seniors health card under subsection (1); and
   (c) the person has reached:
       (i) if the person is not a veteran—pension age; or
       (ii) if the person is a veteran—the age that would be the pension age for that person if he or she were not a veteran; and
   (d) the person is an Australian resident; and
   (e) the person is in Australia; and
   (f) the person is not receiving a service pension; and
   (g) the person is not receiving a social security pension or benefit; and
   (h) the person satisfies the seniors health card income test; and
   (i) the person is not eligible for a seniors health card under subsection (1) or (1A).

Note 1: For member of couple and partner see section 5E.
Note 3: For Australian resident see section 5G.
Note 4: For seniors health card income test see section 118ZZA.
Note 5: For pension age see section 5QB.

(3) A person is eligible for a seniors health card if:
   (a) the person is:
       (i) the non-illness separated spouse of a person who is receiving an age or invalidity service pension; or
       (ii) the non-illness separated spouse of a person who is eligible for a seniors health card under subsection (1); or
       (iii) a widow or widower of a veteran; and
   (b) the person is eligible for a partner service pension; and
   (c) the person has reached:
       (i) if the person is not a veteran—pension age; or
       (ii) if the person is a veteran—the age that would be the pension age for that person if he or she were not a veteran; and
   (d) the person is an Australian resident; and

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Section 118W

(e) the person is in Australia; and
(f) the person is not receiving a service pension; and
(g) the person is not receiving a social security pension or benefit; and
(h) the person satisfies the seniors health card income test; and
(i) the person is not eligible for a seniors health card under subsection (1) or (1A).

Note 1: For non-illness separated spouse, widow and widower see subsection 5E(1).

Note 2: For veteran see subsection 5C(1).

Note 3: For pension age see section 5QB.

Note 4: For Australian resident see section 5G.

Note 5: For seniors health card income test see section 118ZZA.

(4) A person is not eligible for a seniors health card at a particular test time if:

(a) the person has failed to comply with section 118ZJA in respect of the reference tax year; or

(b) where the person has made an estimate of taxable income for the reference tax year and the estimate was accepted—the person did not give the Commission a copy of a notice of assessment of the person’s taxable income for that tax year within 12 months after the end of that tax year.

(4A) In subsection (1A), qualifying age has the meaning given by subsection 45A(2).

(5) In subsection (4):

taxable income, test time and reference tax year have the same meanings as in the Seniors Health Card Income Test Calculator.

Subdivision B—Entitlement

118W Entitlement to a seniors health card

Even though a person is eligible for a seniors health card, it is only if the person is the holder of a seniors health card that benefits and concessions of various kinds relating to the person’s health may be made available to the person by the Commonwealth.
Part VIIC  Seniors health card
Division 1  Eligibility for and entitlement to a seniors health card

Section 118X

Note 1: If there is a determination in force that a person is entitled to a seniors health card, the person is the holder of a seniors health card. For holder of a seniors health card see section 5PB.

Note 2: A person who is the holder of a seniors health card generally has access to concessional pharmaceutical benefits under the National Health Act 1953.

118X  Social Security cardholder not entitled

If a person is the holder of a seniors health card within the meaning of the Social Security Act, the person is not entitled to a seniors health card under this Act.
Division 2—Claim for seniors health card

118Y  Need for a claim

A person who wants to be granted a seniors health card must make a proper claim.

Note: For proper claim see section 118ZA (form), section 118ZB (manner of lodgment) and section 118ZC (residence/presence in Australia).

118Z  Who can claim?

(1) Subject to subsection (2), a claim must be made by:
   (a) the person who wants to be granted a seniors health card; or
   (b) with the approval of the person—another person on the person’s behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

118ZA  Making a claim

(1) To be a proper claim, the claim must be:
   (a) made in writing; and
   (b) in accordance with a form approved by the Commission; and
   (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
   (d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

118ZC  Claimant must be an Australian resident and in Australia

A claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:
   (a) an Australian resident; and
   (b) in Australia;
   on the day on which the claim is lodged.
Part VII C Seniors health card
Division 2 Claim for seniors health card

Section 118ZD

Note: For Australian resident see section 5G.

118ZD Claim may be withdrawn

(1) A claimant for a seniors health card or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(4) A withdrawal made by lodging a document in accordance with section 5T is taken to have been so made on a day determined under that section.

Oral withdrawal of a claim

(5) An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

Acknowledgment of oral withdrawal of a claim

(6) As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:
   (a) an oral withdrawal of the claim was made; and
   (b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

Reactivating the withdrawn claim

(7) If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph (6)(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.
Division 3—Investigation of claim

118ZE Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a seniors health card, the Secretary must investigate the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must submit the claim to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.
Part VIIC  Seniors health card
Division 4  Consideration and determination of claim

Section 118ZF

Division 4—Consideration and determination of claim

118ZF  Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission’s opinion, relevant to the claim and must then determine the claim.

(2) In considering the claim, the Commission must:

   (a) satisfy itself with respect to; or
   (b) determine;

   (as the case requires) all matters relevant to the determination of the claim.

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:

   (a) the evidence submitted with the claim under section 118ZE; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

Note: A claimant may apply to the Commission for review of a determination made under this section (see section 118ZS).

118ZG  Entitlement determination

Subject to section 118X, the Commission is to determine that a person is entitled to a seniors health card if the Commission is satisfied that the person is eligible for the card.

118ZH  Date of effect of determination

A determination under section 118ZG takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.
Division 5—Cardholder’s obligations

118ZI Secretary may require notice of the happening of event or a change in circumstances

(1) The Secretary may give a person who is the holder of a seniors health card a notice that requires the person to inform the Department, or an officer specified in the notice, if:
   (a) a specified event or change of circumstances occurs; or
   (b) the person becomes aware that a specified event or change of circumstances is likely to occur.

   Note: For holder of a seniors health card see section 5PB.

(2) An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect whether the person is eligible for the card.

(3) A notice under subsection (1):
   (a) must be in writing; and
   (b) may be given personally or by post; and
   (c) subject to subsection (3A), must specify how the person is to give the information to the Department or specified officer; and
   (d) must specify the period within which the person is to give the information to the Department or specified officer.

(3A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to inform the Department in writing of the occurrence, or likely occurrence, of a specified event or change of circumstances:
   (a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
   (b) is taken to have been lodged on a day determined under that section.

(4) The period specified under paragraph (3)(d) must end at least 14 days after:
   (a) the day on which the event or change of circumstances occurs; or
Part VIIIC  Seniors health card
Division 5  Cardholder’s obligations

Section 118ZJ

(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

(5) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months.

(5A) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(5B) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5B). See subsection 13.3(3) of the Criminal Code.

(5C) Subsection (5) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5C). See subsection 13.3(3) of the Criminal Code.

(6) A person must not, in purported compliance with a notice under subsection (1), knowingly furnish information that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Subsections 4B(2) and (3) of the Crimes Act 1914 allow a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

(7) This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

(8) In this section, officer means a person performing duties, or exercising powers or functions, under or in relation to this Act.

118ZJ Secretary may require particular information relevant to eligibility for seniors health card

(1) The Secretary may give a person who is the holder of a seniors health card a notice that requires the person to give the Department, or an officer specified in the notice, a statement in
writing about a matter that might affect whether the person is eligible for the card.

Note: For holder of a seniors health card see section 5PB.

(2) A notice under subsection (1):
   (a) must be in writing; and
   (b) may be given personally or by post; and
   (c) subject to subsection (3A), must specify how the statement is to be given to the Department or specified officer; and
   (d) must specify the period within which the person is to give the statement to the Department or specified officer.

(3) The period specified under paragraph (2)(d) must end at least 14 days after the day on which the notice is given.

(3A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to give the Department a statement about a matter of a kind specified in that subsection:
   (a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
   (b) is taken to have been lodged on a day determined under that section.

(4) A statement given in response to a notice under subsection (1) must be in accordance with a form approved by the Commission.

(5) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months.

(5A) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(5B) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5B). See subsection 13.3(3) of the Criminal Code.

(5C) Subsection (5) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5C). See subsection 13.3(3) of the Criminal Code.
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(6) A person must not, in purported compliance with a notice under subsection (1), knowingly furnish information that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Subsections 4B(2) and (3) of the Crimes Act 1914 allow a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

(7) This section extends to:
   (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
   (b) all persons irrespective of their nationality or citizenship.

(8) In this section, officer means a person performing duties, or exercising powers or functions, under or in relation to this Act.

118ZJA  When copy of notice of assessment of taxable income to be given to Department

(1) If a person who is the holder of a seniors health card receives a notice of assessment or amended assessment of his or her taxable income for a particular tax year, the person must, if requested by the Secretary to do so, give a copy of the notice to the Department within 3 months after the day on which the notice was received.

(2) In this section:

   taxable income has the same meaning as in the Seniors Health Card Income Test Calculator.
Division 6—Continuation, variation and termination

118ZK Continuing effect of determination

A determination that a person is entitled to a seniors health card continues in effect until:

(a) the person ceases to be entitled to the card under section 118ZL or 118ZM; or
(b) a further determination under section 118ZN or 118ZO has taken effect.

118ZL Person ceases to be entitled to card automatically—recipient complying with section 118ZI notification obligations

If:

(a) a person who is the holder of a seniors health card is given a notice under section 118ZI; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (the notification period); and
(c) the event or change in circumstances occurs; and
(d) the person informs the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or change in circumstances, the person ceases to be eligible for the card; and
(f) a determination is not made that the person ceases to be entitled to the card before the end of the notification period; the person continues to be entitled to the card until the end of the notification period and the person then ceases to be entitled to the card.

Note: For holder of a seniors health card see section 5PB.
118ZM Person ceases to be entitled to card automatically—recipient not complying with section 118ZI notification obligations

If:

(a) a person who is the holder of a seniors health card is given a notice under section 118ZI; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (the notification period); and
(c) the event or change in circumstances occurs; and
(d) the person does not inform the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or the change in circumstances the person ceases to be eligible for the card;

the person ceases to be entitled to the card immediately after the day on which the event or change in circumstances occurs.

Note: For holder of a seniors health card see section 5PB.

118ZN Determination that a person ceases to be entitled to a seniors health card

(1) If the Commission is satisfied that a person is, or was, the holder of a seniors health card when the person is not, or was not, eligible for the card, the Commission is to determine that the person ceases to be entitled to the card.

Note 1: For holder of a seniors health card see section 5PB.

Note 2: A determination under this section is not necessary in a case where an automatic loss of eligibility is produced by section 118ZL or 118ZM.

Note 3: For the date of effect of a determination under this section see section 118ZR.

(2) A determination under subsection (1) must be in writing.
118ZO  Person may cease to be entitled to a seniors health card for failure to comply with section 118ZJ notice

(1) If:
   (a) a person who is the holder of a seniors health card is given a notice under section 118ZJ; and
   (b) the person does not comply with the requirements set out in the notice;
the Commission may determine that the person ceases to be entitled to the card.

   Note 1: For holder of a seniors health card see section 5PB.
   Note 2: This section will not apply in a case where section 118ZN applies.
   Note 3: For the date of effect of a determination under this section see section 118ZR.

(2) A determination under subsection (1) must be in writing.

118ZP  Resumption of entitlement

(1) If the Commission:
   (a) determines that a person ceases to be entitled to a seniors health card under section 118ZN or 118ZO; and
   (b) reconsiders that decision; and
   (c) becomes satisfied that because of that decision:
      (i) the person was not entitled to a seniors health card when in fact the person was eligible for the card; or
      (ii) the person is not entitled to a seniors health card when in fact the person is eligible for the card;
the Commission is to determine that the person was or is entitled to the card.

(2) The reconsideration referred to in paragraph (1)(b) might be a reconsideration on a claim under section 118ZS for review or a reconsideration on the Commission’s own initiative.

(3) A determination under subsection (1) must be in writing.

Note: For the date of effect of a determination under this section see section 118ZQ.
Part VIIIC  Seniors health card
Division 6  Continuation, variation and termination

Section 118ZQ

118ZQ  Date of effect of favourable determination

A determination under section 118ZP takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

118ZR  Date of effect of adverse determination

(1) The day on which a determination under section 118ZN or 118ZO (the adverse determination) takes effect is worked out in accordance with this section.

(2) The adverse determination takes effect on:
   (a) the day on which the determination is made; or
   (b) if another day is specified in the determination—on that day.

(3) Subject to subsections (4) and (5), the day specified under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act

(4) If:
   (a) the person’s entitlement to a seniors health card is affected by the adverse determination and the person has contravened a provision of this Act (other than subsection 118ZI(5), 118ZJ(5) or 128(4)); and
   (b) the contravention causes a delay in making the determination;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation

(5) If:
   (a) a person has made a false statement or misrepresentation; and
   (b) because of the false statement or misrepresentation, the person became the holder of a seniors health card when in fact the person was not eligible for the card;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

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Division 7—Review of decisions

118ZS  Review of certain decisions

(1) A claimant who is dissatisfied with a decision of the Commission in relation to a claim for a seniors health card may request the Commission to review the decision.

(2) A person who is dissatisfied with a decision of the Commission that the person ceases to be entitled to a seniors health card may request the Commission to review the decision.

118ZT  Application for review

(1) A request for review of a decision under section 118ZS must:
   (a) be made within 3 months after the person seeking review was notified of the decision; and
   (b) set out the grounds on which the request is made; and
   (c) be in writing; and
   (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) If a request for review of a decision is made in accordance with subsection (1), the Commission must review the decision.

(3) If the Commission has delegated its powers under this section to the person who made the decision under review, that person must not review the decision.

118ZU  Commission’s powers where request for review

(1) If the Commission reviews a decision under this Division, the Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must, subject to subsection (3), substitute a new decision in accordance with this Act.
Section 118ZV

(3) If the decision set aside is a decision that a person ceases to be entitled to a seniors health card, the Commission need not substitute another decision.

Note: For the Commission’s evidence gathering powers see section 118ZY.

118ZV Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a decision that a person is entitled to a seniors health card, the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission must not be earlier than the date from which, had the Commission determined that the person is entitled to a seniors health card, such a determination could have taken effect.

118ZW Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division it must make a written record of its decision upon review.

(2) The written record must include a statement that:
   (a) sets out the Commission’s findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission’s decision.

118ZX Person who requested review to be notified of decision

(1) When the Commission affirms or sets aside a decision under this Division it must give the person who requested the review of the decision:
   (a) a copy of the Commission’s decision; and
   (b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 118ZW(1); and
(c) if the person has a right to apply to the Administrative Appeals Tribunal for a review of the Commission’s decision—a statement giving the person particulars of that right.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:
   (a) is of a confidential nature; or
   (b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

118ZY  Powers of Commission to gather evidence

(1) The Commission or the Commission’s delegate may, in reviewing a decision under this Division:
   (a) take evidence on oath or affirmation for the purposes of the review; and
   (b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission’s delegate may, for the purposes of the review:
   (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
   (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
   (c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The Commission’s power under paragraph (1)(a) to take evidence on oath or affirmation:
   (a) may be exercised on behalf of the Commission by:
      (i) the presiding member or the Commission’s delegate; or

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Section 118ZZ

(ii) by another person (whether a member or not) authorised by the presiding member or the Commission’s delegate; and

(b) may be exercised within or outside Australia; and

(c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:

(a) all the powers of the Commission under subsection (1); and

(b) all the powers of the presiding member under subsection (2); for the purposes of taking that evidence.

(7) In this section:

Commission’s delegate means a person to whom the Commission has delegated its powers under section 118ZT and who is conducting the review in question.

118ZZ. Withdrawal of request for review

(1) A person who requests a review under section 118ZS may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

(3) Subject to section 118ZT, a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Section 118ZT provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.
Division 8—Seniors Health Card Income Test Calculator

118ZZA Seniors Health Card Income Test Calculator

The Seniors Health Card Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the seniors health card income test for the purposes of this Act.

Seniors Health Card Income Test Calculator

Satisfying the seniors health card income test

118ZZA-1 This is how to work out whether a person satisfies the seniors health card income test at a particular time (the \textit{test time}).

\begin{tabular}{|l|}
\hline
\textbf{Method statement} \\
\hline
\textit{Step 1.} Work out the amount of the person’s adjusted taxable income for the reference tax year. \\
\textit{Step 2.} Work out the person’s seniors health card income limit using point 118ZZA-11. \\
\textit{Step 3.} Work out whether the person’s adjusted taxable income for the reference tax year exceeds the seniors health card income limit. \\
\textit{Step 4.} If the person’s adjusted taxable income for the reference tax year is less than the person’s seniors health card income limit, the person satisfies the seniors health card income test. \\
\textit{Step 5.} If the person’s adjusted taxable income for the reference tax year is equal to or exceeds the person’s seniors health card income limit, the person does not satisfy the seniors health card income test. \\
\hline
\end{tabular}
Part VIIC  Seniors health card
Division 8  Seniors Health Card Income Test Calculator

Section 118ZZA

Reference tax year

118ZZA-2(1) In the ordinary case, a person’s reference tax year is:
   (a) if the person has received a notice of assessment of his or her taxable income for the tax year immediately preceding the tax year in which the test time occurred—that immediately preceding tax year; or
   (b) otherwise—the tax year immediately preceding the tax year applicable under paragraph (a).

(2) However, if the person has informed the Secretary in writing that the person wishes to have his or her entitlement to a seniors health card determined by reference to his or her adjusted taxable income for the tax year in which the test time occurred (the current tax year), the person’s reference tax year is the current tax year.

Adjusted taxable income

118ZZA-3 For the purposes of this Division, a person’s adjusted taxable income for a particular tax year is the sum of the following amounts (income components):
   (a) the person’s taxable income for that year;
   (b) the person’s fringe benefits value for that year;
   (c) the person’s target foreign income for that year;
   (d) the person’s net rental property loss for that year.

Note 1: For taxable income see point 118ZZA-4.
Note 2: For fringe benefits value see point 118ZZA-5.
Note 3: For target foreign income see point 118ZZA-6.
Note 4: For net rental property loss see point 118ZZA-7.

Taxable income

118ZZA-4(1) In this Division:

   taxable income has the same meaning as in the Income Tax Assessment Act 1997.

(2) For the purposes of this Division, a person’s taxable income for a particular tax year is:
   (a) the person’s assessed taxable income for that year; or

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(b) if the person does not have an assessed taxable income for that year—the person’s accepted estimate of taxable income for that year.

(3) For the purposes of this Division, a person’s **assessed taxable income** for a particular tax year at a particular time is the most recent of:

(a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or

(b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or

(c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

**Fringe benefits value**

118ZZA-5(1) For the purposes of this Division, a person’s **fringe benefits value** for a particular tax year is the person’s accepted estimate of the amount by which the total of the assessable fringe benefits received or to be received by the person in the tax year exceeds $1,000.

Note: The amount of $1,000 corresponds to the fringe benefits value free area in point 1069-H24 in the Family Allowance Rate Calculator in Part 3.7 of the *Social Security Act 1991*.

(2) In this point:

**assessable fringe benefit** has the meaning given by subsection 10A(2) of the *Social Security Act 1991*.

(3) The value of an assessable fringe benefit is to be worked out in accordance with Part 3.12A of the *Social Security Act 1991* except that references in that Part to the Minister and to the Secretary are to be taken to be references to the Minister for Veterans’ Affairs and to the Secretary to the Department of Veterans’ Affairs, respectively.
Section 118ZZA

Target foreign income

118ZZA-6(1) In this Division:

foreign income, in relation to a person, means:
(a) an income amount earned, derived or received by the person from a source outside Australia for the person’s own use or benefit; or
(b) a periodical payment by way of gift or allowance from a source outside Australia; or
(c) a periodical benefit by way of gift or allowance from a source outside Australia.

target foreign income means foreign income that is not:
(a) taxable income; or
(b) received in the form of a fringe benefit.

(2) For the purposes of this Division, a person’s target foreign income for a particular tax year is the person’s accepted estimate of the amount of that income for that year.

Net rental property loss

118ZZA-7(1) In this Division:

net rental property loss, in relation to a person for a tax year, means:
(a) if the expenses incurred by the person on rental property during that year exceed the person’s gross rental property income for that year—the amount by which those expenses exceed that gross rental property income; or
(b) otherwise—nil.

(2) For the purposes of this Division, a person’s net rental property loss for a particular tax year is the person’s accepted estimate of the amount of that loss for that year.
Section 118ZZA

Accepted estimate

118ZZA-8 For the purposes of this Division, a person’s accepted estimate of an income component for a particular tax year is that income component according to the most recent notice given by the person to the Secretary under point 118ZZA-9 and accepted by the Commission for the purposes of this Part.

Notice estimating income component

118ZZA-9(1) A person may give the Secretary a notice, in a form approved by the Commission, setting out the person’s estimate of an income component of the person for a tax year.

(2) The notice is to contain, or be accompanied by, such information as is required by the form to be contained in it or to accompany it, as the case may be.

(3) The Commission is to accept a notice only if the Commission is satisfied that the estimate is reasonable.

Adjusted taxable income of members of couples

118ZZA-10 If a person is a member of a couple, add the couple’s adjusted taxable incomes for the reference tax year and divide by 2 to work out the amount of the person’s adjusted taxable income for the reference tax year.

Seniors health card income limit

118ZZA-11 A person’s seniors health card income limit is worked out using the Seniors Health Card Income Limit Table. Work out which family situation in the table applies to the person. The person’s seniors health card income limit is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each dependent child of the person.
### Seniors Health Card Taxable Income Limit Table

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Person’s family situation</th>
<th>Column 3 Amount per year</th>
<th>Column 4 Additional dependent child Amount per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Not member of couple</td>
<td>$50,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>2</td>
<td>Partnered</td>
<td>$40,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>3</td>
<td>Member of illness separated couple</td>
<td>$50,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>4</td>
<td>Member of respite care couple</td>
<td>$50,000</td>
<td>$639.60</td>
</tr>
</tbody>
</table>

Note 1: For member of couple and partnered, see section 5E.
Note 2: For illness separated couple and respite care couple, see section 5R.
Note 3: For dependent child, see section 5F.
Part VIID—2006 one-off payment to older Australians

118ZZB  2006 one-off payment to older Australians

Eligible if this section applies

(1) A person is eligible for a 2006 one-off payment to older Australians if subsection (2) or (3) applies to the person.

Eligible because of income support payments

(2) This subsection applies to a person if:

(a) the person has reached qualifying age within the meaning of subsection 118OA(2) on or before 9 May 2006; and

(b) a service pension or an income support supplement was payable to the person in respect of a period that includes 9 May 2006; and

(c) the pension or supplement was payable because of a claim the person made on or before 9 May 2006; and

(d) on 9 May 2006, the person:

(i) was in Australia; or

(ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

Eligible because eligible for seniors concession allowance

(3) This subsection applies to a person if:

(a) on 9 May 2006, the person was eligible for seniors concession allowance under section 118PA; or

(b) both:

(i) on or before 9 May 2006, the person made a claim for a seniors health card under Division 2 of Part VIIC and had not withdrawn that claim on or before 9 May 2006; and

(ii) on 9 May 2006, the person either was eligible for the card or would have been so eligible but for being...
Section 118ZZC

temporarily absent from Australia for a continuous period not exceeding 13 weeks.

One one-off payment only

(4) A person is entitled to one payment only under this section, regardless of how many times the person becomes eligible under this section.

118ZZC Amount of the one-off payment

(1) The amount of the one-off payment under section 118ZZB to a person who is eligible for the payment because of subsection 118ZZB(2) is worked out using this table, having regard to the person’s situation on 9 May 2006:

<table>
<thead>
<tr>
<th>Item</th>
<th>Person’s situation on 9 May 2006</th>
<th>Amount of payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>not a member of a couple</td>
<td>$102.80</td>
</tr>
<tr>
<td>2</td>
<td>member of an illness separated couple</td>
<td>$102.80</td>
</tr>
<tr>
<td>3</td>
<td>member of a respite care couple</td>
<td>$102.80</td>
</tr>
<tr>
<td>4</td>
<td>member of a couple (other than an illness separated couple or a respite care couple) the other member of which is not eligible for the one-off payment</td>
<td>$102.80</td>
</tr>
<tr>
<td>5</td>
<td>member of a couple (other than an illness separated couple or a respite care couple) the other member of which is also eligible for the one-off payment</td>
<td>$51.40</td>
</tr>
</tbody>
</table>

(2) The amount of the one-off payment under section 118ZZB to a person who is eligible for the payment because of subsection 118ZZB(3) is $102.80.

118ZZD Claim not required for 2006 one-off payment to older Australians

A claim is not required for 2006 one-off payment to older Australians.
118ZZE Payment of 2006 one-off payment to older Australians

If an individual is eligible for a 2006 one-off payment to older Australians, the Commission must pay the payment to the individual in a single lump sum:

(a) on the date that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Commission considers appropriate.

118ZZF Debts arising in respect of 2006 one-off payment to older Australians

(1) This section applies in relation to an individual who has been paid a 2006 one-off payment to older Australians (the relevant payment) under this Part.

(2) If the individual was eligible for the relevant payment because of subsection 118ZZB(2), a relevant determination is a determination made under Part III or Part IIIA because of which the pension or supplement referred to in paragraph 118ZZB(2)(b) was payable.

(3) If the individual was eligible for the relevant payment because of subsection 118ZZB(3) and because of holding or having held a seniors health card, a relevant determination is a determination made under this Act because of which the person became the holder of the card.

(4) If:

(a) after the relevant payment was made to the individual, a relevant determination in relation to the individual, at least so far as it relates to 9 May 2006 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 9 May 2006, the relevant payment would not have been made;
Section 118ZZF

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(5) If:

(a) an individual was eligible for the relevant payment because of subsection 118ZZB(3) and because of having claimed a seniors health card; and

(b) the individual knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(c) but for that statement or information, the relevant payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(6) If:

(a) an individual was eligible for the relevant payment because of subsection 118ZZB(3) and because of holding or having held a gold card; and

(b) the individual knowingly made a false or misleading statement, or knowingly provided false information, that resulted (directly or indirectly) in the individual becoming the holder of the gold card; and

(c) but for that statement or information, the relevant payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(7) The other provisions of this Act under which debts arise do not apply in relation to payments to which this section applies.

(8) A debt that arises under this section is a recoverable amount within the meaning of subsection 205(8).
119 Commission not bound by technicalities

(1) In considering, hearing or determining, and in making a decision in relation to:
   (a) a claim or application;
   (b) a review, under Division 16 of Part IIIB, of a decision of the Commission with respect to a pension or qualifying service;
   (ba) a review, under Division 16 of Part IIIB, of a decision of the Commission under Part IIIAB (pension bonus); or
   (c) a review, under section 31, of a decision of the Commission with respect to a pension under Part II or IV or an attendant allowance under section 98;
   (d) the suspension or cancellation, under subsection 31(6), of a pension under Part II or IV or an attendant allowance under section 98, the decrease in the rate of such a pension or allowance under that subsection or the increase in the rate of such a pension or allowance under subsection 31(8);
   (da) a review, under Division 7 of Part IVA, of a decision of the Commission with respect to an advance payment of an amount of pension;
   (e) the suspension, cancellation or variation of a pension; or
   (ee) a review, under subsection 115(1), of a decision of the Commission in respect of an application for an allowance or benefit specified in that subsection;

the Commission:
   (f) is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just;
   (g) shall act according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities; and
(h) without limiting the generality of the foregoing, shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:
   (i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and
   (ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the service of a veteran, or of a member of the Defence Force or of a Peacekeeping Force, as defined by subsection 68(1), was not reported to the appropriate authorities.

(2) In subsection (1):

application means:
   (a) an application to increase the rate of:
      (i) a pension granted under Part II or IV; or
      (ii) a service pension granted under Part III; or
      (iii) income support supplement granted under Part IIIA; or
   (b) an application for a pension under Part II or IV made in accordance with subsection 15(2); or
   (c) an application to be provided with treatment under Part V; or
   (d) an application for an allowance or benefit specified in subsection 111(1); or
   (e) an application under Part IIIAB for registration as a member of the pension bonus scheme.

claim means:
   (a) a claim for a pension under Part II or IV; or
   (b) a claim for service pension or other benefit under Part III; or
   (c) a claim for a qualifying service determination under Part III; or
   (d) a claim for income support supplement under Part IIIA; or
   (e) a claim for a pension bonus under Part IIIAB.

120 Standard of proof

(1) Where a claim under Part II for a pension in respect of the incapacity from injury or disease of a veteran, or of the death of a
Section 120

veteran, relates to the operational service rendered by the veteran, the Commission shall determine that the injury was a war-caused injury, that the disease was a war-caused disease or that the death of the veteran was war-caused, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.

Note: This subsection is affected by section 120A.

(2) Where a claim under Part IV:

(a) in respect of the incapacity from injury or disease of a member of a Peacekeeping Force or of the death of such a member relates to the peacekeeping service rendered by the member; or

(b) in respect of the incapacity from injury or disease of a member of the Forces, or of the death of such a member, relates to the hazardous service rendered by the member;

the Commission shall determine that the injury was a defence-caused injury, that the disease was a defence-caused disease or that the death of the member was defence-caused, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.

Note 1: For member of a Peacekeeping Force, peacekeeping service, member of the Forces and hazardous service see subsection 5Q(1A).

Note 2: This subsection is affected by section 120A.

(3) In applying subsection (1) or (2) in respect of the incapacity of a person from injury or disease, or in respect of the death of a person, related to service rendered by the person, the Commission shall be satisfied, beyond reasonable doubt, that there is no sufficient ground for determining:

(a) that the injury was a war-caused injury or a defence-caused injury;

(b) that the disease was a war-caused disease or a defence-caused disease; or

(c) that the death was war-caused or defence-caused;

as the case may be, if the Commission, after consideration of the whole of the material before it, is of the opinion that the material before it does not raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person.

Note: This subsection is affected by section 120A.
Section 120A

(4) Except in making a determination to which subsection (1) or (2) applies, the Commission shall, in making any determination or decision in respect of a matter arising under this Act or the regulations, including the assessment or re-assessment of the rate of a pension granted under Part II or Part IV, decide the matter to its reasonable satisfaction.

Note: This subsection is affected by section 120B.

(5) Nothing in the provisions of this section, or in any other provision of this Act, shall entitle the Commission to presume that:

(a) an injury suffered by a person is a war-caused injury or a defence-caused injury;
(b) a disease contracted by a person is a war-caused disease or a defence-caused disease;
(c) the death of a person is war-caused or defence-caused; or
(d) a claimant or applicant is entitled to be granted a pension, allowance or other benefit under this Act.

(6) Nothing in the provisions of this section, or in any other provision of this Act, shall be taken to impose on:

(a) a claimant or applicant for a pension or increased pension, or for an allowance or other benefit, under this Act; or
(b) the Commonwealth, the Department or any other person in relation to such a claim or application;

any onus of proving any matter that is, or might be, relevant to the determination of the claim or application.

(7) In this section:

hazardous service means service in the Defence Force, before the MRCA commencement date, that is of a kind determined in writing by the Minister administering section 1 of the Defence Act 1903 to be hazardous service for the purposes of this section.

120A Reasonableness of hypothesis to be assessed by reference to Statement of Principles

(1) This section applies to any of the following claims made on or after 1 June 1994:

(a) a claim under Part II that relates to the operational service rendered by a veteran;
Section 120A

(b) a claim under Part IV that relates to:
   (i) the peacekeeping service rendered by a member of a Peacekeeping Force; or
   (ii) the hazardous service rendered by a member of the Forces.

Note 1: Subsections 120(1), (2) and (3) are relevant to these claims.

Note 2: For peacekeeping service, member of a Peacekeeping Force, hazardous service and member of the Forces see subsection 5Q(1A).

(2) If the Repatriation Medical Authority has given notice under section 196G that it intends to carry out an investigation in respect of a particular kind of injury, disease or death, the Commission is not to determine a claim in respect of the incapacity of a person from an injury or disease of that kind, or in respect of a death of that kind, unless or until the Authority:
   (a) has determined a Statement of Principles under subsection 196B(2) in respect of that kind of injury, disease or death; or
   (b) has declared that it does not propose to make such a Statement of Principles.

(3) For the purposes of subsection 120(3), a hypothesis connecting an injury suffered by a person, a disease contracted by a person or the death of a person with the circumstances of any particular service rendered by the person is reasonable only if there is in force:
   (a) a Statement of Principles determined under subsection 196B(2) or (11); or
   (b) a determination of the Commission under subsection 180A(2);
that upholds the hypothesis.

Note: See subsection (4) about the application of this subsection.

(4) Subsection (3) does not apply in relation to a claim in respect of the incapacity from injury or disease, or the death, of a person if the Authority has neither determined a Statement of Principles under subsection 196B(2), nor declared that it does not propose to make such a Statement of Principles, in respect of:
   (a) the kind of injury suffered by the person; or
   (b) the kind of disease contracted by the person; or
   (c) the kind of death met by the person;
as the case may be.
Section 120B

120B Reasonable satisfaction to be assessed in certain cases by reference to Statement of Principles

(1) This section applies to any of the following claims made on or after 1 June 1994:
   (a) a claim under Part II that relates to the eligible war service (other than operational service) rendered by a veteran;
   (b) a claim under Part IV that relates to the defence service (other than hazardous service) rendered by a member of the Forces.

Note 1: Subsection 120(4) is relevant to these claims.

Note 2: For hazardous service and member of the Forces see subsection 5Q(1A).

(2) If the Repatriation Medical Authority has given notice under section 196G that it intends to carry out an investigation in respect of a particular kind of injury, disease or death, the Commission is not to determine a claim in respect of the incapacity of a person from an injury or disease of that kind, or in respect of a death of that kind, unless or until the Authority:
   (a) has determined a Statement of Principles under subsection 196B(3) in respect of that kind of injury, disease or death; or
   (b) has declared that it does not propose to make such a Statement of Principles.

(3) In applying subsection 120(4) to determine a claim, the Commission is to be reasonably satisfied that an injury suffered by a person, a disease contracted by a person or the death of a person was war-caused or defence-caused only if:
   (a) the material before the Commission raises a connection between the injury, disease or death of the person and some particular service rendered by the person; and
   (b) there is in force:
      (i) a Statement of Principles determined under subsection 196B(3) or (12); or
      (ii) a determination of the Commission under subsection 180A(3);

that upholds the contention that the injury, disease or death of the person is, on the balance of probabilities, connected with that service.
(4) Subsection (3) does not apply in relation to a claim in respect of
the incapacity from injury or disease, or the death, of a person if
the Authority has neither determined a Statement of Principles
under subsection 196B(3), nor declared that it does not propose to
make such a Statement of Principles, in respect of:
(a) the kind of injury suffered by the person; or
(b) the kind of disease contracted by the person; or
(c) the kind of death met by the person;
as the case may be.

121 Instalments of pension

(1) Pension is payable:
(a) in arrears; and
(b) by instalments relating to each pension period.

(2) Subject to subsections (3) and (4), the amount payable to a person
as an instalment of pension in relation to a pension period is the
total amount of pension payable to the person for the days in that
period on which pension was payable to the person.

(3) If a person who is receiving a pension is ineligible for payment in
respect of the last day of a pension period, no amount is payable to
the person as an instalment of pension in relation to the pension
period.

(4) If a person who is receiving a pension dies, no amount is payable
to the person as an instalment of pension in relation to the pension
period in which the person died.

(5) An instalment of pension is payable on the next payday after the
end of the pension period to which the instalment relates.

(6) For the purpose of the calculation of the amount of an instalment of
pension, the rate of pension payable to a person for a day is
calculated by dividing the fortnightly rate of pension by 14.

(6A) For a pension that is DFISA:
(a) each instalment is to be rounded to the nearest cent (rounding
half a cent upwards); and
(b) subsections (3), (4) and (6) do not apply.
Section 122

(7) In this section:

*pension* includes an allowance under this Act, other than Victoria Cross allowance under section 103, temporary incapacity allowance under section 107, loss of earnings allowance under section 108, utilities allowance under Part VIIAC or seniors concession allowance under Part VIIAD, but does not include a pension or allowance to which section 58A applies.

122 Payment of pension

(1) Subject to subsection (2), a pension shall be paid to the pensioner.

(2) Where the pensioner, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission to do so, the Commission may, in writing, approve payment of the pension to a person specified in the request for such period as is specified in the approval.

(2A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) The Commission shall not approve payment of the pension to the person specified in the request unless the Commission is satisfied that the person has agreed to receive payment as agent of the pensioner.

(3A) Where a payment of pension is made to a person in accordance with an approval under subsection (2):

(a) the payment shall, for all purposes, be deemed to be a payment of the pension to the pensioner;

(b) neither the Commonwealth nor the Commission is bound to oversee the application of the payment by the person; and

(c) the person shall be taken to receive the payment as agent of the pensioner.

(4) A pension shall be paid in such manner as the Commission determines.

Note: for the procedure to be followed if the Commission determines that a person’s pension is to be paid into an account with a bank see section 122A.

(5) Where, by reason of a public holiday or a bank holiday or for any other reason, an instalment of, or the amount of, a pension cannot
Section 122A

be paid on the day on which it would normally be paid, the instalment or amount of the pension may be paid on an earlier day.

(6) In this section, **pension** means a pension, allowance or other pecuniary benefit payable under this Act, and includes an instalment of such a pension, allowance or other benefit.

122A  **Pension or allowance may be paid to bank etc.**

(1) The Commission may direct that the whole or a part of the amount of a pension is to be paid, at such intervals as it directs, to the credit of an account nominated from time to time by the pensioner, being an account maintained by the pensioner, either alone or jointly or in common with another person, with a bank, and payment is to be made accordingly.

(1A) If the payment is of an amount of pension that is not seniors concession allowance and the person has not nominated an account for the purposes of subsection (1), the amount is not to be paid.

(1B) If:

(a) an amount has not been paid because of subsection (1A); and
(b) the person nominates an account for the purposes of subsection (1);

the amount is to be paid under subsection (1).

(1C) If the payment is of an amount of seniors concession allowance and the person has not nominated an account for the purposes of subsection (1) by the end of the period of 28 days (or such longer period determined by the Commission) starting on the day on which the Commission requested the person to do so, the allowance ceases to be payable to the person.

(1D) However, if the person referred to in subsection (1C) nominates an account for the purposes of subsection (1) after the end of the 28 day or other period, then subsection (1C) ceases to apply to the person on the day the person does so.
Section 122B

(2) In this section:

_{pension}_ means a pension or allowance under this Act or DFISA bonus.

_{pensioner}_ means a person to whom a pension is payable, whether on his or her own behalf or on behalf of another person.

### 122B Direct deductions at person’s request

(1) This section applies if a person is receiving instalments of a pension, allowance or other pecuniary benefit payable under this Act of a class approved by the Commission for the purposes of this section.

(2) The person may request the Commission to make deductions from the instalments for the purpose of making:

(a) payments to the Commissioner of Taxation; or

(b) payments in a class approved by the Commission for the purposes of this section.

(3) The request must be in the form approved by the Commission for the purposes of this section.

(4) If a request is made:

(a) the Commission may make the requested deductions; and

(b) if it does so—the Commission must pay the amounts deducted in accordance with the request.

(5) The Commission may, for the purposes of this section, approve:

(a) classes of pensions; and

(b) classes of allowances; and

(c) classes of pecuniary benefits; and

(d) classes of payments.

The approval must be in writing.

(6) An approval under subsection (5) is a disallowable instrument for the purposes of section 46A of the _Acts Interpretation Act 1901_.

### 122C Payment of DFISA outside Australia

If DFISA is payable to a person who is physically outside Australia, then it may be paid:
Section 122D

(a) in the manner determined by the Commission; and
(b) in the instalments determined by the Commission.

122D Deductions of DFISA and DFISA bonus paid to Commissioner of Taxation

Deductions from DFISA because of notice from the Commissioner of Taxation

(1) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the Taxation Administration Act 1953, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of DFISA:
(a) make deductions from instalments of DFISA payable to the recipient; and
(b) pay the amount deducted to the Commissioner of Taxation.

Deduction from DFISA bonus because of notice from the Commissioner of Taxation

(2) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the Taxation Administration Act 1953, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a DFISA bonus:
(a) make a deduction from the bonus payable to the recipient; and
(b) pay the amount deducted to the Commissioner of Taxation.

Deduction from DFISA bonus because of recipient’s request to do so

(4) The Commission may make a deduction from a DFISA bonus payable to a person if the person, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission:
(a) to make the deduction; and
(b) to pay the amount to be deducted to the Commissioner of Taxation.

The Commission must pay to the Commissioner of Taxation an amount deducted under this subsection.
123 Interpretation

(1) In this section and sections 123A to 123E (inclusive):

**applicable sections** means this section and sections 123A to 123E (inclusive).

**child**, in relation to a person who has died (in this definition called the **deceased**), means:
(a) a person who is a child of the deceased within the meaning of section 10;
(b) a person of whom the deceased was the father or mother; or
(c) a person who was adopted by the deceased or by the deceased and the deceased’s partner or non-illness separated spouse.

**parent**, in relation to a person who has died, means someone whose child the person was.

**sibling**, in relation to a person who has died, means someone who was a sister, half-sister, brother or half-brother of the person.

**waiting period**, in relation to a person, means the period of 12 months commencing on:
(a) if subparagraph 123A(2)(c)(i) applies to the person—the death of the person; or
(b) if subparagraph 123A(2)(c)(ii) applies to the person—the date of the grant of the claim.

(2) For the purposes of paragraph (a) of the definition of **child** in subsection (1), a person shall be taken to be a child even though the person is in receipt of a pension, benefit or allowance of a kind referred to in the definition of **child** in subsection 5F(1).

(3) A reference in the applicable sections to an executor of a will includes a reference to:
(a) an executor of the will by representation; and
(b) if probate of the will has been granted and a person has subsequently been granted administration of the unadministered assets covered by the will—that person.

(4) A reference in the applicable sections to the person to whom a grant of letters of administration with a will annexed has been
Section 123A

made includes a reference to a person who has subsequently been granted administration of the unadministered assets covered by the will.

(5) A reference in the applicable sections, in relation to an approval of a payment, to a person who is known is a reference to a person:

(a) who is alive at the time of the approval; and

(b) whose existence and whereabouts are known to the Commission at that time.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A of Part IIIB applies.

123A Payment of pension etc. on death of person

(1) The objects of the applicable sections are:

(a) to ensure that moneys payable under this Act to a person who has died are paid out as promptly as possible;

(b) to pay those moneys, so far as is consistent with paragraph (a), in accordance with the person’s will;

(c) to ensure that not more than $20,000, or the amount prescribed for the purposes of subsection 123B(6), is paid out without probate of the will having been obtained or letters of administration with the will annexed having been granted; and

(d) to ensure that, in the event of intestacy, the payment of those moneys is made on principles that are uniform throughout Australia.

(2) Where:

(a) a person (in the applicable sections called the deceased) dies;

(b) an amount (in the applicable sections called the distributable amount) of a pension, allowance or other pecuniary benefit is payable under this Act to the deceased; and

(c) the distributable amount:

(i) has accrued, and was unpaid, on the deceased’s death; or

(ii) has become payable after the deceased’s death in respect of a period or event before that death by reason of the grant, after that death, of a claim for the pension, allowance or benefit made before that death;
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Section 123B

the Commission shall deal with the distributable amount in accordance with the applicable sections and the distributable amount shall not, subject to subsections 123B(2) and (3), form part of the deceased’s estate.

(3) Where an amount is paid in accordance with an approval given under the applicable sections, the Commonwealth is not liable to any action, claim or demand for payment in respect of that amount.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A of Part IIIB applies.

123B  Distribution where deceased leaves valid will

(1) This section applies where the Commission is satisfied that:
   (a) the deceased left a valid will; and
   (b) but for the applicable sections, the will would dispose of the deceased’s right to the distributable amount (either expressly or as part of the residue of the deceased’s estate).

(2) Where this section applies and the Commission is satisfied that the will appointed an executor or executors, the Commission may, subject to subsection (6), approve payment of the whole or part of that amount to an executor of the will.

(3) Where this section applies and the Commission is satisfied that:
   (a) no-one is executor of the will; and
   (b) a person has applied for and obtained a grant of letters of administration with the will annexed;

the Commission may approve payment of the whole or part of that amount to the person to whom the grant was made.

(4) Where this section applies and the Commission is satisfied that:
   (a) no-one is executor of the will;
   (b) letters of administration with the will annexed have not been applied for or granted; and
   (c) distribution of the whole or part of the distributable amount in accordance with the statutory order referred to in section 123D would not be inconsistent with the terms of the will;

the Commission may, subject to subsection (6), approve payment of the whole or part of that amount in accordance with the statutory order.

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(5) Where this section applies and the Commission is satisfied that:
   (a) no-one is executor of the will; and
   (b) the waiting period has elapsed without an application for
       letters of administration with the will annexed having been
       made;

   the Commission may, subject to subsection (6), approve payment
   of the whole or part of that amount in accordance with the statutory
   order referred to in section 123D.

(6) If probate of the will has not been obtained and letters of
administration with the will annexed have not been granted, the
Commission shall not approve a payment or payments under
subsection (2), (4) or (5) in respect of the deceased if the amount of
the payment, or the sum of the amounts of the payments made
under those subsections, would exceed $20,000 or such higher
amount as is prescribed for the purposes of this subsection.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A
of Part IIIB applies.

123C Intestacy

Where the Commission is satisfied that:
   (a) the deceased did not leave a valid will; or
   (b) the deceased left a valid will but, even if the applicable
       sections did not apply to the amount, the will would not
       dispose of the deceased’s right to the distributable amount
       (either expressly or as part of the residue of the deceased’s
       estate);

   the Commission may approve payment of the whole or part of that
   amount in accordance with the statutory order referred to in section
   123D.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A
of Part IIIB applies.

123D Statutory order of distribution

(1) Distribution of an amount in respect of the deceased in accordance
with the statutory order shall, subject to subsections (2) and (3), be
made to:

   (a) the known widow or widower of the deceased or the known
       widows or widowers of the deceased in equal shares;
Section 123D

(b) if there is no known widow or widower of the deceased—the known child of the deceased or the known children of the deceased in equal shares;
(c) if there is no known widow or widower of the deceased and no known child of the deceased—the known parent of the deceased or the known parents of the deceased in equal shares; or
(d) if there is no known widow or widower of the deceased, no known child of the deceased and no known parent of the deceased—the known sibling of the deceased or the known siblings of the deceased in equal shares.

(2) Where:
(a) a child (in this subsection called the beneficiary) of the deceased predeceases the deceased or dies before the approval of a payment under the applicable sections; and
(b) there is a known child of the beneficiary or there are known children of the beneficiary;
the amount that would have been paid to the beneficiary had the beneficiary been alive at the time of approval shall be distributed to the child or to those children in equal shares.

(3) Where:
(a) a sibling of the deceased predeceases the deceased or dies before the approval of a payment under the applicable sections; and
(b) there is a known child of the sibling or there are known children of the sibling;
the amount that would have been paid to the sibling had the sibling been alive at the time of approval shall be distributed to that child or to those children in equal shares.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A of Part IIIB applies.
Section 123E

123E Non-distributable amounts

Where the Commission determines in writing that it is not possible to pay the whole or part of the distributable amount in accordance with sections 123B and 123C, that amount or that part of that amount ceases to be payable to the deceased.

Note: Sections 123 to 123E do not apply if Subdivision C of Division 12A of Part IIIB applies.

124 Termination of pension

(1) Where a veteran or a dependant of a veteran has requested the Commission, in writing, to cancel a pension payable under Part II or IV, or an allowance under Part VI, the Commission may cancel the pension or allowance.

(2) Where a veteran or a dependant of a veteran has, for a continuous period of not less than 6 months, failed to draw instalments of a pension granted to the veteran or dependant under Part II or IV, or of an allowance under Part VI, the Commission may suspend or cancel the pension or allowance.

(3) Where the Commission suspends a pension or allowance under subsection (2), it may, at any time, terminate the suspension from the date as from which the pension or allowance was suspended or such later date as the Commission deems proper.

(4) Where:

(a) a person in receipt of a pension under Part II or IV notifies the occurrence of an event or change of circumstances in accordance with a notice under subsection 127(1); and

(b) by reason of the occurrence of that event or change of circumstances, the person ceases to be eligible to receive that pension;

that pension ceases to be payable to the person as from the day after the last day on which the person could, in accordance with that notice, have notified the occurrence of that event or change of circumstances.

(5) Where:

(a) a person who is in receipt of a pension under Part II or IV is required to notify the occurrence of an event or a change in
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circumstances in accordance with a notice under subsection 127(1);
(b) the person does not notify the occurrence of that event or that change in circumstances within the period specified in the notice; and
(c) by reason of the occurrence of that event or that change in circumstances:
   (i) the person ceases to be eligible to receive that pension; or
   (ii) that pension is payable to the person at a lower rate;
that pension ceases to be payable to the person, or becomes payable to the person at the lower rate, as the case may be, as from the day after the day on which that event or that change in circumstances occurred.

(6) In this section:
(b) a reference to a veteran shall be read as including a reference to a person who is a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

125 Pensions etc. absolutely inalienable

(1) Subject to this Act, a pension, allowance or other pecuniary benefit under this Act is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

126 Death of claimant

(1) On the death of a claimant, the claim does not lapse in respect of any period before the death of the claimant, but the legal personal representative of the claimant, or a person approved by the Commission, may take such action in respect of the claim as the claimant could have taken if the claimant had not died and, for that purpose, the legal personal representative or person so approved shall be treated as the claimant.

(2) On the death of a pensioner, the legal personal representative of the pensioner, or a person approved by the Commission, may take such action in respect of a variation of, or the suspension or cancellation of, the pensioner’s pension effected before the death of the pensioner, or effected after the death of the pensioner as from a
date before the death of the pensioner, as the pensioner could have taken if he or she had not died and, for that purpose, the legal personal representative or person so approved shall be treated as the pensioner.

(3) If there is a legal personal representative of a deceased claimant or deceased pensioner, the Commission shall not approve a person for the purpose of subsection (1) or (2) unless it is satisfied that:
   (a) the person has notified the legal personal representative of the deceased claimant, or deceased pensioner, that the legal personal representative has, or may have, a right under subsection (1) or (2), as the case may be; and
   (b) the legal personal representative has refused, or failed within a reasonable time after having been so notified, to take any action in respect of the claim or pension, as the case may be.

(4) In this section, *claim* means a claim in accordance with section 14, 35B, 36D, 37D, 38D, 39D or 45I, an application in accordance with section 15, and an application for review under Division 16 of Part IIIB, section 135 or 175, and *claimant* has a corresponding meaning.

126A Death of a person who has not made a formal claim etc.

(1) If a deceased person has made a claim for a pension under Part II or IV in writing, but otherwise than in accordance with a form approved for the purposes of paragraph 14(3)(a), an authorised representative of the deceased person may make a claim for the pension in accordance with such a form.

(2) If a deceased person has made a claim for a pension under Part III or IIIA in writing, but otherwise than in accordance with the form approved for the purpose under paragraph 35D(b), 36F(b), 37F(b), 38F(b), 39F(b) or 45K(b) (as the case requires), an authorised representative of the deceased person may make a claim for the pension in accordance with that form.

(3) If a deceased person has made an application of a kind referred to in subsection 15(1) or (2) in writing, but otherwise than in accordance with a form approved for the purposes of paragraph 15(3)(a), an authorised representative of the deceased person may make an application of that kind in accordance with such a form.
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(4) A person who, pursuant to subsection (1), (2) or (3), makes a claim for a pension under Part II, III, IIIA or IV, or an application of a kind referred to in subsection 15(1) or (2):
   (a) take such action in relation to the claim or application as the deceased person could have taken if he or she had made the claim or application and had not died; and
   (b) the purposes of taking such action, shall be treated as if he or she were the deceased person.

(5) The Commission may authorise a person to take action under this section in relation to a deceased person if:
   (a) there is no legal personal representative of the deceased person; or
   (b) the Commission is satisfied that:
      (i) person has notified the legal personal representative of the deceased person that the legal personal representative has, or may have, a right under this section to make a claim or application; and
      (ii) legal personal representative has refused, or failed within a reasonable time after having been so notified, to make the claim or application.

(6) In this section:

   authorised representative, in relation to a deceased person, means:
   (a) the legal personal representative of the deceased person; or
   (b) a person authorised by the Commission in accordance with subsection (5) to take action under this section in relation to the deceased person.

127 Power to obtain information

(1) The Secretary may serve on:
   (a) a person to whom a pension, allowance or other benefit under this Act is being paid, including a person to whom the whole or a part of such a pension, allowance or benefit is being paid for the purpose of being applied for the benefit of the pensioner;
   (b) a person whose claim or application for a pension, attendant allowance or recreation transport allowance under this Act is
under consideration by the Commission, the Board or the Administrative Appeals Tribunal;

(c) a person who is being provided with treatment under Part V;

or

(d) a person whose application to be provided with treatment under Part V is under consideration by the Commission;

a notice, in writing:

(e) if:

(i) an event or change of circumstances specified in the notice occurs; or

(ii) the person becomes aware that an event or change of circumstances so specified is likely to occur;

requiring the person to notify the Department, or an officer specified in the notice, of the occurrence or likely occurrence of that event or change of circumstances:

(iii) subject to subsection (2A)—in the manner specified in the notice; and

(iv) within such period after the occurrence of that event or change of circumstances, or after the person becomes so aware, as the case may be, as is specified in the notice;

or

(f) requiring the person to give to the Department, or to an officer specified in the notice, a statement, in accordance with a form approved by the Commission:

(i) subject to subsection (2A)—in the manner specified in the notice; and

(ii) within the period specified in the notice;

relating to any matter specified in the notice that might affect the payment to that person of the pension, allowance or other pecuniary benefit under this Act, or the provision of treatment under Part V.

(2) An event or change of circumstances shall not be specified in a notice referred to in paragraph (1)(e) unless the occurrence of that event or change of circumstances might affect the payment of a pension, allowance or other pecuniary benefit under this Act, or the provision of treatment under Part V.

(2A) A document lodged as a consequence of a notice under subsection (1) that either:
(a) requires a person to inform the Department in writing of the occurrence or likely occurrence of an event or change of circumstances specified in the notice; or

(b) requires the person to give the Department a statement relating to a matter referred to in paragraph (1)(f) that is specified in the notice;

is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been lodged on a day determined under that section.

(3) The period for compliance specified in a notice in accordance with subsection (1) shall not be less than 14 days.

(3A) A notice under subsection (1) may specify an event or change of circumstances by referring to an event or change of circumstance set out in a document referred to in the notice (being a document a copy of which is served on the person with the notice) and, if the notice does so, the event or change of circumstances shall be deemed, for the purposes of this section, to be specified in the notice.

(3B) Where a notice under subsection (1) specifies an event or change of circumstances by referring to an event or change of circumstances set out in a document, it may specify the period within which notification of the occurrence, or likely occurrence, of the event or change of circumstances is to be furnished to the Department by reference to the period set out in that document in respect of that event or change of circumstances and, if the notice does so, the period shall be deemed, for the purposes of this section, to be specified in the notice.

(4) A person who has been given a notice under subsection (1) must not fail to comply with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

(5) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(6) Subsection (4) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the Criminal Code.
128 Secretary may obtain information etc.

(1) The Secretary may, for the purposes of this Act, by notice in writing given to a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any authority of the Commonwealth or of a State or Territory), require the person:

(a) to:

(i) provide the Department, or an officer specified in the notice, with such information as the Secretary requires;

or

(ii) produce to the Department, or to an officer so specified, any documents in the custody or under the control of the person;

within the period (not being less than 14 days after the notice is given) and in the manner specified in the notice; or

(b) to appear before an officer specified in the notice at such reasonable time (not being a time earlier than 14 days after the notice is given) and place as are specified in the notice to answer questions.

(2) Without limiting the generality of subsection (1), the Secretary may:

(a) by notice in writing given to a person who is indebted to the Commonwealth under or as a result of this Act, require the person:

(i) to provide the Department, or an officer specified in the notice, within the period specified in the notice (not being less that 14 days after the notice is given), with such information concerning the person’s financial situation as is required by the notice or to produce to the Department, or to an officer so specified, within that period, such documents concerning that situation as are so specified; and

(ii) if the person’s address changes, to notify the Department or an officer so specified, within 14 days of the change, of the new address; or

(b) by notice in writing given to a person who the Secretary believes may have information concerning the whereabouts of a person who is indebted to the Commonwealth under or as a result of this Act or the financial situation of such a
person, require the person to provide the Department, or an officer specified in the notice, within the period specified in the notice (not being less than 14 days after the notice is given), with such information concerning those matters as is required by the notice or to produce to the Department, or to an officer so specified, within that period, such documents concerning those matters as are specified in the notice.

(2AA) A document lodged as a consequence:

(a) of a notice issued under subsection (1) requiring a person to provide the Department, in writing, with such information as the Secretary specifies in the notice; or

(b) of a notice issued under paragraph (2)(a) requiring a person to provide the Department with such written information concerning the person’s financial situation as is required by that notice; or

(c) of a notice under paragraph (2)(b) requiring a person to provide the Department, in writing, with such information concerning the whereabouts or financial situation of a person indebted to the Commonwealth as is specified in the notice; is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been lodged on a day determined under that section.

(2A) The Secretary may require the information or answers to questions under this section to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the Secretary or an officer to whom information or answers are verified or given may administer an oath or affirmation.

(3) The oath or affirmation to be taken by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(4) A person must not fail to comply with a notice under subsection (1).

Penalty: $1,000 or imprisonment for 6 months, or both.

(4A) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.
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(4B) Subsection (4) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4B). See subsection 13.3(3) of the Criminal Code.

(5) A person shall not, in purported compliance with a notice under subsection (1), intentionally furnish information or give evidence that is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.

(6) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(7) This section does not require a person to furnish information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

128A Provision of tax file numbers

(1) In this section:

income payment means:

(a) a pension under Part II, III, IIIA or IV; or
(b) a temporary incapacity allowance under section 107; or
(c) a loss of earnings allowance under section 108; or
(d) an allowance (other than utilities allowance or seniors concession allowance) under this Act payable to a person in receipt of a pension referred to in paragraph (a).

TFN declaration has the same meaning as in Part VA of the Income Tax Assessment Act 1936.

(2) An income payment, or an allowance under a scheme within the meaning of Part VII, that a person (the eligible person) is eligible to receive is not to be paid to the person if the person fails to comply with the request in subsection (3) or (3A) (whichever applies).

(3) If an eligible person is in Australia, the Secretary may request but not compel the person:

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(a) if the person has a tax file number—to give the Secretary a written statement of the person’s tax file number; or
(b) if the person does not have a tax file number:
   (i) to apply to the Commissioner of Taxation for a tax file number; and
   (ii) to give the Secretary a written statement of the person’s tax file number after the Commissioner of Taxation has issued it.

(3A) If an eligible person has a partner or non-illness separated spouse and the partner or spouse is in Australia, the Secretary may request but not compel the person:
(a) if the partner or spouse has a tax file number—to give the Secretary a written statement of the partner’s or spouse’s tax file number; or
(b) if the partner or spouse does not have a tax file number—to give the Secretary a written statement of the partner’s or spouse’s tax file number after the Commissioner of Taxation has issued it.

(3B) If:
(a) a person’s income payment ceases to be paid because the person fails to comply with subsection (3) or (3A) by a particular day; and
(b) subsection (3) or (3A) is satisfied in relation to the person’s tax file number within the 3 month period that starts on that day;
then the income payment that would have been paid to the person during that period if the person had complied with the request in subsection (3) or (3A) is to be paid to the person.

(3C) If subsection (3) or (3A) is satisfied in relation to the person’s tax file number after the 3 month period has ended the person’s income payment is to be paid from the first pension payday on which subsection (3) or (3A) is satisfied.

(4) The request in subsection (3) or (3A) (whichever applies) in relation to a person’s tax file number is satisfied if:
(a) the Secretary is given:
   (i) where the person is the eligible person and the pension or allowance is assessable income for the purposes of the Income Tax Assessment Act 1936 or the Income Tax Act.
Assessment Act 1997—a TFN declaration by the person; or
(ii) in any other case—a declaration by the person in a form approved by the Secretary; and
(b) the declaration states either:
(i) that the person has a tax file number but does not know what it is and has asked the Commissioner of Taxation to inform him or her of the number; or
(ii) that the person has applied for a tax file number; and
(c) where subparagraph (b)(i) applies—the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
(i) whether the person has a tax file number; and
(ii) if so—the tax file number; and
(d) where subparagraph (b)(ii) applies—the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
(i) if a tax file number is issued to the person—the tax file number; or
(ii) if the application is refused—that the application has been refused; or
(iii) if the application is withdrawn—that the application has been withdrawn; and
(e) the Commissioner of Taxation has not told the Secretary that the person has no tax file number or that an application by the person for a tax file number has been refused; and
(f) if subparagraph (b)(ii) applies—the Commissioner of Taxation has not told the Secretary that:
(i) the application for a tax file number has been withdrawn; or
(ii) the person has not applied for a tax file number.

(5) The Secretary may waive the requirement for a statement of the tax file number of the person’s partner or non-illness separated spouse if satisfied that the person:
(a) does not know that number; and
(b) can obtain none of the following from the partner or non-illness separated spouse:
(i) that number;
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(ii) a statement of that number;
(iii) a declaration by the partner or non-illness separated
spouse under paragraph (4)(a).

129 Self-incrimination

A person is not excused from furnishing information, producing a
document or giving evidence in pursuance of a notice under section
128 on the ground that the information or evidence, or the
production of the document, may tend to incriminate the person,
but any information furnished, evidence given or document
produced in pursuance of a notice under section 128 is not
admissible in evidence against the person in any criminal
proceedings, other than proceedings for an offence against
subsection 128(4) or (5).

130 Furnishing of information

(1) Nothing in a law of a State or of a Territory shall operate so as to
prevent a person from furnishing any information, producing any
documents, or giving any evidence to an officer for the purposes of
this Act.

(2) The Secretary or another officer of the Department may provide
any information obtained in the performance of his or her duties
under this Act (whether before or after the commencement of this
subsection) to the Secretary of another Department of State of the
Commonwealth or to the head of an authority of the
Commonwealth for the purposes of that Department or authority.

131 Interpretation

In sections 127 to 130 (inclusive), unless the contrary intention
appears:

officer means a person performing duties, or exercising powers or
functions, under, or in relation to, this Act.

person includes an unincorporated body.

132 Payment of travelling expenses in certain cases

(1) Subject to such conditions as are prescribed, where:
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(a) a claimant; or
(b) a person likely to be affected by a review under section 31; travels:
(c) within Australia, for the purpose of attending, at the request of the Commission or a delegate of the Commission, before the Commission or such a delegate for a discussion in relation to the claim or review; or
(d) within or outside Australia, for the purpose of attending, at the request of the Secretary or the Commission, for a medical examination or medical investigation related to the claim or review;

he or she is entitled to receive such travelling expenses in connection with that travel as are prescribed.

(2) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying a claimant or person likely to be affected by a review under section 31 to a discussion, or for a medical examination or a medical investigation referred to in subsection (1) of this section, is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(3) Subject to such conditions as are prescribed, a person summoned under section 32 or 57F to give evidence or produce documents, or both, is entitled to receive such travelling expenses in connection with his or her travel to give that evidence or produce those documents, or both, as are prescribed.

(4) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying a person referred to in subsection (3) when that person gives evidence or produces documents, or both, in pursuance of a summons under section 32 or 57F is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(5) Subject to such conditions as are prescribed, an applicant for a review under section 135 is entitled, if the applicant travels in Australia for the purpose of attending a hearing of the review by the Board, to receive such travelling expenses in connection with that travel as are prescribed.

(6) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying an applicant
Section 132

referred to in subsection (5) to a hearing of a review is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(7) Subject to such conditions as are prescribed, where:

(a) the party (not being the Commission) to proceedings for a review of a reviewable decision who made application for the review under section 175; or

(b) if the Commission made application for the review—the other party to the proceedings for the review whose interests are affected by the reviewable decision;

travels within Australia for the purpose of attending before the Administrative Appeals Tribunal in connection with the review, the party is entitled to receive such travelling expenses in connection with that travel as are prescribed.

(8) Subject to such conditions as are prescribed, an attendant who travels within Australia for the purpose of accompanying a party referred to in subsection (7) on an attendance before the Administrative Appeals Tribunal referred to in that subsection is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

(9) Where a claim for a pension:

(a) is made on behalf of the claimant:

(i) by a person who is a dependant of the claimant; or

(ii) by a person approved under paragraph 16(b), (c) or (d) to make the claim on behalf of the claimant; or

(b) is prosecuted by a person who is the legal personal representative of the claimant, or by a person approved under section 126, following the death of the claimant;

and that person travels within Australia with the approval of the Commission for the purpose of:

(c) an investigation, by the Department or the Commission, of the claim; or

(d) attending at a hearing of a review of a decision, in respect of the claim, of the Commission by the Board;

the person is, subject to such conditions as are prescribed, entitled to be paid such travelling expenses in connection with that travel as are prescribed.
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(10) Travelling expenses to which a person is entitled to under this section are payable by the Commonwealth.

(11) Where a person who has travelled in Australia is entitled to be paid travelling expenses under this section in connection with that travel, application for payment of travelling expenses in respect of that travel:

(a) may be made:
   (i) by that person; or
   (ii) with the approval of that person or, if that person is, by reason of physical or mental ailment or of that person’s death, unable to approve a person to make the application on his or her behalf, with the approval of the Commission, by another person on behalf of that person;

(b) shall be made in writing and in accordance with a form approved by the Commission;

(c) shall be accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application;

(d) is to be lodged in accordance with subsection (11A); and

(e) shall be made within 3 months after the completion of that travel, and not otherwise.

(11A) An application:

(a) unless it is an application to which paragraph (b) applies—must be lodged at an office of the Department in Australia in accordance with section 5T; and

(b) if it is an application in respect of travel referred to in subsection (5) or (6)—must either:
   (i) be communicated to the Board in accordance with the directions of the Principal Member given under subsection 148(5); or
   (ii) be lodged at an office of the Department in Australia in accordance with section 5T.

(11B) If an application is communicated to the Board in accordance with the directions of the Principal Member given under subsection 148(5), it is taken to have been made on a day determined in accordance with those directions.
Section 132A

(11C) If an application is lodged with an office of the Department in Australia in accordance with section 5T, it is taken to have been made on a day determined under that section.

(12) In this section *claim* means a claim in accordance with section 14, 35B, 36D, 37D, 38D or 45I, an application in accordance with section 15 and an application for a review under Division 16 of Part IIIB, section, 115 or 135 and *claimant* has a corresponding meaning.

132A Advance of travelling expenses

(1) Where the Commission is satisfied:
   (a) that a person may reasonably be expected to become entitled to be paid travelling expenses under subsection 132(5) or (6) or under subsection 132(9) by virtue of paragraph (d) of that subsection; and
   (b) that it is in all the circumstances appropriate for the person to be paid an advance on account of the travelling expenses that the person is expected to become entitled to be paid;
   the Commission may authorise a payment to the person of an advance on account of the travelling expenses that the person is expected to become entitled to be paid.

(2) If the amount of the advance paid to a person on account of any travelling expenses in respect of any travel of the person exceeds the amount of travelling expenses that become payable to the person in respect of that travel, the person is liable to repay an amount equal to the excess to the Commonwealth.
Part IX—Veterans’ Review Board

Division 1—Preliminary

133 Interpretation

In this Part, unless the contrary intention appears:

applicant means a person who makes an application.

application means an application under this Part to the Board for a review of a decision of the Commission.

member means the Principal Member, a Senior Member or another member of the Board.

pension means pension under Part II or IV.

Principal Member means the Principal Member of the Board.

relevant documentary medical evidence, in relation to an application made in respect of a veteran or a deceased veteran, means certificates, reports or other documents from:
   (a) a medical practitioner; or
   (b) a hospital, or similar institution, in which the veteran or deceased veteran received medical treatment; about a medical condition of the veteran or deceased veteran and reasonably used in support of the application.

review means a review of a decision.

Senior Member means a Senior Member of the Board.

Services member means a member who, on the occasion of his or her appointment, or on any occasion of his or her re-appointment, as a member, was a person selected from lists submitted in accordance with a request made under subsection 158(3).

veteran means:
   (a) a veteran as defined by subsection 5(1); or
   (b) a member of the Forces or a member of a Peacekeeping Force, as defined by subsection 68(1).
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**Division 2—Continuance of Veterans’ Review Board**

134 Continuance of Veterans' Review Board

(1) The Veterans’ Review Board, being the Board established by section 107VB of the *Repatriation Act 1920*, is continued in existence.

(2) The Board consists of a Principal Member and such number of Senior Members, and such number of other members, as are appointed in accordance with this Act.
Division 3—Review by the Board of decisions

135 Review of decisions in respect of pensions and attendant allowances

(1) Where a person:
   (a) who has made a claim for a pension in accordance with section 14;
   (b) who has made application for a pension, or for an increased pension, in accordance with section 15; or
   (c) who has made an application for attendant allowance under section 98;
   is dissatisfied with any decision of the Commission in respect of the claim or application (including a decision under section 20 or 21 approving a date from which payment of a pension, or payment of a pension at a higher rate, may be made, but not being a decision under subsection 19A(1)), the person may, subject to this Act, make application to the Board for a review of the decision of the Commission.

(2) Where the Commission, upon a review under section 31 of a decision in relation to a pension or attendant allowance, has made a further decision:
   (a) revoking that decision; or
   (b) revoking that decision and substituting a new decision; or
   (c) varying that decision;
   the veteran, or the dependant of a deceased veteran, as the case may be, affected by that further decision may make application to the Board for a review:
   (d) of the further decision of the Commission revoking that previous decision; or
   (e) of the new decision of the Commission that was substituted for that previous decision; or
   (f) of that previous decision as varied by the further decision of the Commission.

(3) Where the Commission makes a determination:
   (a) under subsection 31(6) cancelling or suspending, or decreasing the rate of, a pension or attendant allowance;
(b) under subsection 31(8) increasing the rate of a pension or attendant allowance; or
(c) under subsection 31(9) fixing the date of re-commencement of a pension or attendant allowance that has been suspended;

the veteran, or the dependant of a veteran, as the case may be, affected by that determination may make application to the Board for a review of that decision of the Commission to cancel or suspend that pension or attendant allowance, to decrease or increase the rate of that pension or attendant allowance or fixing the date of re-commencement of that pension or attendant allowance that has been suspended, as the case may be.

(4) Subject to subsections (5) and (5A), an application under subsection (1) or (2) to the Board to review a decision of the Commission may be made within 12 months after service on the person to whom the decision relates of a copy of that decision in accordance with subsection 34(2), but not otherwise.

(5) An application under subsection (1), (2) or (3) to the Board to review a decision of the Commission:
(a) assessing a rate of pension or increased rate of pension;
(b) refusing to grant a pension on the ground that the extent of the incapacity of the veteran is insufficient to justify the grant of a pension;
(c) refusing to increase the rate of a pension;
(d) reducing the rate of a pension; or
(e) cancelling or suspending a pension, or fixing the date of re-commencement of a pension that has been suspended;

may be made within 3 months after service on the person to whom the decision relates of a copy of that decision in accordance with subsection 34(2), but not otherwise.

(5A) An application by a person under subsection (1), (2) or (3) to the Board to review a decision of the Commission, whether the decision was made before or is made after the commencement of this subsection, refusing to grant an application for attendant allowance under section 98 may be made within a period of 3 months after service on the person of notice of the decision or within a period of 3 months after the commencement of this subsection, whichever last expires, but not otherwise.

(6) If:
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(a) the Commission, upon a review under section 31 of a decision (the original decision) of a kind referred to in subsection (1), (2) or (3), has made a further decision:
   (i) revoking that decision; or
   (ii) revoking that decision and substituting a new decision; or
   (iii) varying that decision; and
(b) application had not, before the further decision was made, been made to the Board for a review of the original decision; application is not to be made for a review of the original decision but may be made for a review:
   (c) of the further decision of the Commission revoking the original decision; or
   (d) of the new decision of the Commission that was substituted for the original decision; or
   (e) of the original decision as varied by the further decision of the Commission.

(7) If:
(a) the Commission, upon a review under section 31 of a decision (the original decision) of a kind referred to in subsection (1), (2) or (3), has made a further decision:
   (i) revoking that decision; or
   (ii) revoking that decision and substituting a new decision; or
   (iii) varying that decision; and
(b) an application had been made to the Board for a review of the original decision but the hearing of the application:
   (i) had not commenced before the further decision was made; or
   (ii) had commenced but was not completed before the further decision was made;
the application is to be treated as if it were an application made for a review:
   (c) of the further decision of the Commission revoking the original decision; or
   (d) of the new decision of the Commission that was substituted for the original decision; or
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(e) of the original decision as varied by the further decision of the Commission.

136  Application for review

(1) An application to the Board for a review:
   (a) shall be in writing; and
   (b) is to be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been made on a day determined under that section;
and may set out a statement of the reasons for the application.

(2) An application under subsection (1) relating to a pension granted to, or claimed for, a veteran, or a dependant of a deceased veteran, may be made:
   (a) by the veteran or dependant, as the case may be;
   (b) with the approval of the veteran or dependant, as the case may be, by another person on behalf of the veteran or dependant;
   (c) in the case of a veteran or dependant, as the case may be, who is unable, by reason of physical or mental incapacity, to approve a person to make an application on his or her behalf—on behalf of the veteran or dependant, by a person approved by the Commission; or
   (d) in the case of a dependant who is under the age of 18 years, on behalf of the dependant:
      (i) by a parent or guardian of the dependant;
      (ii) by another person approved by a parent or guardian of the dependant; or
      (iii) if there is not a parent or guardian of the dependant alive or willing and able to make, or approve a person to make, such an application on behalf of the dependant—by another person, being a person approved by the Commission.

(3) Subsection (2) does not limit the application of section 126 in relation to applications under subsection (1) of this section.
137 Secretary to prepare report

(1) Within 6 weeks after an application for review made under subsection 135(1), (2) or (3) is received at an office of the Department in Australia, the Secretary shall:
   (a) cause to be prepared a report referring to the evidence under the control of the Department that is relevant to the review; and
   (b) subject to subsection (2), cause a copy of that report to be served on the applicant.

(2) Where the report prepared by the Secretary in pursuance of subsection (1) contains or refers to any information, opinion or other matter:
   (a) that, in the opinion of the Secretary, is of a confidential nature; or
   (b) that, in the opinion of the Secretary, it might be prejudicial to the physical or mental health or well-being of the applicant to communicate to the applicant;

the document served on the applicant in pursuance of paragraph (1)(b) shall not contain or refer to that information, opinion or other matter.

(3) Where a copy of a report is served on an applicant in accordance with subsection (1), the applicant may, within 28 days after service of the report or within such further period as the applicant may request in writing before the expiration of that period, furnish to the Secretary in writing any comments the applicant wishes to make concerning the report.

(4) The Secretary shall forward to the Principal Member of the Board all the relevant documents, including any comments furnished to the Secretary by the applicant concerning the report served on the applicant and, if a further investigation has been made in consequence of those comments of the applicant, a supplementary report referring to any evidence obtained in that further investigation:
   (a) if the applicant duly furnishes comments in accordance with subsection (3) and no further investigation is made in consequence of those comments—as soon as practicable after receipt of those comments;
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(b) if a further investigation is made in consequence of comments furnished by the applicant—as soon as practicable after the completion of that further investigation; or

(c) in any other case—as soon as practicable after the expiration of the period or extended period referred to in subsection (3).

138 Board not bound by technicalities etc.

(1) The Board, in conducting a review, in hearing a review or in making a decision on a review of a decision:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) shall act according to substantial justice and the merits and all the circumstances of the case and, without limiting the generality of the foregoing, shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:

(i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; or

(ii) the absence of, or a deficiency in, relevant official records including an absence or deficiency resulting from the fact that an occurrence that happened during the service of a veteran, or of a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1), was not reported to the appropriate authorities.

(2) The Commission may make available to the Board:

(a) statements of principles applied by the Commission in deciding claims for pension and applications for pension and attendant allowance and increased pension and in conducting reviews under section 31; and

(b) such other material as the Commission considers may be of assistance to the Board in the exercise of its powers or the performance of its functions under this Act.

(3) Nothing in this section authorizes the Commission to direct the Board with respect to its consideration of a particular review by the Board.
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139  Decision of Board

(1) On review of a decision, the Board shall have regard to the evidence that was before the Commission when the decision was made and to any further evidence before the Board on the review that was not before the Commission, being further evidence relevant to the review.

(2) It is the duty of the Board, in reviewing a decision of the Commission, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the review.

(3) For the purpose of reviewing a decision of the Commission, the Board may exercise all the powers and discretions that are conferred by this Act on the Commission in like manner as they are required by this Act to be exercised by the Commission, and shall make a decision, in writing:
   (a) affirming the decision under review;
   (b) varying the decision under review; or
   (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

(4) Where the Board sets aside a decision of the Commission refusing to grant a pension to a person and substitutes for it a decision granting a pension to the person, the Board shall assess the rate or rates at which the pension is to be paid to the person or remit the matter to the Commission to assess the rate or rates at which the pension is to be paid to the person.

140  Statements of decisions of the Board etc.

(1) Where the Board reviews a decision of the Commission, the Board shall:
   (a) record its decision on the review in writing;
   (b) prepare a written statement setting out its reasons for that decision, including its findings on any material questions of fact, and referring to the evidence or other material on which those findings were based;
   (c) file the decision and the written statement with the records of the case; and
   (d) cause to be served on each of the relevant persons:
      (i) a copy of the decision; and
(ii) subject to subsection (2), a copy of the written statement referred to in paragraph (b) of this subsection; and on the applicant for the review, or a person authorized by the applicant, particulars of the person’s right to make application to the Administrative Appeals Tribunal for a review of the decision of the Commission affirmed by that decision of the Board, the decision of the Commission as varied by that decision of the Board or the decision of the Board in substitution for the decision of the Commission set aside by the Board, as the case may be.

(2) Where a statement prepared by the Board in pursuance of paragraph (1)(b) upon a review of a decision of the Commission contains or refers to any information, opinion or other matter:
   (a) that, in the opinion of the Board, is of a confidential nature; or
   (b) that, in the opinion of the Board, might be prejudicial to the physical or mental health or well-being of the applicant to communicate to the applicant;
the document served on the applicant in pursuance of subparagraph (1)(d)(ii) shall not contain or refer to that information, opinion or other matter.

(2A) The copies of a decision and statement that are required by subsection (1) to be served on the Commission in respect of a review of a decision by the Board shall be served on the Commission by forwarding them to, or delivering them at, the prescribed address of the Commission (addressed to the Commission).

(3) In this section:
   (a) a reference to the relevant persons, in relation to a review, shall be read as a reference to:
      (i) the applicant for the review, or a person authorized by that applicant; and
      (ii) the Commission; and
   (b) a reference to a decision of the Board on a review shall be read as including a reference to any assessment made by the Board on the review in pursuance of subsection 139(3) or (4).
140A Correction of errors in decisions or statements of reasons

(1) If, after the making of a decision by the Board, the Board is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Board may direct a registrar or a deputy registrar to alter the text of the decision or statement in accordance with the directions of the Board.

(2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Board or the statement of reasons for the decision, as the case may be.

(3) Examples of obvious errors in the text of a decision or statement of reasons are where:

(a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons; or

(b) there is an inconsistency between the decision and the statement of reasons.

(4) The powers of the Board under this section may be exercised by the Principal Member or by the member who presided in respect of the review to which the decision relates.
Division 4—Organization of the Board

141 Constitution of Board for exercise of powers

(1) Subject to this section, the Board shall, for the purposes of a review, be constituted by:
   (a) the Principal Member or a Senior Member;
   (b) a Services member; and
   (c) one other member.

(1A) The Board may, for the purposes of a particular review, be constituted by:
   (a) the Principal Member; and
   (b) a Senior Member; and
   (c) a Services Member.

(2) With the approval of the Minister, the Board may, for the purposes of a particular review, or of a review included in a particular class of reviews, be constituted by:
   (a) the Principal Member or a Senior Member; or
   (b) one member, not being the Principal Member or a Senior Member;
   only.

142 Principal Member responsible for arrangement of business

(1) The Principal Member is responsible for the efficient operation of the Board.

(2) The Principal Member may give directions:
   (a) for the purpose of increasing the efficiency of the operations of the Board; and
   (b) as to the arrangement of the business of the Board.

143 Members to constitute Board

(1) The Principal Member may give directions, from time to time in writing, as to the persons who are to constitute the Board:
   (a) for the purpose of a particular review or particular reviews; or
(b) for the purposes of reviews listed for hearing at a specified place during a specified period, or during specified periods, being reviews so listed for hearing by, or in accordance with the directions of, the Principal Member.

(2) Where the Board, constituted in accordance with a direction given under subsection (1), completes its hearing of a review listed for hearing at the place and during a period specified in that direction but does not make its decision on the review, those members who constitute the Board in accordance with that direction, by force of this subsection, continue to constitute the Board, unless the Principal Member otherwise directs, for the purpose of making a decision in writing on that review.

144 Member ceasing to be member etc.

(1) Where one of the members constituting the Board by virtue of a direction under section 143 ceases to be a member or ceases, for any reason, to be available for the purposes of a review at the place where the review is to be, or is being, heard or continued, the 2 remaining members shall be deemed to constitute the Board by virtue of the direction given under section 143 until the Principal Member re-allocates the review, under section 143, for further hearing.

(2) Where the member referred to in subsection (1) is the Principal Member or a Senior Member, the Principal Member shall direct which of the 2 remaining members shall preside at any hearing of the review.

(3) Where:
   (a) the hearing of a review has been commenced but has not been completed before the Board; and
   (b) the review has not been re-allocated as mentioned in subsection (1);
the review may be listed for further hearing at a particular place and time in accordance with directions given by the Principal Member with respect to the listing of reviews for hearing or further hearing and, if it is so listed:
   (c) the Board constituted by the members directed to constitute the Board for the hearing of reviews listed for hearing at that
place during the period in which that time occurs may continue the hearing of the review and decide the review; and
(d) the review shall be deemed to have been re-allocated for further hearing and decision accordingly.

(4) The Board to which a review is deemed to have been re-allocated under subsection (3) may, but need not, include a member who was one of the members who constituted the Board for the purpose of hearing the review before the re-allocation took place.

(5) Where a review re-allocated as mentioned in subsection (1), or deemed to have been re-allocated under subsection (3), had been commenced, but had not been completed, before the re-allocation took place, the Board as constituted for the purpose of that review by virtue of that re-allocation may, in the review before it, have regard to any record of the review before the Board as previously constituted.

145 Places of sitting

Sittings of the Board shall be held from time to time as required, and at such places in Australia as may be convenient.
Division 5—Proceedings before the Board

146 Principal Member or Senior Member to preside at hearing

(1) Where the Principal Member is included in the members constituting the Board for the purpose of a review, he or she shall preside at any hearing of the review.

(2) Where the Principal Member is not included in the members constituting the Board for the purpose of a review, the Senior Member who is included in those members shall preside at any hearing of the review.

147 Parties to review before Board

(1) The parties to a review by the Board of a decision of the Commission are:
   (a) the applicant for the review; and
   (b) the Commission.

(2) A party to a review may:
   (a) appear in person, or be represented at the party’s own expense by a person other than a legal practitioner, at any hearing of the review; and
   (b) make such submissions, in writing, to the Board as the party, or the party’s representative, considers relevant to the review.

Note: if the Principal Member gives an applicant a notice under subsection 155AA(4) or 155AB(4) and the applicant wants to be represented by another person in relation to it, the applicant must so authorise the representative in writing after receiving the notice (see section 155AC).

(3) In this section, a reference to a legal practitioner shall be read as including a reference to any person who:
   (a) holds a degree of Bachelor of Laws, Master of Laws or Doctor of Laws or Bachelor of Legal Studies; or
   (b) is otherwise qualified for admission as a barrister, solicitor, or barrister and solicitor, of the High Court or of the Supreme Court of a State or Territory.
148 Procedure of Board

(1) The Principal Member shall, upon receipt of the relevant documents relating to a review of a decision of the Commission, cause to be served on each party to the review a notice informing the party that the Board is to review the decision of the Commission and requesting the party to inform the Principal Member, in writing, within a reasonable time specified in the notice, whether the party wishes to appear on the hearing of the review and, if the party wishes so to appear, whether the party intends to appear on the hearing personally or by another person under section 147.

(2) Where either party to a review of a decision of the Commission informs the Principal Member that the party wishes to appear on the hearing of the review of the decision by the Board, the Principal Member shall:
   (a) cause a date, time and place to be fixed for the hearing of the review; and
   (b) cause notice of the date, time and place so fixed to be served on each party to the review.

(3) The Principal Member may defer fixing a date, time and place for the hearing of a review under subsection (2) until the parties to the review have informed the Principal Member that they are ready to proceed at a hearing.

(4) Where a party to a review of a decision of the Commission does not inform the Principal Member, within the time specified in the notice served on the party under subsection (1), that the party wishes to appear on the hearing of the review, the review may be heard and determined in the absence of that party.

(5) The Principal Member:
   (a) may give general directions, not inconsistent with subsections (1), (2), (3) and (4) as to the procedure of the Board with respect to reviews before it, including reviews the hearings of which have not been commenced; and
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(b) may give directions, not inconsistent with subsections (1), (2), (3) and (4), as to the procedure of the Board with respect to a particular review before the Board, either before or after the hearing of the review has commenced.

(5A) The power of the Principal Member under subsection (5) includes the power to give directions:
(a) as to the manner of communication of documents, including electronic documents, that are required or permitted to be communicated to the Board; and
(b) as to the time at which such documents are to be taken to have been so communicated.

(5B) Without limiting the documents to which subsection (5A) applies, those documents include:
(a) documents, comments and supplementary reports forwarded to the Principal Member under subsection 137(4); and
(b) notices given to the Principal Member by a party to a review of a decision for the purposes of section 148; and
(c) documents produced to the Board under section 151 for the purposes of the hearing of a review Board; and
(d) further documents and reports of investigations or examinations forwarded to the Board as a consequence of a request made under subsection 152(1); and
(e) withdrawals of applications for review communicated to the Board under subsection 155(1); and
(f) statements provided to the Principal Member for the purposes of paragraph 155AA(4)(c); and
(g) statements provided to the Principal Member for the purposes of paragraph 155AA(4)(d); and
(h) statements provided to the Principal Member for the purposes of paragraph 155AB(4)(a); and
(i) statements provided to the Principal Member for the purposes of paragraph 155AB(4)(b).

(6) The presiding member in respect of a particular review may, in respect of a matter not dealt with by directions under subsection (5), give directions, not inconsistent with subsections (1), (2), (3) and (4), as to the procedure to be followed on a hearing of the review, either before or after the hearing of the review has commenced.
(6A) The Principal Member may, in relation to a review, request the Secretary:
   (a) to give to the Principal Member further documents in the Secretary’s custody; or
   (b) to obtain, and give to the Principal Member, further documents; or
   (c) to arrange for the making of any investigation or medical examination and to give to the Principal Member a report of the investigation or examination.

(7) In giving a direction or making a request under this section, the Principal Member or a presiding member shall have regard to the need for the review to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Board permit.

149 Questions to be decided by majority of Board

(1) A question before the Board on a review shall be decided according to the opinion of a majority of the members constituting the Board.

(2) Where the Board is constituted for the purposes of a review by 2 members only and the 2 members cannot agree on a question arising in the review, the Board shall adjourn the review and refer the matter to the Principal Member for the giving of any necessary directions, or the taking of any other action, under section 143 or 144.

150 Hearing to be in private except in special circumstances

(1) Subject to this section, the hearing of a review shall be in private.

(2) The presiding member may give directions (whether in writing or otherwise) as to the persons who may be present at any hearing of a review.

(3) If requested to do so by the applicant, the presiding member may permit a hearing, or a part of a hearing, of a review to take place in public.
151 Powers of Board

(1) The Board may:
   (a) take evidence on oath or affirmation for the purposes of a review; or
   (b) adjourn a hearing of a review from time to time.

(2) The presiding member in relation to a review may:
   (a) summon a person to appear at any hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons;
   (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
   (c) administer an oath or affirmation to a person so appearing.

(3) The applicant for a review by the Board of a decision of the Commission is a competent and compellable witness upon the hearing of the review of that decision by the Board.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The power of the Board under paragraph (1)(a) to take evidence on oath or affirmation for the purposes of a review may be exercised on behalf of the Board by the presiding member in relation to the review or by another person (whether a member or not) authorized by the presiding member, and that power may be so exercised within or outside Australia, but the Board may direct that the power is to be so exercised subject to limitations specified by the Board.

(6) Where a person other than the presiding member in relation to a review is authorized, in accordance with subsection (5), to take evidence for the purposes of the review:
   (a) the first-mentioned person has, for the purposes of taking that evidence, all the powers of the Board under subsection (1) and all the powers of the presiding member under subsection (2); and
   (b) for the purposes of the exercise of those powers by the first-mentioned person, this Part has effect (except where the
152 Request to Secretary for documents etc.

(1) The Board may, at any time, request the Secretary:
   (a) to forward to the Board further documents in the custody of
       the Secretary relating to a review;
   (b) to obtain, and forward to the Board, further documents
       relating to a review; or
   (c) to arrange for the making of any investigation, or any
       medical examination, that the Board thinks necessary with
       respect to a review, and to forward to the Board a report of
       that investigation or examination.

(2) Where a request is made under subsection (1), the Board shall
     adjourn any hearing of the review to which the request relates and
     may, in the case of a review of a decision with respect to a pension
     assessment, vary that assessment pending the completion of that
     review, having regard to the records and evidence on which the
     Commission reached that decision.

153 Information may be made available to parties

(1) Subject to subsections (2) and (3), where, after the relevant
     documents relating to a review have been forwarded to the
     Principal Member of the Board in accordance with subsection
     137(4) and before the commencement of the hearing of the review,
     a party to the review furnishes any information to the Board for the
     purposes of the review, the Board shall make that information
     available to the other party to the review.

(2) Where the Board is of the opinion:
     (a) that any information under the control of the Board is of a
         confidential nature; or
     (b) that it might be prejudicial to the physical or mental health or
         well-being of the applicant to communicate any such
         information to the applicant;
     the Board may refrain from making it available to the applicant,
     but may make it available to a person representing the applicant.
(3) Subsection (1) does not apply to information furnished, as set out in that subsection, by a party to a review other than the Commission unless the Board is of the opinion that it contains, or foreshadows the presentation of, evidence or a submission that has not been considered by the Commission in connection with the review.

154 Period of operation of certain decisions of Board

(1) A decision of the Board on a review of a decision of the Commission of a kind referred to in paragraph 135(5)(a), (b), (c) or (d) shall, unless reviewed by the Administrative Appeals Tribunal and, subject to subsection (2) of this section, be binding upon the applicant and the Commission for a period of 6 months commencing on the day on which the Board makes that decision.

(2) If, during the period referred to in subsection (1), the applicant is of the opinion that his or her incapacity has increased, subsection (1) does not prevent:
   (a) the applicant from making application under subsection 15(1) or (2) for an increased pension or for a pension; or
   (b) the grant of an increased pension, or a pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board upon review of the decision of the Commission on such an application.

155 Withdrawal of application

(1) An applicant for review by the Board of a decision of the Commission may withdraw the application at any time before the Board has commenced the review and, with the consent of the Board, at any time after the Board has commenced the review.

(2) The withdrawal of an application to review a decision of the Commission does not prevent the applicant from subsequently making another application under section 135 to review that decision within the time allowed by that section.
155AA Power to dismiss application—initial consideration

(1) In this section:

standard review period, in relation to an application for review, means the period of 2 years after the day on which the application was received at an office of the Department in Australia.

(2) This section applies to an application for review unless:

(a) the hearing of the review has finished within the standard review period; or

(b) as at the end of the standard review period, a date, time and place is fixed for the commencement or resumption of the hearing of the review.

(3) For the purposes of paragraph (2)(a), the hearing of a review is taken to have finished when there are no further submissions to be made to the Board by any of the parties to the review.

(4) If, at the end of the standard review period:

(a) this section applies to an application for review; and

(b) the Principal Member considers that the applicant should be ready to proceed at a hearing;

the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member, within 28 days after receiving the notice;

(c) a written statement indicating that the applicant is ready to proceed at a hearing; or

(d) a written statement explaining why the applicant is not ready to proceed at a hearing.

(5) If the applicant does not provide a written statement under paragraph (4)(c) or (d) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

(6) If:

(a) the applicant provides a written statement under paragraph (4)(d) within the 28 days; and

(b) the Principal Member considers that the statement contains a reasonable explanation for the applicant’s failure to be ready to proceed at a hearing;
the Principal Member must notify the applicant and the Commission of this.

(7) If:
(a) the applicant provides a written statement under paragraph (4)(d) within the 28 days; and
(b) the Principal Member considers that the statement does not contain a reasonable explanation for the applicant’s failure to be ready to proceed at a hearing;
the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

155AB Power to dismiss application—subsequent consideration

(1) In this section:

extended review period, in relation to an extension notice, means the period of 3 months after the day on which the Principal Member has given the extension notice to the applicant for review.

extension notice means a notice under subsection 155AA(6) or subsection (6) of this section.

(2) If the Principal Member has given an applicant for review an extension notice, this section applies to that application unless:
(a) the hearing of the review has finished within the extended review period; or
(b) as at the end of the extended review period, a date, time and place is fixed for the commencement or resumption of the hearing of the review.

(3) For the purposes of paragraph (2)(a), the hearing of a review is taken to have finished when there are no further submissions to be made to the Board by any of the parties to the review.

(4) If this section applies to an application for review at the end of the extended review period, the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member, within 28 days after receiving the notice:
(a) a written statement indicating that the applicant is ready to proceed at a hearing; or
(b) a written statement explaining why the applicant is not ready to proceed at a hearing.
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(5) If the applicant does not provide a written statement under paragraph (4)(a) or (b) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

(6) If:
   (a) the applicant provides a written statement under paragraph (4)(b) within the 28 days; and
   (b) the Principal Member considers that the statement contains a reasonable explanation for the applicant’s failure to be ready to proceed at a hearing;
   then the Principal Member must notify the applicant and the Commission of this.

(7) If:
   (a) the applicant provides a written statement under paragraph (4)(b) within the 28 days; and
   (b) the Principal Member considers that the statement does not contain a reasonable explanation for the applicant’s failure to be ready to proceed at a hearing;
   then the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal.

155AC  Representation of applicant where outcome could be dismissal of application  

(1) An applicant for review may authorise another person to represent the applicant in relation to a notice under subsection 155AA(4) or 155AB(4).

(2) An authorisation under subsection (1) must be in writing.

(3) The applicant may authorise the representative only after the applicant has received the notice.

(4) If the Principal Member has approved a form for the purposes of subsection (1), the applicant must authorise the representative in that form.

(5) If the applicant does authorise a representative, the representation is to be at the applicant’s own expense.
155A Review by Administrative Appeals Tribunal

(1) Application may be made to the Administrative Appeals Tribunal, subject to section 29 of the Administrative Appeals Tribunal Act 1975, for review of the following decisions of the Principal Member:
   (a) the decision to dismiss an application under subsection 155AA(5) or 155AB(5);
   (b) the decision under paragraph 155AA(6)(b) or 155AB(6)(b) that an applicant has provided a reasonable explanation for the applicant’s failure to be ready to proceed at a hearing;
   (c) the decision under paragraph 155AA(7)(b) or 155AB(7)(b) that an applicant has provided no reasonable explanation for the applicant’s failure to be ready to proceed at a hearing.

(2) Where a decision of a kind referred to in subsection (1) is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the Administrative Appeals Tribunal Act 1975, be made to the Administrative Appeals Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

(3) A failure to comply with subsection (2) does not affect the validity of the decision.
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Division 6—Date of operation of decisions of Board

156 Date of operation of decision by Board

(1) Except where:
   (a) the Board affirms the decision under review; or
   (b) the Board sets aside the decision under review and makes a
decision in substitution for the decision set aside that has the
effect only of revoking a decision of the Commission to
cancel or suspend a pension;
the Board shall specify in its decision on a review under this Part
the date from which its decision is to operate, being a date fixed in
accordance with section 157.

(2) Where the Board sets aside the decision under review and makes,
in substitution for the decision set aside, a decision that has the
effect only of revoking a decision of the Commission to cancel or
suspend a pension, the decision to cancel or suspend the pension
shall be deemed never to have had any force or effect.

157 Dates that may be specified

(1) In this section:

   Board’s decision, in relation to a review by the Board of a
   Commission’s decision, means the decision of the Board, upon its
   review of the Commission’s decision, setting aside the
   Commission’s decision and substituting another decision for it or
   varying the Commission’s decision, but does not include a decision
   of the Board affirming the Commission’s decision.

   Commission’s decision, in relation to a review by the Board,
   means a decision of the Commission that has been reviewed by the
   Board.

   substituted decision means a decision made by the Board in
   substitution for a decision of the Commission that has been set
   aside by the Board upon its review of that decision of the
   Commission.

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varied decision means a decision of the Commission as varied by a decision of the Board upon its review of that decision of the Commission.

(2) Where the Board, upon its review of a decision of the Commission, sets aside that decision and substitutes another decision for it, or varies that decision:

(a) if the effect of the substituted decision, or the varied decision, as the case may be, is to grant a pension or attendant allowance to a person, the Board may fix, as the date from which the Board’s decision is to operate:

(i) if the person made application for the review within 3 months after service on the person of a copy of the Commission’s decision—a date not earlier than the earliest date as from which the Commission could, if it had not refused to grant a pension or attendant allowance, as the case may be, to the person, have approved payment of a pension or of attendant allowance to the person; or

(ii) in any other case—a date not more than 6 months before the date on which the person’s application for review of the Commission’s decision was received at an office of the Department in Australia;

(b) if the substituted decision, or the varied decision, as the case may be, is a decision of a kind specified in subsection (3)—the Board shall remit the matter to the Commission to fix the date as from which the Board’s decision is to operate, being:

(i) if the Board’s decision was made for a reason set out in subsection 31(7)—the date on which the Board’s decision was made or an earlier or later date; or

(ii) in any other case—the date of the first available pension pay-day occurring after the date on which a copy of the Board’s decision is served on the Commission under section 140;

(c) if the substituted decision, or the varied decision, as the case may be, has the effect of altering the description or nature of the war-caused injury or war-caused disease from which a veteran is suffering, or the description or nature of the defence-caused injury or defence-caused disease from which a member of the Forces or a member of a Peacekeeping Force is suffering—the Board may fix, as the date as from
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which that alteration is to operate, such date, being the date on which its decision is made or an earlier or later date, as it determines is fair and reasonable in all the circumstances; or

(d) in any other case—the Board may fix, as the date as from which the Board’s decision is to operate, a date not earlier than the earliest date that the substituted decision, or varied decision, could have operated if it had been made by the Commission in place of the Commission’s decision.

(3) The kinds of decisions specified in this subsection are:

(a) a substituted decision or a varied decision that has the effect of reducing the rate at which a pension is to be paid (not being a pension that is suspended);

(b) a substituted decision that has the effect of suspending a pension (not being a pension that has been cancelled or is suspended); and

(c) a substituted decision that has the effect of cancelling a pension (not being a pension that is suspended).

(4) Where a Board’s decision that sets aside a Commission’s decision and substitutes another decision for it, or that varies a Commission’s decision, is to operate as from a particular date, the substituted decision or the varied decision, as the case may be, shall operate as from the same date.

(5) In this section, a reference to the cancellation of a pension shall be read as including a reference to the cancellation of a pension for the reason that the degree of incapacity of the veteran from war-caused injury or war-caused disease, or both, or the degree of incapacity of the member of the Forces or of the member of a Peacekeeping Force, from defence-caused injury or defence-caused disease, or both, is less than 10 per centum (including nought per centum).
Division 7—Membership of the Board

158 Appointment of members of Board

(1) The members of the Board shall be appointed by the Governor-General.

(2) The Board must have at all times among its members persons selected from lists submitted to the Minister as requested under subsection (3).

(3) The Minister may, from time to time, request organizations representing veterans throughout Australia to submit to the Minister lists of names of persons from which the organization concerned recommends that a selection be made of persons to serve as Services members of the Board.

(4) The Principal Member shall be appointed as a full-time member.

(5) A member other than the Principal Member may be appointed either as a full-time member or as a part-time member.

159 Terms of appointment

(1) Subject to this Division, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Part, as are determined by the Governor-General by instrument in writing.

160 Remuneration and allowances of members

(1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
161 Acting members

(1) The Minister may appoint a person to act as a member:

(a) during any period, or during all periods, when a member, being a full-time member, is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office; or

(b) during any period, or during all periods, when a member, being a part-time member, is, for any reason, unavailable to perform the duties of his or her office; or

(c) during any period, or during all periods, when there is a vacancy in an office of a member.

(2) The Minister may:

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a member in pursuance of an appointment under subsection (1); and

(b) at any time terminate such an appointment.

(3) Where a person is acting as a member in accordance with paragraph (1)(a) or (b) and the office of that member becomes vacant while the person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) Where a person has been appointed under subsection (1) to act in the place of a member (in this subsection referred to as the absent member) who is absent or unavailable, the Minister may, by reason of a pending review or other special circumstances, direct, before the absent member ceases to be absent or unavailable, that the person so appointed shall continue to act in the appointment after the absent member ceases to be absent or unavailable, until the person so appointed resigns the appointment or the Minister terminates the appointment, but a person shall not continue to act by virtue of this subsection for more than 12 months after the absent member ceases to be absent or unavailable.

(5) A person acting in the place of the Principal Member, a Senior Member or another member has all the powers, and shall perform all the functions and duties, conferred or imposed by this Part on the Principal Member, Senior Member or other member, as the case may be.
(6) Where the Board as constituted for the purpose of a review includes a person acting, or purporting to be appointed to act, as a member under this section, or a person so acting, or purporting to be appointed so to act, has done any act, the validity of any decision of, or any direction given or other act done by, the Board as so constituted or of the act done by the person so acting, or purporting to be appointed so to act, shall not be called in question in any proceeding on the ground that the occasion for the person to act, or for the appointment of the person to act, had not arisen or that the occasion for his or her appointment to act had passed or the appointment had ceased to have effect.

(7) The appointment of a person to act as a member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(8) Section 162 applies to and in relation to a person appointed under subsection (1) to act in place of a member on a full-time basis as if the person were a member, and section 165 applies to any person appointed under subsection (1) to act in place of a member as if the person were a member.

162 Leave of absence

(1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

163 Resignation

A member may resign office by writing signed by the member and delivered to the Governor-General.

164 Removal from office

(1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.

(2) The Minister may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.
(3) Where the Minister suspends a member from office, the Governor-General may, on the recommendation of the Minister:
   (a) remove the member from office;
   (b) direct that the suspension of the member continue for such further period as the Governor-General specifies; or
   (c) direct that the suspension of the member terminate.

(4) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

(5) If:
   (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member’s creditors or makes an assignment of the member’s remuneration for their benefit;
   (b) a member, being a member who has been appointed as a full-time member:
      (i) engages, except with the approval of the Minister, in paid employment outside the duties of the member’s office; or
      (ii) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; or
   (c) a member fails, without reasonable excuse, to comply with the member’s obligations under section 165; the Governor-General shall remove the member from office.

(6) The Governor-General may, with the consent of a member who is:
   (a) an eligible employee for the purposes of the Superannuation Act 1976; or
   (b) a member of the superannuation scheme established by deed under the Superannuation Act 1990;
   by notice in writing, retire the member on the ground of physical or mental incapacity.

(6A) The notice must specify the day on which the member is to be retired.

(6B) The day specified in the notice must not be a day earlier than the day on which the Governor-General signed the notice.
(7) A member shall not be suspended, removed or retired from office except as provided by this section.

(8) In spite of anything contained in this section, a member who:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

(9) In spite of anything contained in this section, a member who:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

165 Disclosure of interests

(1) Where a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 143, or of a re-allocation as mentioned in subsection 144(1) or deemed to have been made under subsection 144(3), for the purposes of a review has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member’s functions in relation to that review:
   (a) the member shall disclose the interest to the applicant and the Commission; and
   (b) except with the consent of the applicant and the Commission, the member shall not take part in the review, or exercise any powers in relation to the review, by the Board of the relevant decision of the Commission.

(2) Where the Principal Member becomes aware that a member who is, or is to be, a member of the Board as constituted by virtue of a direction under section 143 or of a re-allocation as mentioned in subsection 144(1) or deemed to have been made under subsection...
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144(3), for the purposes of a review has in relation to that review such an interest as is mentioned in subsection (1) of this section:

(a) if the Principal Member considers that the member should not take part, or should not continue to take part, in the review—the Principal Member shall give a direction to the member accordingly; or

(b) in any other case—the Principal Member shall cause the interest of the member to be disclosed to the applicant and to the Commission.
Division 8—Miscellaneous

166 Delegation

(1) The Principal Member may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Principal Member, delegate to a Senior Member or to an acting Senior Member all or any of the Principal Member’s powers under this Part, other than this power of delegation.

(1A) The Principal Member may, by writing signed by him or her, also delegate all or any of his or her powers under subsection 148(6A) or section 155AA or 155AB to a registrar or a deputy registrar.

(2) A power delegated under this section, when exercised by the delegate, shall, for the purposes of this Part, be deemed to have been exercised by the Principal Member.

(3) A delegation under this section does not prevent the exercise of a power by the Principal Member.

167 Protection of members and witnesses

(1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

(2) A person representing a party at a hearing of a review before the Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Part, a person summoned to attend, or appearing, before the Board as a witness has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the High Court.

168 Failure of witness to attend

(1) A person who has been served, as prescribed, with a summons to appear as a witness before the Board and tendered reasonable expenses shall not:

(a) fail to attend as required by the summons; or
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(b) fail to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: $1,000 or imprisonment for 6 months, or both.

(2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the Criminal Code.

169 Refusal to be sworn or to answer questions etc.

(1) A person appearing as a witness before the Board shall not:

(a) when required in pursuance of section 151 either to take an oath or make an affirmation—fail to comply with the requirement;

(b) fail to answer a question that the person is required to answer by the presiding member; or

(c) fail to produce a document that the person is required to produce by a summons under this Part served on the person as prescribed.

Penalty: $1,000 or imprisonment for 6 months, or both.

(1A) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the Criminal Code.

(2) A person appearing as a witness before the Board shall not intentionally give evidence that is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.
170 Contempt of Board

(1) A person shall not:
   (a) obstruct or hinder the Board or a member in the performance of the functions of the Board; or
   (b) disrupt a hearing before the Board.

Penalty: $2,000 or imprisonment for 12 months, or both.

(2) In subsection (1), member includes an acting member.

170A Medical expenses

(1) The Commonwealth may, subject to this section, pay to an applicant for a review an amount to cover the medical expenses incurred by him or her in respect of relevant documentary medical evidence submitted to the Board for the purposes of the review.

(2) Subsection (1) does not apply to any relevant documentary medical evidence obtained before the day on which a copy or notice of the decision referred to in section 135 that is subject to review was served on the applicant.

(3) The applicant is not to be paid:
   (a) if the applicant has submitted to the Board for the purposes of the review relevant documentary medical evidence relating to only one medical condition—more than the prescribed amount for medical expenses; or
   (b) if the applicant has submitted to the Board for the purposes of the review relevant documentary medical evidence relating to more than one medical condition—more than the prescribed amount for the medical expenses incurred in respect of the evidence relating to any one of those conditions.

(4) An amount is not payable in respect of medical expenses unless:
   (a) the person who has incurred the expenses; or
   (b) any person approved by that person or by the Commission; applies in writing to the Commission for payment under subsection (5).

(5) The application for payment must:
(a) be in accordance with a form approved by the Commission; and
(b) be made:
   (i) if the relevant documentary medical evidence was submitted to the Board before 1 January 1995—before 1 April 1995; or
   (ii) in any other case—within 3 months after the relevant documentary medical evidence was submitted to the Board; and
(c) be lodged at an office of the Department in Australia in accordance with section 5T.

(6) An application for payment lodged in accordance with section 5T is taken to have been made on a day determined under that section.

170B  Travelling expenses for obtaining medical evidence

(1) If an applicant has had to travel to obtain any relevant documentary medical evidence submitted to the Board, the applicant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(2) If:
   (a) the applicant is accompanied by an attendant when travelling to obtain the evidence; and
   (b) the Commission is of the view that it is reasonable for the applicant to be so accompanied by an attendant;
the attendant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(3) Travelling expenses are not payable in respect of travel outside Australia.

(4) Travelling expenses are not payable unless:
   (a) the person who has incurred the expenses; or
   (b) any person approved by that person or by the Commission; applies in writing to the Commission for payment under subsection (5).

(5) The application for payment must:
   (a) be in accordance with a form approved by the Commission; and

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(b) be made:
   (i) if the travel was done before 1 January 1995—before 1 April 1995; or
   (ii) in any other case—within 3 months after the end of the travel; and
(c) be lodged at an office of the Department in Australia in accordance with section 5T.

(5A) An application for payment lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(6) The Commonwealth is to pay the travelling expenses to which a person is entitled under this section.

**170C Advance of travelling expenses**

(1) If the Commission is satisfied that:
   (a) it is reasonable to expect that a person may become entitled to travelling expenses under section 170B; and
   (b) it is appropriate, in all the circumstances, that the person should be paid an advance on account of those expenses;
the Commission may authorise the payment of that advance to the person.

(2) If:
   (a) a person has received an advance on account of any travelling expenses that the person is likely to incur; and
   (b) the person:
      (i) does not incur those travelling expenses; or
      (ii) incurs travelling expenses that are less than the amount of the advance;
the person is liable to repay to the Commonwealth:
   (c) the amount of the advance; or
   (d) the difference between the amount of the advance and the amount of the travelling expenses;
as the case requires.

**171 Fees for witnesses**

(1) A person, other than the applicant, summoned to appear as a witness at a hearing before the Board is entitled to be paid, in
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respect of the person’s attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations in respect of his or her attendance.

(2) Subject to subsection (3), the fees and allowances shall be paid:
   (a) in a case where the witness was summoned at the request of the applicant—by that applicant; and
   (b) in any other case—by the Commonwealth.

(3) The Board may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2)(a) shall be paid, in whole or in part, by the Commonwealth.

172 Staff to assist Board

Any staff required to assist the Board shall be persons engaged under the Public Service Act 1999 and made available for the purpose by the Secretary.

173 Oath or affirmation of office

(1) A person who is appointed or re-appointed as a member, or to act as a member, shall not discharge the duties of the office unless the person has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 4.

(2) The oath or affirmation shall be made before a justice of the peace or a commissioner for taking affidavits.
Part X—Review of decisions by Administrative Appeals Tribunal

174 Interpretation

(1) In this Part, unless the contrary intention appears, *reviewable decision* means a decision in respect of which application may be made to the Administrative Appeals Tribunal under section 175.

(2) In this Part:

*veteran* includes:
- (a) a Commonwealth veteran; and
- (b) an allied veteran; and
- (c) an Australian mariner; and
- (d) an allied mariner; and
- (e) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1).

175 Applications for review

(1) Where a decision made by the Commission has been reviewed by the Board upon a request made under section 135 and affirmed, varied or set aside, then, subject to section 29 of the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review:
- (a) of the decision of the Commission that was so affirmed;
- (b) of the decision of the Commission as so varied; or
- (c) of the decision made by the Board in substitution for the decision so set aside;
as the case may be.

(1A) If the Commission under section 13AG makes a decision that a verification determination should not be made in respect of a person, the person may apply to the Administrative Appeals Tribunal for a review of the decision.

(2) Where the Commission, under section 57B, affirms a decision of the Commission referred to in section 57 or sets it aside and

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substitutes another decision for it, a person may apply to the
Administrative Appeals Tribunal for a review of the decision so
affirmed or substituted.

(2AAA) If the Commission under section 79U:
(a) affirms a decision of the Commission referred to in
subsection 79T(1); or
(b) sets it aside and substitutes another decision for it;
a person may apply to the Administrative Appeals Tribunal for a
review of the decision so affirmed or substituted.

(2AAAA) If the Commission, under section 93ZB, affirms a decision of the
Commission referred to in section 93Z or sets it aside and
substitutes another decision, a person may apply to the
Administrative Appeals Tribunal for a review of the decision so
affirmed or substituted.

(2AA) If the Commission, under section 118ZU, affirms a decision of the
Commission referred to in section 118ZS or sets it aside and
substitutes another decision for it, a person may apply to the
Administrative Appeals Tribunal for a review of the decision so
affirmed or substituted.

(2A) A person’s right to apply to the Administrative Appeals Tribunal
under subsection (1A), (2), (2AAAA), (2AAA) or (2AA) is subject
to section 29 of the Administrative Appeals Tribunal Act 1975.
Note: section 29 of the Administrative Appeals Tribunal Act 1975 deals with
the manner of applying for review.

(3) Where the Commission varies a decision under subsection 31(2)
after an application had been made to the Administrative Appeals
Tribunal for a review of that decision but before the determination
of that application, then, unless the applicant for the review
withdraws the application, the application shall be treated as if it
were an application for a review of the decision as so varied.

(4) Where the Commission, under section 115, affirms a decision of
the Commission in respect of an application for an allowance or
benefit referred to in subsection 115(1), or sets aside such a
decision and substitutes another decision for it, then, subject to
section 29 of the Administrative Appeals Tribunal Act 1975,
application may be made to the Administrative Appeals Tribunal
for a review:
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(a) of the decision so affirmed; or
(b) of the decision made by the Commission under section 115 in substitution for the decision so set aside.

(5) If the Commission, under subsection 116D(2):
   (a) affirms a decision of the Commission under subsection 116C(1); or
   (b) sets aside such a decision and substitutes another decision for it;
then, subject to section 29 of the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal for a review:
   (c) of the decision so affirmed; or
   (d) of the decision made by the Commission in substitution for the decision so set aside.

176 Application of Administrative Appeals Tribunal Act

(1) The Administrative Appeals Tribunal Act 1975 applies in relation to reviewable decisions as if paragraph 25(3)(a) of that Act had been omitted.

(2) For the purposes of the application of section 27 of the Administrative Appeals Tribunal Act 1975 to and in relation to a reviewable decision:
   (a) if that decision is a decision of the Commission as varied by the Board—the Commission shall be taken to be a person whose interests are affected by that reviewable decision; and
   (b) if the Board has set aside a decision of the Commission under section 19 or 31 of this Act and made another decision in substitution for the decision so set aside—the Commission shall be taken to be a person whose interests are affected by the decision of the Board to set aside the decision of the Commission and by the decision of the Board made in substitution for the decision so set aside.

(3) Section 28 of the Administrative Appeals Tribunal Act 1975 does not apply to or in relation to a person whose interests are affected by a reviewable decision:
   (a) in the case of a decision of a kind referred to in paragraph 175(1)(a) or (c) or in subsection 175(2), (2AA) or (4)—if the
person has been served with a copy of that decision and with the statement related to that decision in accordance with section 34, 57E, 118ZX or 140 of this Act, whichever was applicable; or

(b) in the case of a decision of a kind referred to in paragraph 175(1)(b)—if the person has been served with copies of the decision made by the Commission and of the decision made by the Board varying that decision made by the Commission, and with the respective statements related to those decisions, in accordance with section 34 or 140 of this Act, whichever was applicable.

(4) Section 29 of the Administrative Appeals Tribunal Act 1975 applies to and in relation to an application to the Administrative Appeals Tribunal for a review of a reviewable decision:

(a) as if “ending 3 months” were substituted for “ending on the twenty-eighth day” in subsection (2) of that section; and

(b) as if at the end of subsection (7) there were added “until such date, being a date not more than 12 months after the date on which the document setting out the terms of the decision was furnished to the applicant, as the Tribunal deems fit”.

(5) Section 30 of the Administrative Appeals Tribunal Act 1975 applies to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision as if paragraphs (1)(a) and (b) of that section were omitted.

(6) Subject to section 30 of the Administrative Appeals Tribunal Act 1975 in its application in accordance with subsection (5) of this section, the parties to a proceeding before the Administrative Appeals Tribunal for a review of a reviewable decision are:

(a) if the person who has duly applied for a review of the decision is a person other than the Commission:

(i) the person who has so applied; and

(ii) the Commission; or

(b) in any other case:

(i) the Commission; and

(ii) the veteran, or dependant of a deceased veteran, affected by that decision.

(7) Notwithstanding subsection 43(1) of the Administrative Appeals Tribunal Act 1975, where the Administrative Appeals Tribunal sets
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aside a decision under subsection 31(6) to cancel or suspend, or reduce the rate of, a pension or attendant allowance, or a decision under subsection 31(8) to increase the rate of a pension or attendant allowance, being:

(a) a decision of the Commission that has been affirmed by the Board; or
(b) a decision of the Board that was made in substitution for a decision of the Commission;

the Administrative Appeals Tribunal need not make another decision in substitution for the decision so set aside.

(8) Notwithstanding subsection 43(1) of the Administrative Appeals Tribunal Act 1975, where the Administrative Appeals Tribunal sets aside a decision:

(a) to cancel or suspend a pension under section 56E; or
(b) to reduce the rate of a pension under section 56D; or
(c) to increase the rate of a pension under section 56C;

and the decision was one that was:

(d) affirmed by the Commission under section 57B; or
(e) made by the Commission in substitution for a decision set aside under section 57B;

the Administrative Appeals Tribunal need not make another decision in substitution for the decision set aside by it.

(9) Despite subsection 43(1) of the Administrative Appeals Tribunal Act 1975, if the Administrative Appeals Tribunal:

(a) sets aside a decision that a person ceases to be entitled to a seniors health card; and

(b) the decision was one that was:

(i) affirmed by the Commission under section 118ZU; or
(ii) made by the Commission in substitution for a decision set aside under that section;

the Tribunal need not make another decision in substitution for the decision set aside by it.

177 Effective dates of certain determinations relating to payment of pension or seniors health card

(1) This section is in addition to, and not in substitution for, any of the provisions of section 43 of the Administrative Appeals Tribunal Act 1975,
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Act 1975 in their application to proceedings for a review by the Administrative Appeals Tribunal of a reviewable decision.

(2) Where the Administrative Appeals Tribunal, upon application made under subsection 175(1) for a review of a decision of the Commission that has been affirmed or varied by a decision of the Board or a decision of the Board made in substitution for a decision of the Commission, grants a pension (not being a service pension or income support supplement) or attendant allowance, or increases the rate at which a pension (not being a service pension or income support supplement) is to be paid, the Tribunal may approve payment of the pension or of attendant allowance, or payment of the pension at the increased rate, as the case may be:

(a) if the application is made within 3 months after service on the applicant of a document setting out the terms of that decision of the Board—from a date not earlier than the earliest date as from which the Board could, if it had granted a pension or attendant allowance or increased the rate of the pension, have approved payment of the pension or attendant allowance, or payment of the pension at an increased rate, as the case may be; or

(b) in any other case:

(i) if the review relates to a claim in accordance with section 14—from a date not more than 6 months before the date on which the application under subsection 175(1) was made; or

(ii) if the review relates to an application in accordance with section 15, or to an application for attendant allowance—from the date on which the application under subsection 175(1) was made.

(3) Where the Administrative Appeals Tribunal, on a review of a decision of a kind described in subsection 176(7), (8) or (9), varies or sets aside that decision, the Administrative Appeals Tribunal may fix, as the date as from which its decision (including any decision made by it in substitution for the decision set aside) is to operate, a date, being:

(a) if application for the review was made within 3 months after service on the applicant of a copy of the decision of the Board or the Commission, as the case may be—a date not earlier than the date as from which the decision under review was to operate; or
(b) in any other case—a date not earlier than the date on which the application was made to the Administrative Appeals Tribunal.

(4) Where the Administrative Appeals Tribunal fixes, as the date from which its decision to set aside a decision of the Commission, or of the Board, to cancel a pension is to have operated, a date (in this subsection referred to as the later date) after the date (in this subsection referred to as the earlier date) on which that pension was to be cancelled, that decision to cancel that pension shall, by force of this subsection, have effect, and be deemed to have had effect, as if it had not cancelled that pension but had suspended it from that earlier date until that later date.

(5) Where the Administrative Appeals Tribunal, upon application made under subsection 175(2) for a review of a decision of the Commission under section 57B, grants a pension or increases the rate at which a pension is to be paid, the Tribunal may approve payment of the pension, or payment of the pension at the increased rate, as the case may be:

(a) if the application is made within 3 months after the service on the applicant of a document setting out the terms of that decision of the Commission made under section 57B—from a date not earlier than the earliest date as from which the Commission could, if it had, on its review under section 57B, granted a pension or increased the rate of the pension, have approved payment of the pension, or payment of the pension at the increased rate, as the case may be; or

(b) in any other case—from the date on which the application under subsection 175(2) was made.

(5A) Subject to subsections (5B) and (5C), if the Administrative Appeals Tribunal, upon application made under subsection 175(2AA) for a review of a decision of the Commission under section 118ZU, determines that a person is entitled to a seniors health card, the determination takes effect from a date specified by the Tribunal.

(5B) If the application to the Administrative Appeals Tribunal is made within 3 months after the service on the applicant of a document setting out the terms of the decision of the Commission made under section 118ZU, the date specified by the Tribunal must not be earlier than the date from which, had the Commission
Part X  Review of decisions by Administrative Appeals Tribunal

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determined that the person is entitled to a seniors health card, such a determination could have taken effect.

(5C) If subsection (5B) does not apply to a person, the date specified by the Administrative Appeals Tribunal must not be earlier than the date on which the application under subsection 175(2AA) was made.

(6) Where the Administrative Appeals Tribunal, upon application under subsection 175(4) for a review of a decision made by the Commission with respect to an application for an allowance under section 97, 102, 103 or 104, grants the allowance referred to in that section, or increases the rate at which the allowance so referred to is to be paid, the Tribunal may approve payment of the allowance, or of the allowance at the increased rate, as the case may be:

(a) if the application was made within 3 months after service on the applicant of a document setting out the terms of that decision—from a date not earlier than the earliest date as from which the Commission could, if it had not made that decision, have approved payment of the allowance, or payment of the allowance at the increased rate, as the case may be; or

(b) in any other case—from the date on which the application under subsection 175(4) was made.

178  Period of operation of certain decisions of Administrative Appeals Tribunal

(1) Where, on a review of a reviewable decision, the decision of the Administrative Appeals Tribunal expressly, or in effect:

(a) assesses a rate of pension or increased rate of pension;
(b) refuses to grant a pension, on the ground that the extent of the incapacity of the veteran was insufficient to justify the grant of such a pension;
(c) refuses to increase the rate of a pension; or
(d) reduces the rate of a pension;

that decision of the Administrative Appeals Tribunal shall, subject to subsection (2), be binding on the parties to the proceedings before that Tribunal for a period of 6 months commencing on the day on which that Tribunal makes the decision.
(2) If, during the period referred to in subsection (1), the person to whom the pension is payable, or who was refused a pension, is of the opinion that his or her incapacity has increased, subsection (1) does not prevent:

(a) the person from making application for an increased pension or for a pension; or

(b) the grant of increased pension or of a pension, from a date within that period, by the Commission upon its consideration of such an application or by the Board on a review of the decision of the Commission on such an application.

(3) In this section, pension does not include service pension or income support supplement.
Part XI—The Repatriation Commission

Division 1—Establishment, functions and powers

179 Continuance of Commission

(1) The body corporate that was, immediately before the commencement of this Act, in existence, by virtue of section 7 of the Repatriation Act 1920, under the name Repatriation Commission continues in existence, by force of this subsection, under and subject to the provisions of this Act.

(2) The Commission:
   (a) is a body corporate with perpetual succession;
   (b) shall have a seal; and
   (c) may sue and be sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Commission appearing on a document and shall presume that the document was duly sealed.

(4) Debts incurred by the Commission in the performance of its functions shall, for all purposes, be deemed debts incurred by the Commonwealth.

180 Functions of Commission

(1) The functions of the Commission are:
   (a) to grant pensions, allowances and other benefits to veterans, dependants of veterans and certain other persons under and in accordance with the provisions of this Act;
   (b) to establish, operate and maintain hospitals and other institutions for the provision of treatment for veterans, dependants of veterans and other persons eligible to be provided with treatment under Part V;
   (c) to arrange for the provision of treatment and other services for veterans, dependants of veterans and other persons in accordance with this Act;
   (d) to provide the Minister with information concerning, and to advise the Minister on, matters relating to the operation of
Section 180A

this Act, including, but without limiting the generality of the foregoing, matters relating to pensions, allowances and other benefits for veterans, and dependants of veterans, incapacitated from injury or disease suffered as a result of service in a war or in war-like operations and for dependants of veterans whose deaths are attributable to any such service; and

(e) such other functions as are conferred on the Commission by this or any other Act.

(2) The Commission shall, subject to the control of the Minister, have the general administration of this Act.

180A Determination by Commission

(1) If:

(a) the Repatriation Medical Authority has determined, or has declared that it does not propose to make or amend, a Statement of Principles in respect of a particular kind of injury, disease or death (see section 196B); and

(b) the Commission is of the opinion that, because the Statement of Principles is in force, or because of the decision by the Authority not to make or amend the Statement of Principles:

(i) claims for pensions in respect of incapacity from injury or disease of that kind made by veterans, members of the Forces, or members of a Peacekeeping Force, of a particular class; or

(ii) claims for pensions made by dependants of those veterans or members in respect of the death of such a veteran or member; cannot succeed; and

(c) the Commission is also of the opinion that, in all the circumstances of the case, those veterans, members or their dependants should receive a pension;

the Commission may, in its discretion, make a determination in respect of that kind of injury, disease or death under subsection (2) or (3), or determinations under both subsections (as the case requires).

Note: For member of the Forces and member of a Peacekeeping Force see subsection 5Q(1A).
(2) A determination under this subsection in respect of a particular kind of injury, disease or death must be in writing and must:

(a) state that it has effect only in relation to the class of veterans, members of the Forces, or members of a Peacekeeping Force referred to in subparagraph (1)(b)(i); and

(b) state that it applies only in respect of claims relating to:

(i) operational service rendered by a veteran; or

(ii) peacekeeping service rendered by a member of a Peacekeeping Force; or

(iii) hazardous service rendered by a member of the Forces; and

(c) set out:

(i) the factors that must as a minimum exist; and

(ii) which of those factors must be related to service rendered by a person;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

Note 1: For peacekeeping service and hazardous service see subsection 5Q(1A).

Note 2: For factor related to service see subsection (7).

(3) A determination under this subsection in respect of a particular kind of injury, disease or death must be in writing and must:

(a) state that it has effect only in relation to the class of veterans or members of the Forces referred to in subparagraph (1)(b)(i); and

(b) state that it applies only in respect of claims relating to:

(i) eligible war service (other than operational service) rendered by a veteran; or

(ii) defence service (other than hazardous service) rendered by a member of the Forces; and

(c) set out:

(i) the factors that must exist; and

(ii) which of those factors must be related to service rendered by a person;

before it can be said, on the balance of probabilities, that an injury, disease or death of that kind is connected with the circumstances of that service.
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Note 1: For defence service and hazardous service see subsection 5Q(1A).

Note 2: For factor related to service see subsection (7).

(4) A determination under subsection (2) or (3) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(5) While there is in force under subsection (2) a determination in respect of a particular kind of injury, disease or death, any Statement of Principles in force under subsection 196B(2) in respect of that kind of injury, disease or death does not apply in respect of any veteran, member of the Forces, member of any Peacekeeping Force or dependant in relation to whom the determination has effect.

(6) While there is in force under subsection (3) a determination in respect of a particular kind of injury, disease or death, any Statement of Principles in force under subsection 196B(3) in respect of that kind of injury, disease or death does not apply in respect of any veteran or member of the Forces or dependant in relation to whom the determination has effect.

(7) A factor causing, or contributing to, an injury, disease or death is related to service rendered by a person if:
   (a) it resulted from an occurrence that happened while the person was rendering that service; or
   (b) it arose out of, or was attributable to, that service; or
   (c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
      (i) to a place for the purpose of performing duty; or
      (ii) away from a place of duty upon having ceased to perform duty; or
   (d) it was contributed to in a material degree by, or was aggravated by, that service; or
   (e) in the case of a factor causing, or contributing to, an injury—
      it resulted from an accident that would not have occurred:
      (i) but for the rendering of that service by the person; or
      (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
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(f) in the case of a factor causing, or contributing to, a disease—
it would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent
        upon his or her having rendered that service; or

(g) in the case of a factor causing, or contributing to, the death of
    a person—it was due to an accident that would not have
    occurred, or to a disease that would not have been contracted:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent
        upon his or her having rendered that service.

181 Powers of Commission

(1) The Commission has power to do all things necessary or
    convenient to be done for, or in connection with, the performance
    of its functions, duties and powers.

(2) The generality of subsection (1) shall not be taken to be limited by
    any other provision of this Act conferring a power on the
    Commission.

(3) The Commission has power, for or in connection with the
    performance of its functions:
    (a) to enter into contracts;
    (b) to acquire, hold and dispose of real or personal property;
    (c) to erect buildings and structures and carry out works; and
    (d) to engage persons to perform services for the Commission.

(4) The Commission may engage a person under paragraph (3)(d) even
    if the contract under which the person is engaged provides benefits
    to the person that are normally provided only to persons who are
    engaged as employees.

(5) Where a person is engaged under paragraph (3)(d) and the contract
    under which the person is engaged provides benefits to the person
    that are normally provided only to persons who are engaged as
    employees, the contract shall, for the purposes of this Act and any
    other law of the Commonwealth be taken to be a contract for the
    performance of services and not a contract of employment.
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182 Membership of the Commission

(1) The Commission shall consist of not less than 3 and not more than 5 commissioners.

(2) The commissioners shall be appointed by the Governor-General.

(3) The Minister may, from time to time, request organizations representing veterans to submit to the Minister lists of names of persons from which the organization concerned recommends that a selection be made of persons to serve as commissioners.

(4) The Governor-General shall, in appointing a person to be a commissioner, ensure that, when the proposed appointment takes effect, one of the commissioners, at least, will be a person whose name was, when the person was appointed, on a list submitted in accordance with a request made under subsection (3).

(5) Subject to section 184, a commissioner holds office on a full-time basis.

(7) A commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(8) A commissioner holds office on such terms and conditions (if any), in respect of matters not provided for by this Act, as are determined by the Governor-General by instrument in writing.

(9) The appointment of a commissioner is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment.

(10) In this section, appointment includes re-appointment.

183 President and Deputy President

(1) The Governor-General shall appoint one of the commissioners to be the President and another commissioner to be the Deputy President.
(2) The commissioner appointed to be the President or the Deputy President holds office as President or Deputy President until the expiration of the term of office that is current or commences at the time of his or her appointment, but ceases to be the President or Deputy President if the commissioner ceases to be a commissioner or resigns the office of President or Deputy President in accordance with subsection (3).

(3) The commissioner appointed to be the President or the Deputy President may resign the office of President or Deputy President by writing signed by the commissioner and delivered to the Governor-General.

(4) A commissioner is eligible to be re-appointed as the President or Deputy President.

184 Appointment of Secretary as a Commissioner and President

The person holding office under the Public Service Act 1999 as Secretary to the Department may be appointed as a commissioner and as President while retaining the office of Secretary to the Department and, in that event:

(a) the person shall perform his or her duties as commissioner and President concurrently with the performance of his or her duties as Secretary; and

(b) the person shall cease to hold the offices of commissioner and President if the person ceases to hold office as Secretary; and

(c) the person shall not be paid remuneration or allowances in the capacity of commissioner and President, but, for the purpose of the payment of allowances to the person, his or her duties as Secretary shall be deemed to include his or her duties as commissioner and President; and

(d) subject to this section, the provisions of this Act, other than the provisions of section 185, apply to and in relation to the person as commissioner and President.
185 Remuneration and allowances

(1) A commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, the commissioner shall be paid such remuneration as is prescribed.

(2) A commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

186 Leave of absence

(1) A commissioner or an acting commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a commissioner or an acting commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

187 Resignation

A commissioner may resign office by writing signed by the commissioner and delivered to the Governor-General.

188 Termination of appointment

(1) The Governor-General may remove a commissioner from office on an address praying for his or her removal on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

(2) The Minister may suspend a commissioner from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Minister suspends a commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.

(5) The suspension of a commissioner from office under this section does not affect any entitlement of the commissioner to be paid remuneration and allowances.

(6) If:
   (a) a commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
   (b) a commissioner engages, except with the approval of the Minister, in paid employment outside the duties of his or her office;
   (c) a commissioner is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months; or
   (d) a commissioner fails, without reasonable excuse, to comply with his or her obligations under section 189 or 190;
   the Governor-General shall remove that commissioner from office.

(7) The Governor-General may, with the consent of a commissioner who is:
   (a) an eligible employee for the purposes of the Superannuation Act 1976; or
   (b) a member of the superannuation scheme established by deed under the Superannuation Act 1990;
   by notice in writing, retire the commissioner on the ground of physical or mental incapacity.

(7A) The notice must specify the day on which the commissioner is to be retired.

(7B) The day specified in the notice must not be a day earlier than the day on which the Governor-General signed the notice.

(8) A commissioner shall not be suspended, removed or retired from office except as provided by this section.
Section 189

(9) In spite of anything contained in this section, a commissioner who:
   (a) is an eligible employee for the purposes of the
       Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the
       meaning of that Act;

   is not capable of being retired from office on the ground of
   invalidity within the meaning of Part IVA of that Act unless the
   Commonwealth Superannuation Board of Trustees No. 2 has given
   a certificate under section 54C of that Act.

(10) In spite of anything contained in this section, a commissioner who:
   (a) is a member of the superannuation scheme established by
       deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;

   is not capable of being retired from office on the ground of
   invalidity within the meaning of that Act unless the
   Commonwealth Superannuation Board of Trustees No. 1 has given
   a certificate under section 13 of that Act.

189 Commissioner to disclose any interest in claims for pensions etc.

(1) For the purposes of this section:
   (a) a claim or application for a pension that the Commission is
       considering or is to consider;
   (b) a pension that the Commission is reviewing or is to review;
       and
   (c) a decision in relation to:
       (i) a pension; or
       (ii) a claim or application for a pension;
       that the Commission is reviewing or is to review;

   are each a matter to which this section applies.

(2) Where a commissioner has, or acquires, any interest, pecuniary or
    otherwise, that could conflict with the proper performance of his or
    her functions in relation to a matter to which this section applies,
    the commissioner:
    (a) shall disclose the interest to the claimant, applicant or person
        receiving the pension, as the case requires, and to the
        Minister; and
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(b) except with the consent of the claimant, applicant or person receiving the pension, as the case requires, and of the Minister, shall not take part in the consideration or review of the matter by the Commission.

(3) Where the Minister becomes aware that:
(a) the Commission is considering or reviewing, or is to consider or review, a matter to which this section applies; and
(b) a commissioner has, in relation to the matter, an interest of a kind described in subsection (2);
the Minister shall:
(c) if the Minister considers that the commissioner should not take part in, or continue to take part in, the consideration or review of the matter by the Commission—give a direction to the commissioner accordingly; or
(d) in any other case—cause the interest of the commissioner to be disclosed to the claimant, applicant or person receiving the pension, as the case requires.

(4) In this section a reference to the Commission reviewing a decision shall be read as including a reference to the Commission considering whether to review the decision.

(5) In this section:
commissioner includes an acting commissioner.
pension means a pension under Part II or IV, a service pension, income support supplement, or an allowance or other benefit under this Act.

190 Commissioner to disclose other interests

(1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Commission (not being a matter to which section 189 applies) shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission and the commissioner shall not, unless the Minister or the Commission otherwise determines:

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(a) be present during any deliberation of the Commission with respect to that matter; or
(b) take part in any decision of the Commission with respect to that matter.

(3) For the purpose of the making of a determination by the Commission under subsection (2) in relation to a commissioner who has made a disclosure under subsection (1), a commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
(a) be present during any deliberation of the Commission for the purpose of making the determination; or
(b) take part in the making by the Commission of the determination.

(4) In this section, commissioner includes an acting commissioner.

191 Acting commissioners

(1) The Minister may appoint a person to act in the office of a commissioner:
(a) during a vacancy in that office; or
(b) during any period, or during all periods, when the holder of that office:
   (i) is absent from duty or from Australia;
   (ii) is suspended under section 188; or
   (iii) is, for any other reason, unable to perform the functions of that office.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed to act during a vacancy in an office of commissioner shall not continue so to act for more than 12 months.

(4) The Minister may:
(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
(b) at any time, terminate such an appointment.
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(5) Where a person is acting in the office of a commissioner in accordance with paragraph (1)(b) and that office becomes vacant while that person is so acting, that person may, subject to subsections (2) and (6), continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act in the office of a commissioner ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) While a person is acting in an office of a commissioner, the person has, and may exercise, all the powers, and shall perform all the functions, of the commissioner in whose office the person is acting.

(8) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for the person’s appointment had not arisen, that there is a defect or irregularity in or in connection with the person’s appointment, that the person’s appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

192 Acting President or Deputy President

(1) In this section, an office to which this section applies is:
   (a) the office of President of the Commission; or
   (b) the office of Deputy President of the Commission.

(2) Subject to section 193, the Minister may appoint one of the commissioners to act in an office to which this section applies:
   (a) during a vacancy in that office; or
   (b) during any period, or during all periods, when the holder of that office:
      (i) is absent from duty or from Australia;
      (ii) is suspended under section 188;
      (iii) being the Deputy President, is acting in the office of President of the Commission in pursuance of an appointment under this section or section 193; or
      (iv) is, for any other reason, unable to perform the functions of that office.
(3) An appointment of a commissioner under subsection (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) A commissioner appointed to act during a vacancy in an office to which this section applies shall not continue so to act for more than 12 months.

(5) The Minister may:
   (a) determine the terms and conditions of appointment, including remuneration and allowances, of a commissioner appointed, under this section, to act in an office to which this section applies; and
   (b) at any time, terminate the appointment.

(6) The appointment of a commissioner to act in an office to which this section applies ceases to have effect:
   (a) if the commissioner ceases to be a commissioner;
   (b) if the commissioner is suspended from office under section 188; or
   (c) if the commissioner resigns the appointment by writing signed by the commissioner and delivered to the Minister.

(7) Where a commissioner is acting in an office to which this section applies in accordance with paragraph (2)(b) and that office becomes vacant while the commissioner is so acting, that commissioner may, subject to subsections (3) and (6), continue so to act until the Minister otherwise determines, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(8) While a commissioner is acting in an office to which this section applies, the commissioner has, and may exercise, all the powers, and shall perform all the functions, of that office.

(9) The validity of anything done by a commissioner purporting to act under subsection (2) shall not be called in question on the ground that the occasion for the commissioner’s appointment had not arisen, that there is a defect or irregularity in or in connection with the commissioner’s appointment, that the commissioner’s appointment had ceased to have effect or that the occasion for the commissioner to act had not arisen or had ceased.
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(10) The Minister may appoint a person who holds an appointment as acting commissioner under section 191 to act in an office to which this section applies as if the reference in subsection (2) of this section to one of the commissioners included a reference to a person holding an appointment as acting commissioner under section 191 and, if the Minister does so:

(a) subsections (3) to (9), inclusive, of this section apply to and in relation to the person as if the references in those subsections to a commissioner included references to an acting commissioner; and

(b) without limiting the application of those subsections in accordance with paragraph (a) of this subsection, the person so appointed is not entitled to act in that office in pursuance of the appointment under subsection (2) of this section at any time when the person is not acting in an office of commissioner in pursuance of an appointment under section 191.

193 Appointment to act as President and also Secretary

(1) This section applies to:

(a) the office of President of the Commission; and

(b) the office, under the Public Service Act 1999, of Secretary to the Department of Veterans’ Affairs.

(2) The Governor-General may appoint a commissioner to act in both of the offices to which this section applies:

(a) during a period, or during all periods, when there are vacancies in both of those offices; or

(b) if another commissioner holds both of those offices—during any period, or during all periods, when that other commissioner:

(i) is absent from duty or from Australia;

(ii) is suspended under section 188; or

(iii) is, for any other reason, unable to perform the functions of those offices.

(3) An appointment of a commissioner under this section may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
(4) A commissioner appointed to act during vacancies in both of the offices to which this section applies shall not continue so to act for more than 12 months.

(5) An appointment under subsection (2), by reason of vacancies in both of the offices to which this section applies, shall not be made after the expiration of a period of 12 months after the date of the occurrence of the vacancies or, if the vacancies did not both occur on the same date, after the date of the occurrence of the vacancy in the office that last became vacant.

(6) Where a commissioner is acting in both of the offices to which this section applies in accordance with paragraph (2)(b), and those offices both become vacant at the same time while the commissioner is so acting, the commissioner may continue so to act until the Governor-General otherwise directs, the vacancy in either of the offices is filled or a period of 12 months from the date on which those vacancies occurred expires, whichever first happens.

(7) Subject to this section, the Governor-General may:
   (a) determine the terms and conditions of appointment of a commissioner appointed under this section; and
   (b) at any time terminate such an appointment.

(8) A person appointed under subsection (2):
   (a) shall, in the capacity of a person appointed to act as Secretary to the Department of Veterans’ Affairs, be paid such remuneration and allowances as the Governor-General determines; and
   (b) shall not be paid remuneration or allowances in the capacity of commissioner or in the capacity of Acting President.

(9) For the purpose of payment of allowances under paragraph (8)(a) to a person appointed under subsection (2), the duties appertaining to the office of Secretary to the Department of Veterans’ Affairs shall be deemed to include the duties appertaining to the office of commissioner and to the office of President of the Commission.

(10) The appointment of a commissioner under this section ceases to have effect if the commissioner resigns the appointment by writing signed by the commissioner and delivered to the Governor-General.
(11) While a commissioner is acting in the offices to which this section applies, the commissioner has, and may exercise, all the powers, and shall perform all the functions, of the holder of each of those offices.

(12) The validity of anything done by or in relation to a commissioner appointed under this section shall not be called in question on the ground that the occasion for the commissioner’s appointment had not arisen, that there is a defect or irregularity in or in connection with the commissioner’s appointment, that the commissioner’s appointment (not being an appointment to act during vacancies in both of the offices to which this section applies) had ceased to have effect or that the occasion for the commissioner to act had not arisen or had ceased.

(13) The Governor-General may appoint a person who holds an appointment as acting commissioner under section 191 to act in both the offices to which this section applies as if the reference in subsection (2) of this section to a commissioner (first occurring) included a reference to a person holding an appointment as an acting commissioner under section 191 and, if the Governor-General does so:
   (a) subsections (3) to (12), inclusive, of this section apply to and in relation to the person as if the references in those subsections to a commissioner included references to an acting commissioner; and
   (b) without limiting the application of those subsections in accordance with paragraph (a) of this subsection, the person so appointed is not entitled to act in those offices in pursuance of the appointment under subsection (2) of this section at any time when the person is not acting in an office of commissioner in pursuance of an appointment under section 191.

194 Appointments

(1) The Governor-General may, in the same instrument:
   (a) appoint a person, under section 182, to be a commissioner and appoint the person, under section 183, to be the President or Deputy President; or
(b) appoint a person, under section 182, to be a commissioner and appoint the person, under section 193, to act in both the offices to which that section applies; and, if the Governor-General does so, the appointment under section 183 or 193, as the case may be, (in this subsection called the second appointment) shall take effect:

(c) if a date, being a date after the date on which the appointment under section 182 takes effect, is specified in the instrument of appointment as the date on which the second appointment is to take effect—on the date so specified; or

(d) in any other case—immediately after the appointment under section 182 takes effect.

(2) The Minister may, in the same instrument, appoint a person, under section 191, (in this subsection called the first appointment) to act in the office of a commissioner and appoint the person, under section 192, (in this subsection called the second appointment) to act in an office to which that section applies and, if the Minister does so, the second appointment shall take effect:

(a) if a date, being a date after the date on which the first appointment takes effect, is specified in the instrument of appointment as the date on which the second appointment is to take effect—on the date so specified; or

(b) in any other case—immediately after the first appointment takes effect.

195 Meetings

(1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The President:

(a) shall convene such meetings of the Commission as the President considers necessary for the efficient performance of its functions; and

(b) shall convene a meeting of the Commission on receipt of a written request signed by a number of commissioners equal to or exceeding a majority of the commissioners for the time being holding office.

(3) The President shall preside at all meetings of the Commission at which the President is present.
(4) In the absence of the President from a meeting of the Commission, the Deputy President shall preside at the meeting if the Deputy President is present.

(5) In the absence of both the President and Deputy President from a meeting of the Commission, the commissioners present at the meeting shall elect one of their number to preside at the meeting.

(6) At a meeting of the Commission:
   (a) a quorum is constituted by:
       (i) if the Commission is constituted by 3 commissioners—2 commissioners; or
       (ii) in any other case—3 commissioners;
   (b) all questions shall be decided by a majority of the votes of the commissioners present and voting;
   (c) the commissioner presiding has a deliberative vote and, in the event of an equality of votes, does not have a casting vote; and
   (d) in the event of an equality of votes on a question, the question shall be taken to have been decided in the negative.

(7) The Commission may, subject to this section, regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(8) In this section:

   commissioner includes an acting commissioner.

   Deputy President includes an acting Deputy President.

   President includes an acting President.
Division 3—Staff

196 Staff

The staff necessary to assist the Commission shall be persons engaged under the Public Service Act 1999 and made available for the purpose by the Secretary.
Part XIA—The Repatriation Medical Authority

Division 1—Establishment, functions and powers

196A Establishment of Authority

(1) A Repatriation Medical Authority is established.

(2) The Repatriation Medical Authority:
   (a) is a body corporate with perpetual succession; and
   (b) has a common seal; and
   (c) may sue and be sued.

(3) All courts, judges and persons acting judicially must:
   (a) take judicial notice of the imprint of the seal of the Authority
       appearing on a document; and
   (b) presume that the document was duly sealed.

(4) Debts incurred by the Authority in the performance of its functions
    are, for all purposes, taken to be debts incurred by the
    Commonwealth.

196B Functions of Authority

(1) This section sets out the functions of the Repatriation Medical
    Authority. The main function of the Authority is to determine
    Statements of Principles for the purposes of this Act and the
    MRCA.

    Determination of Statement of Principles

(2) If the Authority is of the view that there is sound medical-scientific
    evidence that indicates that a particular kind of injury, disease or
    death can be related to:
    (a) operational service rendered by veterans; or
    (b) peacekeeping service rendered by members of Peacekeeping
        Forces; or
    (c) hazardous service rendered by members of the Forces; or
       (ca) warlike or non-warlike service rendered by members;
the Authority must determine a Statement of Principles in respect of that kind of injury, disease or death setting out:

(d) the factors that must as a minimum exist; and
(e) which of those factors must be related to service rendered by a person;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

Note 1: For sound medical-scientific evidence see subsection 5AB(2).

Note 2: For peacekeeping service, member of a Peacekeeping Force, hazardous service and member of the Forces referred to in paragraphs (2)(b) and (c), see subsection 5Q(1A).

Note 2A: For warlike service, non-warlike service and members referred to in paragraph (2)(ca), see section 196KA. (These definitions are for the purposes of the MRCA.)

Note 3: For factor related to service see subsection (14).

(3) If the Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that a particular kind of injury, disease or death can be related to:

(a) eligible war service (other than operational service) rendered by veterans; or
(b) defence service (other than hazardous service) rendered by members of the Forces; or

(ba) peacetime service rendered by members;

the Authority must determine a Statement of Principles in respect of that kind of injury, disease or death setting out:

(c) the factors that must exist; and
(d) which of those factors must be related to service rendered by a person;

before it can be said that, on the balance of probabilities, an injury, disease or death of that kind is connected with the circumstances of that service.

Note 1: For sound medical-scientific evidence see subsection 5AB(2).

Note 2: For defence service and hazardous service referred to in paragraph (3)(b), see subsection 5Q(1A).

Note 2A: For peacetime service and members referred to in paragraph (3)(ba), see section 196KA. (These definitions are for the purposes of the MRCA.)

Note 3: For factor related to service see subsection (14).
Part XIA  The Repatriation Medical Authority

Division 1  Establishment, functions and powers

Section 196B

(3A) The Authority may determine a Statement of Principles under subsection (2) or (3) for the purposes of this Act, the MRCA, or both Acts.

Investigation

(4) If the Authority:

(a) receives a request under section 196E to carry out an investigation in respect of a particular kind of injury, disease or death; or

(b) of its own initiative, decides that a particular kind of injury, disease or death ought to be investigated for the purposes of this Act, or the MRCA, to find out whether a Statement of Principles may be determined in respect of it;

the Authority must carry out an investigation to obtain information that would enable the Authority to establish:

(c) how the injury may be suffered or sustained, the disease may be contracted or the death may occur; and

(d) the extent (if any) to which:

(i) the injury, disease or death may be war-caused or defence-caused; or

(ii) the injury, disease or death may be a service injury, a service disease or a service death.

Note 1: For war-caused see sections 8 and 9.

Note 2: For defence-caused see section 69.

Note 3: For service injury, service disease and service death see section 196KA. (These definitions are for the purposes of the MRCA.)

(5) If, after carrying out the investigation, the Authority is of the view that there is sound medical-scientific evidence on which it can rely to determine a Statement of Principles under subsection (2) or (3), in respect of that kind of injury, disease or death, the Authority must do so as soon as practicable.

Note: This subsection does not mean that the Authority must carry out an investigation before it can determine a Statement of Principles under subsection (2) or (3).

(6) If, after carrying out the investigation, the Authority is of the view:

(a) that there is no sound medical-scientific evidence on which it can rely to determine a Statement of Principles under
subsection (2) or (3) in respect of that kind of injury, disease or death; or
(b) that the sound medical-scientific evidence on which it can rely is insufficient to allow it to do so;
the Authority must make a declaration in writing:
(c) stating that it does not propose to make a Statement of Principles; and
(d) giving the reasons for its decision.

Subsequent investigation and review of determinations concerning Statement of Principles

(7) If the Authority:
(a) is asked under section 196E to review:
   (i) the contents of a Statement of Principles; or
   (ii) a decision of the Authority not to make a Statement of Principles in respect of a particular kind of injury, disease or death; or
(b) thinks that there are grounds for such a review; or
(c) is directed by the Review Council under subsection 196W(7) to carry out an investigation in respect of a particular kind of injury, disease or death;
the Authority must, subject to subsection 196C(4) and section 196CA in a case where paragraph (a) applies, carry out an investigation to find out if there is new information available about:
(d) how the injury may be suffered or sustained, the disease may be contracted or the death may occur; or
(e) the extent (if any) to which:
   (i) the injury, disease or death may be war-caused or defence-caused; or
   (ii) the injury, disease or death may be a service injury, a service disease or a service death.

Note 1: For war-caused see sections 8 and 9.
Note 2: For defence-caused see section 69.
Note 3: For service injury, service disease and service death see section 196KA. (These definitions are for the purposes of the MRCA.)

(8) If, after carrying out the investigation, the Authority is of the view that there is a new body of sound medical-scientific evidence
available that, together with the sound medical-scientific evidence
previously considered by the Authority, justifies the making of a
Statement of Principles, or an amendment of the Statement of
Principles already determined, in respect of that kind of injury,
disease or death, the Authority must:

(a) determine a Statement of Principles in respect of that kind of
injury, disease or death under subsection (2) or (3); or

(b) make a determination amending the Statement of Principles
determined under subsection (2) or (3) in respect of that kind
of injury, disease or death; or

(c) revoke the Statement of Principles determined under
subsection (2) or (3), and determine a new Statement of
Principles under subsection (2) or (3) in respect of that kind
of injury, disease or death;

as the case requires.

Note: For sound medical-scientific evidence see subsection 5AB(2).

(9) If, after carrying out the investigation, the Authority is of the view:

(a) that there is no new sound medical-scientific evidence about
that kind of injury, disease or death; or

(b) that the new sound medical-scientific evidence available is
not sufficient to justify the making of a Statement of
Principles, or an amendment of the Statement of Principles
already determined in respect of that kind of injury, disease
or death;

the Authority must make a declaration in writing:

(c) stating that it does not propose to make a Statement of
Principles, or amend the Statement of Principles already
determined (as the case may be); and

(d) giving the reasons for its decision.

(10) If the Review Council has, by a decision notified in the Gazette,
directed the Authority to amend a Statement of Principles in
respect of a particular kind of injury, disease or death, the
Authority must make a determination amending the Statement of
Principles determined in respect of that kind of injury, disease or
death in accordance with the directions of the Council.

(11) If, after reviewing a decision of the Authority not to determine a
Statement of Principles under subsection 196B(2) in respect of a
particular kind of injury, disease or death, the Review Council has,
by a decision notified in the *Gazette*, directed the Authority to make such a Statement of Principles, the Authority must determine a Statement of Principles in respect of that kind of injury, disease or death setting out, in accordance with the directions of the Council:

(a) the factors that must as a minimum exist; and
(b) which of those factors must be related to service rendered by a person;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

Note 1: For factor related to service see subsection (14).

Note 2: The Statement of Principles may be determined for the purposes of this Act, the MRCA, or both Acts, in accordance with the directions of the Council (see subsection 196W(4A)).

(12) If, after reviewing a decision of the Authority not to determine a Statement of Principles under subsection 196B(3) in respect of a particular kind of injury, disease or death, the Review Council has, by a decision notified in the *Gazette*, directed the Authority to make such a Statement of Principles, the Authority must determine a Statement of Principles in respect of that kind of injury, disease or death setting out, in accordance with the directions of the Council:

(a) the factors that must exist; and
(b) which of those factors must be related to service rendered by a person;

before it can be said that, on the balance of probabilities, an injury, disease or death of that kind is connected with the circumstances of that service.

Note 1: For factor related to service see subsection (14).

Note 2: The Statement of Principles may be determined for the purposes of this Act, the MRCA, or both Acts, in accordance with the directions of the Council (see subsection 196W(4A)).

(13) A determination under subsection (10) amending a Statement of Principles, or a Statement of Principles under subsection (11) or (12) is to be taken to have had effect from the day on which the decision of the Review Council was notified in the *Gazette*. The determination or Statement of Principles must specify that day.
Part XIA  The Repatriation Medical Authority
Division 1  Establishment, functions and powers

Section 196C

(14) A factor causing, or contributing to, an injury, disease or death is related to service rendered by a person if:

(a) it resulted from an occurrence that happened while the person was rendering that service; or
(b) it arose out of, or was attributable to, that service; or
(c) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:
   (i) to a place for the purpose of performing duty; or
   (ii) away from a place of duty upon having ceased to perform duty; or
(d) it was contributed to in a material degree by, or was aggravated by, that service; or
(e) in the case of a factor causing, or contributing to, an injury—
   it resulted from an accident that would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
(f) in the case of a factor causing, or contributing to, a disease—
   it would not have occurred:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service; or
(g) in the case of a factor causing, or contributing to, the death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:
   (i) but for the rendering of that service by the person; or
   (ii) but for changes in the person’s environment consequent upon his or her having rendered that service.

196C  Powers of Authority with respect to investigations

(1) The Repatriation Medical Authority may not, for the purposes of an investigation, carry out any new research work (including any test or experiment).

(2) The Authority may, for the purposes of an investigation, ask the Secretary:

(a) to forward to the Authority any information:
   (i) in the possession of the Secretary; or
Section 196C

(ii) that the Secretary may obtain;
relating to the kind of injury, disease or death under
investigation; or
(b) to carry out research (including any test or experiment) to
obtain, confirm, or disprove, specific information about that
kind of injury, disease or death and forward a report to the
Authority.

(3) In forming any view during the investigation, the Authority:
(a) may rely only on sound medical-scientific evidence:
   (i) that has been submitted to it; or
   (ii) that it has obtained on its own initiative or from the
        Secretary (under subsection (2)) or from a consultant;
        and
(b) must consider and evaluate all the evidence so made
available to it.

(4) If:

(a) the Authority has carried out the investigation in respect of a
    particular kind of injury, disease or death; and
(b) within 12 months after the Authority has, at the end of the
    investigation:
       (i) determined or amended a Statement of Principles; or
       (ii) declared that it does not propose to make or amend a
            Statement of Principles;
    a person or organisation asks the Authority under section
196E to review:
       (iii) the contents of the Statement of Principles; or
       (iv) its decision not to make a Statement of Principles; and
(c) the Authority thinks that there are no grounds for such a
    review;
the Authority may decide not to carry out an investigation in
respect of that kind of injury, disease or death. The Authority must
then inform the person or organisation in writing of its decision,
stating the reasons for it.
Part XIA The Repatriation Medical Authority
Division 1 Establishment, functions and powers

Section 196CA

196CA Authority not required to investigate certain requests

(1) The Authority may decide not to carry out an investigation in respect of a request for a review made under paragraph 196E(1)(e) or (f) if:
   (a) the request does not state the grounds on which the review is sought; or
   (b) the Authority considers that the request does not identify sufficient relevant information:
      (i) to support the grounds on which the review is sought; or
      (ii) to otherwise justify the review; or
   (c) the request is vexatious or frivolous.

(2) If the Authority decides not to carry out an investigation, it must inform the person or organisation in writing of the decision, stating the reasons for it.

196CB Authority may consolidate requests

If:
   (a) 2 or more requests for review are made under subsection 196E(1); and
   (b) the requests are in relation to the same injury, disease or death;
the Authority may carry out one investigation in relation to those requests.

196D Disallowable instrument

A determination of the Repatriation Medical Authority under section 196B is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

196E Request for an investigation, review etc.

(1) Any of the following:
   (a) the Commission;
   (aa) the Military Rehabilitation and Compensation Commission;
   (b) a person eligible to make a claim for a pension under Part II or IV of this Act;

234 Veterans’ Entitlements Act 1986
(ba) a person eligible to make a claim for compensation under section 319 of the MRCA;

(c) an organisation representing veterans, Australian mariners, members of the Forces, members of Peacekeeping Forces, or members within the meaning of the MRCA, or their dependants;

may request the Repatriation Medical Authority:

(d) to carry out an investigation under subsection 196B(4) in respect of a particular kind of injury, disease or death; or

(e) to review a decision of the Authority under subsection 196B(6) not to make a Statement of Principles in respect of a particular kind of injury, disease or death; or

(f) to review the contents of a Statement of Principles in force under this Part.

(2) A request under subsection (1) must:

(a) be in a form approved by the Authority; and

(b) be lodged at an office of the Authority in Australia in accordance with the directions of the Chairperson of the Authority under subsection (2A).

(2A) The Chairperson of the Authority may give directions:

(a) as to the manner of lodging requests, including electronic requests, with the Authority for the purposes of subsection (1); and

(b) as to the time at which such requests are to be taken to have been so communicated.

(3) If the request is a request for a review made under paragraph (1)(e) or (f), the request must also:

(a) state the grounds on which the review is sought; and

(b) identify any information relied on to support those grounds.

196F Submissions to the Authority

(1) If the Repatriation Medical Authority is carrying out an investigation under subsection 196B(4) or (7), any person or organisation referred to in any of paragraphs 196E(1)(a) to (c) may make a submission in writing to the Authority on any matter (other than a legal matter) relevant to the investigation.
Section 196G

(2) A person having expertise in a field relevant to the investigation may make a submission in writing to the Authority on any matter (other than a legal matter) within his or her expertise that is relevant to the investigation.

(3) If an individual, the Commission, the Military Rehabilitation and Compensation Commission or an organisation has made a written submission, the individual or his or her representative, or a representative of the relevant Commission or of the organisation may, subject to subsection (4), appear before the Authority to make an oral submission complementing the written submission. The oral submission may not cover any legal matter.

(4) A person or organisation may not be represented before the Authority by a legal practitioner.

196G Notice of investigation

(1) As soon as practicable after the Repatriation Medical Authority:
   (a) has been asked under section 196E to carry out:
      (i) an investigation; or
      (ii) a review of a decision of the Authority not to make a Statement of Principles; or
      (iii) a review of the contents of a Statement of Principles; regarding a particular kind of injury, disease or death; or
   (b) has decided on its own initiative to carry out such an investigation or such a review;

   the Authority must publish in the Gazette a notice:
   (c) stating that the Authority intends to carry out an investigation in respect of that kind of injury, disease or death; and
   (d) inviting persons or organisations authorised under subsection 196F(1) to do so to make written submissions to the Authority.

(2) A notice is to specify:
   (a) the date on which the Authority will hold its first meeting for the purposes of the investigation; and
   (b) the date by which all submissions must have been received by the Authority.
(3) A notice must be published in the Gazette at least 28 days before the date of the first meeting of the Authority.

(4) A notice is not invalid merely because it fails to comply with subsection (2).

**196H Copyright in submissions**

(1) The Repatriation Medical Authority is not the owner of any copyright subsisting in material (submitted material) contained in a submission made to the Authority for the purposes of an investigation under section 196B.

(2) In spite of the Copyright Act 1968, the Authority does not infringe any copyright subsisting in submitted material if, in performing its functions or exercising its powers, the Authority does an act comprised in the copyright without the licence of the owner of the copyright.

**196I Access to information**

(1) Subject to subsection (2), any person or organisation referred to in any of paragraphs 196E(1)(a) to (c) is entitled, on request made in writing to the Repatriation Medical Authority, to have reasonable access to any document containing information considered by the Authority for the purposes of an investigation.

(2) The Authority may not disclose any personal information about a particular person if the information is likely to reveal the identity of that person.

**196J Notice of decision not to make etc. Statement of Principles**

(1) When the Repatriation Medical Authority decides not to make, or not to review, a Statement of Principles, it must, within 14 days, notify the Commission or the Military Rehabilitation and Compensation Commission (as the case requires) in writing of its decision.

(2) If the decision is made following a request from a person or organisation under section 196E, the Authority must also notify the person or organisation in writing of its decision.
Part XIA  The Repatriation Medical Authority
Division 1  Establishment, functions and powers

Section 196K

196K  Repatriation Medical Authority to send information to Review Council

The Repatriation Medical Authority must, within 28 days after being notified that the Review Council has been asked to review:

(a) a Statement of Principles; or
(b) its decision not to determine a Statement of Principles in respect of a particular kind of injury, disease or death; or
(c) its decision under subsection 196C(4) not to carry out an investigation in respect of a particular kind of injury, disease or death;

send to the Council a copy of all the information that was available to it when it:

(d) determined, amended, or last amended, the Statement of Principles; or
(e) decided, or last decided, not to determine a Statement of Principles in respect of that kind of injury, disease or death; or
(f) decided not to carry out the investigation.

196KA  Definitions for the purposes of the MRCA

In this Division:

(a) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), service death has the same meaning as in the MRCA; and
(b) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), service disease has the same meaning as in the MRCA; and
(c) for the purposes of paragraphs 196B(4)(d) and 196B(7)(e), service injury has the same meaning as in the MRCA; and
(d) for the purposes of paragraphs 196B(2)(ca) and 196B(3)(ba), members has the same meaning as in the MRCA; and
(e) for the purposes of paragraph 196B(3)(ba), peacetime service has the same meaning as in the MRCA; and
(f) for the purposes of paragraph 196B(2)(ca), non-warlike service does not have the meaning given by this Act but instead has the same meaning as in the MRCA; and
(g) for the purposes of paragraph 196B(2)(ca), warlike service does not have the meaning given by this Act but instead has the same meaning as in the MRCA.
Division 2—Constitution and meetings

196L Membership

(1) The Repatriation Medical Authority consists of a Chairperson and 4 other members.

(2) All members are to be appointed on a part-time basis by the Minister.

(3) One of the members must be a person having at least 5 years experience in the field of epidemiology.

196M Qualifications

The Minister is to appoint a person as Chairperson or as a member only if the person is a registered medical practitioner, or a medical scientist, with at least 10 years experience.

196N Tenure of office

(1) Subject to this Act, a person appointed as Chairperson or as a member holds office for the period specified in the instrument of appointment.

(2) A person may not hold office for a period of more than 5 years but is eligible for reappointment.

196O Resignation

A member may resign from office by written notice given to the Minister.

196P Termination of appointment

The Minister may terminate the appointment of a person as Chairperson or as a member:

(a) for misbehaviour or for physical or mental incapacity; or
Section 196Q

(b) if he or she becomes bankrupt, applies to take the benefit of a law for the relief of bankruptcy or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit.

196Q Acting Chairperson

The Minister may appoint a member to act as Chairperson:
(a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
(b) during any period, or during all periods, when the Chairperson is absent from office.

196R Meetings

(1) The Chairperson may convene meetings of the Repatriation Medical Authority as he or she considers necessary for the performance of its functions. The Chairperson may delegate this power to another member or to a member of the staff of the Authority.

(2) The Chairperson presides at all meetings of the Authority.

(3) At a meeting, 3 members constitute a quorum.

(4) A question arising at a meeting is to be determined by a majority of votes of the members present and voting. The Chairperson has only a deliberative vote.

(5) The Authority must keep minutes of the proceedings at each meeting.

(6) Subject to this section, the Authority determines the procedures for convening its meetings and for conducting its business.

196S Remuneration and allowances

(1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member shall be paid such remuneration as the Minister determines in writing.
Section 196S

(2) A member shall be paid such allowances as the Minister determines in writing.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
Division 3—Staff and consultants

196T Staff

The staff necessary to assist the Repatriation Medical Authority consists of persons engaged under the Public Service Act 1999 and made available to the Authority by the Secretary.

196U Consultants

(1) The Repatriation Medical Authority may, under written agreement, engage consultants to provide expert advice to the Authority about any disease, injury or death that the Authority is investigating.

(2) The Authority may not engage a consultant without the approval of the Minister.
Part XIB—Establishment and functions

196V Establishment of Council

(1) A Specialist Medical Review Council is established.

(2) The Review Council:
   (a) is a body corporate with perpetual succession; and
   (b) has a common seal; and
   (c) may sue and be sued.

(3) All courts, judges and persons acting judicially must:
   (a) take judicial notice of the imprint of the seal of the Review Council appearing on a document; and
   (b) presume that the document was duly sealed.

(4) Debts incurred by the Review Council in the performance of its functions are, for all purposes, taken to be debts incurred by the Commonwealth.

196W Functions of Review Council

(1) This section sets out the functions of the Review Council.

(2) If the Council is asked under section 196Y to review:
   (a) the contents of a Statement of Principles in respect of a particular kind of injury, disease or death; or
   (b) a decision of the Repatriation Medical Authority not to determine a Statement of Principles under subsection 196B(2), or a Statement of Principles under subsection 196B(3), in respect of a particular kind of injury, disease or death;

subject to subsection (3), the Council must, for that purpose, carry out a review of all the information that was available to the Authority when it:
Part XIB The Specialist Medical Review Council
Division 1 Establishment and functions

Section 196W

(c) determined, amended, or last amended, the Statement of Principles; or
(d) decided, or last decided, not to determine a Statement of Principles;

in respect of that kind of injury, disease or death.

(3) If the Council has been asked to review the contents of a Statement of Principles, the Council may carry out a review under subsection (2) only if:

(a) the period within which the Statement of Principles may be disallowed under section 42 of the Legislative Instruments Act 2003 has ended; and
(b) the Statement of Principles has not been disallowed.

(4) If after carrying out the review, the Council is of the view that there is sound medical-scientific evidence on which the Authority could have relied:

(a) to amend the Statement of Principles in force in respect of that kind of injury, disease or death; or
(b) to determine a Statement of Principles under subsection 196B(2), or a Statement of Principles under subsection 196B(3), in respect of that kind of injury, disease or death;

the Council must make a declaration in writing stating its views, setting out the evidence in support and:

(c) directing the Authority to amend the Statement of Principles, or determine a Statement of Principles (as the case may be), in accordance with the directions given by the Council; or
(d) remitting the matter for reconsideration in accordance with any directions or recommendations of the Council.

(4A) The Council may give directions under subsection (4) for the purposes of this Act, the MRCA, or both Acts.

(5) If, after carrying out the review, the Council is of the view:

(a) that there is no sound medical-scientific evidence that justifies the making of a Statement of Principles, or an amendment of the Statement of Principles in force, in respect of that kind of injury, disease or death; or
(b) that the sound medical-scientific evidence available to the Authority is insufficient to justify the making of a Statement...
of Principles, or an amendment of the Statement of Principles, in respect of that kind of injury, disease or death; the Council must make a declaration in writing to that effect giving the reasons for its decision. The Council may include in the declaration any recommendation that it considers fit to make about any future investigation that the Authority may carry out in respect of that kind of injury, disease or death.

(6) If the Council is asked under section 196Z to review a decision of the Repatriation Medical Authority under subsection 196C(4) not to carry out an investigation in respect of a particular kind of injury, disease or death, the Council must consider:

(a) the reasons given by the Authority for making the decision; and

(b) the information on which it relied in making that decision; and

(c) the grounds on which the request for the review was made and any submission made in support of those grounds.

(7) If, after considering the matters referred to in paragraphs (6)(a), (b) and (c), the Council is of the view that:

(a) there appears to be a new body of sound medical-scientific evidence in respect of that kind of injury, disease or death that has not been previously considered by the Authority; and

(b) that new body of evidence, together with the sound medical-scientific evidence available to the Authority, could justify the making of a Statement of Principles, or an amendment of the Statement of Principles already determined, in respect of that kind of injury, disease or death; the Council must make a declaration in writing to that effect giving the reasons for its decision and directing the Authority to carry out an investigation under subsection 196B(7) in respect of that kind of injury, disease or death. The Council may include in the declaration any recommendation or direction that the Council considers fit to make about the carrying out of the investigation.

(8) If, after considering the matters referred to in paragraphs (6)(a), (b) and (c), the Council is not of the view referred to in subsection (7) in respect of that kind of injury, disease or death, the Council must make a declaration in writing:

(a) affirming the decision of the Authority not to carry out the investigation; and
Part XIB  The Specialist Medical Review Council
Division 1  Establishment and functions

Section 196X

(b) giving the reasons for its decision.
The Council may include in the declaration any recommendation that it considers fit to make about any future investigation that the Authority may carry out in respect of that kind of injury, disease or death.

196X  Notification of decision of Review Council to be notified in Gazette

(1) A decision of the Review Council under section 196W must be notified in the Gazette.

(2) The Council must also give a copy of the decision to:
(a) the person or organisation that asked for the review; and
(b) the Commission, or the Military Rehabilitation and Compensation Commission, (if it is not the person referred to in (a)); and
(c) the Repatriation Medical Authority.

196Y  Request for review of contents of Statement of Principles etc.

(1) Subject to subsection (2), any of the following:
(a) the Commission;
(aa) the Military Rehabilitation and Compensation Commission;
(b) a person eligible to make a claim for a pension under Part II or IV of this Act;
(ba) a person eligible to make a claim for compensation under section 319 of the MRCA;
(c) an organisation representing veterans, Australian mariners, members of the Forces, members of Peacekeeping Forces, or members within the meaning of the MRCA, or their dependants;
may ask the Review Council to review:
(d) the contents of a Statement of Principles in force under Part XIA; or
(e) a decision of the Repatriation Medical Authority not to make a Statement of Principles in respect of a particular kind of injury, disease or death.
Section 196Z

(2) The request must be made:
   (a) in the case of a request to review the contents of a Statement of Principles—within 3 months after the Statement of Principles was made, amended or last amended; or
   (b) if paragraph (a) does not apply—within 3 months after the decision of the Authority.

(3) A request must:
   (a) be in a form approved by the Review Council; and
   (b) state the grounds on which the review is sought; and
   (c) be lodged at an office of the Department in Australia in accordance with section 5T.

(3A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(4) The Secretary must send the request to the Review Council, and notify the Repatriation Medical Authority of the request, within 28 days.

196Z  Request for review of decision of Repatriation Medical Authority not to carry out an investigation

(1) If:
   (a) a person or organisation asks the Repatriation Medical Authority under section 196E to review:
      (i) the contents of a Statement of Principles in respect of a particular kind of injury, disease or death; or
      (ii) its decision not to make a Statement of Principles in respect of a particular kind of injury, disease or death; and
   (b) the Authority refuses under subsection 196C(4) to carry out an investigation in respect of that kind of injury, disease or death;

   the person or organisation may, within 3 months, ask the Review Council to review the decision of the Authority not to carry out the investigation.

(2) The request must:
   (a) be in a form approved by the Review Council; and
   (b) state the grounds on which the review is sought; and
Section 196ZA

(c) be accompanied by any submission that the person or organisation wishes to submit in support of those grounds; and

(d) be lodged at an office of the Department in Australia in accordance with section 5T.

(2A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) The Secretary must send the request and any accompanying material to the Review Council, and notify the Repatriation Medical Authority of the request, within 28 days.

196ZA Submissions to Review Council

(1) If the Review Council is carrying out a review under subsection 196W(2), any person or organisation referred to in any of paragraphs 196Y(1)(a) to (c) may make a submission in writing to the Council about any information that was available to the Repatriation Medical Authority and is relevant to the review (relevant information).

(2) A person having expertise in a field relevant to the investigation may make a submission in writing to the Review Council on any relevant information pertaining to that field.

(3) If an individual, the Commission, the Military Rehabilitation and Compensation Commission or an organisation has made a written submission, the individual or his or her representative, or a representative of the relevant Commission or of the organisation may, subject to subsection (5), appear before the Review Council to make an oral submission complementing the written submission.

(4) If the Review Council is carrying out a review under subsection 196W(6) at the request of an individual, the Commission, the Military Rehabilitation and Compensation Commission or an organisation, the individual or his or her representative, or a representative of the relevant Commission or of the organisation may, subject to subsection (5), appear before the Review Council to make an oral submission complementing the written submission (if any) lodged under paragraph 196Z(2)(c).

(5) A person or organisation may not be represented before the Review Council by a legal practitioner.
(6) In this section, a reference to a submission does not include a submission on a legal matter.

196ZB Notice of investigation

(1) As soon as practicable after the Review Council has been asked under section 196Y to review:
   (a) a decision of the Repatriation Medical Authority to make or not to make a Statement of Principles; or
   (b) a review of the contents of a Statement of Principles in respect of a particular kind of injury, disease or death;
the Council must publish in the Gazette a notice:
   (c) stating that the Council intends to carry out a review of the information available to the Authority about that kind of injury, disease or death; and
   (d) inviting persons or organisations authorised under subsection 196ZA(1) to do so to make written submissions to the Council.

(2) A notice is to specify:
   (a) the date on which the Council will hold its first meeting for the purposes of the review; and
   (b) the date by which all submissions must have been received by the Council.

(3) A notice must be published in the Gazette at least 28 days before the date of the first meeting of the Council.

(4) A notice is not invalid merely because it fails to comply with subsection (2).

196ZC Copyright in submissions

(1) The Review Council is not the owner of any copyright subsisting in material (submitted material) contained in a submission made to the Council for the purposes of an investigation under section 196B.

(2) In spite of the Copyright Act 1968, the Review Council does not infringe any copyright subsisting in submitted material if, in performing its functions or exercising its powers, the Council does
Section 196ZD

an act comprised in the copyright without the licence of the owner of the copyright.

196ZD Access to information

(1) Subject to subsection (2), any person or organisation referred to in any of paragraphs 196Y(1)(a) to (c) is entitled, on request made in writing to the Review Council, to have reasonable access to any document containing information considered by the Review Council for the purposes of an investigation.

(2) The Review Council may not disclose any personal information about a particular person if the information is likely to reveal the identity of that person.
Division 2—Constitution and meetings

196ZE Membership

(1) The Review Council consists of such number of members as the Minister determines from time to time to be necessary for the proper exercise of the functions of the Council.

(2) The councillors are to be appointed on a part-time basis by the Minister as provided in this section.

(3) When appointing councillors, the Minister must have regard to the branches of medical science expertise in which would be necessary for deciding matters referred to the Review Council for review. In respect of each of those branches, the Minister must ensure that, at any time, the number (not less than 2) of councillors having experience in that branch is sufficient for the proper exercise of the functions of the Council.

(4) Each person to be appointed councillor is to be selected from a list, or lists, of nominees submitted by such colleges or similar bodies of medical practitioners or medical scientists (for example, the Royal Australasian College of Physicians) as were asked by the Minister to submit nominees for the purposes of the appointment.

(5) The Minister must appoint one of the councillors to be the Convener.

196ZF Qualifications

The Minister is to appoint a person to be a councillor only if the person is a registered medical practitioner, or a medical scientist, with at least 10 years experience.

196ZG Tenure of office

(1) Subject to this Act, a person appointed as Convener or as a councillor holds office for the period specified in the instrument of appointment.

(2) A person may not hold office for a period of more than 5 years but is eligible for reappointment.
Part XIB  The Specialist Medical Review Council
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196ZH  Resignation

A councillor may resign from office by written notice given to the Minister.

196ZI  Termination of appointment

The Minister may terminate the appointment of a person as councillor:

(a) for misbehaviour or for physical or mental incapacity; or
(b) if he or she becomes bankrupt, applies to take the benefit of a law for the relief of bankruptcy or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit.

196ZJ  Acting Convener

The Minister may appoint a councillor to act as Convener:

(a) during a vacancy in the office of Convener, whether or not an appointment has previously been made to the office; or
(b) during any period, or during all periods, when the Convener is absent from Australia or from duty.

196ZK  Conduct of reviews

(1) The Review Council is, for the purposes of a review, to be constituted by at least 3, but not more than 5, councillors selected by the Convener.

(2) If the Review Council as constituted for the purposes of a review includes the Convener, the Convener presides at all meetings of the Council as so constituted.

(3) If the Review Council as constituted for the purposes of a review does not include the Convener, the Convener must appoint one of the councillors selected for the purposes of the review (presiding councillor) to preside at all meetings of the Council as so constituted.

(4) The Convener or the presiding councillor may convene meetings of the Council as he or she considers necessary to carry out the review. The Convener may delegate this power to another councillor or to a member of the staff of the Council.

252  Veterans’ Entitlements Act 1986
(5) A question before the Council is to be decided by a majority of the votes of the councillors present and voting. The Convener or presiding councillor has only a deliberative vote.

(6) The Council must keep minutes of the proceedings at each meeting.

(7) Subject to this section, the Council determines the procedures for convening its meetings and for conducting its business.

196ZL Remuneration and allowances

(1) A councillor is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member is to be paid such remuneration as the Minister determines in writing.

(2) A councillor is to be paid such allowances as the Minister determines in writing.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
Division 3—Staff

196ZM Staff

The staff necessary to assist the Review Council consists of persons engaged under the *Public Service Act 1999* and made available to the Council by the Secretary.
196ZN Medical expenses

(1) The Commonwealth may, subject to this section, pay to an applicant who asks the Review Council to conduct a review as provided for by this Part an amount to cover the medical expenses incurred by him or her in respect of relevant documentary medical evidence obtained for the purposes of the review and submitted to the Review Council.

(2) The applicant is not to be paid:
   (a) if the applicant has submitted to the Review Council relevant documentary medical evidence relating to only one medical condition—more than the prescribed amount for medical expenses; or
   (b) if the applicant has submitted to the Review Council relevant documentary medical evidence relating to more than one medical condition—more than the prescribed amount for the medical expenses incurred in respect of the evidence relating to any one of those conditions.

(3) An amount is not payable in respect of medical expenses unless:
   (a) the person who has incurred the expenses; or
   (b) any person approved by that person or by the Commission; applies in writing to the Commission for payment.

(4) The application for payment must be:
   (a) in accordance with a form approved by the Commission; and
   (b) made within 3 months after the relevant documentary medical evidence was submitted to the Review Council; and
   (c) be accompanied by any document that the applicant considers relevant; and
   (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(4A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.
Part XIB  The Specialist Medical Review Council  
Division 4  Payment of medical and travelling expenses

Section 196ZO

(5) For the purposes of this section relevant documentary medical evidence in relation to an application has the same meaning as is specified in section 133.

196ZO  Travelling expenses for obtaining medical evidence

(1) If an applicant has had to travel to obtain any relevant documentary medical evidence submitted to the Review Council, the applicant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(2) If:
(a) the applicant is accompanied by an attendant when travelling to obtain the evidence; and
(b) the Commission is of the view that it is reasonable for the applicant to be so accompanied by an attendant;
the attendant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(3) Travelling expenses are not payable in respect of travel outside Australia.

(4) Travelling expenses are not payable unless:
(a) the person who has incurred the expenses; or
(b) any person approved by that person or by the Commission;
applies in writing to the Commission for payment under subsection (5).

(5) The application for payment must be:
(a) in accordance with a form approved by the Commission; and
(b) made within 3 months after the end of the travel; and
(c) be accompanied by any document that the applicant considers relevant; and
(d) be lodged at an office of the Department in Australia in accordance with section 5T.

(5A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(6) The Commonwealth is to pay the travelling expenses to which a person is entitled under this section.
196ZP Advance of travelling expenses

(1) If the Commission is satisfied that:
   (a) it is reasonable to expect that a person may become entitled to travelling expenses under section 196ZO; and
   (b) it is appropriate, in all the circumstances, that the person should be paid an advance on account of those expenses;
   the Commission may authorise the payment of that advance to the person.

(2) If:
   (a) a person has received an advance on account of any travelling expenses that the person is likely to incur; and
   (b) the person:
      (i) does not incur those travelling expenses; or
      (ii) incurs travelling expenses that are less than the amount of the advance;
   the person is liable to repay to the Commonwealth:
   (c) the amount of the advance; or
   (d) the difference between the amount of the advance and the amount of the travelling expenses;
   as the case requires.
Part XII—Miscellaneous

197A Saving and transitional provisions

The saving and transitional provisions in Schedule 5 have effect according to their terms.

197 Pensions etc. not for certain members of the Defence Force

(1) A male indigenous inhabitant of the Territory of Papua or the Territory of New Guinea who served in the Defence Force during World War 2 at a rate of pay less than the minimum rate of pay that was prescribed as payable to a male member of the Australian Military Forces and whose services have been terminated by discharge or death, is not eligible:
   (a) to be paid pension under Part II, or service pension under Part III;
   (b) to be provided with treatment under Part V; or
   (c) to receive any allowances or other benefits under Part VI; in respect of that service as a member of the Defence Force during World War 2.

(2) A dependant of a person to whom subsection (1) applies, being a person who has died, is not eligible:
   (a) to be paid pension under Part II or a service pension under Part III;
   (b) to be provided with treatment under Part V; or
   (c) to receive any allowances or benefits under Part VI or Part VII;
   by reason only that the person served as a member of the Defence Force during World War 2.

198 Variations of rates of certain pensions

(1) In this section, unless the contrary intention appears:

above general rate means the following rates:
   (a) the rate under subsection 22(4);
   (b) the rate under subsection 23(4);
(c) the rate under subsection 24(4).

**December quarter** means a quarter ending on 31 December.

**fortnightly MTAWE figure** for a quarter means 1/26 of the annualised MTAWE figure for that quarter within the meaning of section 59EA.

**index number**, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Statistician in respect of that quarter.

**June quarter** means a quarter ending on 30 June.

**relevant period** means:

(a) the period that started on 15 November 1989 and ended on 17 April 1990; and

(b) the period that started on 18 April 1990 and ended on 19 September 1990; and

(c) the period of 6 months that started on 20 September 1990; and

(d) each later period of 6 months (other than the period of 6 months that started on 20 September 1992).

**relevant rate** means:

(a) the general rate;

(d) the rate specified in item 1, 2, 3, 4, 5 or 6 in the table in subsection 27(1) (in column 2);

(e) the rate specified in paragraph 30(1)(a).

**Statistician** means the Australian Statistician.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this Act, the Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this Act, the Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application
of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

(4) Where the factor ascertained, in relation to a relevant period, in accordance with subsection (5) is greater than 1, this Act has effect as if for each relevant rate there were substituted, on the first day of that period:

(a) subject to the other paragraphs of this subsection—a rate calculated by multiplying by that factor:
   (i) in the case to which subparagraph (ii) does not apply—the relevant rate; or
   (ii) if, by virtue of another application or several other applications of this section, this Act has had effect as if another rate were substituted, or other rates were successively substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be;

(b) where a relevant rate calculated in accordance with paragraph (a) (in this paragraph referred to as the \textit{calculated rate}) is a rate per fortnight and is not a multiple of $0.10 per fortnight—a rate equal to:
   (i) if the calculated rate exceeds the next lower rate that is such a multiple by $0.05 per fortnight or more—the next higher rate that is such a multiple; or
   (ii) if the calculated rate exceeds the next lower rate that is such a multiple by less than $0.05 per fortnight—the next lower rate; or

\textbf{Note 1:} For indexation of each above general rate, see subsection (5E).

\textbf{Note 2:} The rate calculated under this section in substitution for the rate referred to in paragraph (e) of the definition of \textit{relevant rate} may be increased under subsection (6) in certain cases.

(5) The factor to be ascertained for the purposes of subsection (4) in relation to a relevant period:

(a) is the number, calculated to 3 decimal places, ascertained by dividing:
   (i) if the relevant period starts between 1 January and 30 June (inclusive)—the index number for the last preceding December quarter; or
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(ii) if the relevant period starts between 1 July and 31 December (inclusive)—the index number for the last preceding June quarter;

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or

(b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—is the number so ascertained increased by 0.001.

(5A) The rate specified in paragraph 30(1)(a) during the relevant period starting on 18 April 1990 and ending when a new rate is substituted under subsection (4) is to be taken for all purposes to be the sum of:

(a) the rate that would, under subsection (4), be substituted for that rate on 18 April 1990; and

(b) $104 per annum.

(5D) For the purposes of the next application of subsection (4) after 18 April 1990 in relation to the rate specified in paragraph 30(1)(a), the last substituted rate referred to in that subsection is to be taken to be the rate worked out under subsection (5A).

(5E) This Act has effect as if, on the first day (the adjustment day) of each relevant period, there were substituted, for each above general rate, the rate worked out as follows:

<table>
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<tr>
<th>Method statement</th>
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<tbody>
<tr>
<td><strong>Step 1.</strong> Work out the general rate on the adjustment day.</td>
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<tr>
<td><strong>Step 2.</strong> Work out the general rate on the day before the adjustment day.</td>
</tr>
<tr>
<td><strong>Step 3.</strong> Work out the above general rate on the day before the adjustment day.</td>
</tr>
<tr>
<td><strong>Step 4.</strong> Subtract the rate at step 2 from the rate at step 3.</td>
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<table>
<thead>
<tr>
<th>Step 5.</th>
<th>Multiply the amount worked out at step 4 by the pension MBR factor specified in section 59LA (rounding the result up to the nearest $0.10).</th>
</tr>
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<tbody>
<tr>
<td>Step 6.</td>
<td>Add the rate worked out at step 1 to the amount worked out at step 5: the result is the above general rate on the adjustment day.</td>
</tr>
</tbody>
</table>

(6) If:

(a) a rate (substituted rate) is substituted for the rate specified in paragraph (e) of the definition of relevant rate because of an application of subsection (4) for a relevant period that starts after 20 September 1997; and

(b) 25% of the fortnightly MTAWE figure for whichever of the following quarters is applicable:

(i) if the relevant period starts on a 20 March—the most recent December quarter;

(ii) if the relevant period starts on a 20 September—the most recent June quarter;

exceeds the substituted rate;

this Act has effect as if there were substituted for the substituted rate a rate equal to:

(c) the substituted rate increased by an amount equal to the excess; and

(d) if the substituted rate (as increased under paragraph (c)) is not a multiple of $0.10, the substituted rate (as so increased) further increased by rounding up to the next highest multiple of $0.10.

(7) If:

(a) a rate is not substituted for the rate (unchanged rate) specified in paragraph (e) of the definition of relevant rate because of an application of subsection (4) for a relevant period that starts after 20 September 1997; and

(b) 25% of the fortnightly MTAWE figure for whichever of the following quarters is applicable:

(i) if the relevant period starts on a 20 March—the most recent December quarter;

(ii) if the relevant period starts on a 20 September—the most recent June quarter;
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exceeds the unchanged rate;
this Act has effect as if there were substituted for the unchanged rate a rate equal to:
(c) the unchanged rate increased by an amount equal to the excess; or
(d) if the unchanged rate (as increased under paragraph (c)) is not a multiple of $0.10, the unchanged rate (as so increased) further increased by rounding up to the next highest multiple of $0.10.

(8) If:
(a) the rate of pension payable to a person is increased because of an application of subsection (6) or (7); and
(b) in respect of the period from 19 March 1998 to the day on which the Veterans’ Entitlements Amendment (Male Total Average Weekly Earnings Benchmark) Act 1998 receives the Royal Assent, the person has been paid any ex gratia payments from the Commonwealth of an amount equal to the amount by which the pension payable to the person would increase as a result of that increase;
the amount of pension payable to the person in respect of that period is reduced by an amount equal to the amount of those ex gratia payments. However, the operation of this subsection is not taken to affect the rate of the pension payable to the person.

(10) Where, by virtue of the application of this section, this Act has effect as if another rate were substituted for a relevant rate or an above general rate on the first day of a relevant period, the substitution, in so far as it affects instalments of a pension under this Act, has effect in relation to every instalment of the pension that falls due on or after the first day of that period, as the case may be, but, if a pension is granted, or the rate of a pension is increased, after the first day of that period as from a date before the first day of that period, the substitution, in so far as it affects instalments of that pension, does not have effect in relation to an instalment of that pension in respect of a period that commenced before the first day of that period.
Section 198A

198A Variation of rates of orphan’s pension

(1) In this section, unless the contrary intention appears:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

relevant rate means the rate specified in paragraph 30(2)(a), (b) or (c).

year to which this section applies means 1990 and each subsequent year.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

(4) Where the factor worked out under subsection (5) in relation to a relevant rate in relation to a year to which this section applies is greater than 1, this Act, and any Act that refers to this Act, have effect as if for that relevant rate there were substituted, on the first day of that year:

(a) subject to paragraph (b)—the rate worked out by multiplying by that factor:

(i) where subparagraph (ii) does not apply—the relevant rate; or

(ii) if, because of another application or other applications of this section, this Act has had effect as if another rate was substituted, or other rates were successively
substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be;

(b) where the rate worked out under paragraph (a) is not a multiple of 10 cents per fortnight—a rate equal to:
   (i) if the rate so worked out exceeds the next lower rate that is such a multiple by 5 cents per fortnight or more—the next highest rate that is such a multiple; or
   (ii) if the rate so worked out exceeds the next lower rate that is such a multiple by less than 5 cents per fortnight—that next lower rate.

(5) The factor to be worked out for the purposes of subsection (4) in relation to a year to which this section applies is:
   (a) in relation to 1990—the number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 1989 by the index number for the June quarter 1988;
   (b) in relation to each subsequent year—the number, calculated to 3 decimal places, worked out by dividing the index number for the last preceding June quarter by the highest index number in respect of an earlier June quarter, not being a June quarter that occurred before 1989; or
   (c) if the number worked out under paragraph (a) or (b) would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so worked out increased by 0.001.

(6) Where, because of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a year, the substitution, in so far as it affects instalments of pensions, benefits and allowances under this Act, has effect in relation to every instalment of such a pension, benefit or allowance that falls due on or after the first day of that year.

198D Variation of rates of certain allowances etc.

(1) In this section, unless the contrary intention appears:

   index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for that quarter.
Section 198D

**relevant rate** means the rate specified in:
(a) item 7, 8, 9, 10, 11, 12, 13, 14 or 15 in the table in subsection 27(1) (in column 2); or
(b) item 1, 2, 3, 4 or 5 in the table in subsection 97(1) (in column 2); or
(c) item 1, 2, 3, 4 or 5 in the table in subsection 98(1) (in column 2); or
(d) item 1, 2, 3, 4, 5, 6, 7, 8, 9 or 10 in the table in subsection 104(1) (in column 2).

**year to which this section applies** means:
(a) the year commencing on 20 September 1991; or
(b) any later year commencing on 20 September.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

(4) Where the factor worked out under subsection (5) in relation to a relevant rate in relation to a year to which this section applies is greater than 1, this Act, and any Act that refers to this Act, have effect as if for that relevant rate there were substituted, on the first day of that year:
(a) subject to paragraph (b)—the rate worked out by multiplying by that factor:
   (i) where subparagraph (ii) does not apply—the relevant rate; or
   (ii) if, because of another application or other applications of this section, this Act has had effect as if another rate was substituted, or other rates were successively
substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or

(b) where the rate worked out under paragraph (a) is not a multiple of 10 cents per fortnight—a rate equal to:

(i) if the rate so worked out exceeds the next lower rate that is such a multiple of 5 cents per fortnight or more—the next highest rate that is such a multiple; or

(ii) if the rate so worked out exceeds the next lower rate that is such a multiple by less than 5 cents per fortnight—that next lower rate.

(5) The factor to be worked out for the purposes of subsection (4) in relation to a year to which this section applies is:

(a) in relation to the year commencing on 20 September 1991—the number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 1991 by the index number for the June quarter 1990; or

(b) in relation to each subsequent year—the number calculated to 3 decimal places, worked out by dividing the index number for the last preceding June quarter by the highest index number in respect of an earlier June quarter, not being a June quarter that occurred before 1991; or

(c) if the number worked out under paragraph (a) or (b) would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so worked out increased by 0.001.

(6) Where, because of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a year to which this section applies, the substitution, in so far as it effects instalments of pensions and allowances under this Act, has effect in relation to every instalment of such a pension or an allowance that falls due on or after the first day of that year.

198E Indexation of utilities allowance and seniors concession allowance

Rates in table to be indexed under this section

(1) A rate referred to in the following table is to be indexed under this section on each indexation day for the rate, using the reference
Section 198E

quarter and base quarter for the rate and indexation day and rounding off to the nearest multiple of the rounding base:

<table>
<thead>
<tr>
<th>Indexation table</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Column 5</th>
<th>Column 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Rate</td>
<td>Indexation days</td>
<td>Reference quarter (most recent before indexation day)</td>
<td>Base quarter</td>
<td>Rounding base</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Rate of utilities allowance under item 1, column 3 of the table in section 118OC (single)</td>
<td>(a) 20 March (b) 20 September</td>
<td>(a) December (b) June</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1991)</td>
<td>$0.40</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Rate of utilities allowance under item 2, column 3 of the table in section 118OC (illness separated couple)</td>
<td>(a) 20 March (b) 20 September</td>
<td>(a) December (b) June</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1991)</td>
<td>$0.40</td>
<td></td>
</tr>
</tbody>
</table>
### Indexation table

<table>
<thead>
<tr>
<th>Item</th>
<th>Rate</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Column 5</th>
<th>Column 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Rate of utilities allowance under item 3, column 3 of the table in section 118OC (respite care couple)</td>
<td>(a) 20 March (b) 20 September</td>
<td>(a) December (b) June</td>
<td>highest June or December quarter before reference quarter (but not earlier than June quarter 1991)</td>
<td>$0.40</td>
</tr>
<tr>
<td>4</td>
<td>Rate of seniors concession allowance under section 118PC</td>
<td>(a) 1 June (b) 1 December</td>
<td>(a) March (b) September</td>
<td>highest March or September quarter before reference quarter (but not earlier than September quarter 1991)</td>
<td>$0.40</td>
</tr>
</tbody>
</table>

Indexed rate substituted for the previous rate

(2) If a rate is to be indexed under this section on an indexation day, this Act has effect as if the indexed rate were substituted for that rate on that day.
Section 198E

How to work out the indexed rate

(3) This is how to work out the indexed rate for a rate that is to be indexed under this section on an indexation day:

Method statement

Step 1. Use subsections (4), (5) and (6) to work out the indexation factor for the rate on the indexation day.

Step 2. Work out the current figure for the rate immediately before the indexation day.

Step 3. Multiply the current figure by the indexation factor: the result is the provisional indexed rate.

Step 4. Use subsections (7), (8) and (9) to round off the provisional indexed rate: the result is the indexed rate.

Note: For current figure see subsection (12).

Indexation factor

(4) Subject to subsections (5) and (6), the indexation factor for a rate that is to be indexed under this section on an indexation day is:

\[
\frac{\text{Index number for most recent reference quarter}}{\text{Index number for base quarter}}
\]

worked out to 3 decimal places.

Note 1: For index number see subsection (12).

Note 2: For reference quarter and base quarter see the table in subsection (1).

(5) If an indexation factor worked out under subsection (4) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

(6) If an indexation factor worked out under subsections (4) and (5) would be less than 1, the indexation factor is to be increased to 1.

Rounding

(7) If a provisional indexed rate is a multiple of the rounding base, the provisional indexed rate becomes the indexed rate.
Section 198E

Note: For provisional indexed rate see step 3 in subsection (3).

(8) Subject to subsection (9), if a provisional indexed rate is not a multiple of the rounding base, the indexed rate is the provisional indexed rate rounded up or down to the nearest multiple of the rounding base.

(9) If a provisional indexed rate is not a multiple of the rounding base but is a multiple of half the rounding base, the indexed rate is the provisional indexed rate rounded up to the nearest multiple of the rounding base.

When first indexation is to take place

(10) The first indexation of the rates specified in items 1, 2 and 3 of the table in subsection (1) is to take place on 20 September 2005.

(10A) The first indexation of the rates specified in item 4 of the table in subsection (1) is to take place on 1 June 2005.

(11) Subsections 198D(2) and (3) also apply for the purposes of this section.

Definitions

(12) In this section:

current figure, as at a particular time and in relation to a rate that is to be indexed under this section, means:

(a) if the rate has not yet been indexed under this section before that time—the rate; and

(b) if the rate has been indexed under this section before that time—the rate most recently substituted for the rate under this section before that time.

highest of a group of quarters, in relation to a group of quarters, means the quarter in that group that has the highest index number.

index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.
Section 198F

198F Indexation of telephone allowance

(1) In this section, unless the contrary intention appears:

*index number*, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for that quarter.

*relevant rate* means the rate specified in subsection 118S(1).

*year to which this section applies* means:

(a) the year commencing on 20 September 1992; or
(b) any later year commencing on 20 September.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purpose of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change took place, or takes place, regard is to be had only to index numbers published in terms of the new reference base.

(4) Where the factor worked out under subsection (5) in relation to a relevant rate in relation to a year to which this section applies is greater than 1, this Act, and any Act that refers to this Act, have effect as if for that relevant rate there were substituted, on the first day of that year:

(a) subject to paragraph (b)—the rate worked out by multiplying by that factor:

(i) where subparagraph (ii) does not apply—the relevant rate; or

(ii) if, because of another application or other applications of this section, this Act has had effect as if another rate was substituted, or other rates were successively
Section 198FA

substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or
(b) where the amount of the rate worked out under paragraph (a) is not a multiple of 80 cents—a rate equal to that amount rounded up to the nearest multiple of 80 cents.

(5) The factor to be worked out for the purposes of subsection (4) in relation to a year to which this section applies is:
(a) in relation to the year commencing on 20 September 1992 the number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 1992 by the index number for the June quarter 1991; or
(b) in relation to each subsequent year—the number calculated to 3 decimal places, worked out by dividing the index number for the last preceding June quarter by the highest index number in respect of an earlier June quarter, not being a June quarter that occurred before 1992; or
(c) if the number worked out under paragraph (a) or (b) would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so worked out increased by 0.001.

(6) Where, because of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a year to which this section applies, the substitution, in so far as it affects instalments of telephone allowance under this Act, has effect in relation to every instalment of the allowance that falls due on or after the first day of that year.

198FA  Indexation of Victoria Cross allowance

(1) In this section, unless the contrary intention appears:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for that quarter.

relevant rate means the rate specified in subsection 103(4).

year to which this section applies means:
(a) the year commencing on 20 September 2005; or
(b) any later year commencing on 20 September.
Section 198FA

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change took place, or takes place, regard is to be had only to index numbers published in terms of the new reference base.

(4) Where the factor worked out under subsection (5) in relation to a relevant rate in relation to a year to which this section applies is greater than 1, this Act, and any Act that refers to this Act, have effect as if for that relevant rate there were substituted, on the first day of that year:

(a) subject to paragraph (b)—the rate worked out by multiplying by that factor:
   (i) where subparagraph (ii) does not apply—the relevant rate; or
   (ii) if, because of another application or other applications of this section, this Act has had effect as if another rate was substituted, or other rates were successively substituted, for the relevant rate—the substituted rate or the last substituted rate, as the case may be; or

(b) where the amount of the rate worked out under paragraph (a) is not a multiple of one dollar—a rate equal to that amount rounded up to the nearest multiple of one dollar.

(5) The factor to be worked out for the purposes of subsection (4) in relation to a year to which this section applies is:

(a) in relation to the year commencing on 20 September 2005—the number, calculated to 3 decimal places, worked out by dividing the index number for the June quarter 2005 by the index number for the June quarter 2004; or

(b) in relation to each subsequent year—the number calculated to 3 decimal places, worked out by dividing the index number for the last preceding June quarter by the highest index.
number in respect of an earlier June quarter, not being a June quarter that occurred before 2005; or
(c) if the number worked out under paragraph (a) or (b) would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so worked out increased by 0.001.

(6) Where, because of the application of this section, this Act has effect as if another rate were substituted for a relevant rate on the first day of a year to which this section applies, the substitution, in so far as it affects instalments of Victoria Cross allowance under this Act, has effect in relation to every instalment of the allowance that falls due on or after the first day of that year.

198G 1 July 2000 increase in certain amounts

(1) This section applies to an amount (the base amount) that is provided for in a provision listed in column 2 of Table A.

Note: Amounts provided for in provisions listed in Table A are amounts as altered from time to time under Division 18 of Part IIIB and sections 198, 198A, 198D and 198F (CPI indexation).

(2) This Act has effect as if, on 1 July 2000, the base amount were replaced by an amount (the replacement amount) worked out by:
(a) calculating the amount (the provisional replacement amount) that is 4% greater than the base amount; and
(b) rounding off the provisional replacement amount in accordance with section 198M, using the rounding base for the base amount (see column 4 of Table A).

(3) For the purposes of subsection (1), the base amount is to include any indexation that occurs on 1 July 2000 under Division 18 of Part IIIB or section 198, 198A, 198D or 198F.

Table A: Rates

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Provision providing for base amount</th>
<th>Column 3 Description of amount</th>
<th>Column 4 Rounding base for base amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>subsection 22(3)</td>
<td>disability pension (general)</td>
<td>0.10</td>
</tr>
</tbody>
</table>

Veterans’ Entitlements Act 1986 275
**Table A: Rates**

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Provision providing for base amount</th>
<th>Column 3 Description of amount</th>
<th>Column 4 Rounding base for base amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>subsection 23(4)</td>
<td>disability pension (intermediate)</td>
<td>0.10</td>
</tr>
<tr>
<td>3</td>
<td>subsection 24(4)</td>
<td>disability pension (special)</td>
<td>0.10</td>
</tr>
<tr>
<td>4</td>
<td>subsection 27(1)—table—items 1 to 6</td>
<td>disability pension (war-caused injury or disease)</td>
<td>0.10</td>
</tr>
<tr>
<td>5</td>
<td>subsection 27(1)—table—items 7 to 15</td>
<td>disability pension (war-caused injury or disease)</td>
<td>0.10</td>
</tr>
<tr>
<td>6</td>
<td>subsection 30(2)—all amounts</td>
<td>orphan pension</td>
<td>0.10</td>
</tr>
<tr>
<td>7</td>
<td>subsection 97(1)—table—column 2—all amounts</td>
<td>clothing allowance</td>
<td>0.10</td>
</tr>
<tr>
<td>8</td>
<td>subsection 98(1)—table—column 2—all amounts</td>
<td>attendant allowance</td>
<td>0.10</td>
</tr>
<tr>
<td>9</td>
<td>subsection 104(1)—table—column 2—all amounts</td>
<td>recreation transport allowance</td>
<td>0.10</td>
</tr>
<tr>
<td>10</td>
<td>subsection 118S(1)</td>
<td>telephone allowance</td>
<td>0.80</td>
</tr>
</tbody>
</table>

**198GA  1 July 2000 increase in rent assistance amounts**

(1) This section applies to an amount (the *base amount*) of rent assistance that is provided for in column 4 of the table in subpoint SCH6-C8(1).

Note: Amounts provided for in column 4 of the table in subpoint SCH6-C8 are amounts as altered from time to time under Division 18 of Part IIIB (CPI indexation).

(2) This Act has effect as if, on 1 July 2000, the base amount were replaced by an amount (the *replacement amount*) worked out by:
(a) calculating the amount (the \textit{provisional replacement amount}) that is 10% greater than the base amount; and
(b) rounding off the provisional replacement amount in accordance with section 198M, using the rounding base of $5.20.

198H Adjustment of amounts following 1 July 2000 increase

(1) If an amount (the \textit{affected amount}) is:
   (a) an amount described in the table in section 198G that is indexed under Division 18 of Part IIIB or under section 198, 198A, 198D or 198F; or
   (b) the amount described in section 198GA; or
   (c) a maximum basic rate provided for in point SCH6-B1; or
   (d) a pension supplement provided for in point SCH6-BA2; or
   (e) an amount provided for in paragraph 30(1)(a); or
   (f) a pension supplement provided for in subsection 30(1A); this section applies to modify the way the amount is indexed under that Division or section (as the case may be) for a limited period after 19 March 2001.

\begin{table}[h]
\centering
\begin{tabular}{|l|}
\hline
\textbf{Step 1.} Work out the current figure for the affected amount on 19 March 2001. \\
\textbf{Step 2.} Multiply the current figure by 0.02. The result is the \textit{provisional overall adjustment amount}. \\
\textbf{Step 3.} Round off the provisional overall adjustment amount in accordance with subsections (6) to (8), using: \\
\hline
\begin{itemize}
\item[(a)] for an affected amount described in the table in section 198G—the rounding base set out in that table for that amount; and \\
\item[(b)] for the amount described in section 198GA—the rounding base of $5.20; and \\
\end{itemize}
\end{tabular}
\caption{Method statement}
\end{table}
(c) for a maximum basic rate provided for in point SCH6-B1—the rounding base of $2.60; and

(d) for a pension supplement provided for in point SCH6-BA2—the rounding base of $0.10; and

(e) for an amount provided for in paragraph 30(1)(a)—the rounding base of $0.10; and

(f) for a pension supplement provided for in subsection 30(1A)—the rounding base of $0.10.

The result is the **overall adjustment amount**.

**Step 4.** For the first indexation day for an affected amount that occurs after 19 March 2001, subtract the current figure from the indexed amount (arrived at using the method statement in subsection 59C(2)). The result (which could be zero) is the **first indexation increase amount**.

**Step 5.** Compare the overall adjustment amount with the first indexation increase amount. If the overall adjustment amount is equal to or less than the first indexation increase amount, go to step 6. If the overall adjustment amount is greater than the first indexation increase amount, go to step 9.

**Step 6.** Subtract the overall adjustment amount from the indexed amount referred to in step 4.

**Step 7.** If the indexed amount is a pension supplement, round off the result in accordance with subsections (6) to (8) (as if the amount were a provisional overall adjustment amount), using the rounding base of $2.60.

**Step 8.** The result obtained under step 6 or step 7 (as the case requires) is taken to be the indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) and this section has no further application in relation to the affected amount.
Step 9. The indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) is taken to be equal to the current figure worked out under step 2 of the method statement in subsection 59C(2). Go to step 10.

Note: The indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) may be increased under section 59EA in certain cases. Similarly, if the indexed amount is a rate worked out under section 198, that amount may be increased under subsection 198(6) or (7) in certain cases.

Step 10. For the second indexation day for the affected amount that occurs after 19 March 2001, subtract the first indexation increase amount from the overall adjustment amount. The result is the remaining adjustment amount.

Step 11. Subtract the current figure from the indexed amount (arrived at using the method statement in subsection 59C(2)). The result (which could be zero) is the second indexation increase amount.

Step 12. Compare the remaining adjustment amount with the second indexation increase amount. If the remaining adjustment amount is equal to or less than the second indexation increase amount, go to step 13. If the remaining adjustment amount is greater than the second indexation increase amount, go to step 16.

Step 13. Subtract the remaining adjustment amount from the indexed amount.

Step 14. If the indexed amount is a pension supplement, round off the result in accordance with subsections (6) to (8) (as if the amount were a provisional overall adjustment amount), using the rounding base of $2.60.
Step 15. The result obtained under step 13 or step 14 (as the case requires) is taken to be the indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) and this section has no further application in relation to the affected amount.

Note: The indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) may be increased under section 59EA in certain cases. Similarly, if the indexed amount is a rate worked out under section 198, that amount may be increased under subsection 198(6) or (7) in certain cases.

Step 16. The indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) is taken to be equal to the current figure worked out under step 2 of the method statement in subsection 59C(2). Go to step 17.

Note: The indexed amount for the purposes of step 5 of the method statement in subsection 59C(2) may be increased under section 59EA in certain cases. Similarly, if the indexed amount is a rate worked out under section 198, that amount may be increased under subsection 198(6) or (7) in certain cases.

Step 17. Repeat the method set out in steps 10 to 16 in relation to the third indexation day and to subsequent indexation days until the remaining adjustment amount is zero.

Meaning of terms in method statement if amount is indexed under section 198, 198A, 198D or 198F

(2) For the purposes of applying the Method statement in this section to an affected amount indexed under section 198, 198A, 198D or 198F, the following expressions used in the Method statement have the meanings set out below:

**current figure**, as at a particular time, means the rate most recently substituted for a relevant rate under section 198, 198A, 198D or 198F (as the case may be) before that time.

**indexed amount** means the rate worked out under subsection (4) of section 198, 198A, 198D or 198F (as the case may be).
Modifications to method statement if amount is indexed under section 198, 198A, 198D or 198F

(3) If the affected amount is indexed under section 198, 198A, 198D or 198F, the following Steps in the Method statement in this section are to be read with the following modifications:

(a) Step 4—as if the words “(arrived at using the Method statement in subsection 59C(2))” were omitted;

(b) Step 8—as if the words “Step 5 of the Method statement in subsection 59C(2)” were omitted and the words “section 198, 198A, 198D or 198F (as the case may be)” were substituted;

(c) Step 9—as if the words “Step 5 of the Method statement in subsection 59C(2) is taken to be equal to the current figure worked out under Step 2 of the Method statement in subsection 59C(2)” were omitted and the words “section 198, 198A, 198D or 198F (as the case may be) is taken to be equal to the current figure” were substituted;

(d) Step 11—as if the words “arrived at using the Method statement in subsection 59C(2))” were omitted;

(e) Step 15—as if the words “Step 5 of the Method statement in subsection 59C(2)” were omitted and the words “section 198, 198A, 198D or 198F (as the case may be)” were substituted;

(f) Step 16—as if the words “Step 5 of the Method statement in subsection 59C(2) is taken to be equal to the current figure worked out under Step 2 of the Method statement in subsection 59C(2)” were omitted and the words “section 198, 198A, 198D or 198F (as the case may be) is taken to be equal to the current figure” were substituted.

Application of section 59EA

(4) Section 59EA does not apply at Step 4 or Step 11 of the Method statement in this section.

Application of subsections 198(6) and (7)

(5) Subsections 198(6) and (7) do not apply at Step 4 or Step 11 of the Method statement in this section.
Section 198J

Rounding of provisional overall adjustment amounts

(6) If a provisional overall adjustment amount is a multiple of the rounding base, the provisional overall adjustment amount is the overall adjustment amount.

(7) If a provisional overall adjustment amount is not a multiple of the rounding base, the overall adjustment amount is the provisional overall adjustment amount rounded up or down to the nearest multiple of the rounding base.

(8) If a provisional overall adjustment amount is not a multiple of the rounding base, but is a multiple of half the rounding base, the overall adjustment amount is the provisional overall adjustment amount rounded up to the nearest multiple of the rounding base.

198J 1 July 2000 increase in income test free area

(1) This section applies to an amount (the base amount) that is provided for in item 1, 2 or 3 of column 3 of the table in point SCH6-E6.

(2) This Act has effect as if, on 1 July 2000, the base amount were replaced by an amount (the replacement amount) worked out by:
   (a) calculating the amount (the provisional replacement amount) that is 2.5% greater than the base amount; and
   (b) rounding off the provisional replacement amount in accordance with section 198M using a rounding base of $52.00.

(3) For the purposes of subsection (1), the base amount is to include any indexation that occurs on 1 July 2000 under Division 18 of Part IIIB.

198K 1 July 2000 increase in assets test free area

(1) This section applies to an amount (the base amount) that is provided for in:
   (a) item 1 or 2 of column 3A of the table in point SCH6-F3; or
   (b) item 2 of column 3B of the table in point SCH6-F3.

(2) This Act has effect as if, on 1 July 2000, the base amount were replaced by an amount (the replacement amount) worked out by:
(a) calculating the amount (the **provisional replacement amount**) that is 2.5% greater than the base amount; and

(b) rounding off the provisional replacement amount in accordance with section 198M, using a rounding base of $250.00.

(3) For the purposes of subsection (1), the base amount is to include any indexation that occurs on 1 July 2000 under Division 18 of Part IIIB.

**198L  1 July 2000 increase in income/assets reduction limit**

(1) This section applies to an amount (the **base amount**) that is provided for in column 3 or 5 of the table in subsection 53E(2).

(2) This Act has effect as if, on 1 July 2000, the base amount were replaced by an amount (the **replacement amount**) worked out by:

(a) calculating the amount (the **provisional replacement amount**) that is 2.5% greater than the base amount; and

(b) rounding off the provisional replacement amount in accordance with section 198M, using a rounding base of $2.60.

**198M  Rounding off provisional replacement amounts**

(1) If a provisional replacement amount is a multiple of the rounding base, the provisional replacement amount is the replacement amount.

(2) If a provisional replacement amount is not a multiple of the rounding base, the replacement amount is the provisional replacement amount rounded up or down to the nearest multiple of the rounding base.

(3) If a provisional replacement amount is not a multiple of the rounding base, but is a multiple of half the rounding base, the replacement amount is the provisional replacement amount rounded up to the nearest multiple of the rounding base.
Part XII  Miscellaneous

Section 199

199 Appropriation

The Consolidated Revenue Fund is appropriated to the extent necessary for the payment of:

(a) pensions granted under Part II, III, IIIA or IV; and
(b) medical and other treatment services provided under Part V; and
(c) allowances and other pecuniary benefits granted under this Act, being allowances and benefits the rates or amounts of which, or the maximum rates or amounts of which, are fixed by this Act; and
(d) assistance or benefits granted under section 106 that are of a similar nature to pensions referred to in paragraph (a), to services referred to in paragraph (b) or to allowances or benefits referred to in paragraph (c); and
(e) payments made under Part VIIAB, and payments and benefits made under regulations made under that Part.

200 Commission may accept contributions

(1) The Commission may accept from a person contributions of money and other property made to it:

(a) for a purpose specified by the person, if application of the money or other property for that purpose is necessary or convenient to be done for, or in connection with, the performance of its functions or duties; or
(b) for application by the Commission, as it deems fit, for, or in connection with, the performance of its functions or duties.

(2) Contributions accepted by the Commission in accordance with subsection (1) may be applied:

(a) if the person making the contribution specified that he or she desired the contribution to be applied for a particular purpose, for the benefit of a particular class of persons or for the benefit of a particular institution maintained by the Commission—for the purpose so specified; or
(b) in any other case—by the Commission as it deems fit, for, or in connection with, the performance of its functions or duties.

(3) Subject to subsection (2), contributions accepted by the Commission in accordance with subsection (1) shall be dealt with...
as prescribed and, subject to the regulations (if any) prescribing the manner in which those contributions are to be dealt with, as determined by the Commission.

201 Commission may administer trusts

(1) Subject to this section, the Commission may be appointed, and may in its corporate name, act as, trustee:
   (a) under a will, settlement or other instrument creating a trust for the benefit of veterans, dependants of veterans, or other persons who were dependent on veterans; or
   (b) under the will of a veteran creating a trust for beneficiaries under that will.

(2) The Commission may decline to accept, or accept subject to such conditions as it deems fit, a trust or appointment to act as trustee.

(3) Where the Commission accepts appointment as trustee of a trust, the Commission:
   (a) has the same powers, duties and liabilities;
   (b) is entitled to the same rights and immunities; and
   (c) is subject to the same control by a court;

as a natural person would have, be entitled to and be subject to if appointed to be, and acting as, trustee of that trust.

(3A) Where the Commission is a trustee of 2 or more trusts under this section, the Commission may, subject to subsection (3B), for the purpose of investing the trust funds, pool the trust funds in respect of those trusts.

(3B) The Commission shall not pool trust funds under subsection (3A), or invest trust funds pooled under that subsection, in a way that prevents the trust funds held in respect of each trust being identified sufficiently to enable the Commission properly to perform its functions as trustee.

(3C) The Commission may:
   (a) make an arrangement with another person for the other person to manage the trust funds; and
   (b) for the purposes of such an arrangement, transfer the trust funds to the other person;
but the making of such an arrangement, or the transferring of the
trust funds, does not relieve the Commission of any duties or
liabilities as trustee.

(4) The regulations may make provision for and in relation to the
investment of moneys vested in the Commission as trustee pending
application in accordance with the trust or for the purpose of
deriving income for application in accordance with the trust.

(5) In this section:

trust funds, in relation to a trust of which the Commission is the
trustee, means moneys vested in the Commission as trustee.

veteran includes:
(a) a Commonwealth veteran; and
(b) an allied veteran; and
(c) an Australian mariner; and
(d) an allied mariner; and
(e) a member of the Forces, or a member of a Peacekeeping
Force, as defined by subsection 68(1).

202 Trustees for pensioners

(1) Where the Commission is satisfied that, having regard to the age,
infirmity, ill health or improvidence of a pensioner, it is desirable
that payment of a pension or allowance payable to the pensioner be
made to another person as trustee for the pensioner, the
Commission may, by instrument in writing, appoint a person to be
the trustee, or itself assume the office of trustee, of instalments of
the pension or allowance, upon trust to apply them as provided in
this section.

(2) Where an instrument is in force under subsection (1) in respect of a
pension or allowance payable to a pensioner:
(a) instalments of that pension or allowance shall be paid to that
trustee;
(b) the trust funds held by the trustee consisting of the
instalments of that pension or allowance received by the
trustee, investments representing those instalments and
interest received on those investments shall be dealt with by
the trustee, as follows:
(i) subject to subparagraph (ii) and to subsections 202A(2) and 202B(2), during the life of the pensioner—those trust funds may be applied for the benefit of the pensioner, or any member of the family, or person dependent on, the pensioner, as the trustee sees fit;

(ii) upon the termination of the trust during the life of the pensioner—the trust funds held upon the termination of the trust shall be paid or transferred, as the case requires, to the pensioner; and

(iii) upon the death of the pensioner before the termination of the trust—those trust funds shall be paid or transferred to the legal personal representative of the deceased pensioner as part of the estate of the deceased pensioner or, if there is no legal personal representative of the deceased pensioner and the Commission is satisfied that application will not be made for probate of the will or letters of administration of the estate of the deceased pensioner, to the person whom the Commission determines to be best entitled to them.

(4) The Commission may, at any time, by instrument in writing, revoke:

(a) an appointment of a person to be the trustee under subsection (1); or

(b) the assumption by it of the office of trustee under subsection (1);

and, where it does so, it may, in the same instrument, exercise, in relation to that pension or allowance, any of its powers under subsection (1).

(5) Where a person appointed to be a trustee under this section:

(a) dies; or

(b) resigns his or her office by instrument in writing delivered to the Commission;

the Commission may, within 3 months after the death or receipt of the instrument, as the case may be, exercise any of its powers under subsection (1) in relation to the pension or allowance concerned.

(6) Where the Commission exercises its powers under subsection (1) by appointing a person to be the trustee, or itself assuming the office of trustee, of instalments of a pension or allowance in the
circumstances referred to in subsection (4) or (5), the trust funds related to instalments of that pension or allowance held by the previous trustee shall, by force of this subsection, become vested in the new trustee.

(7) Where the Commission does not, in the circumstances referred to in subsection (4) or (5), exercise its powers under subsection (1) in relation to a pension or allowance, the trust related to the instalments of that pension or allowance shall be deemed to have been terminated.

202A Commission or public servant acting as trustee

(1) This section applies where, by virtue of an instrument in force under subsection 202(1), the trustee of instalments of the pension or allowance payable to a pensioner is:
   (a) the Commission; or
   (b) an officer of the Australian Public Service appointed as trustee in his or her capacity as such an officer.

(2) The trustee may:
   (a) accumulate so much of the instalments of the pension or allowance received by the trustee as is not required for application in accordance with subparagraph 202(2)(b)(i); and
   (b) invest any trust funds so accumulated in any manner prescribed by the regulations.

(3) Where the trustee is a trustee of instalments of pensions or allowances payable to 2 or more pensioners, the trustee may, subject to subsection (4), for the purposes of investing the trust funds as mentioned in paragraph (2)(b), pool the trust funds in respect of those pensioners.

(4) The trustee shall not pool trust funds under subsection (3), or invest trust funds pooled under that subsection, in a way that prevents the trust funds held in respect of each individual pensioner being identified sufficiently to enable paragraph 202(2)(b) to be complied with.

(5) The trustee may:
   (a) make an arrangement with another person for the other person to manage the trust funds; and
(b) for the purposes of such an arrangement, transfer the trust funds to the other person;
but the making of such an arrangement, or the transferring of the trust funds, does not relieve the trustee of any duties or liabilities as trustee.

(6) The Commission:
(a) may charge such fees, whether by way of commission or otherwise, as are determined in accordance with the regulations in respect of services rendered by the trustee; and
(b) is entitled to reasonable expenses incurred by the trustee in rendering services as trustee.

(7) The fees and expenses payable under subsection (6) in respect of services rendered by the trustee as trustee of a pension or allowance may be paid from the trust funds.

(8) In this section:

trust funds, in relation to the trustee of instalments of the pension or allowance payable to a pensioner, means the instalments of the pension or allowance received by the trustee, investments representing those instalments and returns received on those investments.

202B Other person acting as trustee

(1) This section applies where, by virtue of an instrument in force under subsection 202(1), the trustee of instalments of the pension or allowance payable to a pensioner is a person other than:
(a) the Commission; or
(b) an officer of the Australian Public Service appointed as trustee in his or her capacity as such an officer.

(2) The trustee may:
(a) accumulate so much of the instalments of the pension or allowance received by the trustee as is not required for application in accordance with subparagraph 202(2)(b)(i); and
(b) invest any trust funds so accumulated in any investments authorised for the investment of trust funds by the law of the State or Territory where the pensioner resides.
203 Arrangements with Governments of other countries

The Governor-General may enter into arrangements with the Government of a country that is, or has at any time been, a part of the Dominions of the Crown:

(a) by which the same assistance and benefits (not being pensions) may be granted in the Commonwealth to, or in relation to, persons who are, or have been, members of the naval, military or air forces of that country and have been employed on active service during a war to which this Act applies or in warlike operations in an area described in Schedule 2 during a period during which that area was an operational area as are granted in that country to, or in relation to, persons who have been members of the Defence Force of the Commonwealth and have rendered operational service during such a war or in that operational area, as the case may be; and

(b) the Commission may act as the agent of the Government of that country in the granting of assistance, benefits and pensions to, or in relation to, persons who are, or have been, members of the naval, military or air forces of that country.

205 Recovery of overpayments

(1) This section applies where:

(a) in consequence of a false statement or representation, or of a failure or omission to comply with a provision of this Act or of the Regulations, an amount has been paid by way of pension, allowance or other pecuniary benefit under this Act that would not have been paid but for the false statement or representation or but for the failure or omission; or

(b) an amount has been paid to a person under a prescribed educational scheme that was not lawfully so payable; or

(c) an amount has been purported to have been paid by way of pension, allowance or other pecuniary benefit under this Act, the Social Security Act, the Social Security Act 1947 or the Seamen’s War Pensions and Allowances Act 1940 that was not lawfully so payable; or

(ca) an amount has been paid by way of family assistance under the family assistance law that was not lawfully so payable; or
Section 205

(d) an amount has been paid, whether before or after the commencement of section 32 of the Veterans’ Affairs Legislation Amendment Act 1988, by way of pension, allowance or other pecuniary benefit under this Act, the Social Security Act, the Social Security Act 1947 or the Seamen’s War Pensions and Allowances Act 1940, and the payment of that amount has since become an unauthorised payment; or

(e) a person has incurred a debt under another Act (whether before or after the commencement of this paragraph) for failing to repay part or all of an amount that has been paid as described in paragraph (b); or

(f) a person has incurred a debt under the Social Security Act 1991 (whether before or after the commencement of this paragraph) for failing to repay part or all of an amount that has been paid as described in paragraph (c) or (d); or

(g) a person has received an advance payment of pension under Part II, III or IV or of income support supplement.

(1AB) If:

(a) a person has received an advance payment of a pension under Part II, III or IV or of an income support supplement; and

(b) the pension or income support supplement ceases to be payable to the person; and

(c) at the time when the pension or income support supplement ceases to be payable the person has not repaid the whole of the advance payment;

the amount that has not been repaid is a debt due to the Commonwealth.

(1A) Where this section applies, the recoverable amount shall, subject to section 205AA and unless the Commission takes action under paragraph 206(1)(a) or (b) in respect of that amount, be recovered in any one or more of the ways provided by subsections (1B), (1C) and (1D) and section 205A.

(1B) A recoverable amount may be recovered by deductions under subsection (2).

(1C) A recoverable amount, other than an excluded amount, may be recovered:
(a) by proceedings in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth; or
(b) partly by proceedings referred to in paragraph (a) and partly by deductions under subsection (2).

(1D) A recoverable amount may be recovered by instalments in accordance with a determination made under paragraph 206(1)(c).

(2) If:
(a) an amount (overpayment) has been paid as described in paragraph (1)(a), (b), (c), (ca) or (d) to a person; or
(b) a person has incurred a debt as described in paragraph (1)(e) or (f) or subsection (1AB);

an amount not exceeding the amount of the overpayment or debt may (whether or not proceedings have been instituted in a court to recover the overpayment or debt) be recovered by deductions:

(c) from a pension, allowance or pecuniary benefit payable to that person under this Act; or
(d) from any amount that, because of the person’s death is to be dealt with in accordance with sections 123A to 123E (inclusive); or
(e) with the consent of another person, from any pension, allowance or other pecuniary benefit payable to that other person under this Act;

but the total amount recovered, whether by deduction or by proceedings in a court or both, is not to exceed the amount of the overpayment or debt.

(3) Where deductions have commenced to be made under subsection (2) to recover an amount (in this subsection referred to as the overpayment) but the whole of the overpayment has not been recovered at the end of the period applicable under subsection 206(2), to the institution of proceedings to recover the overpayment, deductions may continue to be made under subsection (2) of this section until the balance of the overpayment has been recovered, notwithstanding that the period during which proceedings may be instituted to recover the balance of the overpayment has expired.
(7) The payment of an amount paid by way of pension, allowance or other pecuniary benefit becomes an unauthorised payment if:

(a) the decision pursuant to which the payment was made is:
   (i) set aside; or
   (ii) varied, so that a lesser amount, or no amount, is payable by way of pension, allowance or other pecuniary benefit;

(b) the setting aside or variation has effect from the date, or from a date earlier than the date, of the payment.

(8) In this section:

excluded amount means:

(a) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1)(b); or

(b) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1)(c) or (d) under the Social Security Act or the Social Security Act 1947; or

(ba) a recoverable amount arising by virtue of the payment of an amount as mentioned in paragraph (1)(ca); or

(c) a recoverable amount arising because of a debt incurred as mentioned in paragraph (1)(e) or (f) or subsection (1AB).

family assistance has the same meaning as in the A New Tax System (Family Assistance) Act 1999.

family assistance law has the same meaning as in the A New Tax System (Family Assistance) (Administration) Act 1999.

prescribed educational scheme means:

(a) the Aboriginal Overseas Study Assistance Scheme; or

(b) the ABSTUDY Scheme; or

(c) the Assistance for Isolated Children Scheme; or

(e) the English as a Second Language Allowance Scheme; or

(f) the Post-graduate Awards Scheme; or

(g) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(h) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(j) a scheme prescribed for the purposes of this definition.
Section 205AAA

205AAA  Notices in respect of debt

(1) If:

(a) a recoverable amount has not been wholly paid to the Commonwealth; and

(b) the right of the Commonwealth to recover the outstanding amount has not been waived under paragraph 206(1)(b);

the Commission must give the person to whom, or on whose account, the recoverable amount was paid a notice specifying:

(c) the date on which it was issued (the date of the notice); and

(d) the reason the outstanding amount was incurred, including a brief explanation of the circumstances that led to the outstanding amount being incurred; and

(e) the period to which the outstanding amount relates; and

(f) the outstanding amount at the date of the notice; and

(g) the day on which the outstanding amount is due and payable; and

(h) that a range of options is available for repayment of the outstanding amount; and

(i) the contact details for inquiries concerning the outstanding amount.

(2) The outstanding amount is due and payable on the 28th day after the date of the notice.
(3) If the recoverable amount has not been wholly paid and:
   (a) the person has failed to enter into an arrangement with the Commission to pay the outstanding amount; or
   (b) the person has entered into such an arrangement with the Commission but has failed to make a payment in accordance with the arrangement or, if the arrangement has been amended, in accordance with the arrangement as amended;
the Commission may give to the person a further notice specifying:
   (c) the date on which it was issued (the date of the further notice); and
   (d) the matters mentioned in paragraphs (1)(d) to (i); and
   (e) the effect of section 205AAB and 205AAD; and
   (f) how the interest under section 205AAB is to be calculated.

(4) A notice given under subsection (1) may also specify the matters mentioned in paragraphs (3)(e) and (f) and, if it does so, it is taken also to be a further notice given under subsection (3).

205AAB  Interest on debt

(1) This section applies to a person who:
   (a) receives a further notice given under subsection 205AAA(3); and
   (b) is not in receipt of a pension, allowance or other pecuniary benefit under this Act or the social security law.

(2) If:
   (a) the person has not entered into an arrangement with the Commission, on or before the final payment day, to pay the outstanding amount of the recoverable amount; and
   (b) the Commission has notified the person in writing that he or she will be required to pay interest under this subsection;
the person is liable to pay interest:
   (c) from and including the first day after the final payment day until the recoverable amount is wholly paid; and
   (d) at the penalty interest rate;
on the outstanding amount from time to time.

(2A) Under this section, a person is not liable to pay interest on an outstanding amount, or the proportion of an outstanding amount,
Section 205AAB

that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.

(3) If:
(a) the person has entered into an arrangement with the Commission to pay the outstanding amount of the recoverable amount; and
(b) the person has failed to make a particular payment in accordance with the arrangement; and
(c) the Commission has notified the person in writing that he or she will be required to pay interest under this subsection;
the person is liable to pay interest:
(d) if the failure occurs on or before the final payment day—from and including the first day after the final payment day until the recoverable amount is wholly paid; or
(e) if the failure occurs after the final payment day—from and including the day after the day in respect of which the last payment in respect of the recoverable amount was made until the recoverable amount is wholly paid;
at the penalty interest rate, on the outstanding amount from time to time.

(4) For the purposes of subsections (2) and (3), the final payment day is the later of the following days:
(a) the 90th day after the day on which the outstanding amount of the recoverable amount was due and payable;
(b) the 28th day after the date of the further notice given under subsection 205AAA(3).

(5) The interest payable on the outstanding amount of a recoverable amount is a debt due to the Commonwealth and may be recovered as if it were a recoverable amount for the purposes of section 205.

(6) If:
(a) interest is payable on the outstanding amount of a recoverable amount; and
(b) an amount is paid for the purpose of paying the recoverable amount and the interest;
the amount so paid is to be applied as follows:
(c) until the recoverable amount (excluding interest) is fully paid—in satisfaction of the outstanding amount of the recoverable amount that is due when the payment is made;
(d) after the recoverable amount (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the outstanding amount of the recoverable amount before the recoverable amount was fully paid.

205AAC Determination that interest not to be payable

(1) The Commission may determine that interest is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a recoverable amount.

(1A) The Commission may make a determination under this section in circumstances that include (but are not limited to) the Commission being satisfied that the person has a reasonable excuse for:
(a) failing to enter into an arrangement to pay the outstanding amount; or
(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(2) The determination may relate to a period before, or to a period that includes a period before, the making of a determination.

(3) The determination may be expressed to be subject to the person complying with one or more specified conditions.

(4) If the person has been notified under subsection 205AAB(2) or (3) that he or she will be required to pay interest under that subsection, the Commission must give written notice of the determination to the person as soon as practicable after the determination is made.

(5) Contravention of subsection (4) does not invalidate a determination.

(6) If:
(a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
(b) the person contravenes a condition or conditions without reasonable excuse;
Section 205AAD

the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.

(7) The Commission may cancel or vary the determination by written notice given to the person.

205AAD Administrative charge

(1) When a person first becomes liable to pay interest under section 205AAB in respect of the outstanding amount of a particular recoverable amount, the person is liable to pay an administrative charge of $50 in respect of the outstanding amount.

(2) An administrative charge payable by a person is a debt due to the Commonwealth and may be recovered as if it were a recoverable amount for the purposes of section 205.

205AAE Penalty interest rate

The penalty interest rate is the rate in force from time to time under section 1229B of the Social Security Act 1991.

205AA Recovery of overpayment by deduction from other pension, benefit or allowance

Where:

(a) a pension or allowance (in this section called the new pension or allowance) becomes payable, or becomes payable at an increased rate, to a person under this Act from a date (in this section called the operative date), being the date on which the decision to grant the new pension or allowance, or to increase the rate of the new pension or allowance, is made (in this section called the date of the decision), or a date before or after the date of the decision;

(b) the person has been paid before, or is paid on or after, the date of the decision:

(i) a pension or allowance under this Act or under the provisions of any other Act administered by the Minister; or

(ii) a pension, benefit or allowance under the Social Security Act or the Social Security Act 1947;
Section 205AB

205AB Recovery of certain amounts from financial institutions

(1) If:

(a) a payment or payments of a pension, benefit or other pecuniary amount are made to a financial institution for the credit of an account kept with the institution; and

(b) the Commission is satisfied that the payment or payments were intended to be made for the benefit of someone who was not the person or one of the persons in whose name or names the account was kept;

the Commission may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the payment or payments;

(d) the amount standing to the credit of the account when the notice is given to the institution.

(2) If:

(a) a payment or payments of a pension, benefit or other pecuniary amount that are intended for the benefit of a person are made to a financial institution for the credit of an account
Section 205AB

that was kept with the institution by the person or by the person and one or more other persons; and

(b) the person died before the payment or payments were made;

the Commission may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the payment or payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2A) As soon as possible after issuing a notice under subsection (2), the Commission must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person’s account; and

(b) the reasons for the recovery action.

(3) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

(4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

(5) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of a payment or payments of a pension, benefit or other pecuniary amount, any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the payment or payments.
205A Commission may take action in relation to money owing to pensioners

(1) Where a person (in this subsection called the pensioner) is indebted to the Commonwealth under or as a result of this Act, the Commission may, by notice in writing given to a person:
   (a) by whom any money is due or accruing or may become due to the pensioner;
   (b) who holds or may subsequently hold money for or on account of the pensioner;
   (c) who holds or may subsequently hold money on account of some other person for payment to the pensioner; or
   (d) who has authority from some other person to pay money to the pensioner;
require the person to whom the notice is given to pay to the Commonwealth:
   (e) an amount specified in the notice, not exceeding the amount of the debt due by the pensioner under or as a result of this Act or the amount of the money referred to in the preceding paragraph that is applicable; or
   (f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the pensioner until that debt is satisfied.

(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.

(3) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty:
   (a) in the case of a natural person—$2,000 or imprisonment for one year, or both; or
   (b) in the case of a body corporate—$10,000.

(3A) Subsection (3) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the Criminal Code.
(4) Where the Commission gives a notice to a person under subsection (1), the Commission shall give a copy of the notice to the pensioner concerned.

(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) shall be deemed to have made the payment under the authority of the pensioner concerned and of any other person concerned.

(6) Where:
   (a) a notice is given to a person under subsection (1) in respect of a debt due by a pensioner; and
   (b) an amount is paid by a person other than the first-mentioned person in reduction or in satisfaction of the debt;
the Commission shall notify the first-mentioned person accordingly, and the amount specified in the notice shall be deemed to be reduced by the amount so paid.

(7) Where, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money shall be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, notwithstanding that the condition has not been fulfilled.

(8) Where:
   (a) a notice is given to a person under subsection (1) in respect of a debt due by a pensioner; and
   (b) the person fails to comply with the notice to the extent that the person is capable of doing so;
an amount equal to:
   (c) so much of the amount required by the notice to be paid by the person as the person was able to pay; or
   (d) so much of the debt due by the pensioner at the time when the notice was given as remains due from time to time; whichever is the lesser, is a debt due by the person to the Commonwealth.

(9) Where:
   (a) a person is indebted to the Commonwealth under subsection (8) in respect of a debt due by a pensioner; and
   (b) the Commonwealth recovers:
Section 205B

(i) the whole or a part of the debt due by the person under subsection (8); or
(ii) the whole or a part of the debt due by the pensioner;

the debt due by the pensioner, and the debt due by the person, are reduced by the amount so recovered and the amount specified in the notice under subsection (1) shall be deemed to be reduced by the amount so recovered.

(10) A reference in this section to a person includes a reference to the Commonwealth, a State, a Territory and any authority of the Commonwealth or of a State or Territory.

205B Certain decisions of Commission reviewable under Social Security Act etc.

(1) This section applies to the following decisions of the Commission made in relation to an amount paid, or purported to have been paid, by way of pension, allowance or other pecuniary benefit under the Social Security Act or the Social Security Act 1947 (in this section called the social security amount):

(a) a decision to recover a recoverable amount in relation to the social security amount by deductions under subsection 205(2);
(b) a decision to give a notice to a person under section 205A in respect of a debt due to the Commonwealth in relation to the payment of the social security amount.

(2) A decision to which this section applies shall be taken for the purposes of the Social Security Act to be a decision made under that Act by an officer (other than the Secretary) of the Department administered by the Minister administering that Act.

206 Waiver etc. of debts

(1) The Commission may, on behalf of the Commonwealth, by determination in writing:

(a) write off debts arising under or as a result of this Act, or debts arising under or as a result of this Act that are included in a class of debts specified by the Minister by notice in writing published in the Gazette;
(b) waive or defer the right of the Commonwealth:
Section 208

(i) to recover from a person the whole or a part of a debt that is payable by the person under or as a result of this Act; or

(ii) to recover debts under or as a result of this Act included in a class of debts specified by the Minister by notice in writing published in the *Gazette*; or

(c) allow an amount that is payable by a person to the Commonwealth under or as a result of this Act to be paid in instalments.

(2) Proceedings for the recovery from a person of any amount that is payable by the person to the Commonwealth under or as a result of this Act are not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

208 Offences

(1) A person shall not:

(a) intentionally make, whether orally or in writing, a false or misleading statement:

(i) in connection with, or in support of, a claim or application made under this Act by that person or by another person for a pension, allowance or other benefit or for an increased pension, allowance or other benefit; or

(ii) with the intention of deceiving an officer doing duty in relation to this Act; or

(iii) with the intention of affecting the rate of a pension, allowance or other pecuniary benefit payable under this Act; or

(b) intentionally obtain:

(i) payment of a pension, allowance or other pecuniary benefit under this Act; or

(ii) payment of an instalment of such a pension, allowance or benefit;

knowing that the payment is:

(iii) not payable at all; or

(iv) payable only in part; or
(c) intentionally obtain payment of a pension, allowance or other pecuniary benefit under this Act, or of an instalment of such a pension, allowance or benefit, by means of a false or misleading statement or of impersonation or a fraudulent device; or

(d) intentionally obtain a benefit (not being a pension, allowance or pecuniary benefit) under this Act by means of a false or misleading statement or of impersonation or a fraudulent device; or

(e) intentionally make or present to the Commission or an officer a statement or document that is false in a material particular.

(2) A person shall not forge the signature of another person on a claim or application made under this Act for a pension, allowance or other benefit or for an increased pension, allowance or other pecuniary benefit, or on any other document connected with, or in support of, such a claim or application, or connected with payment of a pension, allowance or other pecuniary benefit under this Act or the provision of any other benefit under this Act.

Penalty: $1,000 or imprisonment for 6 months, or both.

(3) A person shall not sign his or her name on a document intended to be presented to an officer for the purposes of this Act as his or her signature to the document unless the document has been completely filled in so as to be ready to be presented to an officer without further addition.

Penalty: $1,000 or imprisonment for 6 months, or both.

(4) A person to whom assistance by way of a gift or loan of goods has been granted under this Act for any purpose shall not, without having first obtained the consent of the Commission:

(a) use the goods for any other purpose; or

(b) sell or otherwise dispose of, or pledge, mortgage or deposit by way of security any of those goods.

Penalty: $1,000 or imprisonment for 6 months, or both.

(4A) An offence under subsection (3) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.
Section 209

(5) An offence against subsection (1) is an indictable offence and, subject to subsection (6), is punishable, on conviction, by a fine not exceeding $2,000 or imprisonment for a period not exceeding 12 months, or both.

(6) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(7) Where, in accordance with subsection (6), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding $1,000 or imprisonment for a period not exceeding 6 months, or both.

209 Multiple offences

(1) Charges against the same person for any number of offences against section 208 may be joined in one complaint or information if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.

(2) Where 2 or more charges are included in the same complaint or information, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is convicted of more than one offence against section 208, the court may, if it thinks fit, impose one penalty in respect of all the offences of which the person is convicted, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.
210 Judicial notice to be taken of certain matters

Judicial notice of signature

(1) All courts must take judicial notice of a signature that purports to be attached or appended to any official document if it is the signature of a person who:
   (a) holds or has held the office of Secretary; or
   (b) is or was an officer of the Department.

Judicial notice that person holds office

(2) If the signature of a person referred to in subsection (1) purports to be attached or appended to any official document, all courts must take judicial notice of the fact that the person:
   (a) holds or has held the office of Secretary; or
   (b) is or was an officer of the Department.

210A Evidence

(1) If the signature of any person who:
   (a) holds or has held the office of Secretary; or
   (b) is or was an officer of the Department;
   purports to be attached or appended to any official document, the document must be received in all courts as *prima facie* evidence of the facts and statements contained in it.

(2) A statement in writing, signed by a person referred to in subsection (1), that a person is or was receiving a pension, allowance or other benefit under this Act on a certain date or at a certain rate must be received in all courts as *prima facie* evidence that the person is or was receiving the pension, allowance or benefit on the date or at the rate stated.

(3) If a written statement signed by a person referred to in subsection (1) is to the effect that, on a specified day, a specified person received a specified amount by way of pension bonus under this Act, the statement is prima facie evidence of the matters in the statement.
211 Order for repayment of pension etc.

(1) Where:
   (a) a person is convicted of an offence against subsection 208(1) or (2); or
   (b) a person is charged before a court with an offence against subsection 208(1) or (2) but the Court, being satisfied that the charge has been proved, dismisses the charge or discharges the person without proceeding to a conviction;

   the court may (in the case of a person convicted of the offence, in addition to imposing a penalty in respect of that offence) order the person to repay to the Commonwealth an amount equal to the amount paid by way of pension, allowance or other pecuniary benefit under this Act in consequence of the act, failure or omission in respect of which the person was charged with the offence.

(2) For the purposes of subsection (1), a certificate, under the hand of the Secretary, that an amount specified in the certificate is the amount that has been paid to a person by way of pension, allowance or other pecuniary benefit in consequence of an act, failure or omission specified in the certificate is prima facie evidence of the matters specified in the certificate.

(3) Where:
   (a) the Court makes an order under subsection (1) for the payment to the Commonwealth of an amount of money; and
   (b) the clerk, or other appropriate officer, of the Court signs a certificate specifying:
      (i) the amount ordered to be paid to the Commonwealth; and
      (ii) the person by whom the amount is to be paid; and
   (c) the certificate is filed in a court (which may be the Court) having civil jurisdiction to the extent of the amount to be paid;

   the certificate is enforceable in all respects as a final judgment of the court in which the certificate is filed.

(4) In spite of anything in this Act or any other law, a person is not to be imprisoned in respect of a failure to pay an amount payable to the Commonwealth under this section.
(5) Where:
   (a) a person is convicted of an offence against subsection 208(1) or (2); and
   (b) the court orders him or her to pay an amount of more than $30,000 to the Commonwealth under subsection (1); and
   (c) the offence involved a scheme to defraud the Commonwealth;

the court may, on application by the Commonwealth, order the person to pay to the Commonwealth interest on the amount mentioned in paragraph (b), at the rate of 20% per annum, in respect of the period or periods in respect of which the person was paid pension, allowance or other benefit as mentioned in subsection (1).

(6) In this section:

scheme to defraud the Commonwealth includes either of the following:
   (a) a scheme involving the making of a series of false or misleading statements;
   (b) a scheme involving obtaining a series of payments of pension, allowance or other benefit or instalments of pension, allowance or other benefit under this Act (being payments that were not payable) by means of impersonation or a fraudulent device.

### 212 Delegation by Minister

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate:

   (a) to a commissioner, or to a person appointed or engaged under the Public Service Act 1999, all or any of the Minister’s powers under this Act, other than this power of delegation; and

   (b) to the Principal Member of the Board, all or any of the Minister’s powers under section 161 or 162 of this Act.

(2) A power delegated under this section, where exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.
Section 213

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

(4) In this section, commissioner includes an acting commissioner.

213 Delegation by Commission

(1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a person referred to in subsection (4) all or any of its powers under this Act, under the regulations or under any other legislative instrument made under this Act, under the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 or under any of the provisions of an Act repealed by subsection 3(1) of this Act in their application, notwithstanding their repeal, by virtue of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Commission.

(3) A delegation of a power under this section does not prevent the exercise of a power by the Commission.

(4) The persons to whom a power under this Act may be delegated under subsection (1) are any of the following:
   (a) a commissioner or an acting commissioner;
   (b) an APS employee;
   (c) a public authority established by a law of the Commonwealth;
   (d) an officer or employee of a public authority referred to in paragraph (c);
   (e) a person who performs services on behalf of the Commission under a contract made between the person and:
      (i) the Commission; or
      (ii) the Commonwealth;
   (f) an employee of a person referred to in paragraph (e).
214 Delegation by Secretary

(1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Secretary, delegate to a person referred to in subsection (4), all or any of the Secretary’s powers under this Act or under the regulations or under any other legislative instrument made under this Act, other than this power of delegation.

(2) A power delegated under this section, when exercised by a delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Secretary.

(3) A delegation under this section does not prevent the exercise of a power by the Secretary.

(4) The persons to whom a power under this Act may be delegated under subsection (1) are any of the following:
   (a) an APS employee;
   (b) a public authority established by a law of the Commonwealth;
   (c) an officer or employee of a public authority referred to in paragraph (b);
   (d) a person who performs services on behalf of the Department under a contract made between the person and the Commonwealth;
   (e) an employee of a person referred to in paragraph (d).

214A Telephone access to offices at cheap rate

The Minister shall direct the Secretary to make provision for the development of a service which will enable a person to make a telephone call to an office that is under the general control of the Secretary, at no greater cost than the cost of a local telephone call.

215 Annual report

(1) The Commission shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the operation of this Act during the year that ended on that 30 June.

(2) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the
Section 216

Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) The first report to be prepared and furnished under subsection (1) shall be a report:
   (a) on the administration and operation of the *Repatriation Act 1920* in respect of the period that commenced on 1 July 1985 and ended on the day immediately preceding the date fixed under section 2; and
   (b) on the operation of this Act in respect of the period that commenced on the date fixed under section 2 and ends on 30 June 1986.

(4) The Principal Member of the Board shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the operations of the Board during the year that ended on that 30 June.

(5) The Minister shall cause a copy of a report furnished to the Minister under subsection (4) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(6) The first report to be prepared and furnished to the Minister under subsection (4) shall be a report on the operations of the Board:
   (a) under the *Repatriation Act 1920* in respect of the period that commenced on 1 July 1985 and ended on the day immediately preceding the date fixed under section 2; and
   (b) under this Act in respect of the period that commenced on the date fixed under section 2 and ends on 30 June 1986.

### 216 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not exceeding a fine of $500 for a contravention of the regulations.
Veterans’ Entitlements Act 1986

Act No. 27 of 1986 as amended

This compilation was prepared on 10 October 2006 taking into account amendments up to Act No. 108 of 2006

Volume 4 includes:
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- Schedules 1, 2, 2A and 3–6
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<td>3.</td>
<td>The area comprising the territories of the countries then known as the Federation of Malaya and the Colony of Singapore, respectively.</td>
<td></td>
<td>The period from and including 1 September 1957 to and including 31 July 1960</td>
</tr>
<tr>
<td>4.</td>
<td>Vietnam (Southern Zone).</td>
<td></td>
<td>The period from and including 31 July 1962 to and including 11 January 1973</td>
</tr>
<tr>
<td>5.</td>
<td>All that part of the Federation of Malaya contained within the area bounded by a line commencing at the intersection of the western shore of the Federation of Malaya at high-water mark and the boundary between the States of Perlis and Kedah; thence proceeding generally north-easterly along that boundary to its intersection with the railway line from Arau to Penang Tunggal; thence following that railway line generally southerly to its intersection with the northern boundary between the States of Penang and Kedah; thence proceeding along the boundary between those States generally easterly, southerly and westerly to the intersection of the boundaries of the States of Penang, Kedah and Perak; thence following the boundary between the States of Penang and Perak to its intersection with the railway line from Penang Tunggal to Taiping; thence</td>
<td></td>
<td>The period from and including 1 August 1960 to and including 16 August 1964</td>
</tr>
</tbody>
</table>

6. *Veterans’ Entitlements Act 1986*
<table>
<thead>
<tr>
<th>Description of operational areas</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>following that railway line generally southerly, easterly and southerly to its intersection with the parallel 4 degrees 51 minutes north latitude; thence proceeding due south in a straight line to the intersection of that line with the parallel 4 degrees 30 minutes north latitude; thence proceeding along that parallel to its intersection with the eastern bank of the Perak River; thence following that bank of that river to its intersection with the parallel 4 degrees 47 minutes north latitude; thence proceeding in a straight line to the intersection of the boundaries of the States of Perak, Kelantan and Pahang; thence proceeding along the boundary between the States of Kelantan and Pahang to its intersection with the meridian 101 degrees 48 minutes east longitude; thence proceeding in a straight line to the intersection of the eastern bank of the Raya River with the eastern bank of the Nenggiri River; thence following that bank of that river to its intersection with the western bank of the Galas River; thence proceeding in a straight line due east to the eastern bank of that river; thence following that bank of that river and the eastern bank of the Kelantan River to its intersection with the eastern shore of the Federation of Malaya at high-water mark; thence following that shore at high-water mark to its intersection with the boundary between the Federation of Malaya and Thailand; thence proceeding along that boundary to the western shore of the Federation of Malaya and Thailand at high-water mark; thence following that shore of the Federation of Malaya at high-water mark to the point of commencement.</td>
<td></td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
</tr>
<tr>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td><strong>Description of operational areas</strong></td>
<td><strong>Period</strong></td>
</tr>
<tr>
<td>6. All that area of land and waters (other than islands and waters forming part of the territory of the Republic of the Philippines) bounded by a line commencing at the intersection of the northern shore of Borneo at high-water mark with the boundary between Kalimantan and Sarawak; thence proceeding generally south-easterly, easterly and northerly along that boundary to its junction with the boundary between Kalimantan and Sabah; thence proceeding generally easterly along that boundary to its intersection with the eastern shore of Borneo at high-water mark; thence proceeding in a straight line easterly to the intersection of the western shore of the island of Sebatik at high-water mark with the boundary between that part of that island that forms part of Sabah and that part of that island that forms part of Kalimantan; thence proceeding generally easterly along that boundary to its intersection with the eastern shore of the island of Sebatik at high-water mark; thence proceeding in a straight line easterly to a point 80.5 kilometres east (true) of the intersection of the eastern shore of Borneo at high-water mark with the boundary between Kalimantan and Sabah; thence proceeding generally northerly and south-westerly parallel to and at a distance of 80.5 kilometres from the eastern and northern shores, respectively, of Borneo at high-water mark to a point 80.5 kilometres north (true) of the point of commencement; thence proceeding in a straight line southerly to the point of commencement.</td>
<td>The period from and including 8 December 1962 to and including 16 August 1964</td>
</tr>
<tr>
<td>7. The territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries.</td>
<td>The period from and including 17 August 1964 to and including 30 September 1967</td>
</tr>
</tbody>
</table>

8 *Veterans’ Entitlements Act 1986*
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. All that area of land and waters (other than land or waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam (Southern Zone) with the shore of Vietnam (Southern Zone) at high-water mark; thence proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from, the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; thence proceeding along that parallel westerly to its intersection with the shore of Vietnam at high-water mark; thence following the shore of Vietnam at high-water mark to the point of commencement.</td>
<td>The period from and including 31 July 1962 to and including 11 January 1973</td>
</tr>
<tr>
<td>9. The area comprising the United Nations Mandated Territory of Namibia and the area of land extending 400 kilometres outwards from the borders of Namibia into the adjoining countries of Angola, Zambia, Zimbabwe, Botswana and South Africa (including Walvis Bay).</td>
<td>The period from and including 18 February 1989 to and including 10 April 1990</td>
</tr>
<tr>
<td>Column 1 Description of operational areas</td>
<td>Column 2 Period</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-----------------</td>
</tr>
</tbody>
</table>
| 10. The area comprising the following countries and sea areas:  
  (i) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Island of Cyprus;  
  (ii) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;  
  (iii) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next:  
    (A) 20° 30’ N 70° 40’ E;  
    (B) 14° 30’ N 67° 35’ E;  
    (C) 8° 30’ N 60° 00’ E;  
    (D) 6° 20’ N 53° 52’ E;  
    (E) 5° 48’ N 49° 02’ E;  
  (iv) the sea area contained within the Suez Canal and the Mediterranean Sea east of 30° E. | The period from and including 2 August 1990 to and including 9 June 1991 |
| 11. The area comprising Iraq and Kuwait | The period from and including 23 February 1991 to and including 9 June 1991 |
| 12. The area comprising Cambodia and the areas in Laos and Thailand that are not more than 50 kilometres from the border with Cambodia | The period from and including 20 October 1991 to and including 7 October 1993 |
| 13. The area comprising the former Yugoslavia | The period from and including 12 January 1992 to and including 24 January 1997 |
| 14. The area comprising Somalia | The period from and including 20 October 1992 to and including 30 November 1994 |

10 Veterans’ Entitlements Act 1986
## Schedule 2A—Classes of permanent visas

Paragraph 5C(4)(c)

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Class description</th>
<th>Relevant item in Schedule 1 to Migration Regulations</th>
</tr>
</thead>
<tbody>
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<td>1.</td>
<td>Burmese in Burma (Special Assistance) (Class AB)</td>
<td>1102</td>
</tr>
<tr>
<td>2.</td>
<td>Burmese in Thailand (Special Assistance) (Class AC)</td>
<td>1103</td>
</tr>
<tr>
<td>3.</td>
<td>Cambodian (Special Assistance) (Class AE)</td>
<td>1105</td>
</tr>
<tr>
<td>4.</td>
<td>Camp Clearance (Migrant) (Class AF)</td>
<td>1106</td>
</tr>
<tr>
<td>5.</td>
<td>Citizens of the Former Yugoslavia (Special Assistance) (Class AI)</td>
<td>1109</td>
</tr>
<tr>
<td>6.</td>
<td>East Timorese In Portugal, Macau and Mozambique (Special Assistance) (Class AM)</td>
<td>1113</td>
</tr>
<tr>
<td>7.</td>
<td>Minorities of Former USSR (Special Assistance) (Class AV)</td>
<td>1122</td>
</tr>
<tr>
<td>8.</td>
<td>Refugee and Humanitarian (Migrant) (Class BA)</td>
<td>1127</td>
</tr>
<tr>
<td>8A.</td>
<td>Sri Lankan (Special Assistance) (Class BF)</td>
<td>1129A</td>
</tr>
<tr>
<td>9.</td>
<td>Sudanese (Special Assistance) (Class BD)</td>
<td>1130</td>
</tr>
<tr>
<td>10.</td>
<td>Territorial Asylum (Residence) (Class BE)</td>
<td>1131</td>
</tr>
</tbody>
</table>
## Schedule 3—Peacekeeping forces

Note: See subsections 68(1) and (3).

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Peacekeeping Force</th>
<th>Initial date as a Peacekeeping Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Security Council Commission of Investigation on the Balkans</td>
<td>29 January 1947</td>
</tr>
<tr>
<td>2</td>
<td>Committee of Good Offices</td>
<td>25 August 1947</td>
</tr>
<tr>
<td>3</td>
<td>United Nations Special Commission on the Balkans</td>
<td>26 November 1947</td>
</tr>
<tr>
<td>4</td>
<td>United Nations Commission on Korea</td>
<td>1 January 1949</td>
</tr>
<tr>
<td>5</td>
<td>United Nations Military Observer Group in India and Pakistan</td>
<td>1 January 1949</td>
</tr>
<tr>
<td>7</td>
<td>United Nations Truce Supervision Organisation</td>
<td>1 June 1956</td>
</tr>
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<td>8</td>
<td>United Nations Operations in the Congo</td>
<td>1 August 1960</td>
</tr>
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<td>9</td>
<td>United Nations Yemen Observation Mission</td>
<td>1 January 1963</td>
</tr>
<tr>
<td>10</td>
<td>United Nations Force in Cyprus</td>
<td>14 May 1964</td>
</tr>
<tr>
<td>11</td>
<td>United Nations India-Pakistan Observation Mission</td>
<td>20 September 1965</td>
</tr>
<tr>
<td>12</td>
<td>United Nations Disengagement Observer Force</td>
<td>1 January 1974</td>
</tr>
<tr>
<td>13</td>
<td>United Nations Emergency Force Two</td>
<td>1 July 1976</td>
</tr>
<tr>
<td>14</td>
<td>United Nations Interim Force in Lebanon</td>
<td>23 March 1978</td>
</tr>
<tr>
<td>15</td>
<td>Commonwealth Monitoring Force in Zimbabwe</td>
<td>24 December 1979</td>
</tr>
<tr>
<td>16</td>
<td>Sinai Multinational Force and Observers established by the Protocol between the Arab Republic of Egypt and the State of Israel dated 3 August 1981</td>
<td>18 February 1982</td>
</tr>
<tr>
<td>17</td>
<td>United Nations Iran/Iraq Military Observer Group</td>
<td>11 August 1988</td>
</tr>
<tr>
<td>18</td>
<td>United Nations Border Relief Operation in Cambodia</td>
<td>1 February 1989</td>
</tr>
<tr>
<td>19</td>
<td>United Nations Transition Assistance Group Namibia</td>
<td>18 February 1989</td>
</tr>
</tbody>
</table>

*Veterans’ Entitlements Act 1986*
<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Peacekeeping Force</th>
<th>Initial date as a Peacekeeping Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>The Australian Police Contingent of the United Nations Operation in Mozambique</td>
<td>27 March 1994</td>
</tr>
<tr>
<td>23</td>
<td>Australian Defence Support to a Pacific Peacekeeping Force for a Bougainville Peace Conference</td>
<td>21 September 1994</td>
</tr>
<tr>
<td>24</td>
<td>The Australian Police Contingent of the Multi-National Force in Haiti</td>
<td>10 October 1994</td>
</tr>
</tbody>
</table>
OATH

I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of Principal Member (or Senior Member or member) of the Veterans’ Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will. So help me, God.

AFFIRMATION

I, , do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of Principal Member (or Senior Member or member) of the Veterans’ Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will.
Schedule 5—Savings and transitional provisions

Section 197A

Part 1—General

1 Service pensions—changes introduced on 1 October 1995

(1) Despite Schedule 6, if:

(a) a person was receiving a service pension immediately before 1 October 1995; and
(b) the person was a member of a couple immediately before 1 October 1995; and
(c) the person’s partner was not, immediately before 1 October 1995, receiving a social security pension, a service pension or an income support supplement; and
(d) the amount that was the person’s maximum basic rate in respect of the service pension for the last payment period before 1 October 1995 exceeds the amount of the person’s maximum basic rate on 1 October 1995; and
(e) the amount of that excess exceeds, in relation to a particular period, the sum of:

(i) the increased amounts (if any) for the original components of the rate of service pension payable to the person in respect of the payment period; and
(ii) the new components (if any) of the rate of service pension payable to the person in respect of the payment period; and
(iii) the increased amounts (if any) for those new components; and

(f) this clause has not ceased to apply to the person because of subclause (2);

in calculating the amount of service pension payable to the person in respect of the payment period, an amount equal to the difference between:

(g) the amount of the excess referred to in paragraph (d); and
(h) the sum referred to in paragraph (e);
Clause 3

is to be added to the person’s maximum basic rate.

(2) This clause ceases to apply if:
(a) the person ceases to receive that service pension; or
(b) the person ceases to be a member of that couple; or
(c) the person’s partner receives a social security pension, a service pension or an income support supplement.

(3) In this clause:

*increased amount*, in relation to an original component or a new component, means the amount (if any) by which the amount of the component exceeds the lowest amount of the component payable in any payment period ending after 1 October 1995.

*original component* means:
(a) a person’s maximum basic rate that was used in calculating the person’s rate of service pension for the last payment period before 1 October 1995; or
(b) an additional amount that was added to the person’s maximum basic rate in calculating the person’s rate of service pension for that payment period.

*new component* means:
(a) any additional amount that, in calculating a person’s rate of service pension, is added to the person’s maximum basic rate, being an additional amount that would not have been so added in respect of the last payment period before 1 October 1995; or
(b) any amount by which a person’s rate of service pension has increased as a result of a change in the person’s circumstances on or after 1 October 1995.

*payment period* means the period in respect of which a payment of service pension is payable.

3 Rent assistance—boarders and lodgers (changes introduced on 12 June 1989)

(1) If:
(a) immediately before 12 June 1989:
(i) a person was receiving a service pension under or because of this Act as in force at that time; and

(ii) the person’s service pension rate included an amount by way of rent assistance in respect of payments made for board and lodging; and

(b) at all times since 12 June 1989, the person:

(i) has been receiving a pension under this Act or a social security payment under the Social Security Act; and

(ii) has been a boarder; and

(c) immediately before the commencement of this clause, subsection 30(1) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988 applied to the person;

the amount by way of rent assistance included in the person’s pension rate is not to fall below the floor amount.

(2) If:

(a) a decision was made under this Act on or after 12 June 1989 that a person was entitled to rent assistance under this Act in respect of a period; and

(b) the period started before 12 June 1989; and

(c) the period continued until at least 11 June 1989;

the person is taken, for the purposes of this clause, to have been receiving rent assistance under this Act immediately before 12 June 1989.

(3) If:

(a) immediately before 12 June 1989, a person was receiving rent assistance under or because of the Social Security Act 1947 in respect of payments for board and lodging; and

(b) on or after 12 June 1989, the person became or becomes entitled to be paid a pension under this Act; and

(c) subsection 18(1) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988 had not ceased to apply to the person until the person became entitled to the pension; and

(d) at all times since the person became entitled to the pension the person:

(i) has been receiving a pension; and

(ii) has been a boarder; and
Clause 3

(e) either of the following subparagraphs applies to the person:
   (i) if the person became entitled to the pension before the
       commencement of this clause, subsection 30(3) of the
       Social Security and Veterans’ Affairs Legislation
       Amendment Act 1988 applied to the person immediately
       before that commencement;
   (ii) if the person becomes entitled to the pension after that
        commencement—that subsection would have applied to
        the person immediately before he or she became so
        entitled if it had not been repealed;

the amount of rent assistance included in the person’s pension rate
is not to fall below the person’s floor amount.

(4) Despite subclause (1) or (3), the rate of rent assistance payable to a
person to whom that subclause applies is reduced by the sum of
any indexation or adjustment increases occurring after the
commencement of this clause to the person’s pension rate.

(5) Subclause (1) or (3) ceases to apply to a person if the person’s
pension rate that is applicable because of that subclause is equal to
or less than the rate that would be the person’s pension rate if that
subclause had not applied to the person.

(6) If subclause (1) or (3) ceases to apply to a person, it does not again
apply to the person.

(7) In this clause:

boarder means a person who ordinarily lives on premises where
the person is provided with board and lodging.

floor amount, in relation to a person, means the amount by way of
rent assistance that would be included in the person’s pension rate
if:

   (a) that amount were worked out, subject to paragraph (b), under
       this Act as in force immediately before 12 June 1989; and
   (b) this Act as in force at that time were modified as follows:

       (i) the following paragraph applied instead of paragraph
           55(1)(a):
           “(a) the person pays, or is liable to pay, rent, other than
           government rent, at a rate exceeding $1,040 per
           year;”;

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(ii) “the amount set out in paragraph (1)(a)” were substituted for “$780” in subparagraph 55(3)(a)(i); and
(c) any increase in the amounts being paid by the person from time to time for board and lodging above the level being paid immediately before 11 June 1989 were disregarded.

indexation or adjustment increase means an increase resulting from the operation of Division 18 of Part IIIIB.

payments for board and lodging includes payments for accommodation and other services that are provided to a person who is residing in a nursing home.

4 Rent assistance—retirement village residents (changes introduced on 12 June 1989)

(1) If:
(a) immediately before 3 November 1988:
(i) a person was receiving a service pension; and
(ii) the person’s pension rate included an amount by way of rent assistance under or because of this Act as in force at that time; and
(b) at all times since 3 November 1988:
(i) the person has been entitled to a pension under this Act or a social security payment under the Social Security Act; and
(ii) the person’s principal home has been in a retirement village; and
(c) immediately before the commencement of this clause, subsection 31(1) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988 applied to the person;
the person is taken not to be an ineligible property owner or an excluded property owner for the purposes of this Act.

(2) If:
(a) immediately after 12 June 1989:
(i) a person was receiving a social security payment under the Social Security Act; and
(ii) the person’s pension, benefit or allowance rate included an amount by way of rent assistance because of the
Clause 4

operation of subsection 19(1) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988; and

(b) after 12 June 1989, the person began or begins to receive a pension; and

(c) subsection 19(1) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988 applied to the person at all times between 12 June 1989 and the person’s beginning to receive the pension; and

(d) at all times since the person began to receive the pension:

(i) the person has continued to receive a pension; and

(ii) the person’s principal home has continued to be in the retirement village; and

(e) either of the following subparagraphs applies to the person:

(i) if the person began to receive the pension before the commencement of this clause, subsection 31(2) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1988 applied to the person immediately before that commencement;

(ii) if the person begins to receive the pension after that commencement—that subsection would have applied to the person immediately before he or she began to receive the pension if it had not been repealed;

the person is taken not to be an ineligible property owner or an excluded property owner for the purposes of this Act.

(3) Despite subclause (1) or (2), the rate of rent assistance or residential care allowance payable to a person to whom that subclause applies (whether that rate is required to be worked out under this Act (other than this Schedule) or is required to be worked out under subclause (4) of clause 4) is reduced by the sum of any indexation or adjustment increases occurring after the commencement of this clause to the person’s pension rate.

(4) If, because of subclause (3), the rate of rent assistance or residential care allowance payable to a person to whom subclause (1) or (2) applies is reduced to nil, subclause (1) or (2), as the case may be, ceases to apply to the person.

(5) If subclause (1) or (2) ceases to apply to a person, that subclause does not apply to the person again.
(6) In this clause:

*indexation or adjustment increase* means an increase resulting from the operation of Division 18 of Part IIIB.

5 Rent assistance (changes introduced on 20 March 1993)

(1) This clause applies to a person if:

(a) immediately before 20 March 1993:

(i) the person was receiving a service pension; and

(ii) the person’s pension included an amount by way of rent assistance; and

(b) immediately before the commencement of this clause, section 111 of the *Veterans’ Affairs Legislation Amendment Act (No. 2) 1992* applied to the person; and

(c) this subclause continues to apply to the person.

(2) If:

(a) a decision was made on or after 20 March 1993 under this Act that a person was entitled to rent assistance in respect of a period; and

(b) the period started before 20 March 1993; and

(c) the period continued until at least 19 March 1993;

the person is taken, for the purposes of this clause, to have been receiving rent assistance under this Act immediately before 20 March 1993.

(3) This clause applies to a person if:

(a) immediately before 20 March 1993, the person was receiving rent assistance under the Social Security Act; and

(b) on or after that date, the person became or becomes entitled to be paid a pension; and

(c) either of the following subparagraphs applies to the person:

(i) if the person became entitled to be paid the pension before the commencement of this clause—section 111 of the *Veterans’ Affairs Legislation Amendment Act (No. 2) 1992* applied to the person immediately before that commencement;

(ii) if the person becomes entitled to be paid the pension after that commencement—that section would have
Clause 5

applied to the person immediately before he or she became so entitled if it had not been repealed; and
(d) this subclause continues to apply to the person.

(4) Subject to subclauses (7), (8), (9), (10) and (11), if subclause (1) or (3) applies to a person, the amount by way of rent assistance to be used to calculate the person’s pension rate is the amount (the floor amount) by way of rent assistance that would be included in the person’s pension rate if:
(a) the person’s pension rate were neither income reduced nor assets reduced; and
(b) the amount of rent assistance were calculated under this Act as in force immediately before 20 March 1993.

(5) Subclause (1) or (3) ceases to apply to a person if:
(a) the person no longer receives a service pension, an income support supplement, or a social security pension under the Social Security Act; or
(b) the person ceases to be eligible for rent assistance; or
(c) the pension rate that is applicable to the person because of that subclause is equal to or less than the rate that would be the person’s pension rate if that subclause did not apply to the person; or
(d) the Commission considers that there is a significant change in the person’s circumstances that would affect the amount of rent assistance that is payable to the person apart from this clause.

(6) If:
(a) subclause (1) or (3) ceases to apply to a person because of subclause (5); and
(b) within 42 days, or any longer period that the Commission determines, after the day on which that subclause ceases to apply to the person, there is a change in the person’s circumstances; and
(c) the Commission considers that the change in the person’s circumstances is so significant that subclause (1) or (3) should apply to the person;
the Commission may determine in writing that subclause (1) or (3) is to apply to the person from a stated date.

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Clause 5

(7) Subject to subclauses (11) and (13), if:
   (a) subclause (1) or (3) applies to a person; and
   (b) the person has become or becomes a member of a couple; and
   (c) the person’s partner is receiving a pension, or a social security payment under the Social Security Act, but:
      (i) is not a person to whom subclause (1) or (3) applies; and
      (ii) is not a person to whom clause 63 of Schedule 1A to the Social Security Act applies;

   the amount by way of rent assistance to be used to calculate the person’s pension rate or the person’s partner’s pension rate is not to fall below one-half of the person’s floor amount.

(8) Subject to subclause (11), if:
   (a) subclause (1) or (3) applies to a person; and
   (b) the person has become or becomes a member of a couple; and
   (c) the person’s partner is a person to whom subclause (1) or (3) applies;

   the amount by way of rent assistance to be used to calculate the person’s pension rate or the person’s partner’s pension rate is not to fall below one-half of the person’s floor amount or one-half of the person’s partner’s floor amount, whichever is the greater.

(9) Subject to subclause (11), if:
   (a) subclause (1) or (3) applies to a person; and
   (b) the person has become or becomes a member of a couple; and
   (c) the person’s partner is a person to whom clause 63 of Schedule 1A to the Social Security Act applies;

   the amount by way of rent assistance to be used to calculate the person’s pension rate is not to fall below one-half of the person’s floor amount or one-half of the amount that would be the person’s partner’s floor amount if subsection (1) or (3) applied to the partner, whichever is the greater.

(10) Subject to subclause (11), if:
   (a) a person is receiving a pension; and
   (b) neither subclause (1) nor (3) applies to the person; and

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(c) the person has become or becomes a member of a couple; and

(d) the person’s partner is receiving a social security payment under the Social Security Act and is a person to whom clause 63 of Schedule 1A to the Social Security Act applies; the amount by way of rent assistance to be used to calculate the person’s pension rate is not to fall below one-half of the amount that would be the person’s partner’s floor amount if subclause (1) or (3) applied to the partner.

(11) Despite anything in the preceding provisions of this clause, the rate of rent assistance payable to a person to whom this clause applies is reduced by the sum of any indexation or adjustment increases occurring after the commencement of this clause to the person’s pension rate.

(12) Subject to subclause (6), if subclause (1) or (3) ceases to apply to a person because of subclause (5), it does not again apply to the person.

(13) Subclause (7) ceases to apply to the partner of a person to whom subclause (1) or (3) applies if the pension rate that is applicable to the partner because of subclause (7) is equal to or less than the rate that would be the partner’s pension rate if subclause (7) did not apply to the partner.

(14) If subclause (7) ceases to apply to the partner of a person to whom subclause (1) or (3) applies, subclause (7) does not again apply to the partner.

(15) Nothing in this clause affects the application of clause 3 to a person to whom subclause (1) or (3) of this clause ceases to apply.

(16) In this clause:

floor amount has the meaning given by subsection (4).

indexation or adjustment increase means an increase resulting from the operation of Division 18 of Part IIIB.
6 Saving: Determinations under repealed sections 46Z and 46ZF

A determination in force under section 46Z or 46ZF immediately before the commencement of this section continues to have effect after that commencement as if:

(a) section 46L of this Act, as in force immediately after the commencement of this section, had been in force when the determination was made; and

(b) the determination had been made under that section as so in force; and

(c) any reference in the determination to section 46W, 46ZD or 46ZE were a reference to sections 46D to 46E of this Act.

7 Transitional and saving provisions applicable to the amendments relating to the pension loans scheme

(1) If:

(a) a person has made a request to participate in the previous pension loans scheme; and

(b) Schedule 17 to the Amending Act commences before the first pension payday after the lodging of the request;

for the purposes of this clause, the person is to be treated as a person who is participating in the previous pension loans scheme.

(2) Subject to subclause (3), in relation to a person who is participating in the previous pension loans scheme, subsections 5L(1) and 52(1) and Subdivision E of Division 11 of Part IIIB of this Act, as in force immediately before the commencement of Schedule 17 to the Amending Act, continue to have effect as if the Amending Act had not been enacted.

(3) If a person who is participating in the previous pension loans scheme:

(a) is eligible to participate in the current pension loans scheme; and

(b) makes a request to participate in the current scheme;

and the Commission is satisfied that the amount of any debt that would become payable by the person to the Commonwealth under the current scheme would be readily recoverable, the current scheme applies to the person on and after the day on which the request is lodged.
Clause 8

(4) The debt owed by a person who was participating in the previous pension loans scheme and who is participating in the current pension loans scheme by operation of subclause (3) is, for the purposes of working out the debt owed by the person under the current scheme, to be added to the basic amount of debt accrued under the current scheme.

(5) In this clause:

*Amending Act* means the *Social Security and Veterans’ Affairs Legislation Amendment Act 1995*.

*current pension loans scheme* means the pension loans scheme in operation under the provisions of this Act, as amended by the Amending Act.

*participating in the pension loans scheme* has the same meaning as in subsection 52ZAAA(3).

*previous pension loans scheme* means the pension loans scheme in operation under the provisions of this Act, as in force immediately before the commencement of Schedule 17 to the Amending Act.

8 Transitional and saving provisions: amendments relating to the transfer of carers

(1) If:

(a) a person was receiving a carer service pension immediately before the transfer day; and

(b) neither subclause (2) nor (4) applies to the person;

an instalment of carer service pension is payable to the person on the transfer day at the rate worked out using the following formula:

\[
\frac{\text{Reduced annual rate}}{2} + \text{Pharmaceutical allowance}
\]

where:

*reduced annual rate* means the rate payable in accordance with this Act on the last pension payday before the transfer day, excluding any pharmaceutical allowance payable to a person under this Act.
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*pharmaceutical allowance* means the amount of pharmaceutical allowance that would have been included in the person’s carer service pension if the payment was an instalment under section 58A.

(2) Subject to subclause (5), if:
   
   (a) a person (the *carer*) was receiving a carer service pension immediately before the transfer day; and
   
   (b) the veteran partner who is being cared for by the carer is receiving an age service pension or an invalidity service pension; and
   
   (c) the carer would, apart from subsection 38(1B), be eligible for a partner service pension;

   this Act continues to apply to the person in relation to carer service pension as if the amendments made by Division 1 of Part 5 of Schedule 1 to the amending Act had not been made.

(3) Subject to subclause (5), if:
   
   (a) a person was receiving income support supplement immediately before the transfer day; and
   
   (b) subsection 45AB(1) applied to the person; and
   
   (c) the person would, apart from paragraph 45A(1)(b) and section 45AB, be eligible for income support supplement;

   this Act continues to apply to the person in relation to income support supplement as if the amendments made by Division 1 of Part 5 of Schedule 1 to the amending Act had not been made.

(4) Subject to subclause (5), if:
   
   (a) a person (the *carer*) is receiving a carer service pension immediately before the transfer day; and
   
   (b) the veteran who is being cared for by the carer is not receiving an age service pension or an invalidity service pension but passes the income test under section 53AA and either passes the assets test under section 53AD or is the subject of a decision in force under section 53AN that the assets test does not apply to the veteran;

   this Act continues to apply to the person in relation to carer service pension as if the amendments made by Division 1 of Part 5 of Schedule 1 to the amending Act had not been made.
Clause 9

(5) If carer service pension or income support supplement ceases to be payable to the person after the transfer day, then subclause (2), (3) or (4), as the case requires, ceases to apply to the person.

(6) References in this clause to other provisions of this Act are references to those provisions as they would be if the amendments made by Division 1 of Part 5 of Schedule 1 to the amending Act had not been made.

(7) In this clause:

- **amending Act** means the *Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997*.
- **transfer day** means the day on which Part 5 of Schedule 1 to the amending Act commences.

9 **Transitional provisions applicable to the amendments relating to amounts in respect of children**

(1) If:

- (a) a determination is made on or after 1 January 1998 that a claim for a service pension or income support supplement is to be granted; and
- (b) because of section 36M or 45R, the determination takes effect before that date; and
- (c) had the amendments made by Schedule 1 to the *Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997* not been made, an instalment of the pension or supplement that was payable on a pension pay-day that occurred before that date would have included a child-related amount;

the instalment is to include that amount.

(2) If the amount of an instalment of a service pension or income support supplement that was payable on a pension pay-day before 1 January 1998 would, had the amendments made by Schedule 1 to the *Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997* not been made, be taken to have been increased so as to include a child-related amount, the instalment is taken to have been so increased.
Clause 10

(3) In this clause:

child-related amount, at any relevant time, means an amount that was required at that time to be included in a service pension under Module C or Module D (as Module C or Module D was affected by Module DAA) of the Service Pension Rate Calculator at the end of section 42, or in an income support supplement under Module F or Module G (as Module F or Module G was affected by Module H) of the Income Support Supplement Rate Calculator at the end of section 45Y, of the Veterans’ Entitlements Act 1986 as in force at that time.

10 Saving provisions applicable to the amendments relating to amounts in respect of children

(1) This clause applies to a person if:

(a) immediately before 1 January 1998 a service pension or income support supplement was payable to the person at a rate that included one or more pension/supplement child-related amounts in respect of a child or children; and

(b) the Commission determines on or before 31 March 1998, or after that date as a result of an application made by the person to the Commission on or before that date, that, on 1 January 1998, the person’s notional pension/supplement child-related amount was or will be greater than the notional family allowance child-related amount in relation to the person or the person’s partner.

(2) The rate of service pension or income support supplement payable to the person from time to time includes the person’s notional pension/supplement child-related amount at that time until, in accordance with subclause (2A), it is no longer to be so included.

(2A) For the purposes of subclause (2), the rate of service pension or income support supplement payable to the person is no longer to include the person’s notional pension/supplement child-related amount:

(a) in respect of any payment made at any time before 1 July 2000—if the person’s notional pension/supplement child-related amount ceases to be greater than the notional family allowance child-related amount in relation to the person or the person’s partner at that time; and
Clause 10

(b) in respect of any payment made at any time on or after 1 July 2000—if the person has elected, by written notice given to the Secretary, no longer to be covered by this clause.

(2B) For the purposes of Part IIIC, the rate of invalidity service pension, partner service pension, or income support supplement, that is payable to a person who has not reached pension age does not include the notional pension/supplement child-related amount.

(3) If:

(a) at any time before 1 July 2000, the person’s notional pension/supplement child-related amount ceases to be greater than the notional family allowance child-related amount in relation to the person or person’s partner; and

(b) because of this fact, the rate of service pension or income support supplement payable to a person is no longer to include the first-mentioned amount;

the rate of that pension or supplement is never thereafter to include the person’s notional pension/supplement child-related amount even though that amount may again become greater than the notional family allowance child-related amount in relation to the person or the person’s partner.

(3A) Subclause (2) ceases to apply to the rate of service pension or income support supplement payable to a person:

(a) from the start of the day the Social Security Legislation Amendment (Youth Allowance) Act 1998 commences, if the child or youngest child because of whom this clause applies to the person is 16 or over then; or

(b) from the start of the 16th birthday of the child or youngest child because of whom this clause applies to the person, if that child is under 16 on the day that Act commences.

(3B) In working out the amount of:

(a) a person’s notional pension/supplement child-related amount; and

(b) the notional family allowance child-related amount for a person or his or her partner;

at a time at or after the commencement of the Social Security Legislation Amendment (Youth Allowance) Act 1998, disregard a child who is 16 or over at the time.
(4) In this clause:

*notional family allowance child-related amount*, in relation to a person or a person’s partner at any time before 1 July 2000, means the amount by which the rate of family allowance that would be payable to the person or the person’s partner at that time under the Social Security Act except for point 1069-B8 of that Act, would be more than the minimum family allowance rate.

*notional pension/supplement child-related amount*, in relation to a person at any time, means:

(a) if the time is a time occurring before 1 July 2000—the total of the pension supplement child-related amounts that would have been included at that time in the rate of the service pension or income support supplement payable to the person in respect of any child or children referred to in paragraph (1)(a) if the amendments made by Schedule 1 to the *Veterans Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997* had not been made; and

(b) if the time is a time occurring on or after 1 July 2000—an amount that has been determined by the Commission, by instrument in writing, to be the amount of the pension/supplement child-related amount at that time, having regard to the indexation of the Part A rate of family tax benefit to that time under the *A New Tax System (Family Assistance) Act 1999*.

*pension/supplement child-related amount*, at any relevant time, means an amount that was or would be required at that time to be included in a service pension under Module C or Module D (as Module C or Module D was affected by Module DAA) of the Service Pension Rate Calculator at the end of section 42, or in an income support supplement under Module F or Module G (as Module F or Module G was affected by Module H) of the Income Support Supplement Rate Calculator at the end of section 45Y, of the *Veterans’ Entitlements Act 1986* as in force immediately before 1 January 1998.
Clause 11

11 Saving provisions applicable to certain people who cease to be service pensioners on 1 January 1998

(1) Subject to subclause (2), this clause applies to a person at a particular time (the relevant time) if:

(a) a service pension is not payable to the person; and

(b) a service pension was payable to the person immediately before 1 January 1998 at a rate that included one or more pension child-related amounts in respect of a child or children; and

(c) a service pension would have been payable to the person at the relevant time at a rate that included one or more pension child-related amounts in respect of that child or those children if the amendments made by Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 had not been made.

(2) This clause ceases to apply to a person, and does not afterwards again apply to the person, if:

(a) the service pension referred to in paragraph (1)(c) would have ceased to be payable to the person; or

(b) family payment under the Social Security Act is no longer payable to the person or the person’s partner or is no longer payable to the person or the person’s partner at a rate higher than the minimum family payment rate; or

(c) service pension becomes payable to the person.

(3) A person to whom this clause applies is taken for the purposes of subsection 85(7) to be in receipt of a service pension under Part III.

(4) In this clause:

pension child-related amount, at any relevant time, means an amount that would be required at that time to be included in a service pension under Module C or Module D (as Module C or Module D was affected by Module DAA) of the Service Pension Rate Calculator at the end of section 42 of the Veterans’ Entitlements Act 1986 as in force immediately before 1 January 1998.
11A Amendments relating to treatment of income streams

(1) If:
   (a) a person who had entered into a binding arrangement for the provision to the person of an income stream was, on 19 September 1998, receiving a service pension, an income support supplement or a social security payment; and
   (b) the Minister declares, in writing, that the Minister is satisfied that the application of this Act (as amended by the amending Act) would cause the person significant disadvantage in relation to the treatment of the person’s income stream;
this Act applies to the person in relation to the income stream as if the amendments made by Part 2 of Schedule 3 to the amending Act had not been made.

(2) Subclause (1) ceases to have effect if:
   (a) the service pension, income support supplement or social security payment referred to in subclause (1)(a) (the original payment) ceases to be payable to the person; and
   (b) another service pension, income support supplement or social security payment does not become payable to the person immediately after the original payment ceases to be payable.

(3) If a person was receiving a service pension, an income support supplement or a social security payment on 19 September 1998, the person’s annual rate of ordinary income from:
   (a) an asset-test exempt income stream; or
   (b) an asset-tested income stream (long term);
that is a defined benefit income stream whose commencement day is earlier than 20 September 1998 is to be worked out as if the amendment made by item 81 of Schedule 3 to the amending Act had not been made.

(4) In this clause:

   amending Act means the Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998.

   binding arrangement, in relation to a person, means:
   (a) an arrangement that does not allow the person to commute an income stream; or
Clause 11A

(b) an arrangement that may only be terminated on terms that are, in the opinion of the Commission, likely to cause severe detriment to the person.
Part 2—Aged care accommodation bonds: certain transactions before 6 November 1997

12 Overview of Part

(1) The following is a basic summary of this Part.

(2) For people who either:

   (a) became liable to pay an accommodation bond at any time from the beginning of 1 October 1997 until the end of 5 November 1997 but then agreed to switch to an accommodation charge; or

   (b) sold their principal home on or before 5 November 1997 in order to be able to pay certain accommodation bonds;

and for the partners of such people, certain amounts relating to refunds of such bonds, or to the proceeds of such sales, are excluded from the income and assets tests under this Act.

Note: Accommodation bond and accommodation charge have the same meanings as in the Aged Care Act 1997: see subsection 5L(1) of this Act.

13 Scope of Part

(1) This Part applies to a person if:

   (a) at any time from the beginning of 1 October 1997 until the end of 5 November 1997, the person became liable to pay an accommodation bond for entry to a residential care service; and

   (b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the Aged Care Act 1997 been in force at the time of the entry; and

   (c) the person later made an agreement (a refund agreement) with the provider of the service that the person’s liability to pay an accommodation bond for the entry was to be replaced with a liability to pay an accommodation charge for the entry, and that any payment of any of the bond was to be refunded to the person.
Clause 14

Note: Accommodation bond, accommodation charge and charge exempt resident have the same meanings as in the Aged Care Act 1997: see subsection 5L(1) of this Act.

(2) This Part also applies to a person if the Commission is satisfied that:

(a) on or before 5 November 1997, the person sold his or her principal home for the sole or principal purpose of raising money to pay an accommodation bond for entry to a residential care service; and

(b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the Aged Care Act 1997 been in force at the time of the entry.

Note: Accommodation bond, accommodation charge and charge exempt resident have the same meanings as in the Aged Care Act 1997: see subsection 5L(1) of this Act.

(3) This Part also applies to the partner of a person covered by subclause (1) or (2) (even if the person so covered is now deceased).

(4) For the purposes of subclause (2), the time at which a person sells his or her home is the time when he or she comes under a legal obligation to transfer the home to the buyer.

14 Person’s ordinary income reduced using financial asset rules

(1) For the purposes of this clause, assume that the person’s exempt bond amount (see clause 16) were a financial asset of the person.

(2) The person’s ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 3 of Part IIIB of this Act (Deemed income from financial assets).

(3) In working out that reduction, assume that the total value of the person’s financial assets exceeded the person’s deeming threshold (deeming threshold is a term used in that Division).

15 Value of person’s assets reduced

For the purposes of this Act (other than sections 52FA, 52G, 52GA, 52H, 52JA, 52JB, 52JC and 52JD), the total value of the...
person’s assets is reduced by the person’s exempt bond amount (see clause 16).

16 Meaning of exempt bond amount

(1) The following is how to work out a person’s exempt bond amount.

(2) If the person is covered by subclause 13(1) (but not subclause 13(2)), the person’s exempt bond amount is any amount of accommodation bond payment refunded to the person under the refund agreement mentioned in that subclause.

(3) If the person is covered by subclause 13(2) (but not subclause 13(1)), the person’s exempt bond amount is the gross proceeds of the sale mentioned in that subclause, less:
   (a) any costs incurred in the course of the sale; and
   (b) the amount of any debt the person or the person’s partner owed immediately before the sale, so far as the debt was secured by the home at that time.

(4) If the person is covered by both subclauses 13(1) and (2), the person’s exempt bond amount is the greater of the 2 amounts worked out under subclauses (2) and (3) of this clause.

(5) If the person is covered by subclause 13(3), the person’s exempt bond amount is equal to the exempt bond amount of the person’s partner, as worked out under subclause (2), (3) or (4) of this clause.

(6) But in all of the above cases, if the person currently has a partner (who is not deceased), the person’s exempt bond amount is half of what it would otherwise be.
Part 2A—Charge exempt residents under the Aged Care Act 1997

17 Meaning of charge exempt resident

In this Part:

charge exempt resident has the same meaning as in the Aged Care Act 1997.

17A Persons who became charge exempt residents before commencement

(1) This clause applies if a person first became a charge exempt resident before the commencement of this clause.

(2) If, at any time after becoming a charge exempt resident but before the commencement of this clause, the person, or the person’s partner, was earning, deriving or receiving any rent from the person’s principal home from another person, any such rent earned, derived or received while the person is a charge exempt resident is not income in relation to the person, or the person’s partner, for the purposes of this Act.

Note 1: For rent, see subsection 5N(2).

Note 2: Under subsections 5L(6A) and (7), and subclause (3) of this clause, the principal home of a person in a care situation may be a place other than the place where the person receives care.

(3) A residence of a person is taken to be the person’s principal home for the purposes of this Act during:

(a) if:

(i) the Commission is satisfied that the residence was previously the person’s principal home but that the person left it for the purpose of going into a care situation or becoming an aged care resident; and
Clause 17B

(ii) at any time after leaving the residence but before the commencement of this clause, the person, or the person’s partner, earned, derived or received rent for the residence from another person; any period during which:

(iii) the person is a charge exempt resident; and

(iv) the person, or the person’s partner, is earning, deriving or receiving rent for the residence from another person; and

(b) any period during which the residence is, because of paragraph (a), the principal home of the person’s partner.

Note 1: For rent see subsection 5N(2). For in a care situation see subsection 5NC(2). For aged care resident see subsection 5NC(5).

Note 2: This subclause is not meant to imply that a person may have more than one principal home at the same time.

17B Refunds of accommodation charge

(1) Clauses 17C and 17D apply to an amount (the refunded amount) that is refunded as mentioned in paragraph 56-1(kc) or 56-3(ic) of the Aged Care Act 1997 to a person because the person is or was a charge exempt resident.

(2) Those clauses also apply to an amount (also called the refunded amount) that is paid to a person under paragraph 44-8A(6)(b) of that Act because the person is or was a charge exempt resident.

(3) To avoid doubt, those clauses do not apply if the amount is paid to the person’s estate or to any other person.

17C Person’s ordinary income reduced using financial asset rules

(1) For the purposes of this clause, assume that the refunded amount were a financial asset of the person.

(2) The person’s ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 3 of Part IIIB of this Act (Deemed income from financial assets).

(3) In working out that reduction, assume that the total value of the person’s financial assets exceeded the person’s deeming threshold (deeming threshold is a term used in that Division).
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Clause 17D

17D  Value of person’s assets reduced

For the purposes of this Act (other than sections 52FA, 52G, 52GA, 52H, 52JA, 52JB, 52JC and 52JD), the total value of the person’s assets is reduced by the refunded amount.

17E  Application of Part

This Part applies in relation to a person who is a charge exempt resident at any time, whether before or after the commencement of the Part.

18 Definitions

In this Part:

*amending Act* means the *Social Security and Veterans’ Affairs Legislation Amendment (Payment Processing) Act 1998*.

*pension* means service pension under Part III or income support supplement under Part IIIA.

19 Payability and payment of pension during transition period

(1) In spite of the commencement of Schedule 4 to the amending Act, until and including 12 July 1999, the question whether pension is payable to a person is to be determined in accordance with this Act as in force immediately before 1 July 1999.

(2) In spite of the commencement of Schedule 4 to the amending Act, until and including 15 July 1999, instalments of pension are to be paid in accordance with this Act as in force immediately before 1 July 1999.

20 Continued operation of Act in relation to cancellation etc. of pensions

(1) In spite of the commencement of Schedule 4 to the amending Act, this Act, as in force immediately before 1 July 1999, continues to apply in relation to the cancellation and suspension of pensions, and the variation of the rates of such pensions, until and including 12 July 1999.

(2) Without limiting subclause (1), that subclause has effect:

(a) in relation to the day on which a cancellation, suspension or variation takes effect; and
Clause 21

(b) whether the cancellation, suspension or variation is effected by the operation of a provision of this Act or by a determination under this Act.

(3) A cancellation, suspension or variation that, but for this subclause, would have taken effect on 15 July 1999 takes effect on 13 July 1999.

21 First pension period

A pension period under this Act, as amended by Schedule 4 to the amending Act, must not commence earlier than 13 July 1999.

22 Continued operation of certain notices given before 13 July 1999

If:
(a) at any time before 13 July 1999, the Secretary has given a person a notice under section 54; and
(b) the notice has not been revoked;
the notice continues to have effect on and after 13 July 1999 as if:
(c) the notice had been given under this Act as amended by Schedule 4 to the amending Act; and
(d) the notification period specified in the notice had been so specified in accordance with this Act as so amended.

23 Consequences of occurrence of certain events etc.

(1) If:
(a) the Secretary has, before 13 July 1999, given a person a notice under section 54; and
(b) an event or change in circumstances specified in the notice occurs before 13 July 1999; and
(c) the person to whom the notice was given notifies the Secretary, before 13 July 1999, of the occurrence of the event or change in circumstances;
this Act, as in force immediately before the commencement of Schedule 4 to the amending Act, has effect in relation to the day on which any cancellation or suspension of the pension that is being received by the person, or any variation of the rate of the pension, takes effect.
Clause 24

(2) If:
   (a) the Secretary has, before 13 July 1999, given a person a notice under section 54; and
   (b) an event or change in circumstances specified in the notice occurs before 13 July 1999; and
   (c) the person to whom the notice was given does not notify the Department of the occurrence of the event or change in circumstances before 13 July 1999;

this Act, as amended by Schedule 4 to the amending Act, has effect, subject to subclause 20(3), in relation to the day on which any cancellation or suspension of the pension being received by the person, or any variation of the rate of the pension, takes effect.

24 Transitional regulations

(1) Regulations made under section 216 may prescribe matters in relation to any transitional matters (including prescribing any saving or application provisions) arising out of amendments of this Act made by Schedule 4 to the amending Act.

(2) Without limiting subclause (1), and in spite of any other provision in this or any other Act, regulations made by virtue of subclause (1) may:
   (a) modify the effect of a provision of this Part (other than this clause); or
   (b) substitute another provision for any provision of this Part (other than this clause).
Part 4—Transitional provisions: changes made by Schedule 5 to the Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2000

25 Definitions

In this Part:

amending Act means the Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2000.

pension means a pension under Part II or Part IV or an allowance under Part VI.

26 Payability and payment of pension during transition period

(1) In spite of the commencement of Schedule 5 to the amending Act, until and including 9 July 2001, the question whether pension is payable to a person is to be determined in accordance with this Act as in force immediately before 1 July 2001.

(2) In spite of the commencement of Schedule 5 to the amending Act, until and including 12 July 2001, instalments of pension are to be paid in accordance with this Act as in force immediately before 1 July 2001.

27 Continued operation of Act in relation to cancellation etc. of pensions

(1) In spite of the commencement of Schedule 5 to the amending Act, this Act, as in force immediately before 1 July 2001, continues to apply in relation to the cancellation and suspension of pensions, and the variation of the rates of such pensions, until and including 9 July 2001.

(2) Without limiting subclause (1), that subclause has effect:

(a) in relation to the day on which a cancellation, suspension or variation takes effect; and

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(b) whether the cancellation, suspension or variation is effected by the operation of a provision of this Act or by a determination under this Act.

(3) A cancellation, suspension or variation that, but for this subclause, would have taken effect on 12 July 2001 takes effect on 10 July 2001.

28 First pension period

A pension period under this Act, as amended by Schedule 5 to the amending Act, must not commence earlier than 10 July 2001.

29 Transitional regulations

(1) Regulations made under section 216 may prescribe matters in relation to any transitional matters (including prescribing any saving or application provisions) arising out of amendments of this Act made by Schedule 5 to the amending Act.

(2) Without limiting subclause (1), and in spite of any other provision in this or any other Act, regulations made by virtue of subclause (1) may:

(a) modify the effect of a provision of this Part (other than this clause); or

(b) substitute another provision for any provision of this Part (other than this clause).
Schedule 6—Calculation of rates of service pension and income support supplement

Part 1—Preliminary

1 Steps in rate calculation

(1) The following are the usual steps in the rate calculation process:
   (a) start with a maximum basic rate;
   (aa) add the pension supplement;
   (b) add any additional amounts that are subject to income or assets testing;
   (c) apply the income and assets tests;
   (d) add any additional amounts that are not subject to income or assets testing.

Note 1: The additional amounts referred to in paragraph (b) are amounts for rent assistance and pharmaceutical allowance.

Note 2: The only additional amount for the purposes of paragraph (d) at this time is remote area allowance.

(2) The overall rate calculation process is described in the relevant Method statement in Module A of the Rate calculator.

2 Standard categories of family situations

(1) The Rate Calculator uses the following standard categories of family situations:
   (a) not member of a couple;
   (b) member of a couple or partnered;
   (c) member of an illness separated couple;
   (d) member of a respite care couple;
   (e) partnered (partner getting neither pension nor benefit);
   (f) partnered (partner getting pension);
   (g) partnered (partner getting benefit).

Note: See sections 5E and 5R for definitions of those terms.
(2) If it is necessary to distinguish between the members of sub-categories of these standard categories, further words of description are added to the standard category label.

3 Explanation of Rate Calculator

(1) The Rate Calculator is divided into Modules (for example, Module A).

(2) A Module of the Rate Calculator is divided into points.

(3) The points in a Module are identified by:
   (a) the letters and number SCH6 (followed by a dash), which indicate that the Module is in the Rate Calculator in this Schedule; and
   (b) a letter that is the letter allocated to the Module in which the point occurs; and
   (c) a number that identifies the order of the point within the Module.

Example: Point SCH6-E8 is the eighth point in Module E of the Rate Calculator in this Schedule.

(4) A point in a Module may be divided into subpoints.

4 Application for income tax purposes of income and assets test reductions in respect of service pension or income support supplement

(1) If:
   (a) the rate of a service pension or income support supplement applicable to a person is increased under Module C (rent assistance) or Module D (pharmaceutical allowance) of the Rate Calculator; and
   (b) the rate of the pension is to be reduced under Module E (ordinary/adjusted income test) or Module F (assets test) of the Rate Calculator;

the reduction is to be applied:
   (c) first, to the rate of the pension apart from any increase under Module C (rent assistance) or Module D (pharmaceutical allowance); and
   (d) then, to the amount of any increase under Module C (rent assistance); and
Clause 5

(e) finally, to the amount of any increase under Module D (pharmaceutical allowance).

(2) If:

(a) the rate of a service pension or income support supplement applicable to a person is increased under Module C (rent assistance) or Module D (pharmaceutical allowance) of the Rate Calculator; and

(b) an amount of the pension is to be reduced under section 59T (compensation recovery);

the reduction is to be applied:

(c) first, to that part of the amount that does not include any increase under Module C (rent assistance) or Module D (pharmaceutical allowance); and

(d) then, to the amount of any increase under Module C (rent assistance); and

(e) finally, to the amount of any increase under Module D (pharmaceutical allowance).

5 Commencing rates

(1) The amounts and rates set out in the Rate Calculator at the time of commencement of this Schedule (the \textit{commencing time}) are the same as the corresponding amounts and rates that applied under this Act as in force on 1 January 1997.

(2) However, each amount or rate so set out that is subject to indexation or adjustment under Division 18 of Part IIIB is taken to be replaced immediately after the commencing time by the amount or rate that would have been in force at that time as a result of the application of that Division if this Schedule had commenced on 1 January 1997.
Part 2—Rate Calculator

Module A—Overall rate calculation process [see Note 2]

Rate to be an annual rate

SCH6-A1(1) The rate of pension is an annual rate (fortnightly amounts are provided for information only).

Method statement 1 (service pension, not blind, not war widow/war widower—pensioner)

(2) The rate of service pension for a person who:
(a) is not permanently blind; and
(b) is not a war widow/war widower—pensioner;
is worked out in accordance with Method statement 1.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

Method statement 1

Step 1. Work out the person’s maximum basic rate using MODULE B below.

Step 1A. Work out the amount of pension supplement using Module BA below.

Step 2. Work out the amount per year (if any) by way of rent assistance using MODULE C below.

Step 3. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.

Step 4. Add up the amounts obtained in Steps 1, 1A, 2 and 3: the result is called the maximum payment rate.

Step 5. Apply the ordinary/adjusted income test using MODULE E below to work out the reduction for ordinary/adjusted income.
**Step 6.** Take the reduction for ordinary/adjusted income away from the maximum payment rate: the result is called the **income reduced rate**.

**Step 7.** Apply the assets test using MODULE F below to work out the reduction for assets.

**Step 8.** Take the reduction for assets away from the maximum payment rate: the result is called the **assets reduced rate**.

**Step 9.** Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the **provisional payment rate**.

**Step 10.** Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

**Step 11.** Add any amount obtained in Step 10 to the person’s provisional payment rate (see Step 9). The result is the person’s **rate of service pension**.

**Note 1:** For ordinary/adjusted income see point SCH6-E1.

**Note 2:** If a person’s assets reduced rate is less than the person’s ordinary/adjusted income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 52Y and 52Z).

**Note 3:** If a person’s rate is, or is to be, an income reduced rate or an assets reduced rate, and at least one of those reduced rates is not a nil rate, the person may be able to take advantage of provisions dealing with the pension loans scheme (sections 52ZAAA to 52ZM).

**Note 4:** If a person’s rate is reduced under step 9, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by clause 4 of Part 1 (maximum basic rate first, then rent assistance and finally pharmaceutical allowance).

**Note 5:** The rate calculation for a member of a couple is affected by the operation of point SCH6-A2.

**Note 6.** The amount of a fortnightly instalment of service pension will be rounded to the nearest cent (see subsection 58A(5)).
Note 7: For the minimum amount of a fortnightly instalment of service pension, see subsection 58A(4).

Note 8: An amount of remote area allowance is to be added under Step 11 only if the person’s rate of service pension is greater than nil or, apart from section 36A, 37A or 38A, the person’s rate of service pension would be nil.

Note 9: The amount of a fortnightly instalment of service pension may be reduced by an advance payment deduction (see Division 6 of Part IVA).

**Method statement 2 (service pension, blind, not war widow/war widower—pensioner)**

(3) The rate of service pension for a person who:

(a) is permanently blind; and

(b) is not a war widow/war widower—pensioner;

is worked out in accordance with Method statement 2.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

**Method statement 2**

**Step 1.** Work out what would be the person’s rate of service pension if Method statement 1 applied to the person: the result is called the *notional income/assets tested rate*.

Note: This is the only situation in which a blind person’s pension can be made subject to an income test or assets test (see point SCH6-A3).

**Step 2.** Work out the person’s *maximum basic rate* using MODULE B below.

**Step 2A.** Work out the amount of pension supplement using Module BA below.

**Step 3.** Work out the amount per year (if any) for pharmaceutical allowance using MODULE D below.

**Step 4.** Add up the amounts obtained in Steps 2 and 3: the result is called the *maximum payment rate*. 
Step 5. Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

Step 6. Add:

(a) the maximum payment rate; and  
(b) any amount obtained under Step 5.

The result is called the non-income/assets tested rate.

Step 7. Compare the notional income/assets tested rate and the non-income/assets tested rate: whichever is the greater is the person’s rate of service pension.

Note 1: The amount of a fortnightly instalment of service pension will be rounded to the nearest cent (see subsection 58A(5)).

Note 2: For the minimum amount of a fortnightly instalment of service pension, see subsection 58A(4).

Note 3: The amount of a fortnightly instalment of service pension may be reduced by an advance payment deduction (see Division 6 of Part IVA).

Method statement 3 (service pension, not blind, war widow/war widower—pensioner)

(4) The rate of service pension for a person who:

(a) is not permanently blind; and  
(b) is a war widow/war widower—pensioner;

is worked out in accordance with Method statement 3.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

Method statement 3

Step 1. Work out what would be the person’s rate of service pension if Method statement 1 applied to the person: the result is called the provisional rate.

Step 2. Work out the person’s ceiling rate in accordance with points SCH6-A4 and SCH6-A5.
Step 2A. Work out the amount per year (if any) for rent assistance using MODULE C below.

Step 3. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.

Step 4. Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

Step 5. Add:
(a) the ceiling rate; and
(b) any amount obtained under step 2A; and
(c) any amount obtained under step 3; and
(d) any amount obtained under step 4.

The result is the \textit{revised rate}.

Step 6. Compare the provisional rate and the revised rate: the person’s \textit{rate of service pension} is:
(a) the provisional rate if it is lower than the revised rate; or
(b) the revised rate if it is lower than or equal to the provisional rate.

Note: The amount of a fortnightly instalment of service pension may be reduced by an advance payment deduction (see Division 6 of Part IVA).

\textit{Method statement 4 (service pension, blind, war widow/war widower—pensioner)}

(5) The rate of service pension for a person who:
(a) is permanently blind; and
(b) is a war widow/war widower—pensioner;
is worked out in accordance with Method statement 4.

Note: For \textit{war widow/war widower—pensioner} see subsection 5Q(1).
Schedule 6 Calculation of rates of service pension and income support supplement
Part 2 Rate Calculator
Module A Overall rate calculation process

Method statement 4

Step 1. Work out the person’s ceiling rate in accordance with points SCH6-A4 and SCH6-A5.

Step 1A. Work out the amount per year (if any) for rent assistance using MODULE C below.

Step 2. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.

Step 3. Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

Step 4. Add:
   (a) the ceiling rate; and
   (aa) any amount obtained under step 1A; and
   (b) any amount obtained under Step 2; and
   (c) any amount obtained under Step 3.

The result is the person’s rate of service pension.

Note: The amount of a fortnightly instalment of service pension may be reduced by an advance payment deduction (see Division 6 of Part IVA).

Method statement 5 (income support supplement, not blind)

(6) The rate of income support supplement for a person who is not permanently blind is worked out in accordance with Method statement 5.

Method statement 5

Step 1. Work out the amount of the person’s maximum basic rate using MODULE B below.
Calculation of rates of service pension and income support supplement
Schedule 6
Rate Calculator Part 2
Overall rate calculation process Module A

Step 1A. Work out the amount of pension supplement using Module BA below.

Step 2. Work out the amount per year (if any) for rent assistance using MODULE C below.

Step 3. Work out the amount per year (if any) of the pharmaceutical allowance using MODULE D below.

Step 4. Add up the amounts obtained in Steps 1, 1A, 2 and 3: the result is called the maximum payment rate.

Step 5. Apply the ordinary/adjusted income test using MODULE E below to work out the reduction for ordinary/adjusted income.

Step 6. Take the reduction for ordinary/adjusted income away from the maximum payment rate: the result is called the income reduced rate.

Step 7. Apply the assets test using MODULE F below to work out the reduction for assets.

Step 8. Take the reduction for assets away from the maximum payment rate: the result is called the assets reduced rate.

Step 9. Work out the person’s ceiling rate in accordance with points SCH6-A4 to SCH6-A9.

Step 9A. Add:

(a) the ceiling rate; and

(b) any amount obtained under step 2; and

(c) any amount obtained under step 3.

The result is the increased rate.
Step 10. Compare the income reduced rate (see Step 6), the assets reduced rate (see Step 8) and the increased rate (see step 9A): the person’s **provisional payment rate** is equal to:

(a) whichever is the lowest of those rates; or

(b) if 2 of those rates are the same and the third one is higher—the lower rate; or

(c) if the 3 rates are the same—the income reduced rate.

Step 11. Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

Step 12. Add any amount obtained in Step 11 to the person’s provisional payment rate (see Step 10): the result is the person’s **rate of income support supplement**.

Note 1: For ordinary/adjusted income see point SCH6-E1.

Note 2: If a person’s assets reduced rate is less than the person’s adjusted income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 52Y and 52Z).

Note 3: If a person’s rate is, or is to be, an adjusted income reduced rate or an assets reduced rate, and at least one of those reduced rates is not a nil rate, the person may be able to take advantage of provisions dealing with the pension loans scheme (sections 52ZAAA to 52ZM).

Note 4: If a person’s rate is reduced under Step 10, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by clause 4 of Part 1 (maximum basic rate first, then rent assistance and finally pharmaceutical allowance).

Note 5: The rate calculation for a member of a couple is affected by the operation of point SCH6-A2.

Note 6: The amount of a fortnightly instalment of income support supplement will be rounded to the nearest cent (see subsection 58A(5)).

Note 7: For the minimum amount of a fortnightly instalment of income support supplement, see subsection 58A(4).

Note 8: The amount of a fortnightly instalment of income support supplement may be reduced by an advance payment deduction (see Division 6 of Part IVA).
Method statement 6 (income support supplement, blind)

(7) The rate of income support supplement for a permanently blind person is worked out in accordance with Method statement 6.

Method statement 6

Step 1. Work out the person’s ceiling rate in accordance with points SCH6-A4 and SCH6-A5.

Step 1A. Work out the amount per year (if any) for rent assistance using MODULE C below.

Step 2. Work out the amount per year (if any) of the pharmaceutical allowance using MODULE D below.

Step 3. Work out the amount per year (if any) payable by way of remote area allowance using MODULE G below.

Step 4. Add:

(a) the ceiling rate; and

(aa) any amount obtained under step 1A; and

(b) any amount obtained under Step 2; and

(c) any amount obtained under Step 3.

The result is the person’s rate of income support supplement.

Note: The amount of a fortnightly instalment of income support supplement may be reduced by an advance payment deduction (see Division 6 of Part IVA).

Members of couple

SCH6-A2 If 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing those resources on a 50/50 basis (see points SCH6-E3 and SCH6-F2 below). They will also be treated as sharing expenses (eg for rent) on a 50/50 basis (see points SCH6-C10 and SCH6-C11 below).
Ordinary/adjusted income test and assets test generally not to apply to permanently blind people

SCH6-A3 Except for the purposes of Step 1 in Method statement 2 (applicable in respect of permanently blind service pensioners who are not war widows/war widowers—pensioners), a permanently blind person’s pension is not subject to an ordinary/adjusted income test (compare Module E) or an assets test (compare Module F).

Note: For war widow/war widower—pensioner see subsection 5Q(1).

Ceiling rate

SCH6-A4 The ceiling rate for a war widow/war widower—pensioner is $3,247.40 unless point SCH6-A5 applies to him or her.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

Note: The ceiling rate is adjusted 6 monthly in line with service pensions (see section 59LA).

SCH6-A5 If:

(a) a person became a war widow/war widower—pensioner before 1 November 1986; and

(b) immediately before that day the person was receiving a social security pension at a rate (the pre-November 1986 rate) equal to or more than $3,122.60; and

(c) since that day the person has been continuously receiving the social security pension or income support supplement;

his or her ceiling rate is, subject to point SCH6-A5A, equal to the pre-November 1986 rate.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

SCH6-A5A On and after 1 July 2000, the ceiling rate referred to in point SCH6-A5 is taken to be equal to the pre-November 1986 rate increased by 4%.

SCH6-A6 However, if:

(a) a war widow/war widower—pensioner is a person:

   (i) to whom income support supplement or service pension is payable; and

   (ii) who is not permanently blind; and

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(b) the person’s pension under Part II or IV is compensation reduced;

the ceiling rate for the war widow/war widower—pensioner is the sum of:

(c) the rate applying under point SCH6-A4 or SCH6-A5, as the case may be; and

(d) the amount of the reduction in the pension under Part II or IV worked out under points SCH6-A7 to SCH6-A9.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

Compensation reduced pension under Part II or IV

SCH6-A7 A pension under Part II payable to a war widow/war widower—pensioner is **compensation reduced** if that pension has been reduced:

(a) by taking into account (under subsection 30(3)) the rate, or amount, of any payment that he or she is entitled to receive under the law of a State or of a foreign country; or

(b) by taking into account (under Division 5A of that Part) the rate at which any compensation is payable to him or her.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

SCH6-A8 A pension under Part IV payable to a war widow/war widower—pensioner is **compensation reduced** if that pension has been reduced by taking into account (under Division 4 of that Part) the rate at which any compensation is payable to him or her.

Note: For war widow/war widower—pensioner see subsection 5Q(1).

SCH6-A9 The **amount of the reduction in the pension under Part II or IV** is worked out by using the formula:

\[
\text{Full pension rate} - \text{Compensation reduced rate}
\]

where:

**full pension rate** means the amount per annum that would have been the annual rate of the pension under Part II or IV if it had not been reduced.

**compensation reduced rate** means the annual rate of pension under Part II or IV payable after that pension has been reduced.
Module B—Maximum basic rate

Maximum basic rate

SCH6-B1 A person’s maximum basic rate depends on the person’s family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3.

Table B—Maximum basic rates

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Person’s family situation</td>
<td>Rate per year $</td>
<td>Rate per fortnight $</td>
</tr>
<tr>
<td>1.</td>
<td>Not a member of a couple</td>
<td>9,006.40</td>
<td>346.40</td>
</tr>
<tr>
<td></td>
<td>A member of an illness separated couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A member of a respite care couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Partnered</td>
<td>7,511.40</td>
<td>288.90</td>
</tr>
</tbody>
</table>

Note 1: For *member of a couple* and *partnered* see section 5E, and for *illness separated couple* and *respite care couple* see subsections 5R(5) and (6).

Note 2: The maximum basic rates are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).
Module BA—Pension supplement

Pension supplement

SCH6-BA1 The amount of a person’s pension supplement depends on the person’s maximum basic rate. There is a pension supplement amount for each maximum basic rate listed in the table in point SCH6-B1.

Amount of pension supplement

SCH6-BA2 The amount of a person’s pension supplement is worked out by:
(a) calculating the amount (the provisional supplement amount) that is 4% of the person’s 1 July 2000 maximum basic rate; and
(b) rounding off the provisional supplement amount in accordance with points SCH6-BA4 to SCH6-BA6.

Note: The pension supplement amounts are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

SCH6-BA3 A person’s 1 July 2000 maximum basic rate is the maximum basic rate that would have been the person’s maximum basic rate if the rate had not changed since 1 July 2000.

Rounding off of provisional supplement amount

SCH6-BA4 If a provisional supplement amount is a multiple of $2.60, the amount of the pension supplement is the provisional supplement amount.

SCH6-BA5 If a provisional supplement amount is not a multiple of $2.60, the amount of the pension supplement is the provisional supplement amount rounded up or down to the nearest multiple of $2.60.

SCH6-BA6 If a provisional supplement amount is not a multiple of $2.60, but is a multiple of $1.30, the amount of the pension supplement is the provisional supplement amount rounded up to the nearest multiple of $2.60.
Module C—Rent assistance

Application

SCH6-C1 Points SCH6-C2 to SCH6-C11 and point SCH6-C15 apply to a person who is in receipt of a service pension or an income support supplement. Points SCH6-C13 and SCH6-C14 apply only to a person who is in receipt of a service pension. Points SCH6-C14B and SCH6-C14C apply only to a person who is in receipt of an income support supplement.

Rent assistance

SCH6-C2 Rent assistance is an amount that may be added to the maximum basic rate or ceiling rate to help cover the cost of rent. Subject to points SCH6-C13 and SCH6-C14 (which apply only to a person who is in receipt of a service pension) and points SCH6-C14B and SCH6-C14C (which apply only to a person who is in receipt of an income support supplement), a person who is eligible for rent assistance under point SCH6-C3 can have added to his or her maximum basic rate or ceiling rate the amount applying to that person under Table C-2.

Eligibility for rent assistance

SCH6-C3 Rent assistance is to be added to a person’s maximum basic rate or ceiling rate if:

(a) the person is not an aged care resident; and
(b) the person is not an ineligible property owner; and
(c) the person pays, or is liable to pay, rent (other than Government rent); and
(d) the rent is payable at a rate of more than the rent threshold rate; and
(e) either:

(i) the person is in Australia; or
(ii) the person is temporarily absent from Australia and the period in respect of which the rent assistance is sought is not a period after the first 26 weeks of the absence; and

(f) the person satisfies either point SCH6-C3A or SCH6-C3B.

Note 1: For aged care resident see subsection 5NC(5).
Note 2: For rent, Government rent and ineligible property owner see section 5N.

Note 3: For rent threshold rate see point SCH6-C6.

Note 4: For illness separated couple and respite care couple see subsections 5R(5) and (6).

SCH6-C3A A person satisfies this point if:
(a) the person is not a member of a couple, or is a member of an illness separated couple or a respite care couple, and is entitled to be paid a family tax benefit; and
(b) either:
   (i) the person’s maximum Part A rate of family tax benefit does not include rent assistance; or
   (ii) the person’s maximum Part A rate of family tax benefit includes rent assistance and clause 4B of Schedule 1 to the Family Assistance Act applies to reduce the person’s Part A rate of family tax benefit.

SCH6-C3B A person satisfies this point if:
(a) the person is a member of a couple (other than an illness separated couple or a respite care couple) and the person, or the person’s partner, is entitled to be paid family tax benefit; and
(b) either:
   (i) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit does not include rent assistance; or
   (ii) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit includes rent assistance and clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person’s, or the person’s partner’s, Part A rate of family tax benefit.

No rent assistance if partner getting incentive allowance under the Social Security Act

SCH6-C4 If a person is a member of a couple and the person’s partner is living with the person in their home, an additional amount is not to be added to the person’s maximum basic rate or ceiling rate under point SCH6-C3 if an amount by way of incentive allowance is being added to the maximum basic rate or ceiling rate of the person’s partner.
Note: For incentive allowance see subsection 5Q(1); the provisions of the Social Security Act relating to incentive allowance were repealed with effect from 12 November 1991 but the allowance continues to be paid to certain existing recipients under clause 36 of Schedule 1A to that Act.

No rent assistance if person receiving a Special Rate Disability Pension

SCH6-C4A No additional amount is to be added to a person’s maximum basic rate or ceiling rate under point SCH6-C3 if the person chooses to receive a Special Rate Disability Pension under section 200 of the MRCA.

Partner with rent increased pension

SCH6-C5 A person has a partner with a rent increased pension, for the purposes of this Module, if:

(a) the partner is living with the person in their home; and
(b) the partner is receiving a service pension, income support supplement, or social security pension; and
(c) either of the following applies:
   (i) the partner is receiving a service pension, income support supplement or social security pension the rate of which is increased to take account of rent paid or payable by the partner;
   (ii) the partner is receiving a social security pension and is entitled to be paid family tax benefit at a rate higher than the base rate under clause 4 of Schedule 1 to the Family Assistance Act and which includes an amount to take account of rent paid or payable by the partner.

Note 1: Social security pension includes a rehabilitation allowance.
Note 3: For the treatment of rent paid by a member of a couple see points SCH6-C10 and SCH6-C11.

Rent threshold rate

SCH6-C6 A person’s rent threshold rate depends on the person’s family situation. Work out which family situation in Table C-1 applies to the person. The rent threshold rate is the corresponding amount in column 3.

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**Calculation of rates of service pension and income support supplement**  
**Schedule 6**  
**Rate Calculator**  
**Part 2**  
**Rent assistance**  
**Module C**

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**Table C-1—Rent threshold rates**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Person’s family situation</td>
<td>Rate per year $</td>
<td>Rate per fortnight $</td>
</tr>
</tbody>
</table>
| 1.       | Not a member of a couple  
A member of an illness separated couple  
A member of a respite care couple  
Partnered—partner without a rent increased pension | 1,856.40 | 71.40 |
| 2.       | Partnered—partner with a rent increased pension | 1,510.60 | 58.10 |

Note 1: For *member of a couple* and *partnered* see section 5E.

Note 2: For *partner with a rent increased pension* see point C5.

Note 3: The column 3 amounts are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

**Factors affecting rate of rent assistance**

SCH6-C7 The rate of rent assistance depends on:

(a) the annual rent paid or payable by the person; and  
(b) whether or not the person has a partner with a rent increased pension; and  
(c) whether or not the person, or the person’s partner, receives one or more of the following payments:  
(i) disability pension;  
(ii) permanent impairment compensation;  
(iii) adjusted disability pension.

Note 1: For *disability pension* see section 5Q.

Note 2: For *adjusted disability pension* and *permanent impairment compensation* see point SCH6-C16.

**Rate of rent assistance**

SCH6-C8(1) The rate of rent assistance is whichever is the lesser of rate A and rate B applicable to the person in accordance with Table C-2.
Table C-2—Rate of rent assistance

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Person’s family situation</th>
<th>Column 3 Rate A $</th>
<th>Column 4 Rate B $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not a member of a couple</td>
<td></td>
<td>1,939.60</td>
</tr>
<tr>
<td></td>
<td>A member of an illness separated couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A member of a respite care couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Partnered—partner without a rent increased pension</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Partnered—partner with a rent increased pension</td>
<td></td>
<td>915.20</td>
</tr>
</tbody>
</table>

\[3 \times \frac{(AR - RTR)}{4}\]

Note 1: For member of a couple and partnered see section 5E.

Note 2: For partner with a rent increased pension see point C5.

Note 3: The column 4 amounts are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

(2) In Table C-2:

AR means annual rent as provided by points SCH6-C9 to SCH6-C11.

RTR means the rent threshold rate applicable under column 3 of Table C-1 in point SCH6-C6.

Annual rent

SCH6-C9 Annual rent is the annual rent paid or payable by the person whose service pension rate or income support supplement rate is being calculated.
Rent paid by a member of a couple

SCH6-C10 If a person is a member of a couple and the person’s partner is living with the person in their home, any rent that the person’s partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Note: For member of a couple see section 5E.

Rent paid by a member of an illness separated or respite care couple

SCH6-C11 If a person is a member of an illness separated couple or a respite care couple, any rent that the person’s partner pays or is liable to pay in respect of the premises occupied by the person is to be treated as paid or payable by the person.

Note: For illness separated couple and respite care couple see subsections 5R(5) and (6).

Application

SCH6-C12 Points SCH6-C13 and SCH6-C14 apply only to a person who is in receipt of a service pension. If such a person or the partner of such a person receives either or both a disability pension and permanent impairment compensation, the amount of rent assistance worked out under Table C-2 may be reduced under point SCH6-C13.

Note 1: For disability pension see section 5Q.
Note 2: For permanent impairment compensation see point SCH6-C16.

Effect of disability pension and permanent impairment compensation on rate of rent assistance

SCH6-C13 This is how to work out the effect of a person’s disability pension and permanent impairment compensation on the person’s rate of rent assistance:

Method statement

Step 1. Work out the annual rate of the person’s disability pension and permanent impairment compensation: the result is the person’s disability income.

Note 1: For disability pension see section 5Q.
Note 1A: For permanent impairment compensation see point SCH6-C16.

Note 2: For the treatment of the amount of disability pension and permanent impairment compensation of members of a couple see point SCH6-C14.

Step 2. Work out the person’s rent assistance free area (see point SCH6-C15 below).

Step 3. Work out whether the person’s disability income exceeds the person’s rent assistance free area.

Step 4. If the person’s disability income does not exceed the person’s rent assistance free area, the person’s rate of rent assistance worked out under Table C-2 is not affected.

Step 5. If the person’s disability income exceeds the person’s rent assistance free area, take the person’s rent assistance free area away from the person’s disability income: the result is the person’s disability income excess.

Step 6. Multiply the person’s disability income excess by 0.4: the result is the rent assistance reduction amount.

Step 7. Take the person’s rent assistance reduction amount away from the rate of rent assistance worked out under Table C-2: the result is the person’s rate of rent assistance.

Disability income

SCH6-C14 If a person is a member of a couple, the person’s disability income for the purposes of this Module is worked out as follows:

(a) if each member of the couple receives either or both a disability pension and permanent impairment compensation—by adding the couple’s annual rates of disability pension and permanent impairment compensation and dividing the result by 2;

(b) if only one member of the couple receives either or both a disability pension and permanent impairment compensation:

(i) where the member receives both a disability pension and permanent impairment compensation—by adding the member’s annual rates of disability pension and
permanent impairment compensation and dividing the result by 2; or
(ii) where subparagraph (i) does not apply—by dividing the member’s annual rate of disability pension or permanent impairment compensation by 2.

Note 1: For disability pension see section 5Q.
Note 2: For permanent impairment compensation see point SCH6-C16.

Application

SCH6-C14A Points SCH6-C14B and SCH6-C14C apply only to a person who is in receipt of an income support supplement. If such a person, or the partner of such a person, receives adjusted disability pension, the amount of rent assistance worked out under Table C-2 may be reduced under point SCH6-C14B.

Note: For adjusted disability pension see point SCH6-C16.

Effect of adjusted disability pension on rate of rent assistance

SCH6-C14B This is how to work out the effect of a person’s adjusted disability pension on the person’s rate of rent assistance:

Method statement

Step 1. Work out the annual rate of the person’s adjusted disability pension: the result is the person’s disability income.

Note 1: For adjusted disability pension see point SCH6-C16.
Note 2: For the treatment of the amount of adjusted disability pension of members of a couple see point SCH6-C14C.

Step 2. Work out the person’s rent assistance free area (see point SCH6-C15 below).

Step 3. Work out whether the person’s disability income exceeds the person’s rent assistance free area.

Step 4. If the person’s disability income does not exceed the person’s rent assistance free area, the person’s rate of rent assistance worked out under Table C-2 is not affected.
Schedule 6 Calculation of rates of service pension and income support supplement
Part 2 Rate Calculator
Module C Rent assistance

Step 5. If the person’s disability income exceeds the person’s rent assistance free area, take the person’s rent assistance free area away from the person’s disability income: the result is the person’s disability income excess.

Step 6. Multiply the person’s disability income excess by 0.4: the result is the rent assistance reduction amount.

Step 7. Take the person’s rent assistance reduction amount away from the rate of rent assistance worked out under Table C-2: the result is the person’s rate of rent assistance.

Disability income

SCH6-C14C If a person is a member of a couple, the person’s disability income for the purposes of SCH6-C14B is worked out as follows:

(a) if each member of the couple receives adjusted disability pension—by adding the couple’s annual rates of adjusted disability pension and dividing the result by 2;

(b) if only one member of the couple receives adjusted disability pension—by dividing the member’s annual rate of adjusted disability pension by 2.

Note: For adjusted disability pension see point SCH6-C16.

How to calculate a person’s rent free area

SCH6-C15 A person’s rent assistance free area is worked out using Table C-3. Work out which family situation in Table C-3 applies to the person.

<p>| Table C-3—Rent assistance free area |</p>
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2 Category of person</th>
<th>Column 3 Free area per year $</th>
<th>Column 4 Free area per fortnight $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not a member of a couple</td>
<td>2,548</td>
<td>98</td>
</tr>
<tr>
<td>2.</td>
<td>Partnered</td>
<td>2,236</td>
<td>86</td>
</tr>
</tbody>
</table>

70 Veterans’ Entitlements Act 1986
Note 1: For member of a couple and partnered see section 5E.

Note 2: Item 2 of Table C-3 applies to members of illness separated and respite care couples.

Note 3: The free areas are adjusted annually (see section 59GA).

Rent assistance examples

Note: The following examples are based on the amounts and rates set out in this Module at the commencement of this Schedule (see clause 5 of Part 1 of this Schedule).

Example 1:

Facts: Ross is a single service pensioner without children. Ross does not receive any disability pension and pays $120 per week rent.

Result: Item 1 in Table C-2 applies to Ross.

Rate A for Ross is $3,287.70 calculated as follows:

\[
3 \times \left( \text{Annual rent} - \text{Rent threshold rate} \right) = \frac{3 \times \left( \$120 \times 52 \right) - \$1,856.40}{4} = \$3,287.70
\]

Rate B for Ross is $1,939.60.

As the maximum rate of rent assistance is the lesser of Rates A and B, Ross’s rate of rent assistance is $1,939.60 per year. Ross will receive $74.60 per fortnight.

Example 2:

Facts: Ted and Pam are members of a pensioner couple without children. They rent a house for $160 per week. Ted receives 100% disability pension ($6,255.60 per year). Pam receives the wife’s component of disability pension ($210.60 per year).

Result: Item 2 in Table C-2 applies to Ted and Pam.

Rate A for Ted is $2,553.50 calculated as follows:

\[
3 \times \left( \text{Annual rent} - \text{Rent threshold rate} \right) = \frac{3 \times \left( \$160 \times 52 \right) - \$1,510.60}{8} = \$2,553.50
\]

Rate B for Ted is $915.20.

As the lesser rate is $915.20, this is the maximum rent assistance that Ted can receive. However, as both Ted and Pam receive disability pension, the Rent Assistance Income Test in point SCH6-C13 applies.

Ted’s disability pension income is:

\[
\frac{\$6,255.60 + \$210.60}{2} = \$3,233.10
\]
Item 2 of Table C-3 applies. Ted’s disability pension income excess is the disability pension income less the rent assistance free area:

\[ 3,233.10 - 2,236.00 = 997.10 \]

The reduction in rent assistance is:

\[ \frac{997.10}{2} = 498.55 \]

The rent assistance Ted will receive per year is Rate B less amount of rent reduction:

\[ 915.20 - 498.55 = 416.65 \]

Ted will receive $16.03 per fortnight.

The same calculation applies to Pam’s rate of rent assistance.

SCH6-C16 In this Module:

- **adjusted disability pension** has the same meaning as in section 118NA.

- **permanent impairment compensation** means:
  
  (a) any payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment); and

  (b) if the person was paid a lump sum under section 68, 71 or 75 of the MRCA (permanent impairment)—any weekly amounts that the person would have been paid if the person had not chosen the lump sum.
Module D—Pharmaceutical allowance

Eligibility for pharmaceutical allowance

SCH6-D1 Subject to this Module, an additional amount by way of pharmaceutical allowance is to be added to a person’s maximum basic rate.

No pharmaceutical allowance during certain periods of absence from Australia

SCH6-D2 Pharmaceutical allowance is not to be added to a person’s maximum basic rate if the person is not eligible to receive the allowance because of subsection 118A(2) or (2A).

No pharmaceutical allowance if person receiving pharmaceutical allowance under the Social Security Act.

SCH6-D3 Pharmaceutical allowance is not to be added to a person’s maximum basic rate if the person is receiving pharmaceutical allowance under the Social Security Act.

No pharmaceutical allowance before advance payment period ends

SCH6-D4 Pharmaceutical allowance is not to be added to a person’s maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under:
   (i) Division 2 of Part VIIA of this Act; or
   (ii) Part 2.23 of the Social Security Act; and
(b) the person’s advance payment period has not ended.

Note: For advance payment period see point SCH6-D5.

Advance payment period

SCH6-D5(1) A person’s advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
(b) ends after the number of advance pension periods have passed.
(2) In this point:

*advance pharmaceutical allowance* includes advance pharmaceutical allowance under the Social Security Act.

*amount of advance* means the amount of the advance paid to the person.

*number of advance pension periods* means the number of periods worked out using the following formula:

\[
\text{Amount of advance} \times \frac{26}{\text{Pharmaceutical allowance rate}}
\]

*pharmaceutical allowance* includes pharmaceutical allowance under the Social Security Act.

*pharmaceutical allowance rate* means the yearly amount of pharmaceutical allowance which would be added to the person’s maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person’s maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

SCH6-D6 Pharmaceutical allowance is not to be added to a person’s maximum basic rate if the addition of the amount would contravene section 118M.

*Amount of pharmaceutical allowance*

SCH6-D7 The amount of pharmaceutical allowance depends on the person’s family situation. Work out which family situation in Table D applies to the person. The amount of pharmaceutical allowance per year is the corresponding amount in column 3.
## Table D—Amount of pharmaceutical allowance

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2 Person’s family situation</th>
<th>Column 3 Rate per year $</th>
<th>Column 4 Rate per fortnight $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not a member of a couple</td>
<td>140.40</td>
<td>5.40</td>
</tr>
<tr>
<td></td>
<td>A member of an illness separated couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A member of a respite care couple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Partnered—partner not eligible for pharmaceutical allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A war widow/war widower—pensioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Partnered—partner eligible for pharmaceutical allowance</td>
<td>70.20</td>
<td>2.70</td>
</tr>
</tbody>
</table>

Note 1: For **member of a couple** and **partnered** see section 5E.

Note 2: For **illness separated couple** and **respite care couple** see subsections 5R(5) and (6).

Note 3: For **war widow/war widower—pensioner** see subsection 5Q(1).

Note 4: The column 3 amounts are adjusted annually (see section 59L).
Module E—Ordinary/adjusted income test

Definition

SCH6-E1 In this Module:

*ordinary/adjusted income* means:

(a) for the purpose of the calculation of the rate of service pension—ordinary income; or
(b) for the purpose of the calculation of the rate of income support supplement—adjusted income.

Note: For *ordinary income* and *adjusted income* see section 5H.

Effect of income on maximum payment rate

SCH6-E2 This is how to work out the effect of a person’s ordinary/adjusted income on the person’s maximum payment rate:

<table>
<thead>
<tr>
<th>Method statement</th>
</tr>
</thead>
</table>
| **Step 1.** Work out the annual rate of the person’s ordinary/adjusted income.  
Note: For the treatment of the ordinary/adjusted income of members of a couple see point SCH6-E3. |
| **Step 2.** Work out the person’s ordinary/adjusted income free area (see points SCH6-E6 to SCH6-E10 below).  
Note: A person’s ordinary/adjusted income free area is the maximum amount of ordinary/adjusted income the person can have without affecting the person’s pension rate. |
| **Step 3.** Work out whether the person’s ordinary/adjusted income exceeds the person’s ordinary/adjusted income free area. |
| **Step 4.** If the person’s ordinary/adjusted income does not exceed the person’s ordinary/adjusted income free area, the person’s ordinary/adjusted income excess is nil. |
Step 5. If the person’s ordinary/adjusted income exceeds the person’s ordinary/adjusted income free area, the person’s ordinary/adjusted income excess is the person’s ordinary/adjusted income less the person’s ordinary/adjusted income free area.

Step 6. Use the person’s ordinary/adjusted income excess to work out the person’s reduction for ordinary/adjusted income using point SCH6-E11 below.

Note 1: See the Method statements in point SCH6-A1 for the significance of the person’s reduction for ordinary/adjusted income.

Note 2: The application of the ordinary/adjusted income test is affected by provisions about the following:
(a) the general concept of ordinary income (sections 46 and 46A);
(b) business income (sections 46B and 46C);
(c) deemed income from financial assets (sections 46D to 46M);
(d) income from income streams (sections 46Q to 46Y);
(e) disposal of income (sections 48-48E).

Ordinary/adjusted incomes of members of couples

SCH6-E3 If a person is a member of a couple, add the annual rates of the couple’s ordinary/adjusted incomes and divide by 2 to work out the amount of the person’s ordinary/adjusted income for the purposes of this Module. However, in making this calculation disregard any amount that is taken (whether for the purposes of this Act or of the Social Security Act) to be ordinary income of either partner because of section 59TA of this Act or section 1174 of the Social Security Act.

Additional ordinary income because of excess compensation payments

SCH6-E3A Add to the amount derived for a person under point SCH6-E3 any amount that is taken (whether for the purposes of this Act or of the Social Security Act) to be ordinary income of the person because of section 59TA of this Act or section 1174 of the Social Security Act.
Payment of arrears of periodic compensation payments

SCH6-E4 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving a compensation affected pension; and

(b) in relation to the entitlement, the person receives a payment (an arrears payment) of arrears of periodic compensation;

the person is taken to receive on each day in the periodic payments period an amount calculated by dividing the amount of the arrears payment by the number of days in the periodic payments period.

Note: For event that gives rise to an entitlement to compensation, compensation affected pension and periodic payments period see section 5NB.

Ordinary/adjusted income free area

SCH6-E5 A person’s ordinary/adjusted income free area is the amount of ordinary/adjusted income the person can have without any deduction being made from the person’s maximum payment rate.

How to calculate a person’s ordinary/adjusted income free area

SCH6-E6 A person’s ordinary/adjusted income free area is worked out using Table E-1. Work out which family situation in Table E-1 applies to the person. The ordinary/adjusted income free area is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent child of the person.
### Table E-1—Ordinary/adjusted income free area

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Column 5</th>
<th>Column 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Category of person</td>
<td>Basic income free area per year</td>
<td>Basic income free area per fortnight</td>
<td>Additional free area per year</td>
<td>Additional free area per fortnight</td>
</tr>
<tr>
<td>1.</td>
<td>Not member of a couple</td>
<td>2,548</td>
<td>98</td>
<td>639.60</td>
<td>24.60</td>
</tr>
<tr>
<td>2.</td>
<td>Partnered (partner getting neither pension nor benefit)</td>
<td>2,236</td>
<td>86</td>
<td>639.60</td>
<td>24.60</td>
</tr>
<tr>
<td>3.</td>
<td>Partnered (partner getting pension)</td>
<td>2,236</td>
<td>86</td>
<td>319.80</td>
<td>12.30</td>
</tr>
</tbody>
</table>

**Note 1:** For member of a couple, partnered (partner getting neither pension nor benefit), partnered (partner getting benefit) and partnered (partner getting pension) see section 5E.

**Note 2:** For dependent child see section 5F.

**Note 3:** Items 2 and 3 of Table E-1 apply to members of illness separated and respite care couples.

**Note 4:** The basic free area is indexed annually in line with CPI increases (see sections 59B to 59E).

*No additional free area for certain prescribed student children*

**SCH6-E7** No additional free area is to be added for a dependent child who:

(a) has reached the age of 18 years; and

(b) is a prescribed student child within the meaning of the Social Security Act;

unless the person whose rate is being calculated, or the person’s partner, receives carer allowance under the Social Security Act for the child.
Reduction of additional free area for dependent children

SCH6-E8 The additional free area for a dependent child of a person to whom items 1 and 2 of Table E-1 apply is reduced by the annual amount of any payment received by the person or the person’s partner for or in respect of that particular child. The payments referred to in point SCH6-E10 do not result in a reduction.

SCH6-E9 The additional free area for a dependent child of a person to whom item 3 of Table E-1 applies is reduced by 50% of the annual amount of any payment received by the person or the person’s partner for or in respect of that particular child. The payments referred to in point SCH6-E10 do not result in a reduction.

SCH6-E10 No reduction is to be made under point SCH6-E8 or SCH6-E9 for a payment:
(a) under this Act; or
(b) of maintenance income; or
(c) under the Social Security Act; or
(d) under the A New Tax System (Family Assistance) Act 1999; or
(e) under an Aboriginal study assistance scheme; or
(f) under the Assistance for Isolated Children Scheme.

Note: For Aboriginal study assistance scheme see section 5F.

Ordinary/adjusted income free area examples

Note: The following examples are based on the amounts and rates set out in this Module at the commencement of this Schedule (see clause 5 of Part 1 of this Schedule).

Example 1:

Facts: Wayne and Mary are members of a couple. They both receive pensions. They have 2 dependent children—Max and Angela. Angela is being fostered by Wayne and Mary and they receive $15 per week from the NSW Government by way of a foster care payment in respect of Angela.

Result: The annual rate of foster care payment is:

$15 \times 52 = $780
As point SCH6-E9 applies to Wayne and Mary (they are covered by item 3 of Table E-1 in point SCH6-E6), the reduction is at the 50% rate (i.e. $390 per year). The possible additional amounts for Angela ($312) are therefore reduced to nil.

The amount that Wayne gets for Max is not subject to reduction and is $312 per year. Mary gets $312 for Max as well.

Wayne’s ordinary/adjusted income free area is:

\[
$2,236 + $312 = $2,548
\]

Mary’s ordinary income free area is the same.

Example 2:

If Wayne and Mary received only $10 per week ($520 per year) foster care payment for Angela, the amount each of them would be allowed for Angela would be:

\[
\frac{\$312 - \$520}{2} = $312 - $260 = $52
\]

Then each would have an ordinary income/adjusted free area of:

\[
$2,236 + $312 + $52 = $2,600
\]

*Pension reduction for ordinary/adjusted income in excess of ordinary/adjusted income free area*

SCH6-E11 (1) A person’s reduction for ordinary/adjusted income is:

*Ordinary/adjusted income excess \times 0.4*

(2) In this point:

*ordinary/adjusted income excess*, in relation to a person, means the person’s ordinary/adjusted income less the person’s ordinary/adjusted income free area.

SCH6-E12 In this Module:

*dependent child*, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.
Module F—Assets test

Effect of assets on maximum payment rate

This is how to work out the effect of a person’s assets on the person’s maximum payment rate:

Method statement

Step 1. Work out the value of the person’s assets.

Note 1: For the treatment of the assets of members of a couple see point SCH6-F2.

Note 2: For the assets that are to be disregarded in valuing a person’s assets see section 52.

Note 3: For the valuation of an asset that is subject to a charge or encumbrance see sections 52C and 52CA.

Step 2. Work out the person’s assets value limit (see point SCH6-F3 below).

Note: A person’s assets value limit is the maximum value of assets the person can have without affecting the person’s pension rate.

Step 3. Work out whether the value of the person’s assets exceeds the person’s assets value limit.

Step 4. If the value of the person’s assets does not exceed the person’s assets value limit, the person’s assets excess is nil.

Step 5. If the value of the person’s assets exceeds the person’s assets value limit, the person’s assets excess is the value of the person’s assets less the person’s assets value limit.

Step 6. Use the person’s assets excess to work out the person’s reduction for assets using point SCH6-F4 below.

Note 1: See the Method statements in point SCH6-A1 for the significance of the person’s reduction for assets.

Note 2: The application of the assets test is affected by provisions about the following:
Calculation of rates of service pension and income support supplement  
Schedule 6  
Rate Calculator  
Part 2  
Assets test  
Module F

Value of assets of members of couples

SCH6-F2 For the purposes of this Module:

(a) the value of the assets of a member of a couple is taken to be 50% of the sum of:
   (i) the value of the person’s assets; and
   (ii) the value of the person’s partner’s assets; and

(b) the value of the assets of a particular kind of a member of a couple is taken to be 50% of the sum of:
   (i) the value of the person’s assets of that kind; and
   (ii) the value of the person’s partner’s assets of that kind.

Assets value limit

SCH6-F3 A person’s assets value limit is worked out using Table F-1. Work out the person’s family situation and property ownership situation. The assets value limit is the corresponding amount in column 3.

<table>
<thead>
<tr>
<th>Item</th>
<th>Person’s family situation</th>
<th>Column 3A—Either person or partner property owner $</th>
<th>Column 3B—Neither person nor partner property owner $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not member of a couple</td>
<td>124,000</td>
<td>212,500</td>
</tr>
<tr>
<td>2.</td>
<td>Partnered</td>
<td>88,000</td>
<td>132,250</td>
</tr>
</tbody>
</table>

Note 1: For member of a couple and partnered see section 5E.
Note 2: For property owner see section 5L.
Note 3: Item 2 applies to members of illness separated and respite care couples.

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Note 4: The assets value limit in column 3B of item 1 is adjusted annually in line with CPI increases (see section 59H). The other assets value limits are indexed annually in line with CPI increases (see sections 59B to 59E).

Pension reduction for assets in excess of assets value limit

SCH6-F4(1) A person’s reduction for assets is worked out by using the formula:

\[
\frac{(\text{Assets excess}) \times 19.50}{250}
\]

where:

**assets excess** means the value of the person’s assets less the person’s assets value limit.

(2) In calculating a person’s assets excess under subpoint (1), disregard any part of the excess that is not a multiple of $250.
Module G—Remote area allowance

Remote area allowance

SCH6-G1 An amount by way of remote area allowance is to be included in a person’s rate of pension if:

(a) one of the following subparagraphs applies:
   (i) the person’s rate of pension apart from this point is greater than nil; or
   (ii) the person’s rate of pension apart from this point is nil merely because an advance pharmaceutical allowance has been paid to the person under Division 2 of Part VIIA of this Act or under Part 2.23 of the Social Security Act; or
   (iii) the person’s rate of pension apart from this point is nil merely because of the operation of Part IIID; and

(b) the person’s usual place of residence is situated in the remote area; and

(c) the person is physically present in the remote area.

Note: For remote area and physically present in the remote area see section 5Q.

Rate of remote area allowance

SCH6-G2 The rate of remote area allowance payable to a person is worked out using Table G. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child of the person.
Table G—Remote area allowance

<table>
<thead>
<tr>
<th>Column 1 Item</th>
<th>Column 2 Person’s family situation</th>
<th>Column 3 Basic allowance per year</th>
<th>Column 4 Basic allowance per fortnight</th>
<th>Column 5 Additional allowance per year</th>
<th>Column 6 Additional allowance per fortnight</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not member of a couple</td>
<td>473.20</td>
<td>18.20</td>
<td>189.80</td>
<td>7.30</td>
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<td></td>
<td>A member of an illness separated couple</td>
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<td></td>
<td>A member of a respite care couple</td>
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<tr>
<td></td>
<td>Partnered—partner not receiving remote area allowance</td>
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<tr>
<td>2.</td>
<td>Partnered (partner receiving remote area allowance)</td>
<td>405.60</td>
<td>15.60</td>
<td>189.80</td>
<td>7.30</td>
</tr>
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</table>

Note 1: For FTB child see subsection 5F(1).
Note 2: For member of a couple and partnered see section 5E.
Note 3: For illness separated couple and respite care couple see subsections 5R(5) and (5A).

Eligibility of FTB children who are outside Australia

SCH6-G3(1) If an FTB child leaves Australia otherwise than temporarily, additional allowance is not payable for the child on or after the day on which he or she left Australia.

(2) If an FTB child is temporarily absent from Australia for more than 8 weeks, additional allowance is not payable for the child after the first 8 weeks of the absence.
Special rule where partner has an FTB child but is not receiving a pension, benefit or allowance

SCH6-G4 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
(b) the person’s partner is not receiving a service pension, an income support supplement, a social security pension, or a social security benefit; and
(c) the person’s partner has an FTB child;
the child is taken, for the purposes of this Module, to be an FTB child of the person.

Special rule where partner has an FTB child but is not receiving additional allowance for the FTB child

SCH6-G5 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
(b) the person’s partner has an FTB child; and
(c) the person’s partner is not receiving additional allowance for the FTB child;
the child is taken, for the purposes of this Module, to be an FTB child of the person.

Special rule dealing with the death of an FTB child

SCH6-G6 If an FTB child of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child during that 14 weeks.
Notes to the Veterans’ Entitlements Act 1986

Note 1

The Veterans’ Entitlements Act 1986 as shown is this compilation comprises Act No. 27, 1986 amended as indicated in the Tables below.

The Veterans’ Entitlements Act 1986 was modified by the Veterans’ Affairs Legislation Amendment Act 1991 (see Act No. 74, 1991, s. 3, Schedule 1 [Part 1]).

For application, saving or transitional provisions made by the Corporations (Repeals, Consequentials and Transitionals) Act 2001, see Act No. 55, 2001.

All other relevant information pertaining to application, saving or transitional provisions prior to 5 March 1997 is not included in this compilation. For subsequent information see Table A.

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- **Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994** 164, 1994 16 Dec 1994 S. 32 Part 1 (ss. 1, 2), Div. 1 (s. 3) and Div. 11 (ss. 52–54) of Part 2, Part 3 (ss. 55–59) and Part 4 (s. 60); Royal Assent Div. 3 (ss. 13–27) and Div. 7 (ss. 36–38) of Part 2: 20 Mar 1995 (zd) Div. 5 of Part 2 (ss. 32–34): 1 July 1994 Remainder: 1 Jan 1995

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Act Notes

(a) Subsection 72(3) of the Social Security and Veterans’ Affairs (Miscellaneous Amendments) Act 1986 provided for the amendment of the Veterans’ Entitlements Act 1986. The last-mentioned section was repealed by the Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987 before a date was fixed for the commencement of subsection 72(3).

(b) The Social Security and Veterans’ Affairs (Miscellaneous Amendments) Act 1986 was amended by subsection 5(1) only of the Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987, section 2 of which provides as follows:

2. Each provision of this Act comes into operation, or is deemed to have come into operation, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.

(c) Section 65 of the Veterans’ Affairs Legislation Amendment Act 1987 provided for the amendment of the Social Security and Veterans’ Affairs (Miscellaneous Amendments) Act 1986. The last-mentioned section is dependent upon the commencement of subsection 72(3) of the Social Security and Veterans’ Affairs (Miscellaneous Amendments) Act 1986. The last-mentioned section was repealed by the Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987 before a date was fixed for the commencement of subsection 72(3).

(d) The Veterans’ Affairs Legislation Amendment Act 1987 was amended by Part 8 (sections 85 and 86) only of the Social Security and Veterans’ Affairs Legislation Amendment Act (No. 4) 1989, section 2 of which provides as follows:

2. Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.

(e) The Veterans’ Affairs Legislation Amendment Act 1987 was amended by Schedule 8 (Part 1) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(9) of which provides as follows:

(9) Part 1 of Schedule 8 is taken to have commenced on 5 June 1987, immediately after the Veterans’ Affairs Legislation Amendment Act 1987 received the Royal Assent.

(f) The Veterans’ Entitlements Act 1986 was amended by sections 60–98 only of the Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987, section 2 of which provides as follows:

2. Each provision of this Act comes into operation, or is deemed to have come into operation, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.

(g) The Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987 was amended by section 61 only of the Social Security Legislation Amendment Act 1988, subsection 2(5) of which provides as follows:

(5) The remaining amendments of the Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987 made by Schedule 4 shall be taken to have commenced on 16 December 1987.

(h) The Social Security and Veterans’ Entitlements (Maintenance Income Test) Amendment Act 1988 was amended by Part 3 (sections 84–86) only of the Social Security Legislation Amendment Act 1990, section 2 of which provides as follows:

2. Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day shown by the note in italics at the foot of the provision.

(i) The Veterans’ Affairs Legislation Amendment Act 1988 was amended by sections 87 and 88(a), (b) only of the Social Security and Veterans’ Affairs Legislation Amendment Act (No. 4) 1989, section 2 of which provides as follows:

2. Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

(i) The Social Security and Veterans’ Affairs Legislation Amendment Act 1988 was amended by sections 79 and 80 only of the Social Security and Veterans’ Affairs Legislation Amendment Act (No. 4) 1989, section 2 of which provides as follows:

2. Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.

(k) The Veterans’ Entitlements Act 1986 was amended by sections 89–127 only of the Social Security and Veterans’ Affairs Legislation Amendment Act (No. 4) 1989, section 2 of which provides as follows:

2. Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.

(l) The Veterans’ Entitlements Act 1986 was amended by sections 18–24 only of the Social Security and Veterans’ Affairs Legislation Amendment Act (No. 2) 1990, subsections 2(1)–(3) of which provide as follows:

(1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

(2) Sections 4, 5 and 6, paragraph 7(g), sections 8, 19, 20 and 21, paragraph 22(g) and section 23 are taken to have commenced on 22 August 1990.

(3) Paragraphs 8(a) to (f) and 22(a) to (f) (inclusive) commence on 1 March 1991.

(m) The Veterans’ Entitlements Act 1986 was amended by sections 36–92 only of the Veterans’ Affairs Legislation Amendment Act 1990, section 2 of which provides as follows:

2. Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.

Commencement of sections 37(b), (c), 38, 42(a), 61, 92(a) and (b) provides as follows:
Immediately after the commencement of the Veterans’ Entitlements Act 1986.

The Veterans’ Entitlements Act 1986 came into operation on 22 May 1986 (see Gazette 1986, No. S225).

(n) The Veterans’ Affairs Legislation Amendment Act 1990 was amended by Schedule 3 (item 128) only of the Statute Law Revision Act 1996, subsection 2(3) of which provides as follows:

(3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

(o) Section 2 of the Veterans’ Entitlements (Rewrite) Transition Act 1991 provides as follows:

(1) Subject to subsection (2), this Act commences on 1 July 1991, immediately after the commencement of the Veterans’ Entitlements Amendment Act 1991.

(2) Section 19 commences immediately after the commencement of section 22.

Section 22 commenced on 1 July 1991.

(p) The Veterans’ Entitlements (Rewrite) Transition Act 1991 was amended by Schedule 5 (item 8) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(8) of which provides as follows:

(8) Schedules 5 and 7 commence on the 28th day after the day on which this Act receives the Royal Assent.

(q) Subsections 2(3) and (6) of the Veterans’ Affairs Legislation Amendment Act 1991 provide as follows:

(3) Subject to subsection (4), section 4 commences or is taken to have commenced on 1 July 1991, immediately after the commencement of section 19 of the Veterans’ Entitlements (Rewrite) Transition Act 1991.

(6) Part 2 of Schedule 3 commences or is taken to have commenced on 1 July 1991, immediately after the commencement of section 19 of the Veterans’ Entitlements (Rewrite) Transition Act 1991.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

(i) The Veterans’ Entitlements Act 1986 was amended by sections 10–21 only of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1991, section 2 of which provides as follows:

2. Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.

Commencement of paragraphs 19(a) and (b) provides as follows:
Immediately after the commencement of the Veterans’ Entitlements Act 1986.

The Veterans’ Entitlements Act 1986 came into operation on 22 May 1986 (see Gazette 1986, No. S225).

(s) Subsection 2(2) of the Social Security and Veterans’ Affairs Legislation Amendment Act 1992 provides as follows:

(2) Section 7 is taken to have commenced on 20 March 1992, immediately after the commencement of Division 5 of Part 2 of the Social Security Legislation Amendment Act (No. 3) 1991 and Division 2 of Part 2 of the Social Security Legislation Amendment Act (No. 4) 1991.

(t) Subsections 2(2), (3) and (7)–(10) of the Veterans’ Affairs Legislation Amendment Act 1992 provide as follows:

(2) Part 5 of the Schedule is taken to have commenced on 22 May 1986, immediately after the commencement of the Veterans’ Entitlements Act 1986.

(3) Sections 23, 24, 25, 28 and 30 are taken to have commenced on 8 January 1991, immediately after the commencement of section 85 of the Veterans’ Affairs Legislation Amendment Act 1990.

(7) Division 11 of Part 4 and Part 2 of the Schedule are taken to have commenced on 1 July 1991, immediately after the commencement of the Veterans’ Entitlements Amendment Act 1991.

(8) The following provisions are taken to have commenced on 1 July 1991, immediately after the commencement of section 22 of the Veterans’ Entitlements (Rewrite) Transition Act 1991:

(a) Division 12 of Part 4;
(b) Part 5;
(c) Part 4 of the Schedule.

(9) Division 16 of Part 4 is taken to have commenced immediately after the commencement of Part 5.

(10) Part 3 of the Schedule is taken to have commenced on 1 July 1991, immediately after the commencement of section 19 of the Veterans’ Entitlements (Rewrite) Transition Act 1991.

In pursuance of subsection 2(9), Part 5 commenced on 1 July 1991, immediately after the commencement of section 22 of the Veterans’ Entitlements (Rewrite) Transition Act 1991.

(u) The Veterans’ Affairs Legislation Amendment Act 1992 was amended by Schedule 5 (item 1) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(8) of which provides as follows:

(8) Schedules 5 and 7 commence on the 28th day after the day on which this Act receives the Royal Assent.

(v) Subsections 2(3) and (5) of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1992 provide as follows:

(3) Part 3 of Schedule 2 is taken to have commenced on 1 July 1991, immediately after the commencement of the Veterans’ Entitlements Amendment Act 1991.

(5) Part 4 of Schedule 2 commences, or is taken to have commenced, on 1 January 1993, immediately after the commencement of the Social Security (Family Payment) Amendment Act 1992.
The Veterans’ Entitlements Act 1986 was amended by Division 2 of Part 4 (sections 81 and 82) only of the Social Security Legislation Amendment Act 1993, subsection 2(24) of which provides as follows:

(24) Division 2 of Part 4 commences immediately after Division 9 of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1992.

Division 9 commenced on 20 September 1993.

The Veterans’ Entitlements Act 1986 was amended by Schedule 1 (Part 2) and Schedule 2 (Part 2) only of the Social Security (Budget and Other Measures) Legislation Amendment Act 1993, subsection 2(8)(a) and (b) of which provides as follows:

(8) The following provisions commence, or are taken to have commenced on 20 March 1994:

(a) Division 2 of Part 2 and Schedule 1;
(b) Division 3 of Part 2 and Schedule 2;

The Veterans’ Entitlements Act 1986 was amended by section 85 only of the Migration Legislation Amendment Act 1994, subsection 2(3) of which provides as follows:

(3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the Migration Reform Act 1992.

Section 3 commenced on 1 September 1994.

The Veterans’ Entitlements Act 1986 was amended by Part 4 (sections 8–11) only of the Commonwealth Reciprocal Recovery Legislation Amendment Act 1994, subsection 2(2) of which provides as follows:

(2) Part 2, paragraph 7(b) and Part 4 commence on 1 July 1994, immediately after the commencement of section 8 of the Social Security Legislation Amendment Act 1994.

Subsection 2(3) of the Veterans’ Affairs Legislation Amendment Act 1994 provides as follows:

(3) Part 2 commences, or is taken to have commenced, on 1 July 1994, immediately after the commencement of Part 3 of the Social Security Legislation Amendment Act (No. 2) 1993.

The Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994 was amended by Schedule 3 (items 131–137) only of the Statute Law Revision Act 1996, subsection 2(3) of which provides as follows:

(3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

The Veterans’ Entitlements Act 1986 was amended by sections 56 and 57 only of the Social Security Legislation Amendment Act (No. 2) 1994, subsections 2(3) and (6) of which provide as follows:

(3) Divisions 2, 8 and 11 of Part 2, Part 3, Part 4 (other than paragraph 57(a)) commence on 1 July 1994.
(6) Subsections 40(2) and 46(1), paragraph 57(a) and Part 5 commence on 20 September 1994, immediately after the commencement of Part 3 of the Social Security (Home Child Care and Partner Allowances) Legislation Amendment Act 1994.

Subsection 2(3) of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1994 provides as follows:


The Veterans’ Affairs Legislation Amendment Act (No. 2) 1994 was amended by Schedule 3 (item 130) only of the Statute Law Revision Act 1996, subsection 2(3) of which provides as follows:

(3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

(zf) Subsection 2(3) of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 provides as follows:


(zg) The Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 was amended by Schedule 3 (items 138–141) only of the Statute Law Revision Act 1996, subsection 2(3) of which provides as follows:

(3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

(zh) The Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 was amended by Schedule 8 (Part 2) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(10) of which provides as follows:

(10) Part 2 of Schedule 8 is taken to have commenced on 16 December 1994, immediately after the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 received the Royal Assent.

(zj) Section 2 of the Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994 provides as follows:

2. This Act commences on 1 January 1995 immediately after the commencement of the Student Assistance (Youth Training Allowance) Act 1994.

(zk) The Veterans’ Entitlements Act 1986 was amended by Schedule 16 (Part 5) only of the Social Security Legislation Amendment Act (No. 1) 1995, subsection 2(5) of which provides as follows:

(5) If this Act does not receive the Royal Assent before 1 July 1995, Parts 1, 2 and 5 of Schedule 16 are taken to have commenced immediately before 1 July 1995.

(zd) Subsections 2(3)–(5), (8), (13) and (15)–(19) of the Veterans’ Affairs Legislation Amendment and Repeal Act 1995 provide as follows:

(3) Items 153 and 154 in Part 7 of Schedule 1 are taken to have commenced on 1 July 1994, immediately after the commencement of Division 5 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

(4) Part 4 of Schedule 1 is taken to have commenced on 20 March 1995, immediately after the commencement of section 44 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994.

(5) Items 39 and 40 in Part 5 of Schedule 1 are taken to have commenced on 1 January 1995, immediately after the commencement of Division 9 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

(8) Item 91 in Part 7 of Schedule 1 is taken to have commenced on 1 January 1995, immediately after the commencement of section 8 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

(13) Items 139 and 145 in Part 7 of Schedule 1 are taken to have commenced on 1 July 1991, immediately after the commencement of Part 2 of Schedule 3 to the Veterans’ Affairs Legislation Amendment Act 1991.

(15) Schedule 2 is taken to have commenced on 22 May 1986, immediately after the commencement of the Veterans’ Entitlements Act 1986.

(16) Schedule 3 is taken to have commenced on 1 July 1991, immediately after the commencement of section 19 of the Veterans’ Entitlements (Re-write) Transition Act 1991.
(17) Schedule 4 is taken to have commenced on 1 July 1993, immediately after the commencement of Division 8 of Part 4 of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1992.

(18) Item 1 in Schedule 5 is taken to have commenced on 20 March 1995, immediately after the commencement of Division 6 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994.

(19) Schedule 6 is taken to have commenced on 7 April 1994, immediately after the commencement of the Military Compensation Act 1994.

(zm) The Veterans’ Affairs Legislation Amendment and Repeal Act 1995 was amended by Schedule 8 (Part 3) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(11) of which provides as follows:

(11) Part 3 of Schedule 8 is taken to have commenced on 17 October 1995, immediately after the Veterans’ Affairs Legislation Amendment and Repeal Act 1995 received the Royal Assent.

(zn) The Veterans’ Affairs (1995-96 Budget Measures) Legislation Amendment Act 1995 was amended by Schedule 8 (Part 4) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(12) of which provides as follows:


(zo) The Veterans’ Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995 was amended by Schedule 8 (Part 5) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(13) of which provides as follows:

(13) Part 5 of Schedule 8 is taken to have commenced on 12 December 1995, immediately after the Veterans’ Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995 received the Royal Assent.

(zp) The Veterans’ Entitlements Act 1986 was amended by the Social Security and Veterans’ Affairs Legislation Amendment Act 1995, subsections 2(1), (4)(b), (e), (5)(b), (7) and (8) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(4) The following provisions commence, or are taken to have commenced, on 1 July 1996:

   (b) Schedule 6 and Part 1 of Schedule 9;

   (e) Part 2 of Schedule 16.

(5) The following provisions commence, or are taken to have commenced, on 20 September 1996:

   (b) Part 2 of Schedule 9;

(7) Subject to subsection (8), Schedule 7 and Schedule 17 commence on a day or days to be fixed by Proclamation.

(8) If Schedule 7 or Schedule 17 does not commence under subsection (7) within 6 months after the day on which this Act receives the Royal Assent, that Schedule commences on the first day after the end of that period.

(zq) The Social Security and Veterans’ Affairs Legislation Amendment Act 1995 was amended by Schedule 8 (Part 6) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsection 2(14) of which provides as follows:

(14) Part 6 of Schedule 8 is taken to have commenced on 9 January 1996, immediately after the Social Security and Veterans’ Affairs Legislation Amendment Act 1995 received the Royal Assent.

(zr) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 (items 113–137), Schedule 4 (items 148–150) and Schedule 5 (item 153) only of the Statute Law Revision Act 1996, subsections 2(1) and (2) of which provide as follows:
Act Notes

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.

Item 113 is taken to have commenced immediately after the commencement of Schedule 4 to the Veterans’ Affairs Legislation Amendment Act 1994.


Item 114 is taken to have commenced immediately after the commencement of Schedule 3 to the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

Schedule 3 commenced on 20 March 1995.

Items 115, 118, 121 and 133 are taken to have commenced immediately after the commencement of the Veterans’ Entitlements Amendment Act 1991.

The Veterans’ Entitlements Amendment Act 1991 came into operation on 1 July 1991.

Items 116 and 117 are taken to have commenced immediately after the commencement of section 5 of the Health and Community Services Legislation Amendment Act 1991.

Section 5 commenced on 24 December 1991.

Items 119, 120, 122–124 and 129–131 are taken to have commenced immediately after the commencement of Division 7 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994.

Division 7 of Part 2 commenced on 20 March 1995.

Item 125 is taken to have commenced immediately after the commencement of Division 7 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

Division 7 of Part 2 commenced on 20 March 1995.

Items 126–128 are taken to have commenced immediately after the commencement of Division 3 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994.

Division 3 of Part 2 commenced on 20 March 1995.

Items 132 and 134–136 are taken to have commenced immediately after the commencement of Division 6 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994.

Division 6 of Part 2 commenced on 20 March 1995.

Item 137 is taken to have commenced immediately after the commencement of section 20 of the Veterans’ Entitlements (Rewrite) Transition Act 1991.

Section 20 commenced on 1 July 1991.

(zt) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 (items 1–4) only of the Veterans’ Affairs Legislation Amendment Act (No. 1) 1996, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zt) Subsection 2(6) of the Veterans’ Affairs Legislation Amendment (1996-97 Budget Measures) Act 1997 provides as follows:

(6) Part 3 of Schedule 1 commences, or is taken to have commenced, on 20 March 1997, immediately after the commencement of Schedule 10 to the Social Security Legislation Amendment (Budget and Other Measures) Act 1996.

(zu) The Income Tax (Consequential Amendments) Act 1997 was amended by Schedule 12 (item 30) only of the Tax Law Improvement Act 1997, subsection 2(4) of which provides as follows:

(4) If a note specifies the commencement of an item in Schedule 12, the item commences as specified in the note.

Item 30 commences immediately before 1 July 1997.
The Veterans’ Entitlements Act 1986 was amended by Schedule 3 (item 1) only of the Hearing Services and AGHS Reform Act 1997, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

The Veterans’ Entitlements Act 1986 was amended by Schedule 4 (items 1–94) only of the Aged Care (Consequential Provisions) Act 1997, subsections 2(1) and (4) of which provide as follows:

(1) Subject to this section, this Act commences immediately after the commencement of the Aged Care Act 1997 (other than Division 1 of that Act).

(4) Items 78 to 87 (inclusive) of Part 2 of Schedule 4 commence immediately after the commencement of Part 1 of that Schedule.

The Aged Care Act 1997 (other than Division 1) commenced on 1 October 1997.

The Veterans’ Entitlements Act 1986 was amended by Schedule 6 (items 142 and 143) and Schedule 12 (item 35) only of the Tax Law Improvement Act 1997, subsections 2(2), (3) and (5) of which provide as follows:

(2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the Income Tax Assessment Act 1997.

(3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.

(5) If there is no note specifying the commencement of an item in Schedule 12, the item commences on 1 July 1997 immediately after the commencement of the Income Tax Assessment Act 1997.

The Veterans’ Entitlements Act 1986 was amended by Schedule 1, Schedule 4 (item 1), Schedule 5 (items 2–7) and Schedule 8 (Parts 7–9) only of the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997, subsections 2(1)–(8) and (15)–(17) of which provide as follows:

(1) Subject to the following subsections, this Act commences on the day on which it receives the Royal Assent.

(2) Part 1, and items 130, 131, 132 and 135, of Schedule 1 are taken to have commenced on 13 May 1997.

(3) Parts 2 and 3 of Schedule 1 commence on 1 January 1998.


(5) Part 5 of Schedule 1 commences on the earlier of the following days:

(a) the social security payday that is the third such payday to occur after the day on which this Act receives the Royal Assent; or

(b) the 25 December 1997 carer payment payday.

Note: For the meaning of social security payday and 25 December 1997 carer payment payday, see subsection (17).

(6) Part 7 of Schedule 1 commences on the seventh day after the day on which this Act receives the Royal Assent.

(7) Schedule 4 is taken to have commenced on 1 July 1997.

(8) Schedules 5 and 7 commence on the 28th day after the day on which this Act receives the Royal Assent.

(15) Part 7 of Schedule 8 is taken to have commenced on 1 July 1997.

(16) Part 8 of Schedule 8 is taken to have commenced on 20 March 1996.

(16A) Item 28 of Schedule 8 is taken to have commenced on 4 July 1996, immediately after the commencement of Schedule 7 to the Veterans’ Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995.

(17) In this section:

social security payday means a day that is a pension payday as defined in section 23 of the Social Security Act 1991.
Notes to the Veterans’ Entitlements Act 1986

**Act Notes**

**25 December 1997 carer payment payday** means:

(a) unless paragraph (b) applies—the social security payday that falls on 25 December 1997, or

(b) if, under section 218 of the Social Security Act 1991, a direction is made that amounts of carer payment that would normally be paid on 25 December 1997 are to be paid on a specified earlier day—that specified earlier day.

The social security payday of 11 December 1997 is the third such payday to occur after the day on which this Act received the Royal Assent.

(zz) The Veterans’ Entitlements Act 1986 was amended by Schedule 1 (items 362–368), only of the Social Security Legislation Amendment (Parenting and Other Measures) Act 1997, subsection 2(2) of which provides as follows:

(2) Part 3 of Schedule 1 commences on 1 July 1998. The remaining items of Schedule 1 commence on 20 March 1998.

(zzz) The Veterans’ Entitlements Act 1986 was amended by Schedule 19 (items 3–5) only of the Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997, subsection 2(2) of which provides as follows:

(2) Schedule 1 (other than items 44 and 45), Schedules 6 and 8, Schedule 15 (other than items 17, 18, 25, 29 and 30) and Schedule 19 commence, or are taken to have commenced, on 1 January 1998.

(zzbb) The Veterans’ Entitlements Act 1986 was amended by Schedule 5 (item 30) and Schedule 13 (items 50–82) only of the Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998, subsections 2(1) and (10) of which provide as follows:

(1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.

(10) Item 71 of Schedule 13 commences on 20 September 1998, immediately after the commencement of Part 4 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997.

(zzcc) The Veterans’ Entitlements Act 1986 was amended by Schedule 1 (items 195 and 196) only of the Financial Sector Reform (Consequential Amendments) Act 1998, subsection 2(2) of which provides as follows:

(2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the Australian Prudential Regulation Authority Act 1998.

(zzd) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 (items 44–86) and Schedule 7 (items 47–66) only of the Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998, subsections 2(3) and (9) of which provide as follows:

(3) Schedule 3 commences on 20 September 1998.

(9) Schedule 7 commences, or is taken to have commenced, on 1 April 1998.

(zzee) The Veterans’ Entitlements Act 1986 was amended by Schedule 1 (items 12–20) only of the 1998 Budget Measures Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998, subsection 2(2) of which provides as follows:

(2) Schedules 1 and 2 commence, or are taken to have commenced, on 1 January 1999.

(zzf) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 (items 74 and 75) only of the Assistance for Carers Legislation Amendment Act 1999, subsection 2(2)(b) of which provides as follows:

(2) The following provisions:

(b) Schedule 2 (other than items 1 and 3):

commence immediately after the commencement of Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

Note: Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 commences on 1 July 1999.

(zzg) The Veterans’ Entitlements Act 1986 was amended by Schedule 7 (items 232–244) only of the Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999, subsections 2(2)(e) and (16) of which provide as follows:

(2) The following provisions commence on the transfer date:
   (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).

(16) The Governor-General may, by Proclamation published in the Gazette, specify the date that is to be the transfer date for the purposes of this Act.

The transfer date was 1 July 1999 (see Gazette 1999, No. S283).

(zzh) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 only of the A New Tax System (Compensation Measures Legislation Amendment) Act 1999, subsections 2(2) and (3) of which provide as follows:

(2) Schedules 1, 2 and 3 commence, or are taken to have commenced:
   (a) after all the provisions listed in subsection (3) have commenced; and
   (b) on the last day on which any of those provisions commenced.

(3) These are the provisions:
   (a) section 1–2 of the A New Tax System (Goods and Services Tax) Act 1999;
   (b) section 2 of the A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999;
   (c) section 2 of the A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999;
   (d) section 2 of the A New Tax System (Goods and Services Tax Imposition—General) Act 1999;

(zzhb) The A New Tax System (Compensation Measures Legislation Amendment) Act 1999 was amended by Schedule 1 (items 3 and 4) only of the Compensation Measures Legislation Amendment (Rent Assistance Increase) Act 2000, section 2 of which provides as follows:

2 This Act commences, or is taken to have commenced, immediately before the commencement of Schedule 1 to the A New Tax System (Compensation Measures Legislation Amendment) Act 1999.


(zzi) The Veterans’ Entitlements Act 1986 was amended by Schedule 9 only of the A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999, subsection 2(2) of which provides as follows:

(2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than item 63) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999.

(zjj) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 only of the Aged Care Amendment (Omnibus) Act 1999, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on a day to be fixed by Proclamation.

(zkk) The Veterans’ Entitlements Act 1986 was amended by Schedule 1 (items 963–977) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, commencing time means the time when the Public Service Act 1999 commences.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

(2) Subject to this section, this Act commences at the commencing time.

(zzl) Subsections 2(3)–(6) of the Veterans’ Affairs Legislation Amendment Act (No. 1) 1999 provide as follows:

(3) Schedule 4 is taken to have commenced immediately after the commencement of item 132 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997.

(4) Items 6 and 7 of Schedule 6 are taken to have commenced immediately after the commencement of item 126 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997.

(5) Item 8 of Schedule 6 is taken to have commenced immediately after the commencement of section 7 of the Veterans’ Affairs Legislation Amendment Act (No. 2) 1994.

(6) Items 9 to 13 of Schedule 6 are taken to have commenced immediately after the commencement of section 67 of the Veterans’ Affairs Legislation Amendment Act 1990.

Item 132 of Schedule 1 commenced on 13 May 1997.
Item 126 of Schedule 1 commenced on 10 November 1997.
Section 7 commenced on 8 December 1994.
Section 67 commenced on 22 December 1998.

(zzm) The Veterans’ Entitlements Act 1986 was amended by Schedule 5 (items 70–74) and Schedule 11 (items 115 and 116) only of the A New Tax System (Tax Administration) Act 1999, subsection 2(9)(b) of which provides as follows:

(9) The following provisions commence on 1 July 2000:

(b) Schedule 11 (other than item 44).

(zzn) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 (items 75–77) only of the A New Tax System (Tax Administration) Act (No. 1) 2000, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the A New Tax System (Tax Administration) Act 1999.

Section 1 commenced on 22 December 1999.

(zzo) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 only of the Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzp) Subsection 2(2) of the Veterans’ Affairs Legislation Amendment Act (No. 1) 2000 provides as follows:

(2) Part 4 of Schedule 1 is taken to have commenced on 1 January 1996, immediately after the commencement of Schedule 8 to the Veterans’ Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995.

(zzq) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 (item 120) only of the Family Law Amendment Act 2000, subsection 2(1) of which provides as follows:

(1) Subject to subsections (1A) and (2), this Act commences 28 days after the day on which it receives the Royal Assent.

(zzr) Subsection 2(1) (item 65) of the Statute Law Revision Act 2002 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.
Notes to the Veterans’ Entitlements Act 1986

Act Notes

Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>65. Schedule 2, item 36</td>
<td>Immediately after the time specified in the Veterans’ Affairs Legislation Amendment (Budget Measures) Act 2000 for the commencement of item 19 of Schedule 5 to that Act</td>
<td>1 July 2001</td>
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</table>

(zzs) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 (item 87) only of the Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

(zzt) The Veterans’ Entitlements Act 1986 was amended by Schedule 3 (items 559–562) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.

(zzu) The Veterans’ Entitlements Act 1986 was amended by Schedule 2 (items 484–487) only of the New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zzua) Subsection 2(1) (item 9) of the Taxation Laws Amendment Act (No. 5) 2002 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
</table>

(zzv) The Veterans’ Entitlements Act 1986 was amended by the Veterans’ Affairs Legislation Amendment (2001 Budget Measures) Act 2001, subsections 2(3)(b) and (4)(b) of which provide as follows:

(3) Items 1 and 3 of Schedule 4 commence at the later of:
   (b) the time when Parts 4 to 10 of the Administrative Review Tribunal Act 2001 commence.

(4) Item 2 of Schedule 4 commences at the later of:
   (b) the time when Parts 4 to 10 of the Administrative Review Tribunal Act 2001 commence.

The Administrative Review Tribunal Bill has not been enacted. Therefore these amendments do not commence.

(zzw) Subsection 2(1) of the Veterans’ Affairs Legislation Amendment Act (No. 1) 2002 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Veterans’ Entitlements Act 1986

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## Act Notes

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<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Schedule 3</td>
<td>Immediately after the Aged Care Act 1997 (other than Division 1 of that Act) commenced</td>
<td>1 October 1997</td>
</tr>
<tr>
<td>6. Schedule 5, item 2</td>
<td>Immediately after item 97 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>11 December 1997</td>
</tr>
<tr>
<td>7. Schedule 6, item 1</td>
<td>Immediately after the commencement of the provisions of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 that commenced on 1 January 1995</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>8. Schedule 6, item 2</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>10. Schedule 6, item 4</td>
<td>Immediately after item 41 of Schedule 17 to the Social Security and Veterans’ Affairs Legislation Amendment Act 1995 commenced</td>
<td>9 July 1996</td>
</tr>
<tr>
<td>11. Schedule 6, item 5</td>
<td>Immediately after the commencement of the provisions of the Veterans’ Affairs Legislation Amendment and Repeal Act 1995 that commenced on 17 October 1995</td>
<td>17 October 1995</td>
</tr>
<tr>
<td>12. Schedule 6, item 6</td>
<td>Immediately after items 44 to 86 of Schedule 3 to the Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998 commenced</td>
<td>20 September 1998</td>
</tr>
<tr>
<td>13. Schedule 6, item 7</td>
<td>Immediately after the provisions of items 50 to 70 of Schedule 13 to the Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998 commenced</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>14. Schedule 6, item 8</td>
<td>Immediately after the commencement of the provisions of the Social Security and Veterans’ Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998 that commenced on 15 September 1997</td>
<td>15 September 1997</td>
</tr>
<tr>
<td>15. Schedule 6, item 9</td>
<td>Immediately after the provisions of items 50 to 70 of Schedule 13 to the Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998 commenced</td>
<td>1 July 1998</td>
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</table>
### Act Notes

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
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<tbody>
<tr>
<td>17. Schedule 6, item 11</td>
<td>Immediately after Schedule 3 to the Aged Care Amendment (Omnibus) Act 1999 commenced</td>
<td>21 October 1999</td>
</tr>
<tr>
<td>19. Schedule 6, item 13</td>
<td>Immediately after items 44 to 86 of Schedule 3 to the Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998 commenced</td>
<td>20 September 1998</td>
</tr>
<tr>
<td>20. Schedule 6, item 14</td>
<td>Immediately after item 41 of Schedule 17 to the Social Security and Veterans’ Affairs Legislation Amendment Act 1995 commenced</td>
<td>9 July 1996</td>
</tr>
<tr>
<td>21. Schedule 6, item 15</td>
<td>Immediately after Schedule 9 to the A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999 commenced</td>
<td>1 July 2000</td>
</tr>
<tr>
<td>22. Schedule 6, item 18</td>
<td>Immediately after item 6 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>13 May 1997</td>
</tr>
<tr>
<td>25. Schedule 6, item 23</td>
<td>Immediately after section 18 of the Veterans’ Affairs Legislation Amendment Act 1994 commenced</td>
<td>21 June 1994</td>
</tr>
<tr>
<td>27. Schedule 6, item 30</td>
<td>Immediately after item 17 of Schedule 4 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 commenced</td>
<td>1 July 1999</td>
</tr>
<tr>
<td>31. Schedule 6, item 34</td>
<td>Immediately after the Veterans’ Entitlements Amendment Act 1991 commenced</td>
<td>1 July 1991</td>
</tr>
<tr>
<td>33. Schedule 6, items 36 and 37</td>
<td>Immediately after item 6 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>13 May 1997</td>
</tr>
<tr>
<td>34. Schedule 6, item 38</td>
<td>Immediately after item 49 of Schedule 4 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 commenced</td>
<td>1 July 1999</td>
</tr>
</tbody>
</table>
### Act Notes

<table>
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<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
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<tbody>
<tr>
<td>36. Schedule 6, item 41</td>
<td>Immediately after Division 11 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 commenced</td>
<td>16 December 1994</td>
</tr>
<tr>
<td>38. Schedule 6, item 44</td>
<td>Immediately after item 91 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>11 December 1997</td>
</tr>
<tr>
<td>40. Schedule 6, item 46</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>41. Schedule 6, item 47</td>
<td>Immediately after Part 4 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>20 September 1998</td>
</tr>
<tr>
<td>42. Schedule 6, items 48 and 49</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>44. Schedule 6, item 51</td>
<td>Immediately after section 74 of the Veterans’ Entitlements Act 1986 commenced</td>
<td>22 May 1986</td>
</tr>
<tr>
<td>45. Schedule 6, items 52 and 53</td>
<td>Immediately after item 6 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>13 May 1997</td>
</tr>
<tr>
<td>47. Schedule 6, item 56</td>
<td>Immediately after item 30 of Schedule 1 to the Veterans’ Affairs Legislation Amendment Act (No. 1) 2000 commenced</td>
<td>24 November 2000</td>
</tr>
<tr>
<td>49. Schedule 6, item 60</td>
<td>Immediately after item 30 of Schedule 1 to the Veterans’ Affairs Legislation Amendment Act (No. 1) 2000 commenced</td>
<td>24 November 2000</td>
</tr>
<tr>
<td>51. Schedule 6, item 62</td>
<td>Immediately after section 29 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 commenced</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>53. Schedule 6, item 67</td>
<td>Immediately after Part 7 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>10 November 1997</td>
</tr>
<tr>
<td>55. Schedule 6, item 69</td>
<td>Immediately after Division 8 of Part 2 of the Veterans’ Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994 commenced</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>57. Schedule 6, item 74</td>
<td>Immediately after item 73 of Schedule 6 to this Act commences</td>
<td>6 September 2002</td>
</tr>
<tr>
<td>59. Schedule 6, item 77</td>
<td>Immediately after Part 5 of Schedule 1 to the Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 commenced</td>
<td>11 December 1997</td>
</tr>
<tr>
<td><strong>Provision(s)</strong></td>
<td><strong>Commencement</strong></td>
<td><strong>Date/Details</strong></td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>60. Schedule 6, item 78</td>
<td>Immediately after the Veterans' Entitlements Act 1986 commenced</td>
<td>22 May 1986</td>
</tr>
<tr>
<td>64. Schedule 6, item 83</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>66. Schedule 6, item 85</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>68. Schedule 6, items 87 to 96</td>
<td>Immediately after Schedules 1, 2 and 3 to the Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997 commenced</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>69. Schedule 7, items 1 and 2</td>
<td>Immediately after items 17 and 19 of Schedule 1 to the Veterans' Affairs Legislation Amendment Act (No. 1) 2000 commenced</td>
<td>24 November 2000</td>
</tr>
</tbody>
</table>

(zzwa) Subsection 2(1) (items 41 and 42) of the Statute Law Revision Act 2006 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th><strong>Provision(s)</strong></th>
<th><strong>Commencement</strong></th>
<th><strong>Date/Details</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>41. Schedule 2, item 26</td>
<td>Immediately after the time specified in the Veterans' Affairs Legislation Amendment Act (No. 1) 2002 for the commencement of item 52 of Schedule 6 to that Act.</td>
<td>13 May 1997</td>
</tr>
<tr>
<td>42. Schedule 2, item 27</td>
<td>Immediately after the time specified in the Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Act 2004 for the commencement of item 86 of Schedule 1 to that Act.</td>
<td>29 June 2004</td>
</tr>
</tbody>
</table>

(zzx) Subsection 2(1) (item 3) of the Veterans' Affairs Legislation Amendment Act (No. 2) 2002 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<table>
<thead>
<tr>
<th><strong>Provision(s)</strong></th>
<th><strong>Commencement</strong></th>
<th><strong>Date/Details</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Schedule 1, items 3 to 8</td>
<td>Immediately after the commencement of Schedule 1 to the Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002</td>
<td>20 September 2001</td>
</tr>
</tbody>
</table>
Notes to the Veterans’ Entitlements Act 1986

**Act Notes**

(zzz) Subsection 2(1) (item 2) of the Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Schedules 1 to 4</td>
<td>Immediately after the commencement of the Family Law Legislation Amendment (Superannuation) Act 2001</td>
<td>28 December 2002</td>
</tr>
</tbody>
</table>

(zzz) Subsection 2(1) (item 3) of the Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Schedule 1</td>
<td>Immediately after the commencement of sections 3 to 62 of the Legislative Instruments Act 2003</td>
<td>1 January 2005</td>
</tr>
</tbody>
</table>

(zzza) Subsection 2(1) (item 16) of the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Schedule 2, items 120 to 169</td>
<td>The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the Higher Education Support Act 2003.</td>
<td>1 January 2004</td>
</tr>
</tbody>
</table>

(zzzb) Subsection 2(1) (item 7) of the Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Act 2004 provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Schedule 1, Part 6</td>
<td>Immediately after the commencement of Part 4 of Schedule 1 to the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004.</td>
<td>1 July 2004</td>
</tr>
</tbody>
</table>

138 Veterans’ Entitlements Act 1986
(zzzc) Subsection 2(1) (item 4) of the *Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Election Commitments) Act 2004* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Schedule 2, items 22 and 23</td>
<td>Immediately after the commencement of item 25 of Schedule 1 to this Act.</td>
<td>1 December 2004</td>
</tr>
</tbody>
</table>

(zzzd) Subsection 2(1) (items 2 and 3) of the *Veterans’ Entitlements Amendment (2005 Budget Measure) Act 2005* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Schedule 1, item 1</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>6 July 2005</td>
</tr>
<tr>
<td>3. Schedule 1, items 2 to 4</td>
<td>Immediately after the provision(s) covered by table item 2.</td>
<td>6 July 2005</td>
</tr>
</tbody>
</table>

(zzze) Subsection 2(1) (items 7 and 9) of the *Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Schedule 6, item 1</td>
<td>Immediately after the time specified in the <em>A New Tax System (Compensation Measures Legislation Amendment) Act 1999</em> for the commencement of item 22 of Schedule 2 to that Act.</td>
<td>1 July 2000</td>
</tr>
<tr>
<td>9. Schedule 6, item 3</td>
<td>Immediately after the commencement of item 17 of Schedule 2 to the <em>Family and Community Services and Veterans’ Affairs Legislation Amendment (2004 Election Commitments) Act 2004</em>.</td>
<td>1 December 2004</td>
</tr>
</tbody>
</table>
## Table of Amendments

The amendment history of the *Veterans' Entitlements Act 1986* appears in the Table below. For repealed provisions up to and including Act No. 132, 1998 see the Repeal Table.

### Table of Amendments

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<th>How affected</th>
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<td></td>
</tr>
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<td>ad. No. 16, 2001</td>
</tr>
<tr>
<td>S. 5</td>
<td>am. No. 106, 1986; Nos. 78, 88 and 130, 1987; No. 134, 1988; Nos. 163 and 164, 1989; No. 2, 1991; rs. No. 72, 1991; am. Nos. 73 and 74, 1991; Nos. 51 and 70, 1992; Nos. 78, 81, 148, 164 and 184, 1994; Nos. 118 and 146, 1995; Nos. 1 and 43, 1996; Nos. 7, 87, 114 and 157, 1997; Nos. 45, 48, 68, 84 and 93, 1998; Nos. 44, 83 and 132, 1999; Nos. 47 and 102, 2001; Nos. 11, 54, 73, 74 and 121, 2002; Nos. 52 and 109, 2004; No. 61, 2005; No. 82, 2006</td>
</tr>
<tr>
<td>S. 5A</td>
<td>ad. No. 72, 1991</td>
</tr>
<tr>
<td>S. 5AB</td>
<td>ad. No. 98, 1994</td>
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<tr>
<td>S. 5B</td>
<td>ad. No. 72, 1991; am. Nos. 73 and 208, 1991; No. 70, 1992; No. 27, 1993; No. 118, 1995</td>
</tr>
<tr>
<td>S. 5C</td>
<td>ad. No. 72, 1991; am. Nos. 70 and 228, 1992; Nos. 78, 98 and 164, 1994; Nos. 118 and 128, 1995; No. 43, 1996; No. 157, 1997</td>
</tr>
<tr>
<td>S. 5D</td>
<td>ad. No. 72, 1991; am. No. 74, 1991; No. 118, 1995</td>
</tr>
<tr>
<td>S. 5E</td>
<td>ad. No. 72, 1991; am. Nos. 74 and 175, 1991; No. 70, 1992; Nos. 98 and 184, 1994; No. 118, 1995; No. 45, 1996; No. 118, 1999; No. 74, 2002; No. 52, 2004</td>
</tr>
<tr>
<td>Subhead. to s. 5F(3)</td>
<td>rs. No. 118, 1995; am. No. 93, 1998</td>
</tr>
<tr>
<td>S. 5F</td>
<td>ad. No. 72, 1991; am. Nos. 73 and 175, 1991; No. 70, 1992; Nos. 98 and 184, 1994; Nos. 106 and 118, 1995; No. 1, 1996; Nos. 87, 157 and 197, 1997; Nos. 45 and 93, 1998; Nos. 83, 1999; No. 73, 2002; No. 61, 2005</td>
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<tr>
<td>S. 5G</td>
<td>ad. No. 72, 1991; am. Nos. 73 and 74, 1991; Nos. 60, 78 and 164, 1994; No. 118, 1995</td>
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</tbody>
</table>
### Table of Amendments

ad. = added or inserted     am. = amended     rep. = repealed     rs. = repealed and substituted

<table>
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<td>S. 5H .........................</td>
<td>ad. No. 72, 1991</td>
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<tr>
<td></td>
<td>am. Nos. 73, 74 and 175, 1991; Nos. 70 and 228, 1992; Nos. 78, 98, 148, 164 and 184, 1994; Nos. 118 and 146, 1995; No. 1, 1996; Nos. 114, 157 and 197, 1997; Nos. 45 and 93, 1998; Nos. 13 and 132, 1999; No. 157, 2000; No. 10, 2001; Nos. 73 and 74, 2002; Nos. 122 and 150, 2003; Nos. 52, 94, 100, 128 and 132, 2004; Nos. 29 and 66, 2005; Nos. 41 and 108, 2006</td>
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<td>Note to s. 5H(8)(e) ...............</td>
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<tr>
<td></td>
<td>am. No. 175, 1991; Nos. 70 and 228, 1992; Nos. 78, 148 and 164, 1994; No. 118, 1995; No. 1, 1996; Nos. 7 and 114, 1997; No. 93, 1998; Nos. 44 and 132, 1999; Nos. 11, 54, 73 and 121, 2002; No. 116, 2004</td>
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<td>Note 4 to s. 5J(1C) ..................</td>
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<td>Notes 1A, 1B to s. 5JA(2)(h) .......</td>
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<td>Heading to s. 5JB ....................</td>
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<td>am. Nos. 11 and 121, 2002; No. 116, 2004; No. 36, 2006</td>
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<td>Note 1A to s. 5JB(2)(h) .............</td>
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<tr>
<td>S. 5JBA .................................</td>
<td>ad. No. 116, 2004</td>
</tr>
<tr>
<td></td>
<td>am. No. 36, 2006</td>
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<tr>
<td>Ss. 5JC, 5JD .........................</td>
<td>ad. No. 121, 2002</td>
</tr>
<tr>
<td>S. 5K .................................</td>
<td>ad. No. 72, 1991</td>
</tr>
<tr>
<td></td>
<td>am. No. 228, 1992; No. 118, 1995</td>
</tr>
<tr>
<td>S. 5L .................................</td>
<td>ad. No. 72, 1991</td>
</tr>
<tr>
<td></td>
<td>am. Nos. 73 and 74, 1991; No. 70, 1992; Nos. 78, 98 and 164, 1994; Nos. 118 and 146, 1995; No. 1, 1996; No. 114, 1997 (as am. by No. 73, 2002); No. 157, 1997; No. 67, 1998; No. 132, 1999; No. 132, 2000; Nos. 54 and 73, 2002; No. 29, 2005</td>
</tr>
<tr>
<td>Note 1 to s. 5L(6A) ..................</td>
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</tr>
<tr>
<td>Note 4 to s. 5L(6A) ..................</td>
<td>am. No. 29, 2005</td>
</tr>
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| S. 5NA              | ad. No. 73, 1991  
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- Renumbered Div. 1 of Part IIIB... No. 98, 1994

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- am. No. 98, 1994
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_Veterans’ Entitlements Act 1986_ 213
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214 Veterans’ Entitlements Act 1986
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Note 2

Schedule 6 (subpoint SCH6-A1(3))—Schedule 2 (item 22) of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* (No. 68, 1999) as amended by the *Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006* (No. 108, 2006) provides as follows:

**Schedule 2**

**22 Subpoint SCH6-A1(3) (method statement 2, step 4)**

After “2,” insert “2A,”.

The proposed amendment was misdescribed and is not incorporated in this compilation.
Notes to the Veterans’ Entitlements Act 1986

Table A

Application, saving or transitional provisions

(No. 7, 1997)

Schedule 1

23 Application

The amendment made by item 22 applies to a funeral benefit under section 99 of the Veterans’ Entitlements Act 1986 in respect of which an application is made under section 113 of that Act after 20 August 1996.

66 Application of amendments

(1) The amendment of the Veterans’ Entitlements Act 1986 made by item 64 applies only to a person who makes an application for an advance payment of service pension or income support supplement on or after the day on which this Act receives the Royal Assent.

(2) The amendment of the Veterans’ Entitlements Act 1986 made by item 65 applies only to the following persons:

   (a) unless paragraph (b) applies—a person who makes an application for an advance payment of service pension or income support supplement on or after the day on which this Act receives the Royal Assent;

   (b) a person who:

      (i) receives an advance payment of service pension or income support supplement in respect of an application for that payment made before the day on which this Act receives the Royal Assent; and

      (ii) makes an application for an advance payment of service pension or income support supplement after the end of the period of 12 months immediately after the person receives the payment referred to in subparagraph (i).

78 Application of amendments

The amendments of the Veterans’ Entitlements Act 1986 made by items 67 to 77 apply only to a person who makes an application for an
Notes to the Veterans’ Entitlements Act 1986

Table A

advance payment of service pension or income support supplement on or after the day on which this Act receives the Royal Assent.

Aged Care (Consequential Provisions) Act 1997 (No. 114, 1997)

Schedule 4

51 Application
The amendments to the Veterans’ Entitlements Act 1986 made by this Part apply to instalments of pension paid after the day on which this Part commences.

89 Application
The amendments of the Veterans’ Entitlements Act 1986 made by this Part apply to instalments of pension paid after the day on which this Part commences.

94 Application
The amendments of the Veterans’ Entitlements Act 1986 made by this Part apply in relation to an instalment of pension paid after the day on which the Aged Care Act 1997 commences.

Tax Law Improvement Act 1997 (No. 121, 1997)

4 Application of amendments
An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.
Table A

Veterans’ Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 (No. 157, 1997)

Schedule 1

26 Application

The amendments of the Veterans’ Entitlements Act 1986 made by this Part apply only to persons who make an application, or on whose behalf an application is made, for an advance payment of an amount of pension or income support supplement on or after 1 January 1998.


Schedule 13

61 Application

The repeal of paragraph 5H(8)(ha) of the Veterans’ Entitlements Act 1986 applies for the purposes of working out income earned, derived or received after 1 July 1998.

78 Saving provision

The amendment made by item 77 does not affect arrangements or proceedings for recovery of an amount purportedly paid under the AUSTUDY scheme before the commencement of this item but was not lawfully payable under that scheme.

Veterans’ Entitlements Amendment (Gold Card) Act 1998 (No. 92, 1998)

Schedule 1

3 Transitional—pre-commencement notification

The notification mentioned in subparagraph 85(4A)(c)(i) or (ii) of the Veterans’ Entitlements Act 1986 (as amended by this Schedule) may have been given before this Schedule commences.
Table A

Note: This would allow the veteran to become eligible for treatment at the time of that commencement (assuming that the veteran satisfied the other criteria in subsection 85(4A) of that Act at that time).


Schedule 2

45 1 July 2000 increase in rate of certain pensions

(1) If, on or after 1 July 2000, a pension is payable to a person because of the operation of subsection 4(6) or 10(1) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986, the rate at which the pension is payable is the amount that is 4% greater than the rate at which the pension was payable to the person immediately before 1 July 2000.

(2) The amount is to be rounded as follows:
   (a) if the pension is payable because of subsection 4(6) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986—to the nearest cent (rounding 0.5 cents upwards);
   (b) otherwise—to the nearest ten cents (rounding 5 cents upwards).


Schedule 3

18 Application of amendments

The amendments made by this Part apply only to people leaving Australia on or after 20 September 2000, and the provisions of the Veterans’ Entitlements Act 1986 that are amended by this Part continue to apply, as if the amendments had not been made, to people leaving Australia before that date.

Veterans’ Entitlements Act 1986
Table A


Schedule 2

12 Transitional—subsection 5L(1) of the Veterans’ Entitlements Act 1986

The amendment made by item 1 of this Schedule does not imply that, at any time before the commencement of this item, money was not an asset for the purposes of a provision of the Veterans’ Entitlements Act 1986.


Schedule 2

418 Transitional—pre-commencement offences

(1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:

(a) an offence committed before the commencement of this item; or
(b) proceedings for an offence alleged to have been committed before the commencement of this item; or
(c) any matter connected with, or arising out of, such proceedings;

as if the amendment or repeal had not been made.

(2) Subitem (1) does not limit the operation of section 8 of the Acts Interpretation Act 1901.

419 Transitional—pre-commencement notices

If:

(a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
Table A

(b) any or all of those other provisions are repealed by this Schedule; and
(c) the first-mentioned provision is amended by this Schedule; the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Veterans’ Affairs Legislation Amendment Act (No. 1) 2000 (No. 141, 2000)

Schedule 1

10 Application
The amendments made by items 6, 7 and 9 only apply to requests made on or after the commencement of those items.

12 Application
The amendment made by item 11 only applies to travelling expenses incurred on or after the commencement of that item.

21 Saving
A delegation under section 213 or 214 of the Veterans’ Entitlements Act 1986 that was in force immediately before the commencement of this Part continues in force as if it had been made under that section as amended by this Part.

Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001 (No. 10, 2001)

Schedule 2

94 Saving—old regulations
(1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or

Veterans’ Entitlements Act 1986
component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the Air Force Act 1923 and the members have now become members of the Air Force Reserve.

(2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

95 Regulations about transitional matters

(1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.

(2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.

(3) Subitem (2) does not limit the scope of subitem (1).

Veterans’ Affairs Legislation Amendment (Application of Criminal Code) Act 2001 (No. 16, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
9 Application and transitional

(1) The amendments made by items 6 and 7 apply to a person in respect of an amount that becomes a recoverable amount on or after 1 July 2001.

(2) In the case of a person in respect of whom an amount was a recoverable amount immediately before 1 July 2001, the following provisions of this item have effect.

(3) If the person was at 1 July 2001 receiving a pension, allowance or other pecuniary benefit under the Veterans’ Entitlements Act 1986 or under the social security law:

   (a) if the person had not become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day—neither the subsections repealed by item 6 nor the sections inserted by item 7 apply to the person in respect of the debt; or

   (b) if the person had become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day—the subsections repealed by item 6 continue to apply to the person in respect of the debt and the sections inserted by item 7 do not apply.

(4) If:

   (a) the person was not at 1 July 2001 receiving a pension, allowance or other pecuniary benefit under the Veterans’ Entitlements Act 1986 or under the social security law; and

   (b) the person had repaid part of the relevant debt before that day;

the following paragraphs have effect:

   (c) if the person had become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day—the subsections repealed by item 6 continue to apply to the person in respect
of the debt but, if the person fails on or after that day to make a payment in respect of the debt in accordance with an arrangement entered into with the Commission:

(i) the Commission may give to the person a further notice in accordance with subsection 205AAA(3) inserted by item 7; and

(ii) sections 205AAB, 205AAC and 205AAE inserted by that item apply;

(d) if the person had not become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day and the person fails on or after that day to make a payment in respect of the debt in accordance with an arrangement entered into with the Commission:

(i) the Commission may give to the person a further notice in accordance with subsection 205AAA(3) inserted by item 7; and

(ii) sections 205AAB to 205AAE inserted by that item apply.

(5) If:

(a) the person was not at 1 July 2001 receiving a pension, allowance or other pecuniary benefit under the Veterans’ Entitlements Act 1986 or under the social security law; and

(b) the person had not repaid any part of the relevant debt before that day;

the following paragraphs have effect:

(c) if the person had become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day—the subsections repealed by item 6 continue to apply to the person in respect of the debt;

(d) if the person had not become liable before that day to pay an additional amount in respect of the relevant debt under subsection 205(5) of the Veterans’ Entitlements Act 1986 as in force at any time before that day:
Notes to the Veterans’ Entitlements Act 1986

Table A

(i) the Commission may give to the person a further notice in accordance with subsection 205AAA(3) inserted by item 7; and
(ii) sections 205AAB to 205AAE inserted by that item apply.

(6) The amendments made by items 5A and 8A apply to:
   (a) debts that are owed at the commencement of 1 July 2001; and
   (b) debts that arise after that time.


Schedule 2

488 Application

(1) Subject to this item, the amendments made by this Schedule apply to:
   (a) depreciating assets:
      (i) you start to hold under a contract entered into after 30 June 2001; or
      (ii) you constructed where the construction started after that day; or
      (iii) you start to hold in some other way after that day; and
   (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

226 Veterans’ Entitlements Act 1986
Notes to the *Veterans’ Entitlements Act 1986*

**Table A**

_Veterans’ Entitlements Amendment (Gold Card Extension) Act 2002_  
(No. 12, 2002)

**Schedule 1**

2 **Transitional—pre-commencement notification**

The notification mentioned in subparagraph 85(4B)(c)(i) or (ii) of the *Veterans’ Entitlements Act 1986* (as amended by this Schedule) may have been given before this Schedule commences.

Note: This would allow the veteran to become eligible for treatment at the time subsection 85(4B) of the *Veterans’ Entitlements Act 1986* commences (assuming that the veteran satisfies the other criteria in that subsection at that time).

_Veterans’ Affairs Legislation Amendment Act (No. 1) 2003* (No. 26, 2003)

**Schedule 1**

8 **Application provision**

The amendments of the *Veterans’ Entitlements Act 1986* made by this Part apply in relation to any claim for pension bonus made under that Act on, or at any time after, the day on which this Act receives the Royal Assent.

28 **Application provision**

The amendments of the *Veterans’ Entitlements Act 1986* made by this Part apply in relation to any claim for pension bonus made under that Act on, or at any time after, the day on which this Act receives the Royal Assent.

32 **Application of items 29, 30 and 31**

The amendments made by items 29, 30 and 31 apply to claims for partner service pension lodged on or after the commencement of those items.
Table A

35 Application of items 33 and 34
   The amendments made by items 33 and 34 apply to multiple
   compensation payments in relation to the same event of which at least
   one is received after the commencement of those items.

   Family and Community Services and Veterans’ Affairs Legislation Amendment

Schedule 1

4 Application
   The amendment of section 5H of the Veterans’ Entitlements Act 1986
   made by this Schedule applies to amounts paid after the commencement
   of this Schedule.

   Military Rehabilitation and Compensation (Consequential and Transitional

Schedule 1

16C Application of items 16A and 16B
   The amendments made by items 16A and 16B apply from the pension
   period that begins after those items commence.

44 Saving determinations of hazardous service
   A determination in force under subsection 120(7) of the VEA
   immediately before the commencement of item 43 of this Schedule
   continues in force after that time despite the amendment made by that
   item.

142 Application of amendments
   The amendments made by this Part apply to claims under section 14, or
   applications under section 15, of the Veterans’ Entitlements Act 1986
   made after the commencement of section 3 of the Military
Schedule 1

31 Saving provision

An application:
   (a) that complies with the requirements of section 45TE of the 
       Veterans’ Entitlements Act 1986 as in force immediately
       before the commencement of item 30; and
   (b) that has been lodged at an office of the Department in
       Australia in accordance with the requirements of
       section 45TG of that Act as so in force; and
   (c) that has not been dealt with before that day;

is to be taken, for all purposes of the Veterans’ Entitlements Act 1986 as
amended and in force on and after that day, as if it were an application
lodged in accordance with the requirements of section 45TE of that Act
as so amended.

40 Saving provision

A request:
   (a) that complies with the requirements of section 49G of the
       Veterans’ Entitlements Act 1986 as in force immediately
       before the commencement of item 39; and
   (b) that has been lodged at an office of the Department in
       Australia in accordance with the requirements of section 5T
       of that Act as so in force; and
   (c) that has not been dealt with before that day;

is to be taken, for all purposes of the Veterans’ Entitlements Act 1986 as
amended and in force on and after that day, as if it were a request
lodged in accordance with the requirements of section 49G of that Act
as so amended.

92 Saving provision

A claim:
   (a) that complies with the requirements of section 118I of the
       Veterans’ Entitlements Act 1986 as in force immediately
       before the commencement of item 91; and
Notes to the Veterans’ Entitlements Act 1986

Table A

(b) that has been lodged in accordance with the requirements of section 118J of that Act as so in force; and
(c) that has not been dealt with before that day;
is to be taken, for all purposes of the Veterans’ Entitlements Act 1986 as amended and in force on and after that day, as if it were a claim lodged in accordance with the requirements of section 118I of that Act as so amended.

Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Act 2004 (No. 94, 2004)

Schedule 1

5 Transitional

(1) In this item:
amended Act means the Veterans’ Entitlements Act 1986 as amended by this Part.

commencement time means the time at which the amendments made by this Part commence.

(2) For the purposes of the amended Act, the Commission is taken to have approved, at the commencement time, pensions payable under Part III or Part IIIA of the amended Act as a class of pensions under section 122B of that Act.

(3) If an approval of a class of payments under section 58JA of the Veterans’ Entitlements Act 1986 was in force just before the commencement time, the approval is taken, for the purposes of the amended Act, to be an approval of that class of payments by the Commission under section 122B of the amended Act that was made at the commencement time.

(4) If a request was in force under section 58H or 58JA of the Veterans’ Entitlements Act 1986 just before the commencement time, it is taken, for the purposes of the amended Act, to be a request made at the commencement time under section 122B of the amended Act.

Veterans’ Entitlements Act 1986

230
15 **Application**

(1) The amendment made by item 6 applies to decoration allowance payable after the commencement of this item.

(2) The amendments made by items 7 to 9 apply to decorations awarded after the commencement of this item.

(3) The amendments made by items 10 and 13 apply to Victoria Cross allowance payable after the commencement of this item.

21 **Application**

The amendment made by this Part applies where the decision to grant the pension, or to increase the rate of the pension, is made after the commencement of this item.

24 **Application**

Subparagraphs 38(1)(aa)(iii) and 38(1)(e)(ii) of the Veterans’ Entitlements Act 1986, as amended by this Part, apply for the purpose of determining whether a person is, at or after the commencement of this Part, eligible for a partner service pension, and for that purpose residence of a person in Norfolk Island before (as well as at or after) the commencement of this Part may be taken into account.

26 **Application**

The amendment made by this Part applies in relation to instalments of service pension for pension periods that start after the commencement of this item.

31 **Application**

The amendments made by this Part apply where the decision to grant the pension, or to increase the rate of the pension, mentioned in paragraph 27A(1)(a) of the Veterans’ Entitlements Act 1986 is made after the commencement of this item.

33 **Application**

The amendment made by this Part applies in relation to instalments of service pension and income support supplement for pension periods starting at or after the commencement of this item.
Notes to the *Veterans’ Entitlements Act 1986*

Table A


**Schedule 2**

**43 Application of amendments in this Schedule**

(1) The amendments made by items 1, 2, 22, 23, 24, 25, 26, 27 and 28 of this Schedule apply in relation to payments under the *Veterans’ Entitlements Act 1986* payable on or after 20 September 2004.

**44 Transitional: claims made for social security pension or benefit that are not determined before 20 September 2004**

If:

(a) on a day (the *claim day*) that is before 20 September 2004, a person made a claim for a social security pension or a social security benefit; and

(b) on the claim day, adjusted disability pension (within the meaning of section 118NA of the *Veterans’ Entitlements Act 1986* (as amended by this Schedule)) was payable to the person or the person’s partner; and

(c) before 20 September 2004, a determination on the claim had not been made; and

(d) apart from this item, the claim would be rejected on or after 20 September 2004, but only because the rate of the pension or benefit would be nil; and

(e) the rate of the pension or benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) of that Act (as amended by this Schedule) were made;

then, despite any provision of the *Social Security (Administration) Act 1999*, the claim is taken to have been made on 20 September 2004.

**Schedule 4**

**4 Application**

(1) The amendments made by items 1 and 2 apply in relation to the deaths of veterans occurring on or after the commencement of those items.
(2) The amendment made by item 3 applies in relation to the deaths of dependants occurring on or after the commencement of that item.


Schedule 2

26 Application—amendments of sections 5JA and 5JB of the Veterans’ Entitlements Act 1986

The amendments of sections 5JA and 5JB of the Veterans’ Entitlements Act 1986 made by this Schedule apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 20 September 2004.

27 Transitional—current asset-test exempt income streams can be commuted to purchase market linked income streams

(1) This item applies to an income stream (the first income stream) if:

(a) the first income stream is an asset-test exempt income stream immediately before the commencement of this item; and

(b) the first income stream’s contract, or governing rules, are later changed to allow for commutation if the payment resulting from the commutation is transferred directly to the purchase of an income stream covered by subsection 5JBA(1) of the Veterans’ Entitlements Act 1986.

(2) Neither of the following result in the first income stream ceasing to be an asset-test exempt income stream:

(a) the change to the contract, or the governing rules, described in paragraph (1)(b) of this item;

(b) a commutation of the first income stream in accordance with that change.
29 Transitional—early use of new Life Tables

(1) This item applies to an income stream with a commencement day happening:
   (a) after the first day (the \textit{new publication day}) during 2004 or 2005 on which the Australian Government Actuary (the \textit{AGA}) publishes Australian Life Tables (the \textit{new Life Tables}) that differ from the AGA’s most recent publication of Australian Life Tables before 2004; and
   (b) during the period starting on 20 September 2004, and ending on:
      (i) if the new publication day happens during 2004—31 December 2004; or
      (ii) if the new publication day happens during 2005—31 December 2005.

(2) For the purposes of determining whether the income stream is an asset-test exempt income stream, the life expectancy on the income stream’s commencement day of:
   (a) the primary beneficiary of the income stream; or
   (b) the primary beneficiary’s reversionary partner (if any) on that day;
   can be ascertained by reference to:
   (c) the Life Tables prescribed for the purposes of the definition of \textit{life expectation factor} in subsection 27H(4) of the \textit{Income Tax Assessment Act 1936} most recently published before 2004; or
   (d) the new Life Tables.

(3) When working out the income stream’s \textit{relevant number} for the purposes of the \textit{Veterans’ Entitlements Act 1986}, a person’s life expectancy must be ascertained by reference to the same Life Tables as those chosen under subitem (2) of this item in relation to the income stream and the person.
Schedule 2

24 Special payment of seniors concession allowance in December 2004

(1) In this item:

1 December test day means the seniors concession allowance test day that occurs on 1 December 2004.

seniors concession allowance means seniors concession allowance under Part VIIAD of the Act.

seniors concession allowance test day has the meaning given by section 118P of the Act.

Social Security Act means the Social Security Act 1991 as amended by this Schedule and Schedule 1 to this Act.

social security law means the social security law (within the meaning of subsection 23(17) of the Social Security Act) as amended by this Schedule and Schedule 1 to this Act.

the Act means the Veterans’ Entitlements Act 1986 as amended by this Schedule and Schedule 1 to this Act.

transitional day means a day in December 2004 (other than 1 December 2004).

(2) Transitional seniors concession allowance is payable under this item to a person in relation to the transitional day if:

(a) seniors concession allowance would be payable to the person under section 118PB of the Act in relation to the transitional day if that day had been a seniors concession allowance test day; and

(b) seniors concession allowance was not payable to the person under section 118PB of the Act in relation to the 1 December test day.

(3) Transitional seniors concession allowance is payable only once in relation to December 2004.

(4) If transitional seniors concession allowance is payable to a person in relation to the transitional day, the person is to be paid an instalment of
Table A

the allowance as soon as is reasonably practicable on or after the transitional day. The amount of the instalment is $100.

(5) For the purposes of the Act, the social security law and the *Income Tax Assessment Act 1997*:

(a) transitional seniors concession allowance payable under this item in relation to the transitional day is to be treated as if it were seniors concession allowance payable under Part VIIAD of the Act in relation to the 1 December test day; and

(b) an instalment of transitional seniors concession allowance paid under this item in relation to the transitional day is to be treated as if it were a payment of an instalment of seniors concession allowance under Part VIIAD of the Act in relation to the 1 December test day.

(6) The Consolidated Revenue Fund is appropriated for the purposes of this item.

Schedule 5

4 Application

The amendments made by this Schedule apply in relation to the deaths of veterans occurring on or after the commencement of this Schedule.

*Family and Community Services and Veterans’ Affairs Legislation Amendment (Further 2004 Election Commitments and Other Measures) Act 2005* (No. 29, 2005)

Schedule 3

18 Application provision

The amendments made by this Part apply in respect of accommodation bonds in calculating the value of a person’s assets on or after the later of:

(a) the day on which this Act receives the Royal Assent; and
(b) 1 July 2005;

(irrespective of when a bond was paid).
### Table A

#### 19 Transitional provision

(1) If:

(a) either:

   (i) a person makes a claim for a service pension or an income support supplement under the *Veterans’ Entitlements Act 1986* between 1 July 2005 and 30 September 2005 (inclusive); or

   (ii) the Commission determines under subitem (2) that this subitem should apply in respect of a person; and

(b) the pension or supplement first becomes payable to the person because of the amendments made by this Part;

the pension or supplement is payable from the later of:

(c) 1 July 2005; and

(d) the day on which the pension or supplement first becomes payable to the person.

(2) The Commission may determine in writing that subitem (1) should apply in respect of a person if:

(a) the person makes a claim for a service pension or an income support supplement under the *Veterans’ Entitlements Act 1986* between 1 October 2005 and 30 June 2006 (inclusive); and

(b) the Commission is satisfied that special circumstances apply in respect of the person.

(3) A determination under subitem (2) is not a legislative instrument.

*Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005* (No. 61, 2005)

### Schedule 4

#### 29 Application of items 22 and 23

The amendments made by items 22 and 23 apply in relation to an adverse determination, made after the commencement of this item, to reduce the rate of, or cancel, a person’s service pension or income support supplement for a day that occurs after that commencement.
30 Application of items 24 and 25
The amendments made by items 24 and 25 of this Schedule apply in relation to a decision, made after the commencement of this item, calculating the rate of service pension or income support supplement for a day that occurs before or after that commencement.

Schedule 9
14 Application of amendments
(1) The amendments made by items 2, 3 and 4 apply to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries on or after 1 January 2006.

(2) The amendments made by items 5, 6 and 7 apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 1 January 2006.

(3) The amendments made by items 1 and 11 to 13 apply in working out the annual rate of ordinary income of a person from an income stream on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.

(4) The amendments made by items 8, 9 and 10 apply in working out if obligations for the making of payments under an income stream satisfied the requirements of subsections 5JBA(5) to (9) of the Veterans' Entitlements Act 1986 on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.
Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006 (No. 41, 2006)

Schedule 2

2 Administrative scheme for 2006 one-off payments to older Australians (veterans)

(1) Subject to this item, the Minister administering the Veterans’ Entitlements Act 1986 may, by legislative instrument, determine a scheme under which one-off payments may be made to older Australians in particular circumstances. The Minister may, by legislative instrument, vary or revoke the scheme.

(2) The circumstances in which the scheme provides for payments must be circumstances:
   (a) in which the Minister considers that Part VIID of the Veterans’ Entitlements Act 1986 does not produce appropriate results; and
   (b) occurring in the financial year starting on 1 July 2005.

(3) Without limiting the generality of subitem (1), the scheme may deal with the following:
   (a) the circumstances in which payments are to be made;
   (b) the amount of the payments;
   (c) what a person has to do to get a payment;
   (d) debt recovery in circumstances similar to those provided for in section 118ZZF of the Veterans’ Entitlements Act 1986;
   (e) administrative matters, such as determination of entitlement and how and when payments will be made.

(4) Payments under the scheme are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
Table A

Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006 (No. 82, 2006)

Schedule 7

33 Transitional—trusts created before 20 September 2006

(1) For a trust created before 20 September 2006, a failure to comply with a requirement of Subdivision A of Division 11B of Part IIIB of the Veterans’ Entitlements Act 1986 concerning a particular matter does not prevent the trust being a special disability trust if:

(a) the Commission, by written notice (an exemption notice) to the trustees, exempts the trust from the requirement as it concerns that matter; and

(b) in a case where the exemption notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the period (if any) stated in the exemption notice.

Note: For special disability trust, see section 52ZZZW of the Veterans’ Entitlements Act 1986.

(2) A period stated in an exemption notice for the purpose of paragraph (1)(b) must end at or before the end of 30 June 2007.

(3) An exemption notice has effect, subject to any conditions mentioned in paragraph (1)(b):

(a) from:

(i) the start of 20 September 2006; or

(ii) if the exemption notice states a time for the start of its period of effect that is after 20 September 2006—the stated time; and

(b) until:

(i) the end of 30 June 2007; or

(ii) if the exemption notice states a time for the end of its period of effect that is before the end of 30 June 2007—the stated time.

(4) If guidelines are made under subitem (5), a decision in relation to giving an exemption notice to the trustees of the trust must be made in accordance with the guidelines.
Table A

(5) The Commission may, by legislative instrument, make guidelines for deciding any or all of the following:

- (a) whether or not to give exemption notices to trustees of trusts;
- (b) what conditions to include in exemption notices;
- (c) the periods for compliance with conditions in exemption notices;
- (d) the periods during which exemption notices are to have effect.